

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
ALVIN C. BUSH, VICE CHAIRMAN  
DANIEL F. CLARK, ESQ.  
ARTHUR COCCODRILLI  
MURRAY UFBERG, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 27, 2004

Honorable Allen D. Biehler, P.E., Secretary  
Department of Transportation  
Keystone Building, 8th Floor  
400 North Street  
Harrisburg, PA 17120

Re: Regulation #18-377 (IRRC #2417)  
Department of Transportation  
Alcohol Highway Safety Schools and Driving Under the Influence Program Coordinators

Dear Secretary Biehler:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

evp

Enclosure

cc: Honorable Richard A. Geist, Majority Chairman, House Transportation Committee  
Honorable Keith R. McCall, Democratic Chairman, House Transportation Committee  
Honorable Roger A. Madigan, Chairman, Senate Transportation Committee  
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee

**Comments of the Independent Regulatory Review Commission**  
**on**  
**Department of Transportation Regulation #18-377 (IRRC #2417)**  
**Alcohol Highway Safety Schools and Driving Under the Influence Program**  
**Coordinators**

**October 27, 2004**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Transportation (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on September 27, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Section 94.5. Curriculum. – Clarity.**

This section establishes the five core components of Alcohol Highway Safety School (AHSS). We have two concerns.

First, Section 94.9, relating to notification of possible fines and imprisonment, requires AHSS instructors to provide oral and written notice to all AHSS students of the provisions of 75 Pa.C.S. § 1543(b), relating to driving while operating privileges are suspended or revoked. It also requires the notices to be presented to students during the first component of AHSS. A cross reference to Section 94.9 should be added to Subsection 94.5(a)(1), which relates to component one of the curriculum.

Second, Subsection (a)(3) describes the content of component three of AHSS. It includes an introductory paragraph followed by three numbered subparagraphs. The information contained in the subparagraphs duplicates the information contained in the introductory paragraph. Similar duplicative language can be found in Subsection (a)(4) and (a)(5), which relate to component four and five respectively. The final-form regulation should be amended to delete the duplicative provisions of these subsections.

**2. Section 94.6. AHSS approval; revocation and refusal of approval. – Clarity.**

*Subsection (c)*

This subsection states, in part: “The Department will have free access to the records of the AHSS and all of its students’ records, not covered by confidentiality laws or regulations, including § 94.13 (relating to confidentiality), as part of the entry and inspection process.” We have two concerns.

First, the final-form regulation should specify what documents are to be confidential. It should also define the term “records” and specify how long those records must be maintained by the AHSS.

Second, the final-form regulation should include specific references to the applicable confidentiality laws or regulations.

*Subsection (d)*

This subsection provides the Department the ability to revoke or refuse to issue a letter of approval to operate an AHSS. How will an AHSS be notified that their letter of approval was refused or revoked? The final-form regulation should specify how the Department will provide appropriate notification to an AHSS.

**3. Section 94.10. AHSS instructor qualification, selection, certification and recertification. – Clarity.**

Subsection (c)(6) relates to AHSS instructor certification. It references “any additional reporting requirements established by the Department.” These requirements should be included in the final-form regulation.

**4. Section 94.11. Suspension or revocation of certification. – Clarity.**

This section establishes the appeal rights of an AHSS instructor whose certification is suspended or revoked or an AHSS instructor that is restricted or prohibited from participating in a DUI program. It states that the Department will provide notice and an opportunity for an administrative hearing “within a reasonable time.” The phrase “reasonable time” is unclear. The final-form regulation should provide a time period for providing the notice.

OCT-27-2004 WED 08:45 AM

FAX NO.

## Facsimile Cover Sheet

**Kristine M. Shomper**  
Administrative Officer



Phone: (717) 783-5419  
Fax #: (717) 783-2664  
E-mail: [kriss@irrc.state.pa.us](mailto:kriss@irrc.state.pa.us)  
Website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Stephen Martin  
**Agency:** Department of Transportation  
**Phone:** 7-5079  
**Fax:** 2-2741  
**Date:** October 27, 2004  
**Pages:** 4

RECEIVED  
2004 OCT 27 AM 11:19  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-377 (IRRC #2417). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Quick Group **Date:** 10/27/04