

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 #18-392 (IRRC #2418)
Department of Transportation
Official Traffic Control Devices

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. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

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

Comments of the Independent Regulatory Review Commission
on
Department of Transportation Regulation #18-392 (IRRC #2418)
Official Traffic Control Devices
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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.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. General. - Consistency with statute and existing regulations; Economic impact; Need; Implementation procedure; Reasonableness; Clarity.

Responsibility

The primary issue raised by commentators involves Section 212.5 relating to installation and maintenance responsibilities. Sections 212.5(b)(1)(ii), (b)(1)(iv), (b)(1)(v), (b)(2) and (d) codify who is responsible for traffic control devices. Commentators believe the responsibilities contained in this section will impose new costs on local authorities. One commentator does not believe the Department has the authority to assign these responsibilities to local authorities.

The existing regulations of the Department at 67 Pa. Code § 211.6(b)(3) state, “[a]ny municipality **may** install, revise, remove, maintain and operate” certain types of official traffic control devices. (Emphasis added.) The proposed amendments in Sections 212.5(b) and (d) state that municipalities “**are** responsible for the installation, revision, maintenance and removal” of certain official traffic control devices. (Emphasis added.) There are two concerns.

First, the intent of this change from the existing regulations is unclear. The Department should explain.

Second, the Department should explain its authority to assign these responsibilities, how the regulation is consistent with the statute and what costs will be imposed on local authorities by Section 212.5. This explanation by the Department should accompany the final-form regulation.

Supplements and Publications

The proposed regulation adopts the Manual on Uniform Traffic Control Devices (MUTCD). In addition, Section 212.3 states that the Department will publish a supplement to the MUTCD. The proposed regulation also identifies publications which contain specifications, standards and

requirements for traffic control devices and construction materials. Section 212.12 contains a list of these publications and states that these “documents will be available in the Department’s Sales Store.” There are three concerns.

First, the publications set forth requirements not specifically included in the proposed regulation. For example, Section 212.3(1), entitled “Pennsylvania’s Supplement to the MUTCD,” states a published supplement “will include the requirements for official traffic control devices contained in this chapter” Section 212.3(2) reads: “The supplement will be called *Official Traffic Control Devices* (Department Publication 212).”

It is unclear what additional requirements the Department envisions. For example, Section 212.3(1)(iv) states the supplement will include “other guidance.” What is included in this term? Will it contain guidelines or requirements that are binding? The Department should explain why additional requirements are needed and why these requirements are not included in the proposed regulation and subject to comment and oversight.

Second, the proposed regulation also refers to standards in Department publications. An example is Section 212.101(a), relating to approved signs, which reads:

Official traffic signs are identified in the *Pennsylvania Handbook of Approved Signs* (Department Publication 236M) which includes sign standards that show the shape, color, dimensions, legends, application and placement of official signs. When sign messages are required other than those provided for in the *Pennsylvania Handbook of Approved Signs*, the Bureau of Highway Safety and Traffic Engineering may authorize new sign standards. When approved by the Secretary, through the Chief, Traffic Engineering and Operations Division, these signs shall also be regarded as official signs.

What is the relationship of these Department publications to the MUTCD nationwide standards? In the preamble, the Department states that the “MUTCD will become the standard for traffic-control in this Commonwealth.” Given the nationwide standards, why are the additional publications and supplements necessary?

Third, the timing for publication of these documents is not explained. When will they be published? Will the Department publish revised supplements? How often will it be revised and how will the regulated community be notified when it is published or revised?

2. Section 212.1. Definitions. - Clarity.

Engineering and traffic study

This definition describes the study as “conforming to generally accepted engineering standards and practices.” There are two concerns with this phrase.

First, if this phrase is intended to be a requirement, it would not be enforceable because it is in a definition. Therefore, the phrase should be moved to the body of the regulation.

Second, it is not clear what standard would be used to determine if a study conforms to “generally accepted engineering standards and practices.” A cross reference or further description is needed.

Local authorities

This definition includes “state agencies, boards and commissions other than the Department.”
What specific state authorities does this include?

3. Section 212.2. Adoption of Federal standards. - Implementation procedures; Clarity.

Subsection (b) states amendments to the MUTCD “will take effect 60 days after the effective date specified by the Federal Highway Administration” unless the Department publishes notice that the amendment does not take effect. When would the Department publish this notice? Which requirements should the regulated community comply with during the 60-day period?

4. Section 212.4. Application. - Economic impact; Feasibility; Reasonableness.

Subsection (a) begins with these two sentences:

This chapter applies to the approval, location, installation, revision, operation, maintenance and removal of all traffic signs, signals, markings and other traffic-control devices on all streets and highways in this Commonwealth. All signs, signals, markings and other traffic-control devices erected shall conform to this chapter.

The subsection also includes an exemption for existing traffic control devices if “the Department or local authorities have on file evidence that the traffic restrictions were so posted or erected in accordance with then-current regulations.”

A commentator is concerned that local authorities may not be able to easily provide the evidence the Department will require for the exemption. The commentator cites a concern with providing documentation for all signs within a local authority’s boundaries, including signs that are 30 or more years old. An example is also given of signs erected by developers on lands over which a local authority later assumed control.

Under item #18 of the Regulatory Analysis Form, the Department states, “[t]here are little or no potential costs or savings to local governments associated with these regulations.” However, if a local authority is unable to provide sufficient evidence, this regulation would impose significant costs on it. The Department should specify what “evidence” a local authority will be required to provide in order to qualify for the exemption. The Department should also examine and document the costs that local authorities would incur in retaining or recovering this evidence. Finally, what recourse is there if a local authority cannot recover or provide sufficient evidence?

5. Section 212.10. Requests for changes, interpretations or permission to experiment. - Clarity.

This section begins with the phrase “a municipality or other agency” The defined term “local authorities” should be used in its place.

6. Section 212.120. General motorist service signs. - Clarity.

This section states, “[t]he application of general motorist service signs must be in accordance with the Department’s Statewide policy, and will generally be limited to expressways and

freeways” (Emphasis added.) The phrase “generally be limited to” is vague. When would the application of general motorist service signs not be limited to expressways and freeways?

7. Section 212.202. No-passing zones. - Clarity.

Subsection (a)(9) states “In areas where a capacity analysis indicates Level of Service D.” A cross reference should be added to the “Level of Service D” provision.

8. Section 212.302. Traffic-control signals. - Clarity.

The table in Subsection (b)(3)(i) is not clear. In the first two columns labeled “Major Street” and “Minor Street,” why are the top four rows identical to the bottom four rows?

9. Section 212.406. Channelizing devices. - Clarity.

Subsection (b) contains the prohibition that, “Cones that are 18 inches high may only be used to protect new pavement markings.” The regulation does not state the size of cones required when cones are used as channelizing devices. Technically, this language would allow a 12-inch cone, which is presumably not the intent. Further explanation of the intended prohibition is needed in the regulation.

10. Section 212.409. Rumble strips. - Clarity.

The last sentence states, “When rumble strips are used, it is desirable to extend the rumble strip patterns onto the shoulder whenever possible” Stating what is “desirable” is nonregulatory language. The regulation should clearly state what is required.

11. Errors or omission in citations, cross references or necessary details. - Reasonableness; Clarity.

The requirements listed below are incorrect or vague. The Department should review these sections, and correct the references or add specific cross references, citations or more detail so that the regulated parties have full notice of what is required. These sections include:

- Section 212.10(2) requires a request to include “sufficient information to allow the Department to make a ruling”
- Section 212.116(a)(2)(i) references the “Restricted Hours Panel (R3-20).” Should this reference be to “Restricted Hours Panel (R10-20a)?” (Emphasis added.)
- Section 212.117(a)(1) requires the safe load capacity of a bridge to be determined “in accordance with Department standards”
- Section 212.121(a) requires specific service signs to only be installed “in accordance with Department policy.”
- Section 212.404(b) states, “Portable sign supports must be of a type approved by the Department.”

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



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

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Stephen Martin
Agency: Department of Transportation
Phone: 7-5079
Fax: 2-2741
Date: October 27, 2004
Pages: 6

RECEIVED
2004 OCT 27 AM 9:02
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-392 (IRRC #2418). 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: *Diane [Signature]* Date: 10/27/04