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

June 15, 2005

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

Re: Regulation #18-401 (IRRC #2474)  
Department of Transportation  
Administrative Practice and Procedure

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 me at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Kaufman", written over a horizontal line.

Kim Kaufman  
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 #18-401 (IRRC #2474)

### Administrative Practice and Procedure

June 15, 2005

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 May 16, 2005. 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **Section 491.2b. Separation of adjudicatory and adversarial functions. – Reasonableness, Clarity.**

##### *Subsection (a)(1)*

Under this subsection, it is not clear how one would be considered to be “significantly involved” in a proceeding. For clarity, the Department should define the term or explain the criteria used to determine who is “significantly involved.”

##### *Subsection (a)(2)*

This subsection contains the phrase “substantive supervisory responsibility.” Does the Department intend this to mean direct supervision? For clarity, this term should be defined or the Department should set forth the criteria used to determine who has “substantive supervisory responsibility.”

##### *Subsection (a)(3)*

This subsection states, “Ex parte communications . . . that may create an appearance of impropriety in a matter shall be avoided.” The phrase “be avoided” is not consistent with the decision of the Pennsylvania Supreme Court in the case of Lyness v. State Board of Medicine, 529 Pa. 535, 605 A.2d 1204 (1992). Therefore, the regulations should clearly prohibit ex parte communications which create the appearance of impropriety.

JUN-15-2005 WED 10:06 AM

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## Facsimile Cover Sheet

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Administrative Officer



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**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:** June 15, 2005  
**Pages:** 3

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**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-401 (IRRC #2474). 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:

Date:

06-15-05