

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:
Transportation

(2) Agency Number:
18-433:

IRRC Number: 2968

(3) PA Code Cite:

67 Pa. Code, Chapter 441

(4) Short Title:

Access and Occupancy of Highways by Driveways and Local Roads

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact:
Charles Goodhart, Director
Bureau of Maintenance and Operations
Commonwealth Keystone Building, 400 North Street
Harrisburg, Pennsylvania 17120-0064,
(717) 787 6899; cgoodhart@pa.gov

Secondary Contact:
Glenn C. Rowe, Division Chief
Traffic Engineering & Operations
Bureau of Safety & Traffic Engineering
Commonwealth Keystone Building, 400 North Street
Harrisburg, PA 17108-2047
(717) 783-6479; GLROWE@pa.gov

(6) Type of Rulemaking (check applicable box):

- | | |
|---|--|
| <input checked="" type="checkbox"/> Proposed Regulation | <input type="checkbox"/> Emergency Certification Regulation; |
| <input type="checkbox"/> Final Regulation | <input type="checkbox"/> Certification by the Governor |
| <input type="checkbox"/> Final Omitted Regulation | <input type="checkbox"/> Certification by the Attorney General |

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Chapter 441 regulates the location, design, construction, and maintenance of driveways, local roads, and structures within State highway right-of-way. The purpose of these amendments is to better reconcile the needs of motorists operating in normal highway traffic and the needs of motorists entering or leaving State highway right-of-way from adjacent property. Except with respect to limited-access highways, owners of property adjacent to State highways have a right of reasonable access. At the same

time, the efficiency and safety of a highway is affected by the amount and type of interference caused by accessing traffic. As the number of access points onto a highway increases, the ability of the highway to provide for the unimpeded and reasonably safe movement of traffic is diminished.

The proposed regulation includes amendments to address who can apply for a permit and/or who can submit the permit application; and updates out-of-date sections of the regulation.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The authority for this rulemaking is contained in Section 420 of the State Highway Law, Act of June 1, 1945, P.L. 1242, No. 428, *as amended*, (36 P.S. Section 670-420),

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This rulemaking is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed to expand the definition of owner to allow additional people with an interest in the property to apply for a permit. The term agent was also added allowing an agent to submit a permit application on behalf of the owner.

The regulation is also needed to update out-of-date sections. The amendments to the regulation incorporate the use of the Department's Electronic Permitting System and remove the permit fees from the regulation to allow the Department to periodically publish permit fees in the Pennsylvania Bulletin. The amendments also update sight distance requirements by replacing the values, tables and formulas with a reference to Department Publication 13M (Highway Design Manual) which uses *AASHTO's Intersection Sight Distance* and *AASHTO's Stopping Sight Distance*, and; replace driveway design criteria and layout figures with a reference to Department Publication 282 (Highway Occupancy Permit Manual) where the information will be placed. The amendments also update outdated references and definitions so the terminology is consistent with current Department usage in other regulations, policies and publications.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data did not form the basis for this rulemaking

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

This rulemaking should not have any adverse effects. To the contrary, the inclusion of provisions allowing for electronic submission of permit applications will increase the efficiency and lower the cost of submitting an application for a highway occupancy permit.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Any person, business or local government wishing to obtain access to a roadway under the jurisdiction of the Pennsylvania Department of Transportation will be required to comply with the regulation. An approximate number of people who will desire to do so at any given time cannot be calculated. Currently the Department issues approximately 4,000 such highway occupancy permits each year.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

A specific estimate of the costs and/or savings to the regulated community cannot be calculated. As noted above [in (12) above] the inclusion of provisions allowing for electronic submission of permit applications will increase the efficiency and lower the cost of submitting an application for a highway occupancy permit.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

A specific estimate of the costs and/or savings to local government cannot be calculated. As noted above [in (12) above] the inclusion of provisions allowing for electronic submission of permit applications will increase the efficiency and lower the cost for local governments submitting an application for a highway occupancy permit.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

A specific estimate of the costs and/or savings to state government cannot be calculated. The inclusion of provisions for electronic submission of permit applications will increase the efficiency of the permitting process and clearly result in reduced costs to state government. The costs associated with implementing the electronic permitting system is expected to be quickly recouped in the administrative efficiencies realized.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
State Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Total Savings	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
COSTS:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Costs	None	None	None	None	None	None
REVENUE LOSSES:	None	None	None	None	None	None
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Revenue Losses	None	None	None	None	None	None

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -09/10	FY -10/11	FY -11/12	Current FY 12/13
582 - 7844701000	\$ 2,000,000	\$ 2,000,000	\$ 2,776,000	\$ 2,665,000

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The efficiencies effectuated by this rulemaking outweigh any initial difficulties applicants might experience in initially navigating the electronic permitting system. The streamlining and paperwork reduction that will be achieved by this rulemaking outweigh any cost to the Commonwealth to develop and implement the system.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Department did not consult with any focus group or advisory council in the development of the regulation.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The changes proposed overall are positive changes for developers (providing more flexibility with respect to who can be an applicant and with respect to driveway designs, as well as more efficiency with respect to ePermitting). This should indirectly improve the Commonwealth's competitiveness with

other States in regard to economic development.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This rulemaking will not directly affect other regulations of the Department, but for consistency, the Department is proposing similar amendments to 67 Pa. Code, Chapter 459 (relating to the occupancy of highways by utilities) to provide for electronic permitting.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

These amendments will reduce paperwork by providing for the electronic submission, review and processing of highway occupancy permits.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions were included to meet the particular needs of affected groups. Provisions were retained, however, to allow for the continued submission of permit applications non-electronically for those applicants without access to the technology for electronic submission.

(26) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: 9/8/2012
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 1/5/2013
- D. The expected effective date of the final-form regulation: 1/5/2013
- E. The date by which compliance with the final-form

regulation will be required:

1/5/2013

F. The date by which required permits, licenses or other approvals must be obtained:

N/A

(27) Provide the schedule for continual review of the regulation.

This regulation will be reviewed at least annually or more frequently as experience under the new provisions suggests.

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WITH THE
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Copy below is hereby approved as to form and legality.
Attorney General.

Amey M. Elliott
By: _____

(Deputy Attorney General)

AUG 09 2012

Date of Approval

Copy of below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

**Department
of
Transportation**
(Agency)

DOCUMENT/FISCAL NOTE NO. # 18-433

DATE OF ADOPTION _____

BY *Henry J. Schuler*

Secretary of Transportation

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby approved as to
form and legality. Executive or
Independent Agencies.

Shawn E. Smith
By: _____

JUL 18 2012

(Date of Approval)

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike Inapplicable Title)

Check if applicable. No attorney
General Approval or Objection within
30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART B. NONVEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 441. ACCESS TO AND OCCUPANCY OF HIGHWAYS BY

DRIVEWAYS AND LOCAL ROADS

Notice of Proposed Rulemaking

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART B. NONVEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

**CHAPTER 441. ACCESS TO AND OCCUPANCY OF HIGHWAYS BY
DRIVEWAYS AND LOCAL ROADS**

Notice of Proposed Rulemaking

Preamble

The Department of Transportation, Bureau of Maintenance and Operations, pursuant to the authority contained in Section 420 of the State Highway Law, Act of June 1, 1945, P.L. 1242, No. 428, *as amended*, (36 P.S. Section 670-420), proposes to amend 67 Pa. Code Chapter 441, Access to and Occupancy of Highways by Driveways and Local Roads, as set forth in Annex A to this Notice.

Purpose of This Chapter

The purpose of this chapter is to regulate the location, design, construction, and maintenance of driveways, local roads, and structures within State highway right-of-way to provide safe and efficient transportation operations, security, economy of maintenance, and preservation of proper drainage while authorizing safe and reasonable access to the highway.

Purpose of These Amendments to the Regulations

The purpose of these amendments is to better reconcile the needs of motorists operating in normal highway traffic and the needs of motorists entering or leaving State highway right-of-way from adjacent property. Except with respect to limited-access

Preamble

67 Pa. Code, Chapter 441

Access to and Occupancy of Highways by
Driveways and Local Roads

Page 1

highways, owners of property adjacent to State highways have a right of reasonable access. At the same time, the efficiency and safety of a highway is affected by the amount and type of interference caused by accessing traffic. As the number of access points onto a highway increases, the ability of the highway to provide for the unimpeded and reasonably safe movement of traffic is diminished.

The proposed regulation includes amendments to address two areas: first, to clarify “who can apply for a permit and/or who can submit the permit application; and second, to update out-of-date sections of the regulation.

To clarify “who can apply for a permit” the definition of owner was expanded allowing additional people with an interest in the property to apply. To broaden “who can submit an application” the term agent was added allowing an agent to submit on behalf of the owner.

To update out-of-date sections, the regulation includes amendments to address the following: to incorporate the use of the Department’s Electronic Permitting System; to remove the permit fees from the regulation and to provide provisions that allow the Department to publish the permit fees in the Pennsylvania Bulletin; to update sight distance requirements by replacing the values, tables and formulas with a reference to Department Publication 13M (Highway Design Manual) which uses *AASHTO’s Intersection Sight Distance* and *AASHTO’s Stopping Sight Distance*; to replace driveway design criteria and layout figures with a reference to Department Publication 282 (Highway Occupancy Permit Manual) where the information will be placed; and to update outdated references and definitions so the terminology is consistent with current Department usage in other regulations, policies and publications.

Significant Provisions of the Amendments

Significant amendments to the chapter include the following:

(1) The proposed amendments to Section 441.1, *Definitions*, include the addition of the following: agent, Deputy Secretary, Electronic Permitting System, fee owner, intersection sight distance, local governments and owner. These terms were added because they are used in other amendments made throughout the Chapter.

The following were deleted: combination, director, form 408, intermediate island, own, roadway construction standards, setback, turning radius, and numerous Department publications. These terms were removed because they were either replaced with a more appropriate term or no longer used in the Chapter.

The definitions for the following were modified: Central Permit Office, low volume driveway, and medium volume driveway. These definitions were modified to make corrections or to clarify the existing definition.

(2) Section 441.3(b), *Who may apply for a permit*, was amended to state that permit applications must be in the name of the owner or, where applicable, the owners of the property or a local government. If the owner, who is applying for the permit is not the fee owner or a local government, the applicant will be required to notify the fee owner that an application has been submitted and to secure the approval of the fee owner or to indemnify the Commonwealth, in a form acceptable to the Department, against any action which the fee owner may bring against the Commonwealth relating to the permit or permit application.

The term “own” was replaced by “owner” and “fee owner” in the definitions.

Owner is defined as a person who holds fee title to land or a person who holds an estate

or other legal interest in property, such as an easement, a lease, a license, subsurface rights, or an equitable interest under a sales agreement or option to purchase. Fee owner is defined as a person who holds fee title to land or a tenant in a lease that will not terminate within 15 years of the permit issuance date.

Section 441.3(b) further states that permit applications must be submitted by the applicant or by an agent on behalf of the applicant in which case the application must be accompanied by an agent authorization form acceptable to the Department.

(3) Section 441.3(c), *Where to submit applications*, and Section 441.3(e)(1), related to *Application procedures and required information*, require the applicants to use the Department's internet based Electronic Permitting System to submit applications. Language was added that allows the Department to still accept paper applications if necessary.

Further amendments to section 441.3(e), *Application procedures and required information*, were made to accommodate the use of the Electronic Permitting System, including deleting the requirement to submit five sets of plans, deleting references to microfilming as the permit plans will be stored electronically, and, under payment, deleting "by check or money order" to allow for electronic payment.

(4) Section 441.4. *Permit fees*, was amended to replace the existing fees with a paragraph that states the Department will prescribe a fee schedule for application processing, review of the application and associated materials, permit inspection, permit supplement, and miscellaneous fees payable to the Department in connection with permits. The fee schedule will be published by the Department in the Pennsylvania Bulletin. The Department may periodically review and revise the schedule and publish a

revised schedule in the Pennsylvania Bulletin. The fees shall not exceed the approximate reasonable cost to process the application, to review the application and associated materials, to record and issue the permit, to amend the permit, and to inspect the permitted work.

Section 441.5(a), *Issuance of permits*, the clause that states the permit will serve as a receipt for the fees accompanying the application was deleted because review fees may not be invoiced and collected until after the permit has been issued.

(5) Sections 441.5(e)(1), 441.8(m)(3), and 441.10(b)(2) have been amended to replace “director” with “Deputy Secretary or his designee” to be consistent with policy currently being used by the Department.

(6) Section 441.5(h), *Work completion notification*, was amended to state that, when all permitted work has been completed, the permittee shall provide written notification to the district office in lieu of stating the permittee shall mail the Department form/post card.

Section 441.5(i), *Permanent permit microfilm record*, was deleted because permits, permit plans, and other material will be stored electronically using the Electronic Permitting System.

(7) Section 441.8(a) and (b) were amended to remove the reference to the driveway configuration figures in section 441.9 and instead reference the figures in Department Publication 282 (Highway Occupancy Permit Manual).

Proposed amendments to Section 441.8(h), *Sight distance*, replace the existing *desirable* sight distance values in Tables 1 through 6 with a reference to intersection sight distance as set forth in Department Publication 13M (Highway Design Manual). The

minimum acceptable sight distance formula is removed from the Chapter. If the intersection sight distance is impractical or infeasible to achieve, the applicant may use stopping sight distance as set forth in Department Publication 13M (Highway Design Manual). The proposed regulation still requires longer intersection sight distance where attainable to allow for better operation of the driveway and state routes.

Amendments to Section 441.8(i)(4), *Grade of access driveway*, related to uncurbed roadways, remove Figure 1 and references Department Publication 282 (Highway Occupancy Permit Manual) for design standards and guidelines.

Amendments to Section 441.8(i)(5), *Grade of access driveway*, related to curbed roadways, remove the design restrictions and figures for driveway aprons and depressed curb and instead references Department design standards.

(8) Section 441.9, *Driveway layout illustrations*, was deleted and the section was marked “reserved”. References to these figures/illustrations throughout the Chapter have been updated to reference the standard access configuration details in Department Publication 282 (Highway Occupancy Permit Manual).

Persons and Entities Affected

These regulations affect property owners, including municipalities, who propose to create an access to a State highway or to significantly change the design, operation or location of an existing access. The affected persons will be required to submit to the Department an application and plans for a permit which detail the particulars of the proposed occupancy, in accordance with these regulations.

Fiscal Impact

These regulations should not increase costs for the Commonwealth or local governments. Costs to the Commonwealth may decrease if the fees are increased through periodic publication in the Pennsylvania Bulletin to help offset the cost of the highway occupancy permit program.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. § 745.5(a), the agency submitted a copy of these proposed regulations, on August 14, 2012 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments recommendation, or objections.

Sunset Provisions

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under Section 420 of the State

Highway Law (36 P.S. Section 670-420). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Charles Goodhart, Director, Bureau of Maintenance and Operations, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania 17120-0064, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this regulation is, Glenn C. Rowe, Division Chief, Traffic Engineering & Operations, Bureau of Safety & Traffic Engineering, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17108-2047; Telephone number (717) 783-6479.

Barry J. Schoch, P.E.

Secretary of Transportation

ANNEX A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART B. NON-VEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 441. ACCESS TO AND OCCUPANCY OF
HIGHWAYS BY DRIVEWAYS AND LOCAL ROADS

§ 441.1. Definitions.

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

* * * * *

Access—A driveway, street or other means of passage of vehicles between the highway and abutting property, including acceleration and deceleration lanes and such drainage structures as may be necessary for the proper construction and maintenance thereof.

Agent—A person who is authorized to act on behalf of the owner(s).

Central Permit Office—The Department office for the control of issuance of permits located at:

Pennsylvania Department of Transportation

Central Permit Office]

Bureau of Maintenance and Operations

400 North Street, 6th Floor

Harrisburg, Pennsylvania 17120-[0041]0064

[*Combination*—Two or more vehicles physically interconnected in tandem.]

* * * * *

[*Director*—The director of the Department's Bureau of Highway Services.]

Deputy Secretary—Deputy Secretary for Highway Administration.

District Office—Any of the 11 engineering district offices of the Department.

* * * * *

Egress—The exit of vehicular traffic from abutting properties to a highway.

Electronic Permitting System—The Department's web application used to submit, review, track, and store highway occupancy permits, applications, plans, documents and engineering studies.

Equipment—All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and completion of the work.

Fee Owner—A person who holds fee title to land or a tenant in a lease that will not terminate within 15 years of the permit issuance date.

[*Form 408*—The latest revision of highway construction specifications issued by the Department.]

Frontage width—The distance along the right-of-way line in front of an abutting property.

* * * * *

[*Intermediate island*—The section of right-of-way between driveways from the pavement edge or curb to the property line.]

Intersection sight distance—The distance required by a driver traveling at a given speed to perceive the presence of potentially conflicting vehicles in sufficient time to stop or adjust their speed to avoid colliding in the intersection.

Joint use driveway—A driveway shared by and constructed to provide access to two or three properties.

Limited access highway—A highway to which owners or occupants of abutting lands and other persons have no legal right of access except at points and in the manner determined by the Department.

Local governments—Townships, cities, boroughs, incorporated towns, home rule municipalities, and counties.

Local road—Every public highway other than a state highway. The term includes existing or proposed streets, lanes, alleys, courts, and ways.

Low volume driveway—A driveway used or expected to be used by more than 25 but [less] not more than 750 vehicles per day.

* * * * *

Medium volume driveway—A driveway used or expected to be used by more than 750 but [less] not more than 1500 vehicles per day.

* * * * *

[*Own*—To hold title to land or a building or be a tenant in a lease that will not terminate within 15 years of the permit issuance date.]

Owner—A person who holds fee title to land or a person who holds an estate or other legal interest in property, such as an easement, a lease, a license, subsurface rights, or an equitable interest under a sales agreement or option to purchase.

Pavement edge—The edge of the main traveled portion of any highway, exclusive of shoulder.

* * * * *

[*Publication 43*—A Department publication, sometimes called “Bulletin 43,” containing requirements for the maintenance and protection of traffic on construction projects.

Publication 68—A Department publication containing regulations governing the design, location, and operation of all official traffic signs, signals, and markings on and along highways.

Publication 90—A Department publication containing requirements for work area traffic control during highway maintenance operations and utility work.]

Right-of-way—The area which has been acquired by the Department for highway purposes.

Roadway—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk of shoulder.

[*Roadway construction standards*—Department Publication No. 72 containing the Department’s design standards for roadway construction.]

Secretary—The Secretary of the Department.

[*Setback*—The lateral distance between the right-of-way line and the roadside building, liquid fuel pump island, display stand, or other object, which will result in space for vehicles to stop or park between such objects and the right-of-way line.]

Shoulder—The portion of the roadway, contiguous to the traffic lanes, for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses and pavements.

* * * * *

Traffic control device—Any sign, signal, marking or device placed or erected for the purpose of regulating, warning, or guiding vehicular traffic or pedestrians, or both.

[*Turning radius*—The radius of an arc which approximates the turning path of the exterior corner of a vehicle.]

* * * * *

§ 441.3. Permit application procedure.

* * * * *

(b) [*Who may execute applications.*] Who may apply for a permit. Permit applications [shall] must be submitted in the name of [and executed by,] the owner or owners of the property or in the name of a local government.

(1) If the applicant who is applying for the permit is not the fee owner of the property or a local government, the applicant shall be required to notify the fee owner that an application has been submitted.

(i) The applicant shall be required to secure the approval of the fee owner to submit the application; or

(ii) to indemnify the Commonwealth, in a form acceptable to the Department, against any action which the fee owner may bring against the Commonwealth relating to the permit or permit application.

(2) Permit applications may be submitted by an agent on behalf of the applicant if accompanied by an agent authorization form acceptable to the Department.

(c) *Where to submit applications.* [Permit applications shall be submitted to either the district or county office having jurisdiction over the county in which the proposed work will be performed.] Permit applications shall be submitted via the Department's internet based

Electronic Permitting System, which can be accessed through the Department's home page. If necessary, the district or county office having jurisdiction over the county in which the proposed work will be performed may accept, at their discretion, paper applications and supporting documents.

* * * * *

(e) *Application procedure and required information.* Permit applications:

(1) Shall be submitted via the Department's Electronic Permitting System. At the Department's discretion, applications may be submitted in person or by mail on a properly completed Department application form [Form M-945 A].

(2) Shall be signed by the applicant.

(3) Shall include [five sets of] plans, of a quality sufficient for electronic storage [microfilming] and in a form acceptable to the Department, detailing the location and pertinent dimensions of both the proposed installation and related highway features.

(4) Shall include payment [be accompanied by a check or money order, payable to the Department,] in the appropriate amount, as set forth in § 441.4 (relating to permit fees).

(5) Shall be submitted to the Department at least 30 days prior to the anticipated start of work.

(6) Shall contain proof of ownership.

(f) *Traffic control plan.* Submission of the traffic control plan shall be as follows:

* * * * *

(3) The traffic control plan shall be either:

(i) [A] a detailed drawing, showing all traffic control devices[.], or

(ii) a reference to a standard drawing found in [Publication 43 or Publication 90]

Publication 213 (Temporary Traffic Control Guidelines), provided the referenced

standard drawing properly depicts the work area and completely addresses the needed traffic control.

* * * * *

(h) *Drainage release for other than minimum use driveways.* If it can reasonably be anticipated that there will be an increase in the flow of water onto the property of some other person as a result of action, authorized by the permit, a drainage release shall be submitted with the application. Where possible, drainage releases [~~Form L-15 or CC-15~~], in a form acceptable to the Department, will be obtained, by and at the expense of the applicant, from all property owners over whose land additional drainage will flow. All drainage releases shall be notarized and recorded, by and at the expense of the applicant, in the County Office of the Recorder of Deeds. If a drainage release cannot be obtained from any affected property owner, the Department may nonetheless issue a permit if it determines that there is no reasonable and prudent alternative available to the applicant and the applicant executes an indemnification [agreement] acceptable to the Department.

* * * * *

§ 441.4. Permit fees.

(a) [*Permit issuance fees.* Issuance fees shall be used to defray costs incurred by the Department in reviewing and processing the application and plan, including the preliminary review of the site location identified in the application, and issuing and processing the permit.

(1) Issuance fees shall be as follows:

- (i) Minimum use driveways—\$15.
- (ii) Low volume driveways—\$30.
- (iii) Medium volume driveways—\$40.

(iv) High volume driveways—\$50.

(2) Supplement fee each six-month time extension or each submitted change shall be—\$10.

(b) *General permit inspection fees.* General inspection fees shall be used to defray costs incurred by the Department in spot inspection of permitted work or subsequent inspection after the permitted work has been completed, to insure compliance with the permit and this chapter; they shall be as follows:

- (1) Minimum use driveway—\$10 each.
- (2) Low volume driveway—\$20 each.
- (3) Medium volume driveway—\$35 each.
- (4) High volume driveway—\$50 each.

(c) (a) The Department will prescribe a fee schedule for application processing, review of the application and associated materials, permit inspection, permit supplement, and miscellaneous fees payable to the Department in connection with permits.

- (1) The fee schedule will be published by the Department in the Pennsylvania Bulletin.
- (2) The Department may periodically review and revise the schedule and publish a revised schedule in the Pennsylvania Bulletin.
- (3) The fees shall not exceed the approximate reasonable cost to process the application, to review the application and associated materials, to record and issue the permit, to amend the permit, and to inspect the permitted work.

(b) *Exemptions.* [Permit issuance fees and general permit inspection fees] Application processing, application review, permit inspection, and permit supplement fees shall not be payable by any of the following:

- (1) The Commonwealth.
- (2) Political subdivisions of this Commonwealth.
- (3) Governmental authorities organized under the laws of this Commonwealth.
- (4) The Federal government.
- (5) Charitable organizations which are exempt from or in compliance with act of August 9, 1963, P. L. 628, No. 337 (10 P. S. § § 160-1—160-17).

[(d) *Additional inspection fees.* If the Department determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more employes to inspect the permitted work on a more than spot inspection basis, the permit will so indicate and the permittee shall be charged for all salary, overhead, and expenses incurred by the Department for inspection.

* * * * *

(f) *Miscellaneous fees.* The applicant shall pay notary and recording costs including the cost of recording the permit in the County Office of the Recorder of Deeds when required, and the cost of all drainage releases. Permits shall be recorded whenever deemed necessary by the Department, including when:

* * * * *

(3) an access covenant (Form CC-14) is executed with the permit as specified in paragraph (16) of § 441.6 of this title (relating to general conditions).]

§ 441.5. Issuance of permits.

(a) *General rule.* Upon application duly made, in accordance with this chapter, a permit will be issued by the appropriate district office, subject to this chapter and the conditions contained

on the permit and its attachments and supplements. The permit will be the authority of the applicant to proceed with the work[and will also serve as a receipt for the fees accompanying the application].

* * * * *

(e) *Waiver of design requirements.* Waiver of design requirements shall be as follows:

(1) If any design requirement set forth in this chapter cannot be met, the [director] Deputy Secretary or his designee may waive the requirement if the following conditions are satisfied:

* * * * *

(h) *Work completion notification.* When all permitted work has been completed, the [self-addressed post card (Form M-945G) which accompanies the permit] permittee shall [be mailed] provide written notification to the district office.

[(i) *Permanent permit microfilm record.* The permit, together with plans, relevant correspondence, and any supplements issued, will be microfilmed, and the microfilm record will be retained in the central permit office.]

§ 441.6. General conditions.

The following conditions shall apply to permits issued under the provisions of this chapter:

(1) *Scope of permit.* The permit shall be binding upon the permittee, its agents, contractors, successors, and assigns.

* * * * *

(vii) Disputes between the permittee and the Department shall be governed by the appropriate provisions in [Form] Publication 408 (Specifications).

* * * * *

(3) *Work to conform to Department standards.* The work shall be done at such time and in such a manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the Department including, but not limited to, [Form] Publication 408 (Specifications). If at any time it shall be found by the Department that the work is not being done or has not been properly performed, the permittee upon being notified in writing by the Department shall immediately take the necessary steps, at its own expense, to place the work in condition to conform to such requirements or standards. In case any dispute arises between the permittee and the Department's inspector, the Department's inspector shall have the authority to suspend work until the question at issue can be referred to and be decided by the district office.

* * * * *

(9) *Traffic protection and maintenance.* Maintenance and protection of traffic shall be carried out in accordance with the requirements of the Department, as set forth in Chapter 212 (relating to official traffic-control devices) and Publication 213 (Temporary Traffic Control Guidelines) [Publication 43 and Publication 90].

* * * * *

(ii) Traffic control devices shall be provided in accordance with Chapter 212 (relating to official traffic-control devices) and Publication 213 (Temporary Traffic Control Guidelines). [Publication 43 and Publication 90.] Any open trench or hole shall be adequately barricaded to prevent possible injury to pedestrians and the motoring public. All traffic control devices shall be of an approved type. Signs shall conform to the requirements of Publications 111M (Traffic Control Pavement Markings & Signing Standards) and 236M (Handbook of Approved Signs) [Publication 68].

(iii) Designated employes shall be assigned by the permittee to direct one lane traffic. Flagmen shall be provided as specified in the permit and in accordance with Chapter 212

(relating to official traffic-control devices) and Publication 213 (Temporary Traffic Control Guidelines) [Publication 43 and Publication 90].

* * * * *

(16) *Future additional driveways.* Future additional driveways shall consist of the following:

(i) If the Department anticipates that a property may be subdivided and that such subdivision will result in an unacceptable number or arrangement of driveways or both, the Department may require the property owner to enter into an access covenant [(Form CC-14)] in a form acceptable to the Department prior to issuance of a permit.

* * * * *

(17) *Use of highway prohibited.* Prohibited use of the highway shall be as follows:

* * * * *

(ii) Improvements on private property adjacent to the right-of-way shall be so located that parking, stopping, and maneuvering of vehicles on the right-of-way will not be necessary in order for vehicles or patrons to be served. New liquid fuel pump islands installed in service stations adjacent to the highway shall be located at least 12 feet outside the right-of-way, in order for a driveway permit to be issued. [See Figure 11 and Figure 12.]

§ 441.7. General driveway requirements.

* * * * *

(f) *Approaches to driveways.* Driveway approaches shall conform to the following standards:

* * * * *

(3) Where the highway is curbed, driveway approaches shall be installed 1 1/2 inches above the adjacent highway or gutter grade to maintain proper drainage. [See Figure 5.]

§ 441.8. Driveway design requirements.

(a) *General.* General requirements shall be as follows:

(1) The ability of a driveway to safely and efficiently function as an integral component of a highway system requires that its design and construction be based on the amount and type of traffic that it is expected to serve and the type and character of roadway which it accesses. This chapter separates driveways into four classifications, based on the amount of traffic they are expected to serve. A description of each classification and typical examples of land uses normally associated with each follows:

(i) Minimum use driveway[, see Figure 7]. A driveway normally used by not more than 25 vehicles per day, such as:

- (A) single family dwellings, duplex houses; or
- (B) apartments with five units or less.

(ii) Low volume driveway[, see Figure 8]. A driveway normally used by more than 25 vehicles per day but [less] not more than 750 vehicles per day, such as:

- (A) office buildings;
- (B) elementary and junior high schools; or
- (C) car washes.

(iii) Medium volume driveway[, see Figures 9, 11, and 12]. A driveway normally used by more than 750 vehicles but [less] not more than 1500 vehicles per day, which does not normally require traffic signalization, such as:

- (A) motels;
- (B) fast food restaurants; or
- (C) service stations and small shopping centers or plazas.

(iv) High volume driveway[, see Figure 10]. A driveway normally used by more than 1500 vehicles per day, which often requires traffic signalization, such as:

- (A) large shopping centers; or
- (B) multi-building apartment or office complexes.

(2) The design features described in this section and illustrated in Publication 282 (Highway Occupancy Permit Manual) [the attendant figures] are to be used by the applicant in designing the driveway plans which accompany the application. Dimensions shall be selected from the range of values shown on the appropriate figure, unless site conditions warrant a deviation. The Department may require design details which are more stringent than those specified in this chapter to insure the safe and efficient operation of any proposed driveway.

[(3) Figures 7, 8, and 9 show two sets of design values. The applicant shall design his driveway using the values appropriate for the posted speed of the roadway being accessed.]

(b) *Angle of access driveway approach.* Angle of access driveway approach shall include the following:

(1) Access driveway approaches used for two-way operation shall be positioned at right angles, that is, 90 degrees, to the highway or as near thereto as site conditions permit, except as authorized in [Figure 11] Publication 282 (Highway Occupancy Permit Manual).

(2) When two access driveways are constructed on the same property frontage and used for one-way operation, each of these driveways may be placed at an angle less than a right angle, but not less than 45 degrees to the highway, except that along divided highways where no openings are allowed in the median the minimum angle of an exit driveway may be 30 degrees, as shown in [Figure 12] Publication 282 (Highway Occupancy Permit Manual).

* * * * *

(e) *Multiple driveways.* Multiple driveways serving the same property must be separated by a minimum distance of 15 feet measured along the right-of-way line and 20 feet measured along the shoulder, ditch line, or curb. When the distance between multiple driveways is 50 feet or less measured along the shoulder or ditch line, the Department may require the area between [shall]to be clearly defined by permanent curbing. This curb shall be placed in line with existing curb or two feet back of the shoulder or ditch line on uncurbed highways. It shall be extended around the driveway radii to the right-of-way line.

* * * * *

(h) *Sight distance.* Conditions for sight distance shall be as follows:

(1) [Access driveways shall be located at a point within the property frontage limits which provides at least the minimum sight distance listed in the appropriate following table:

* * * * *

Table 6—Safe Sight Distance for buses and combinations entering driveways by left turns.

<i>Posted Speed</i>	<i>Safe Sight Distance in Feet</i> ¹		
<i>(mph)</i>	<i>2-Lane</i>	<i>4-Lane</i>	<i>6-Lane</i>
25	330	360	390
35	485	530	575
45	690	750	810
55	905	990	1075

¹ Measured from the point where a left-turning vehicle stops for a vehicle in the outside lane.] Intersection sight distance. An access driveway shall be located at a point within the property frontage limits which provides at least the minimum intersection sight distance as set forth in Publication 13M (Highway Design Manual).

(Editor's note — Tables 1 through 6 are to be deleted)

(2) [In using Tables 1 through 6 the following additional requirements shall apply:

* * * * *

(iv) The sight distance values in Tables 1 through 6 are desirable for safe operation of the driveway. Sight distance values less than desirable will be accepted only if it is impossible to achieve the desirable value by locating the driveway at any point within the property frontage boundaries. The minimum acceptable sight distance values shall be computed from the following formula:

$$SSSD = \frac{1.47 Vt + V^2}{30 (f+g)}$$

SSSD = Minimum safe stopping sight distance (feet).

V = Velocity of vehicle (miles per hour).

t = Perception time of motorist (average = 2.5 seconds).

f = Wet friction of pavement (average = 0.30).

g = Percent grade of roadway divided by 100.] Stopping Sight Distance.

Stopping sight distance, as set forth in publication 13M (Highway Design Manual), will be accepted only if it is impractical or infeasible to achieve intersection sight distance by locating the driveway at any point within the property frontage boundaries.

(3) Insufficient Sight Distance. If sight distance requirements as specified in this chapter cannot be met, the Department may:

* * * * *

(vi) deny access to the highway.

(i) Grade of access driveway. Grade of access driveway shall be constructed in the following manner:

* * * * *

(2) Where a drainage ditch or swale exists, the permittee shall maintain an adequate swale across the driveway or install an adequate pipe under the driveway in accordance with [Form 408] Publication 13M (Highway Design Manual). Drainage pipe installed under driveways shall be at least 15 inches in diameter.

(3) The side slopes for driveway embankments within the right-of-way shall not be steeper than ten to one. [See Figure 6.]

(4) Grade requirements in uncurbed shoulders within the right-of-way shall conform to [Figure 1] standards identified in Publication 282 (Highway Occupancy Permit Manual).

(Editor's note — Figure 1 is to be deleted)

(5) Grade requirements where curbs and sidewalks are present shall conform to Department standards identified in Publication 13M (Highway Design Manual), Publication 72M (Roadway Construction Standards) and Publication 282 (Highway Occupancy Permit Manual).

[(i) The driveway approaches shall be installed 1 1/2 inches above the adjacent roadway or the gutter grade to maintain proper drainage. See Figure 5.

* * * * *

(iv) When the sidewalk is directly against the back of the curb and the sidewalk is at least five feet wide, the curb shall be sloped as shown in Figure 5 of this subsection. This will eliminate the need for depressing the back edge of the sidewalk. For sidewalks narrower than five feet, the curb will be sloped and the back edge of the sidewalk will be

depressed (maximum 1 1/2 inches) to maintain an 8.0% maximum grade on the driveway. The longitudinal grade of the sidewalk shall not exceed two inches per foot.]

(Editor's note — Figures 2 through 6 are to be deleted)

(j) *Auxiliary lanes.* Auxiliary lanes shall consist of the following:

* * * * *

(4) *Cost.* When required, auxiliary lanes shall be constructed, at no cost to the Department, in accordance with the Department design standards [Roadway Construction Standards and Form 408].

* * * * *

(k) *Access driveway pavement.* Access driveways shall be appropriately surfaced with a stabilized material between the traveled way and the right-of-way line unless a higher type material is specified by the permit. Low, medium, and high volume driveways which provide access to paved highways shall be paved within the right-of-way. Materials used in the construction of driveways shall meet the requirements of [Form] Publication 408 (Specifications). The driveway pavement shall be at least four inches thick within the right-of-way.

* * * * *

(m) *Median openings.* Median openings shall consist of the following:

* * * * *

(3) Requests for removal of a median divisor will not be granted without the approval of the [director] Deputy Secretary or his designee.

* * * * *

(o) *Traffic control devices.* Requirements for traffic control devices shall be as follows:

* * * * *

(2) *Electrically powered devices.* Electrically powered devices shall consist of the following:

(i) When power operated devices, including traffic signals, are required for proper traffic control, a traffic signal approval as defined in 75 Pa. C.S. § 6109 and § 6122 and in accordance with Publication 46 (Traffic Engineering Manual)[permit (Form TE 964)] shall be obtained in addition to the occupancy permit. The permit to own and operate a traffic control device shall be requested by and issued to only the appropriate municipality.

* * * * *

§ 441.9. [Driveway layout illustrations.] Reserved.

[Figures 7 through 12 illustrate and supplement the minimum design requirements described in this chapter. Although site conditions may not allow strict adherence to the dimensions shown in these illustrations, every effort shall be made to design and construct the safest and most efficient access onto the State highway.]

(Editor's note — Figures 7 through 12 are to be deleted)

§ 441.10. Penalties and enforcement.

* * * * *

(b) *Additional grounds for revocation.* Additional grounds for revocation shall be as follows:

* * * * *

(2) The [director] Deputy Secretary or his designee may revoke a permit for nonpayment of a fee specified in § 441.4 (relating to permit fees) including default of a check submitted for the payment.

* * * * *



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 14, 2012

David Sumner, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking
18-433 — 67 Pa. Code, Chapter 441
Access and Occupancy of Highways by Driveways and Local Roads

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for amendments to Chapter 441 of Department regulations which the Department of Transportation intends to adopt in accordance with the provisions of Section 5 of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended* 71 P.S. § 745.5.

Copies of these materials were also delivered today to the Legislative Reference Bureau and to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department of Transportation will provide IRRC with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

Stephen F. J. Martin
Regulatory Counsel



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: #18-433
 SUBJECT: Access and Occupancy of Highways by Driveways and Local Roads
 67 Pa. Code, Chapter 441
 AGENCY: Department of Transportation

2012 AUG 14 PM 2:29

RECEIVED
IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>8-14-12</u>	<u><i>Victor Gwartz</i></u> for Majority Chair Hon. Richard A. Geist	HOUSE COMMITTEE ON TRANSPORTATION
<u>8/14/12</u>	<u><i>Suzanne E Chadwick</i></u> for Minority Chair Hon. Michael P. McGeehan	
<u>8-14-12</u>	<u><i>Cecilia Boyer</i></u> for Majority Chair Hon. John C. Rafferty, Jr.	SENATE COMMITTEE ON TRANSPORTATION
<u>8-14-12</u>	<u><i>John Wozniak</i></u> for Minority Chair Hon. John N. Wozniak	
<u> </u>	<u> N/A </u>	OFFICE OF ATTORNEY GENERAL
<u>8/14/12</u>	<u><i>K Cooper</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>8/14/12</u>	<u><i>Samatha Hansen</i></u>	LEGISLATIVE REFERENCE BUREAU
Date:	August 14, 2012	