

# Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY  
REVIEW COMMISSION**

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

(1) Agency  
Department of Transportation

(2) Agency Number:  
18-461

IRRC Number: 3083

(3) PA Code Cite:  
67 Pa. Code Chapter 101

(4) Short Title:  
Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic

(5) Agency Contacts (List Telephone Number and Email Address):  
Primary Contact: Glenn C. Rowe, P.E., Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 783-6479, [glrowe@pa.gov](mailto:glrowe@pa.gov)  
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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

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

This regulation authorizes persons to direct, control and regulate traffic and establishes safety attire standards for those persons. The purpose of updating this regulation is to ensure compliance with 67 Pa. Code § 212.2, which incorporates by reference the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD) required by 23 C.F.R. § 655.603. Those individuals currently covered under Chapter 101 as well as those being added pursuant to this rulemaking should already be following the requirements of the MUTCD.

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

Authority for this regulation is found in relevant provisions of the Vehicle Code, Act of June 17, 1976, P.L. 162, Number 81, *as amended*, (75 Pa. C.S. §§ 3102 and 6103).

(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.

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Effective December 16, 2009, the FHWA revised its MUTCD. In accord with this current MUTCD, safety apparel must comply with American National Standards Institute/International Safety Equipment Association standards. States are required to conform state regulations to the MUTCD pursuant to the federal regulations cited in response to question 7, above. Department regulations at 67 Pa. Code § 212.2 incorporate the FHWA's MUTCD by reference.

(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.

This regulation is needed to conform Pennsylvania regulations to the worker visibility provisions of the FHWA's most recent version of the MUTCD. States are required to conform state regulations to the MUTCD pursuant to the federal regulations cited in response to question 7, above. This rulemaking is designed to ensure continued compliance with federal law. Persons authorized to direct, control and regulate traffic, which includes a vast group of individuals in the construction industry, will benefit from these safety protections that are already widely utilized in the industry.

(11) 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. These regulations, if amended as proposed, will be the same as the federal standards.

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

All states are required to comply with FHWA's MUTCD per the federal regulations cited in response to question 7, above. Therefore, this regulation should not impact Pennsylvania's ability to compete with other states.

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

No, this rulemaking does not affect other Department regulations or those of other state agencies; the regulation does however amplify 67 Pa. Code § 212.2.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Outreach to the regulated community was conducted, including outreach to the Association of Pennsylvania Constructors, the Marcellus Shale Coalition, the American Traffic Safety Services Association, the Utility Highway Liaison Committee, small businesses (Protection Services, Inc., Flagger Force and Beth's Barricades). These groups did not have any issues with the safety apparel changes because the groups, including the small businesses the Department reached out to, were already in compliance with the federal standards. The expansion of the universe of persons authorized to direct and control traffic was changed in this regulation but authority for these persons to direct traffic is contingent upon compliance with federal standards, as required by the federal regulations cited in

response to question 7, above. The Department incorporates the FHWA's MUTCD by reference in 67 Pa. Code § 212.2.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Traffic control persons on utility, maintenance or construction projects, adult school crossing guards, railroad crossing guards, national guard and military police and emergency organization personnel while directing, controlling and regulating traffic will be required to comply with this regulation. The impact should be nonexistent, insofar as the aforementioned groups were already required to comply with the federal regulations cited in response to question 7, above and 67 Pa. Code § 212.2.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The following persons or groups will be required to comply with this regulation, as enumerated in § 101.2:

- (1) Traffic control persons on utility, maintenance or construction projects.
- (2) Adult school crossing guards for assisting school children across busy or hazardous highways or for assisting the ingress or egress of vehicles to and from a school.
- (3) Railroad crossing guards at railroad grade crossings, for purposes of stopping vehicular traffic to permit the safe passage of trains.
- (4) Civil defense, National Guard and military police while performing their regular duties or during National or local emergencies.
- (5) Personnel of emergency organizations such as, but not limited to, fire departments, hospitals, river rescue associations, ambulance associations and personnel of emergency vehicles designated by the State Police while performing their duties.
- (6) Highway service vehicle personnel of tow trucks and road service vehicles.
- (7) Department of Conservation and Natural Resources personnel while performing their official duties.
- (8) Persons controlling traffic at authorized parades, processions or other public assemblies.
- (9) Persons assisting to improve highway safety by the directing, control or regulation of traffic volumes created by the ingress or egress to or from a commercial, industrial, manufacturing, agricultural, or natural resource or mineral extraction operation.

Considering the varied scope of groups involved, an estimate of the number of individuals and groups required to comply cannot be reasonably determined.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The impact is minimal as the regulated community is already complying with Federal standards. By updating the regulation, the Department is ensuring that it is in compliance with Federal standards already being met by the regulated community.

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

The benefit of increased safety of persons directing or controlling traffic that will result from increased visibility far outweighs the minimal costs of the protective clothing that has already been incurred by the regulated community. As noted previously, persons authorized to direct traffic are already wearing the recommended protective clothing.

(19) 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.

The cost to the regulated community should be nonexistent insofar as the covered groups, including those groups to be added pursuant to this rulemaking, should already have been in compliance with the federal regulations and 67 Pa. Code § 212.2. As a practical matter, in almost all instances, the required protective clothing is already being worn.

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

The cost to local governments should be minimal to nonexistent. This rulemaking ensures Chapter 101 reflects the current required federal standards. The required protective clothing should already be in use by the regulated community, including the individuals added to the scope of Chapter 101.

(21) Provide a specific estimate of the costs and/or savings to the **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.

The cost to state government should be minimal to nonexistent. This rulemaking ensures Chapter 101 reflects the current required federal standards. The required protective clothing should already be in use by the regulated community.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

**Regulated Community:** This question is not applicable, as the regulated community should already be complying with the federal regulations and 67 Pa.Code § 212.2.

**Local Governments:** This question is not applicable, as local governments should already be complying with the federal regulations and 67 Pa.Code § 212.2.

**State Government:** This question is not applicable, as, again, state government should already be complying with the federal regulations and 67 Pa.Code § 212.2. This rulemaking is driven largely by the need to ensure Department regulations remain consistent with the federal MUTCD.

(23) 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Appropriation 582	\$71,631	\$71,879	\$68,907	\$44,192
Program 719 <sup>1</sup>				

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

<sup>1</sup> While no fiscal impact is anticipated, the amounts set forth under this program are designated for safety equipment and apparel within the budget for the Department's Bureau of Maintenance and Operations.

- (c) A statement of probable effect on impacted small businesses.
  - (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.
- (a) The number of small businesses subject to the regulation is difficult to quantify; however, any small businesses that engage in directing, controlling and regulating traffic should have already incurred the costs necessary to meet the FHWA's MUTCD, which is adopted by the Department at 67 Pa. Code § 212.2. This rulemaking merely brings relevant portions of Chapter 101 into compliance with the latest version of the FHWA's MUTCD.
  - (b) See (a), above.
  - (c) See above. There are no reporting, recordkeeping or other administrative costs associated with this regulation.
  - (d) See above. There is no less intrusive or less costly methods of achieving the purpose of the proposed regulation.

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

No special provisions have been developed to meet the needs of any special group.

(26) 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.

There were no alternatives to these provisions considered. The amendments to this regulation are designed to ensure continued compliance with federal regulations.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No adverse impact on small business is anticipated, thus no regulatory methods were considered that will minimize any adverse impact on small businesses. Again, this regulation is consistent with FHWA MUTCD standards already being followed by the regulated community. In addressing each of the above subparts, the Department offers:

- a) No less stringent compliance or reporting requirements for small businesses are available due to this regulation being a federal requirement.

b) No less stringent schedules or deadlines for compliance were considered due to federal requirements and no practical means of further delaying promulgation of the regulation. There are no reporting requirements under this regulation.

c) There is no practical means of consolidating or simplifying compliance with the regulation, which has safety as its genesis. There are no reporting requirements under this regulation.

d) Establishment of performing standards for small businesses has not been considered as operational standards are universal in the industry. There are no design standards required in the regulation.

e) Exemption of small businesses cannot be considered in view of the mandatory nature of the federal MUTCD requirements.

(28) 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.

The Department defers to the expertise of the FHWA in its development of the MUTCD. No additional data was gathered or evaluated by the Department.

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

- |   |                 |
|---|-----------------|
| A. The date by which the agency must receive public comments:                               | <u>12/08/14</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>11/17/16</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>12/31/16</u> |
| D. The expected effective date of the final-form regulation:                                | <u>12/31/16</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>12/31/16</u> |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>      |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation will be reviewed on a biannual basis or as changes in federal standards or regulations may dictate.

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**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE  
LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

**DO NOT WRITE IN THIS SPACE**

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

By: \_\_\_\_\_  
(Deputy Attorney General)

\_\_\_\_\_  
Date of Approval

Check if applicable  
Copy not approved. Objections attached.

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. 18-461  
DATE OF ADOPTION 10/14/2016

BY *Gene S. Filardi*  
Secretary of Transportation

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

B. *John Favelle*

OCT 17 2016

(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 FINAL RULEMAKING**

**DEPARTMENT OF TRANSPORTATION**

**TITLE 67, TRANSPORTATION**

**PART I – DEPARTMENT OF TRANSPORTATION**

**SUBPART A. VEHICLE CODE PROVISIONS**

**ARTICLE VI – OPERATION OF VEHICLE CODE PROVISIONS**

**CHAPTER 101 – AUTHORIZING APPROPRIATELY ATTIRED PERSONS TO  
DIRECT, CONTROL, OR REGULATE TRAFFIC**



**RULES AND REGULATIONS**

**Title 67—TRANSPORTATION**

**DEPARTMENT OF TRANSPORTATION**

**67 PA. CODE CH. 101**

**Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic**

**Notice of Final Rulemaking**

**Preamble**

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 3102 and 6103 (relating to obedience to authorized persons directing traffic; and promulgation of rules and regulations by department), proposes to amend Chapter 101 (relating to authorizing appropriately attired persons to direct, control or regulate traffic) to read as set forth in Annex A.

**Purpose of Chapter 101**

The purpose of Chapter 101 is to identify those persons authorized to direct, control or regulate traffic and to prescribe minimum suitable safety attire in accordance with 75 Pa.C.S. § 3102.

## **Purpose of Rulemaking**

The purpose of this rulemaking is to clarify and expand, as appropriate, the enumeration of appropriately attired persons authorized to direct, control and regulate traffic. This rulemaking also ensures compliance with the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), which is incorporated by reference in the Department's Regulations at 67 Pa. Code § 212.2. The MUTCD contains the national standards governing traffic control devices, including appropriate attire. Federal regulations codified at 23 CFR 655.603 (the "federal regulations") require state MUTCDs be in "substantial conformance with the national MUTCD" and to adopt changes to the national MUTCD issued by the FHWA. States "are encouraged to adopt the National MUTCD in its entirety as their official Manual on Uniform Traffic Control Devices." The Commonwealth's Vehicle Code, specifically 75 Pa.C.S. § 6121, requires the Department to publish a manual for a uniform system of traffic control devices that correlates with and so far as possible conforms to the national MUTCD and other FHWA issued or endorsed standards.

The Department adopted the federal MUTCD in 2006. The Department's Chapter 101 is being revised to more fully align with current federal standards, as the MUTCD was revised in 2009 with respect to safety apparel. Those individuals currently covered under Chapter 101 as well as those being added pursuant to this rulemaking should already be following the national safety apparel standards and training requirements set forth in the MUTCD but this regulation will provide clarity and reinforce the applicability of the MUTCD.

***Summary of Comments and Changes in the Final Adopted Regulation***

The amendments to the regulation were published as a proposed rulemaking in the November 8, 2014 issue of the *Pennsylvania Bulletin*. The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees of the Pennsylvania General Assembly. Two comments were received from the public and IRRC submitted several comments. No comments were received from the Committees.

Ms. Kathleen K. Ryan, Esquire, General Counsel and Chief Operating Officer of the Pennsylvania Funeral Directors Association, requested that licensed funeral directors be exempted from the training component of the proposed regulation. Her reasoning was that funeral directors are already subject to six hours of continuing education per renewal cycle and furthermore, not all of them direct traffic. Ms. Ryan believes that to require all licensees to complete the training would be unduly burdensome to those who do not direct traffic.

In response to Ms. Ryan's comment, which was echoed by IRRC, the Department has amended Section 101.1 to clarify its scope. Additionally, to avoid confusion the Department has removed the language regarding training from this regulation, which conforms this rulemaking to the scope of the current regulation.

Mr. Matt Anderson, P.E., PTOE, Roadway Engineer with Williams Midstream Service, LLC, submitted comments regarding language in Sections 101.2 and 101.3. Regarding Section 101.2(9), Mr. Anderson requested that:

Title 67 Transportation  
Chapter 101  
Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic  
Preamble

[L]anguage [be] added to this paragraph to ensure midstream activities are not excluded, purely by definition. As written, this applies to "natural resource or mineral extraction sites", it would be best to add "including transmission and gathering facilities" or similar wording.

After carefully considering Mr. Anderson's comment, the Department has determined that the "transmission and gathering facilities" referenced by Mr. Anderson would fall under Section 101.2(9) of this regulation as proposed, which authorizes traffic control by "[p]ersons assisting to improve highway safety by the directing, control or regulation of traffic volumes created by the ingress or egress to or from a commercial, industrial, manufacturing, agricultural, or natural resource or mineral extraction operation." "Transmission and gathering facilities" are by their very nature commercial activities and incidental to "natural resource or mineral extraction sites."

Mr. Anderson further commented about Section 101.3. His comments appear to be focused on bracketed text to be removed by this regulation. With respect to Section 101.3(1), he noted that "[t]he option of controlling traffic with a red flag at intersections was not mentioned." The Department determined that the use of a red flag at intersections is already permissible under 67 Pa. Code § 212.412 (regarding flagger signaling devices); thus it need not be repeated in this regulation.

Finally, Mr. Anderson suggested that industrial, mineral and natural resource sites be addressed in the regulation, either in a stand-alone subsection 101.3(7) or by adding relevant language to existing section 101.3(1), "to make sure the industry is covered, and has clear direction." Again, it appears that this comment is directed at language to be deleted by this rulemaking. Section 101.3 sets forth the minimum attire to be worn by

those individuals authorized to direct traffic. Industrial, mineral and natural resource sites fall under Section 101.2(9) of this regulation, as explained above, and thus any further amendments are unnecessary. References to 67 Pa. Code § 212.2 in this regulation add clear direction to the impacted industry and further explain responsibilities. No additional amendments are necessary.

Moreover, to the extent that there was a lack of clarity in Section 101.3 by addressing emergency and incident responders separate from other authorized persons, the Department has made further edits to Section 101.3.

IRRC provided comments as follows:

First, IRRC noted that more details were needed to determine whether the regulation is in the public interest. In response, the Department has added language in the “Purpose of Proposed Rulemaking” section, above, to better explain this regulation as it relates to federal requirements relative to traffic control and updated its Regulatory Analysis Form to further substantiate that this regulation is in the public interest.

Second, IRRC noted a contradiction between Section 101.1 and Paragraph 101.2(10) and stated the two provisions should be reconciled. In response, the Department has removed Paragraph 101.2(10) to eliminate the contradictory language and provided further clarification to Section 101.1.

Third, IRRC noted several concerns regarding the details of the Department’s flagger training requirements. As a preliminary matter, the current regulation at 67 Pa. Code §§ 101.1-101.4 does not address training. The Department has met its obligations under the MUTCD and federal regulations relative to training by requiring training by

contract and as express conditions of permits, including without limitation highway occupancy permits governing ingress and egress from state highways. While the Department will consider future amendments to this and other relevant regulations, the Department agrees with IRRC's comments and concerns regarding training. The Department's addition of training to this regulation had the potential to confuse the regulated community. To avoid any confusion, the Department has removed references in Chapter 101 to flagger training requirements and will continue to meet its obligations relative to public safety through contractual and permit-based programs. To the extent that it determines that additional clarity is required regarding training, the Department will either amend this or another of its regulations.

Regarding IRRC's comment about the training requirement in Paragraph (8), based on Ms. Ryan's comment about the same matter, the Department has amended Section 101.1's scope. Additionally, the Department has removed references in Chapter 101 to flagger training requirements for the reasons previously stated.

Additionally, removal of references in Chapter 101 to flagger training requirements has rendered IRRC's comments regarding Section 19 of the Regulatory Analysis Form (RAF) moot and the RAF has been reviewed and amended to account for all comments.

IRRC also noted that the phrase "Or an equivalent designated by the Department through publication in the Pennsylvania Bulletin" does not comply with the requirements of the Regulatory Review Act. The Department has removed this language.

Finally, IRRC raised concerns about future amendments to the requirements of the American National Standards Institute/International Safety Equipment Association

(ANSI/ISEA). The Department has removed direct references in Chapter 101 to ANSI/ISEA or standards regarding the color of specific safety attire and instead references 67 Pa. Code § 212.2 and its adoption of the current version of the MUTCD. The MUTCD already refers to the current version of the ANSI/ISEA. As ANSI/ISEA requirements change, the MUTCD will be amended and made applicable to the Department and regulated community pursuant to 67 Pa. Code § 212.2.

### **Persons and Entities Affected**

This final rulemaking will affect persons who are authorized to direct, control or regulate traffic in accordance with 75 Pa.C.S. § 3102 and this Chapter; however, those impacts are minimal as this final rulemaking ensures this Chapter is consistent with federal requirements.

### **Fiscal Impact**

This proposed rulemaking should not require the expenditure of additional funds by the Commonwealth, local municipalities or persons referenced in 75 Pa.C.S. § 3102 and this Chapter, as the regulated community has already incurred costs to meet FHWA standards that are already followed by the regulated community.

### **Regulatory Review**

Under Section 5(a) of the Regulatory Review Act, Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. 745.5(a), on October 28, 2014, the Department submitted a

copy of this proposed regulation to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In preparing this final-form regulation, the Department considered and addressed all comments received from the public and from IRRC. No comments were received from the Committees.

### **Sunset Provisions**

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under 75 Pa.C.S. § 101 *et seq.* (the Vehicle Code), federal regulations and FHWA standards. The Department, however, will continue to closely monitor these regulations for their effectiveness.

### **Contact Person**

The contact person for technical questions about this rulemaking is Glenn C. Rowe, PE, Chief, Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 783-6479, glrowe@pa.gov.

### **Order**

The Department of Transportation orders that:

- (A) The regulations of the Department of Transportation, 67 PA. Code, Chapter 101 are to read as set forth in Annex A.



- (B) The Secretary shall certify this Order and Annex A and deposit the same with IRRC for consideration at the next public meeting, as required by law.
- (C) The Secretary of the Department of Transportation shall submit this Order and Annex A hereto to the Office of Attorney General for approval as to legality and form, as required by law.
- (D) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

Leslie S. Richards,  
Secretary of Transportation

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF TRANSPORTATION**

**SUBPART A. VEHICLE CODE PROVISIONS**

**ARTICLE VI. OPERATION OF VEHICLES**

**CHAPTER 101. AUTHORIZING APPROPRIATELY ATTIRED PERSONS TO DIRECT, CONTROL OR REGULATE TRAFFIC**

**§ 101.1. Purpose.**

This chapter indicates those persons, other than ~~a uniformed police [officers] officer, sheriff, constable or, in an emergency, a railroad or street railway police officer,~~ PERSONS ENUMERATED IN 75 PA. C.S. § 3102 (RELATING TO OBEDIENCE TO AUTHORIZED PERSONS DIRECTING TRAFFIC), who are authorized to direct, control or regulate traffic, and ~~[to prescribe minimum suitable attire and equipment for those persons]~~ prescribes ~~minimum suitable safety apparel~~ APPROPRIATE ATTIRE.

**§ 101.2. Persons authorized to direct traffic.**

~~The following persons are authorized to direct, control or regulate traffic,~~ SUBJECT TO THE REQUIREMENTS OF 67 PA. CODE § 212.2 (RELATING TO ADOPTION OF FEDERAL STANDARDS), WHICH INCORPORATES THE FEDERAL HIGHWAY ADMINISTRATION'S MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) AVAILABLE AT: [HTTP://MUTCD.FHWA.DOT.GOV](http://MUTCD.FHWA.DOT.GOV)), THE FOLLOWING PERSONS ARE AUTHORIZED TO DIRECT, CONTROL OR REGULATE TRAFFIC:

(1) Traffic control persons on utility, maintenance or construction projects.

(2) Adult school crossing guards for assisting school children across busy or hazardous highways ~~or for assisting the ingress or egress of school buses and school vans~~ **VEHICLES to and from a school.**

(3) Railroad crossing guards at railroad grade crossings, for purposes of stopping vehicular traffic to permit the safe passage of trains.

(4) Civil defense, National Guard and military police while performing their regular duties or during National or local emergencies.

(5) Personnel of emergency organizations such as, **but not limited to**, fire departments, hospitals, river rescue associations, ambulance associations and personnel of emergency vehicles designated by the State Police under 75 Pa.C.S. § 6106 (relating to designation of emergency vehicles by the Pennsylvania ~~police~~ **State Police**) while performing their duties.

(6) Highway service vehicle personnel of tow trucks and road service vehicles.

(7) **[Park Maintenance Supervisors, Park Rangers I and Environmental Education Specialists of the Department of Environmental Resources, Bureau of State Parks, who have completed the Department of Environmental Resources' Traffic Control Training Course, while performing their official duties.] Department of Conservation and Natural Resources personnel while performing their official duties.**

(8) **Persons controlling traffic at authorized parades, processions or other public assemblies. ~~These persons shall have successfully completed and participated in a formal flagging procedures and guidelines training course as defined and outlined by the Department.~~**

**(9) Persons assisting to improve highway safety by the directing, control or regulation of traffic volumes created by the ingress or egress to or from a commercial, industrial, manufacturing, agricultural, or natural resource or mineral extraction operation. These persons shall have successfully completed and participated in a formal flagging procedures and guidelines training course as defined and outlined by the Department.**

~~**(10) Persons authorized by 75 Pa.C.S. § 3102 (relating to obedience to authorized persons directing traffic).**~~

**§ 101.3. Minimum attire.**

**[This section sets forth standards for minimum attire and equipment so that persons directing, controlling or regulating traffic are easily distinguishable and so that their directions can be understood.**

**(1) Traffic control persons on utility, maintenance or construction projects shall wear orange, fluorescent red-orange or fluorescent yellow-orange vests and a protective helmet. In addition, they shall be equipped with a flagman traffic control sign, a paddle with a Stop sign on one face and a Slow sign on the opposite face, as described in Publication 203 of the Department.**

**(2) Adult school crossing guards shall wear as a minimum a safety vest or safety belt manufactured from retroreflective and fluorescent material visible both day and night at 300 feet to approaching motorists.**

**(3) Members of the National Guard or military police shall wear their official uniforms and members of the civil defense shall wear their official arm bands and white hats or other distinctive clothing.**

**(4) Emergency vehicle personnel and Park Maintenance Supervisors, Park Rangers I and Environmental Education Specialists of the Department of Environmental Resources, Bureau of State Parks, shall wear their official uniform or shall utilize a red flag to control traffic during daylight hours and a flashlight with a red luminaire during hours of darkness. A firefighter's hat is sufficient attire for a firefighter and an official hat and badge is sufficient attire for fire police.**

**(5) Personnel of highway service vehicles shall wear red or yellow fluorescent vests which shall be reflectorized for nighttime operations.**

**(6) Railroad crossing guards shall be equipped with a red flag during daylight hours and with a lighted lantern capable of providing both red and white aspects during the hours of darkness.]**

**This section sets forth the minimum standards for high-visibility safety apparel ATTIRE for authorized persons directing, controlling or regulating traffic so that they are more easily distinguishable. APPROPRIATELY ATTIRED PERSONS INCLUDING A authorized persons directing, controlling or regulating traffic as identified in § 101.2 (relating to persons authorized to direct traffic) shall wear high-visibility safety apparel as follows:**

**~~—(1) High-visibility safety apparel is personal protective safety clothing ATTIRE that is intended to provide conspicuity during daytime and nighttime usage, and that meets the REQUIREMENTS OF THE MUTCD INCORPORATED BY 67 PA. CODE § 212.2 (RELATING TO ADOPTION OF FEDERAL STANDARDS). Performance Class 2 or 3 requirements of the American National Standards Institute/International Safety Equipment Association (ANSI/ISEA) 107-2004, "American National Standard for High-~~**

~~Visibility Safety Apparel and Headwear," including future amendments or an equivalent designated by the Department through publication in the *Pennsylvania Bulletin*.~~

~~—(2) Emergency and incident responder personnel may wear high visibility safety apparel that meets the performance requirements of the ANSI/ISEA 207-2006 Publication 6, "American National Standard for High-Visibility Public Safety Vests," including future amendments or an equivalent designated by the Department through publication in the *Pennsylvania Bulletin*.~~

~~—(3) The high visibility safety apparel must be fluorescent orange, fluorescent yellow-green, a combination of fluorescent orange and yellow-green, or another color designated by amendments to the ANSI/ISEA or the Department through publication in the *Pennsylvania Bulletin*.~~

#### § 101.4. Emergencies.

[Nothing in this chapter precludes a person from temporarily directing traffic at the scene of an emergency.]

(a) A person at the scene of an emergency may temporarily direct traffic, with or without being properly attired ~~in high-visibility safety apparel~~, until an authorized person as identified in § 101.2 (relating to persons authorized to direct traffic) OR 75 Pa. C.S. § 3102 (RELATING TO OBEDIENCE TO AUTHORIZED PERSONS DIRECTING TRAFFIC) arrives.

(b) An emergency as used in subsection (a) means an unplanned or unforeseen incident that warrants an immediate action to direct, control or regulate traffic to minimize threats to public health or public safety.

**Title 67. Transportation**  
**Part I. Department of Transportation**  
**Subpart A. Vehicle Code Provisions**  
**Article VI. Operation of Vehicles**  
**Chapter 101. Authorizing Appropriately Attired Persons to Direct,**  
**Control, or Regulate Traffic**  
**Final Rulemaking**

The following have submitted comments during the proposed rulemaking stage, but have not requested additional information under 1 Pa. Code § 305.2(d). However, this agency nonetheless provided notification upon the initial submission on August 31, 2016 and the subsequent withdrawal on September 27, 2016, and is submitting notification to them concurrently with delivery of this revised final-form rulemaking.

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COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 17, 2016

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

Re: Final Rulemaking (Resubmission)  
# 18-461 — 67 Pa. Code, Chapter 101  
Authorizing Appropriately Attired Persons to Direct, Control, or Regulate Traffic

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for amendments to Chapter 101 of the Department of Transportation's (Department) regulations which the Department intends to adopt in accordance with the provisions of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended*.

This final rulemaking is a revised version of the rulemaking previously submitted to your office on August 31, 2016 and subsequently withdrawn on September 27, 2016. This resubmission addresses concerns from Independent Regulatory Review Commission (IRRC) regarding the Department's edits in response to comments from the public and IRRC.

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

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Spotts".

Jeffrey M. Spotts,  
Regulatory Counsel



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

I.D. NUMBER: #18-461  
 SUBJECT: Authorizing Appropriately Attired Persons to Direct, Control,  
 or Regulate Traffic  
 67 Pa. Code, Chapter 101  
 AGENCY: Department of Transportation

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IRRC

**TYPE OF REGULATION**

- Proposed Regulation
- X 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>
10/17/16	<u>Nancy S Cole</u> for Majority Chair Hon. <b>John Taylor</b>	HOUSE COMMITTEE ON TRANSPORTATION
10/17/16	<u>William F Keller</u> for Minority Chair Hon. <b>William F. Keller</b>	
10/17/16	<u>C. Boyle</u> for Majority Chair Hon. <b>John C. Rafferty, Jr.</b>	SENATE COMMITTEE ON TRANSPORTATION
10/17/16	<u>JJ</u> for Minority Chair Hon. <b>John N. Wozniak</b>	
	<u>N/A</u>	OFFICE OF ATTORNEY GENERAL
10/17/16	<u>K Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION

Date: October 17, 2016