

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>Independent Regulatory Review Commission</p> <p>December 11, 2025</p>	
<p>(1) Agency</p> <p>Transportation</p>		<p>IRRC Number: 3425</p>	
<p>(2) Agency Number: 18</p> <p>Identification Number: 481</p>			
<p>(3) PA Code Cite: 67 Pa. Code, Chapter 441</p>			
<p>(4) Short Title: Access to and Occupancy of Highways by Driveways and Local Roads</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Michael J. Dzurko, 400 North Street, Harrisburg, Pennsylvania 17120, Telephone Number: (717) 783-6080, mdzurko@pa.gov</p> <p>Secondary Contact: Robert J. Pento, P.E., 400 North Street, Harrisburg, Pennsylvania 17120, Telephone Number: (717) 783-6265, rpento@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The Pennsylvania Department of Transportation (PennDOT) proposes to amend Chapter 441 with regard to the location, design, construction, and maintenance of: driveways; local roads; drainage facilities; structures; means of ingress, egress and access; and other property within the State highway right-of-way through highway occupancy permits (HOPs). Pursuant to the Stewardship and Oversight Agreement between PennDOT and the U.S. Department of Transportation Federal Highway Administration (FHWA), available at https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf, PennDOT is responsible for administering the Federal-aid Highway program in Pennsylvania, which requires conformance with federal transportation regulations in Title 23 of the Code of Federal Regulations.</p> <p>This proposed rulemaking updates permitting processes and requirements to formally implement the electronic permitting system (EPS); conforms to current industry standards and practices; clarifies permit procedures for applicants with various types of property interests adjacent to or requiring access via the state highway right-of-way; and updates the definition of the term “access” to include non-vehicular access to the state highway.</p>			

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

The authority for this rulemaking is contained in Section 420, act of June 1, 1945 (P.L. 1242, No. 428), known as the State Highway Law (36 P.S. § 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.

The amendments are not mandated by any federal or state law or court order, or federal regulation; however, Chapter 441 implements PennDOT's responsibilities under the Stewardship and Oversight Agreement between PennDOT and the FHWA, <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>, in accordance with the requirements of Title 23 of the Code of Federal Regulations. Importantly, 23 CFR §1.36 authorizes FHWA to withhold funding if the State violates or fails to comply with the federal law or regulations.

In addition, portions of the rulemaking relating to who can apply for a permit are proposed to address broad comments regarding Chapter 441, which were raised by the Independent Regulatory Review Commission (IRRC) during a prior rulemaking (Regulation #18-479, IRRC #3200) that narrowly addressed the definition of "owner" and who can submit an application under Chapter 441.

The Department proposes to change the definition of "access" to include non-vehicular access in light of the recent Commonwealth Court Decision of *N-Jie v. Dep't of Transportation*, 300 A.3d 1131 (Pa. Cmwlth. 2023). We are also changing the "Penalties and Enforcement" section to include the ability to block an "access." In *N-Jie*, the court opined that 67 Pa. Code § 441.6(4)(ii) did not authorize the Department to remove a pedestrian bridge on which a permit had never been issued. The court held that this subparagraph of the regulation only applies where a highway occupancy permit has been issued. *Id.* at 1140. In a footnote, the Commonwealth Court noted that 67 Pa. Code § 441.10, titled "Penalties and Enforcement" did not authorize PennDOT to remove a pedestrian bridge where the regulation only allowed PennDOT to block "driveways." *Id.* at FN 9. The Commonwealth Court pointed out that the regulation's definition of "driveway" did not include a pedestrian bridge. *Id.* The Department seeks to amend the definition of "access," in addition to proposing other amendments, to continue its existing practices of exercising its duty under the State Highway Law, in furtherance of the safety of the traveling public.

(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 because a significant portion of Chapter 441 has not been updated since its original promulgation in 1979. Since that time, traffic engineering standards have evolved, and technology has allowed for the more efficient processing of permit applications. The regulation will incorporate and formally implement procedures currently in use due to these advances.

For example, the formula to calculate sight distance has evolved and the regulation needs to reflect this. Also, PennDOT implemented its Electronic Permitting System (EPS or ePermitting) in 2011, which has greatly improved the HOP process by reducing the review time and increasing transparency and predictability.

In addition, the regulation will address the concerns raised by IRRC relating to the various types of property interests that may be implicated in highway occupancy permitting. *See* Comments of the Independent Regulatory Review Commission, Department of Transportation Regulation #18-479 (IRRC #3200), Access to and Occupancy of Highways by Driveways and Local Roads, May 16, 2018. Specifically, the regulation seeks to accommodate the way commercial property development transactions occur by authorizing preliminary approvals of permits, pending closing on financing and transfer of the property. Many commercial development transactions are contingent on the issuance of permits. The current regulations place additional burdens on developers who do not own fee-title to the property adjacent to the state highway right-of-way at the time of the application, but who will own fee-title when a real estate transaction closes.

There is a compelling public interest in amending the regulation because the control of the location, design, construction and maintenance of driveways, local roads, drainage facilities, and structures adjoining or within the state highway right-of-way protects the public investment in the state highway system and ensures the safe and efficient movement of traffic.

The regulated community will benefit from amending the regulation because it clarifies existing procedures and eliminates bureaucratic burdens on developers.

Based on historical permit data extracted from PennDOT's Electronic Permitting System (ePermitting System or EPS), approximately 3,000 applicants per year will benefit from the amended regulations. The expansion of the definition of access will not increase the number of applicants by any significant amount as vehicular access is the primary source of PennDOT's highway occupancy permit applications. In some cases, depending on the scope of the project (i.e., driveways for a private residence vs. multiple access points and traffic improvements for a large commercial development), neighboring property owners and the communities surrounding the proposed access may benefit from the amended regulations.

PennDOT also considered the comments submitted by the Independent Regulatory Review Commission (IRRC) during a prior rulemaking (Regulation #18-479, IRRC #3200) that narrowly addressed the definition of "owner" and who can apply for a permit under Chapter 441. *See* [3200_05-16-18 COMMENTS.pdf \(state.pa.us\)](#) We found many of the suggestions to be beneficial and incorporated those changes in this rulemaking. A portion of those comments, however, are not supported by stakeholders or can be addressed in less onerous means that further PennDOT's existing practices and policy. In view of this, PennDOT has carefully balanced the interests of all involved parties, and to that

end, there are a few suggestions offered by IRRC that PennDOT appropriately considered but will not include within this proposed rulemaking. PennDOT believes IRRC's comments to our prior rulemaking (Regulation #18-479, IRRC #3200) that narrowly addressed the definition of "owner" and who can submit an application under Chapter 441, is relevant here as many of the same issues are raised by this rulemaking. The prior rulemaking was the impetus to this proposed rulemaking, so any comments that IRRC previously made should be addressed here as it is likely that the same comments will be raised again.

First, with regard to IRRC's suggestion to require written notice to the fee owner, the proposed rulemaking does not specify an acceptable form or means of notice, but it does require an applicant to provide proof of receipt of notice by a fee owner, which provides protection to fee owners but leaves an applicant with discretion to seek the advice of their counsel, assess the particular nuances of their application and project and demonstrate to PennDOT that it provided notice to protect the interests of the fee owner. *See, [3200 05-16-18 COMMENTS.pdf \(state.pa.us\)](#)* We believe this satisfies the goal of IRRC's comments while not prescribing a particular methodology that may not work for all situations.

Second, IRRC also suggested an applicant must indemnify all non-fee owners. PennDOT finds this to be unworkable. Such a requirement is particularly unworkable where multiple mineral and utility easement holders exist, and applicants may not be aware of those easement holders due to a historic occupancy or right that is unrecorded. In such scenarios, seeking out all non-fee owners with impacted rights would place an undue burden on applicants and developers when their occupancy is established by ascertainable, legally cognizable means.

Third and last, IRRC suggested a bond in favor of fee owners. Because the value of any impact is difficult to ascertain, determining an appropriate amount of such bond, which would carry with it an approximate cost equaling three percent of a bond amount, would be difficult and result in administrative and financial burdens—all in the name of protecting fee owner rights. Because proof of a fee owner's receipt of notice is required by PennDOT, PennDOT will have relevant information to ensure that fee owners obtain notice and can participate in the HOP application, intervention, and appeals processes. Requiring a bond in favor of the fee owner is onerous on the applicant in all cases, especially where there is a clear legal right to access under an easement, sales agreement, or court order, which would unnecessarily result in a substantial expenditure of time and money where there are legal safeguards for fee owners provided by this proposed rulemaking and existing administrative legal remedies available to fee owners.

(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. There are no provisions more stringent than 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?

While design standards for access to the highway right-of-way are generally consistent among the states, program administration procedures and submission requirements vary widely. Pennsylvania's ability to compete with other states is generally not impacted by highway occupancy requirements. While developers may research regions to pursue projects, location selection depends on a project's economic viability in a certain area, and not the specifics of a state's highway access and occupancy requirements.

States take various approaches to regulating access to highways. For instance, Pennsylvania has separate regulations for occupancy of highway right-of-way by utilities whereas some states combine those regulations with access regulations; some states allow local governments or counties to regulate access to highways; and some states impose different fees based on the extent of the work.

The proposed regulations include amendments to five main substantive categories as follows:

1. **Definitions** – the proposed rulemaking adds or modifies the following definitions: access, authorized agent, Department Specifications, deputy secretary, Design Manual Part 2, drainage facility, electronic permitting system, Highway Occupancy Permit Operations Manual, low volume driveway, medium volume driveway, municipality, owner, roadway, and roadway construction standards... Most of these terms are not defined in other states.
2. **Who can apply for a permit** – the proposed rulemaking allows those with a sales agreement, or an option to purchase, to apply for a permit and obtain preliminary permit approval. The applicant will not be issued a permit until the property is purchased. This changes the current requirement that an applicant must be an "owner," which has caused issues in the past for developers who are required to obtain the required permits before closing on the property.
3. **Design standards/requirements**—the proposed rulemaking relates to temporary access driveway figures and sight distance.
4. **Automatic indemnifications**—the current regulations require permittees to indemnify PennDOT in certain circumstances. The proposed amendments make indemnification automatic (consistent with current language in § 441.6(13)) at permit

issuance, rather than having to be documented separately on a form prescribed by PennDOT.

5. **Penalties and enforcement-** the proposed rulemaking allows PennDOT to remove an unpermitted access that PennDOT determines is unsafe and the property owner or facility owner fails to remove the same after receiving notice.

While the changes in this rulemaking clarify how PennDOT handles easement holders and other interested parties, in New Jersey Title 16, Chapter 47 of the State Highway Access Management Code provides no guidance regarding how New Jersey handles situations where an underlying fee owner does not agree to apply for a permit needed by a holder of an easement or other property interest that allows an access point or situations where a developer does not own the lot prior to applying for a permit. PennDOT sees this clarification as an advantage that Pennsylvania will have over New Jersey should this rulemaking become final. Similarly, while PennDOT has clarified the definition of an owner in this proposed rulemaking, in Virginia (24 VAC 30-21-20 Land Use Permit) and New York (N.Y. Codes R. & Regs. Tit. 17 Chapter IV Highways, Subchapter B. Work Permits on State Highways, State-Owned Bridges and Culverts) there is no definition of owner, which again gives Pennsylvania an advantage.

Most states surveyed below require some form of indemnification, which provides a level playing field. We could not find information regarding indemnification for Maryland (MDOT SHA Access Manual) or Delaware (DelDOT Development Coordination Manual).

The laws in various other states are assessed more fully below. The following is a sampling of the requirements for access to and occupancy of state highways from nearby states and states of similar size to Pennsylvania in the substantive categories that this proposed rulemaking seeks to amend. Entries under the “definitions” category relate to definitions for terms being added or modified in this proposed rulemaking and terms that may explain differences among the states in the other substantive categories, focusing primarily on what is relevant to this proposed rulemaking.

New Jersey: ([Title 16, Chapter 47. State Highway Access Management Code](#))

1. Definitions

"Applicant" means the current owner of a lot, site, or street applying for an access permit.

"Lot owner" means the owner of the lot as per the deed. A lot owner may be a private or public entity. The term does not include a contract purchaser, tenant, developer, or holders of easements or licenses.

"Lot" means a single tax map parcel.

"Site" means the use of more than one lot for a development, such as a shopping center or an office complex, where the lots are contiguously situated and function interdependently, in whole or in substantial part, for purposes of site circulation. Ownership of the lots may be by one or more parties. The combination of the lots will be treated as one lot for purposes of determining conformance.

"Major access application" or "major access permit" means an access application or permit for a lot or site with an expected two-way traffic volume of 500 or more daily trips between it and a State highway.

"Major with planning review access application" or "major with planning review access permit" means an access application or permit for a lot or site with an expected two-way traffic volume of 500 or more daily trips and 200 or more new trips in any peak hour between it and a State highway.

"Major traffic generator" means a use that generates 500 or more daily trips between a State highway and a lot or site.

"Minor access application" or "minor access permit" means an access application or permit for a lot or site with an expected two-way traffic volume of less than 500 daily trips between it and a State highway.

"Temporary driveway permit" means a permit for time-limited access for a specific lot or site, use, and estimated volume of traffic. Such uses may include, but are not limited to, site preparation (when done separately from construction of access pursuant to a permit) and environmental testing/monitoring.

2. Who can apply for a permit

The current owner of a lot, site, or street can apply for an access permit. No guidance could be located regarding how the state handles situations where an underlying fee owner does not agree to apply for a permit needed by a holder of an easement or other property interest that allows an access point or situations where a developer does not own the lot prior to applying for a permit.

3. Design standards

The location of driveways shall be established using the Design Standards and Driveway Design Parameters found at NJ.AC. 16:47 Appendix E and safety considerations based on sight distance and other geometric requirements.

Appendix E: For municipal, county, or private roadways, the design standards found in the American Association of State Highway and Transportation Officials (AASHTO) "A Policy on Geometric Design of Highway and Streets" 6th edition, or superseding editions for the appropriate functional classification shall govern unless superseded by other governmental regulations.

4. Indemnification

§ 16:47-10.4(a)(8) Permit conditions may include provisions for indemnification of the State and its employees and officials.

Maryland: (MDOT SHA Access Manual)

1. Definitions

None found.

2. Who can apply for a permit

Maryland has separate regulations for "entrance permits" to the state highway right-of-way for residences and commercial-industrial or subdivision streets. Residential applicants can be an

individual or corporation desiring to construct an entrance to a private residence.

Sec. 11.04.05.01 of the Code of Maryland Regulations governs who may apply for commercial-industrial or subdivision streets as follows:

B. Who Shall Apply for a Permit. The following is a descriptive listing of some of the parties required to apply for a permit. It is to be used only as a guide and may not be construed as all-inclusive. The words "commercial", "industrial", and "subdivision", used singularly or collectively in the following text, shall include all entrances other than those for an individual residence:

(1) Owners, or their duly authorized representatives (developers, contractors, tenants, lessees, etc.), of land newly being developed commercially, industrially, or as a subdivision, all desiring access to a State highway;

(2) Parties desiring to establish a new public street intersection or modify an existing public street intersection;

(3) Parties desiring to change existing entrances or create new entrances into existing commercial or industrial facilities, and subdivisions;

(4) Parties desiring to modify, expand, or in any other manner make improvement to an existing facility, which will increase or change the type of vehicular generation or traffic pattern;

(5) Parties desiring to change use or occupancy of an existing facility;

(6) Parties owning, occupying, leasing, or using a commercial or industrial facility (which was in existence before 1957) that is not fully channelized in accordance to permits issued by the Administration and which is now deemed hazardous from the viewpoint of access;

(7) Parties desiring to do any work within or across the State highway right-of-way.

3. Design standards

Sight Distance Standards (MDOT SHA Access Manual Chapter 1.2)

All points of access shall adhere to the safety criteria for acceptable intersection and stopping sight distance in accordance with current Administration standards and engineering practices. Sight distance shall be measured and evaluated for each proposed point of state highway access in accordance with the State's adopted version of AASHTO's "A Policy on Geometric Design of Highways and Streets." Applicants are strongly advised that sight distance should be evaluated for each desired point of access prior to seeking preliminary subdivision or site plan approval from the local approving authority. MDOT SHA cannot recommend action on a filing that involves access to a state highway until adequate sight distance is demonstrated. In no instance will prior subdivision or site plan approval by the local authority relieve the applicant from having to meet the State's sight distance requirements.

4. Indemnifications

No information found.

Virginia: 24VAC30-21-20 ("land use permit")

1. Definitions

“Auxiliary Lane” means the portion of the roadway adjoining the traveled way for parking, speed change, storage for turning, weaving, truck climbing or for other purposes supplementary to through traffic movement.

“Entrance, Commercial” means any entrance serving land uses that generate more than 50 vehicular trips per day or the trip generation equivalent of more than five individual private residences or lots for individual private residences using the methodology in the Institute of Transportation Engineers Trip Generation, 8th Edition.

"Entrance, Private" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

“Traveled Way” means the portion of the roadway that allows for the movement of through traffic, including vehicles, transit, and freight. It does not include such facilities as curb and gutter, shoulders, turn lanes, bicycle facilities, sidewalks, or parking lanes.

2. Who can apply for a permit

Land use permits can be issued to the highway right-of-way abutting property owner to install entrances and to “[a] person, organization or government authorized to assume the responsibility and liability for an approved activity within the highway right-of-way. The law does not provide a definition for “property owner.”

https://www.vdot.virginia.gov/media/vdotvirginiagov/doing-business/technical-guidance-and-support/land-use-and-development/land-use-permits/Frequently_Asked_Questions.pdf All permits shall be issued to the adjacent property owner in the case of entrance permits. Permits may be issued jointly to the owner and his contractor as agent.

By issuing a permit, VDOT is giving permission only for whatever rights it has in the right-of-way; the permittee is responsible for obtaining permission from others who may also have an interest in the property.

3. Design standards

Temporary logging entrances. District-wide permits may be issued for the installation, maintenance, and removal of temporary entrances onto non-limited access primary and secondary highways for the purpose of harvesting timber.

Sight Distance for Private Entrances.

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance standards specified in Appendix F of the Road Design Manual, 2011 (VDOT) cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee.

The district administrator's designee may require the property owner to grade slopes, clear brush,

remove trees, or conduct other similar efforts, or any combination of these, necessary to provide the safest possible means of ingress and egress that can be reasonably achieved.

Minimum Sight Distance for Commercial Entrances

A. No less than minimum intersection sight distance shall be obtained for a commercial entrance and no less than minimum stopping or intersection sight distance shall be obtained for a low volume commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix F of the Road Design Manual, 2011 (VDOT). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices, 2003, revised 2007 (FHWA), methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing highway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the highway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

Traffic Analysis

A detailed traffic analysis may be required with an entrance permit application in order to document the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

4. Indemnification

All applicants to whom permits are issued shall at all times indemnify and save harmless the Commonwealth Transportation Board, members of the Board, the Commonwealth, and all Commonwealth employees, agents, and officers from responsibility, damage, or liability arising from the exercise of the privilege granted in such permit to the extent allowed by law.

New York: N.Y. Codes R. & Regs. Tit. 17 Chapter IV – Highways, [Subchapter B. Work Permits on State Highways, State-Owned Bridges and Culverts](#)

1. Definitions

“Commercial driveway” means a driveway serving a commercial establishment, industry, governmental or educational institution, private utility, hospital, church, apartment building or other comparable traffic generator.

“Major Commercial Driveway” means any commercial driveway where the action:

1. 100 or more vehicles entering and leaving the highway during the highest hour of driveway activity; or

2. 50 or more vehicles entering and leaving during the eighth highest hour of driveway activity.

“Minor Commercial Driveway” means any commercial driveway where the actual or anticipated traffic volumes on a typical day are less than the values stipulated for a major commercial driveway.

“Residential driveway” means a driveway serving a private home or an apartment building containing no more than four family units.

2. Who can apply for a permit

The New York Code, Rules and Regulations ([Title 17, Chapter IV, Subchapter B](#)) require any person, institution, corporation, or other entity desiring permanent or temporary access to a State highway to obtain a work permit from the department to provide an entrance and/or exit.

Applications for work permits will be accepted only from property owners or their authorized agents. Certification of legal ownership or owner's authorization may be required. The term “owner” is not defined.

3. Design standards

Inadequate sight distance or other safety or operational deficiencies may require that turn restrictions be imposed at the driveway. Desirable sight distances at driveways are shown in sections 125.22 and 125.23. These sight distances are designed to enable vehicles exiting from the driveway to turn left or right and to accelerate to the operating speed of the highway without causing vehicles on the highway to reduce their speed by more than 10 miles per hour. Vehicles exiting to the left should be able to clear the near half of the highway without conflicting with through traffic approaching from the left. These sight distances are based on a 42" eye height and a 54" object height. Sight distances for semi-trailers are based on a 72" eye height and a 54" object height. Use of turn restrictions and/or acceleration lanes can eliminate the need for sight distances shown in sections 125.22 and 125.23. If the Regional Traffic Engineer believes that through traffic would accept a 20 mile per hour reduction in speed due to driveway use, the values may be reduced by one-third.

3. Indemnification

Indemnity Agreement - In addition to the protection afforded to NYSDOT under any available insurance, NYSDOT shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations; whether undertaken by Permittee's own forces or by contractors or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, NYSDOT, and their agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claim, including but not limited to claims for personal injuries, property damage or wrongful death and/or environmental claims, in any way associated with the Permittee's, activities or operations, no matter how caused.

Delaware: [DeIDOT Development Coordination Manual](#)

1. Definitions (1.8)

Applicant – An individual or firm seeking approval from DelDOT.

Commercial Entrance – An entrance to or exit from a non-residential site or non-State maintained street.

Construction Entrance – A temporary access for the ingress and egress of construction vehicles.

Drainage Structure – An inlet box, pipe, box culvert, or other similar conduit installed for the purpose of draining the flow of surface water

Major Residential Subdivision – A subdivision of six or more residential lots.

Minor Residential Subdivision – A subdivision of five or fewer residential lots.

Parcel – A uniquely described piece of land whose boundaries are established by legal instrument such as recorded deed, court order or a recorded plot which is recognized as a separate legal entity for the purposes of transfer of title.

Sight Distance – The distance visible to the driver of a passenger vehicle measured along the normal travel path of a roadway from one point to another point at a specified height above the roadway.

Stopping Sight Distance (SSD) – The distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the roadway becomes visible. It includes the distance traveled during driver perception and reaction times, and the vehicle braking distance.

2. Who can apply for a permit

Proof of ownership from the local land use agency (this must be an official document or on letterhead from the local land use agency) or an affidavit indicating property owner's name and Tax Map I.D. Number

If the applicant is not the current property owner, the power of attorney form must be completed and included in the application. The Power of Attorney form is not used to issue the permit to someone other than the property owner. Its purpose is to allow someone else to sign for the permit. The permit holder is still the property owner.

It should be noted, however, that DelDOT's Coordination Manual often uses the terms "owns or controls" and property owner/developer throughout.

3. Design standards

SIGHT DISTANCE: Entrance and intersection sight distance requirements shall meet DelDOT standards.

The entrance location and design shall provide a clear line of sight for the driver of a vehicle preparing to enter the roadway and should be designed in accordance with applicable guidelines and standards such as DelDOT's policies and AASHTO's location and design standards.

4. Indemnification

No information found.

Florida: Fla. Admin. Code R. 14-96 ([State Highway System Connection Permits](#))

1. Definitions

“Applicant” means the person submitting a connection permit application. An applicant may be a property owner or the owner’s authorized agent. The Department will also accept a connection permit application by a person holding an unrecorded interest in the property, such as a lease, that includes the right of access to the property, upon written proof of authorization from the property owner to submit the application executed before a notary public.

“Connection Category” means a Department assigned permit designation based on estimated vehicle trips per day to and from the property as set forth by Rule 14.96.004, F.A.C., or derived through generally accepted professional practice.

“Generally Accepted Professional Practice” for the purpose of this rule chapter means the use of professional engineering and planning knowledge in the applicable professional publications, such as traffic studies or traffic study guidelines done in accordance with the procedures of recognized traffic or transportation organizations and agencies such as the Transportation Research Board, Eno Foundation, Institute of Transportation Engineers, or design standards or principles of the American Association of State Highway and Transportation Officials (AASHTO), the Department, or the Federal Highway Administration (FHWA).

“Property owner” means the person or persons holding the recorded title of property abutting the State Highway System, and other persons holding a recorded interest in such property that includes the right of access.

“Vehicle Trips Per Day (VPTD)” means the average number of vehicle trips, existing or projected, based on actual counts or the estimation methodology in the 6th Edition of the Institute of Transportation Engineers *Trip Generation Report* or other generally accepted professional practice.

2. Who can apply for a permit

An applicant may be a property owner or the owner’s authorized agent. The Department will also accept a connection permit application by a person holding an unrecorded interest in the property, such as a lease, that includes the right of access to the property, upon written proof of authorization from the property owner to submit the application executed before a notary public.

3. Design standards

All construction and maintenance on Department right of way shall conform to the Federal *Manual on Uniform Traffic Control Devices* (MUTCD), incorporated by reference under Rule 14-15.010, F.A.C. All construction and maintenance on Department right of way shall also conform to the Department’s *Design Standards*, January 2002, Topic #625-010-003; the *Standard Specifications for Road and Bridge Construction*, 2000 Edition, the Department’s *Plans Preparation Manual*, January 2003, or other generally accepted professional practices. With the exception of the MUTCD, which already is incorporated by reference under Rule 14-15.010, F.A.C., the manuals and standards specifically listed in this section are hereby incorporated by reference and made a part of the rules of the Department of Transportation.

“Temporary Connection Category” provides a temporary, time limited connection to the State

Highway System for a specific property, use, and estimated traffic volume. Such uses may include forest land clearing and temporary agricultural or construction uses. This category may not be used for permanent construction at a site where it is reasonably expected that the use is the ultimate use of the property. Further, a temporary connection permit does not bind the Department in any way to the future issuance of a permanent connection permit at the temporary connection location. The permittee shall remove, at the permittee's own cost, the temporary connection at the end of the permit period or shall apply for an extension or a new permit. The fee for this category is \$250 for a six month period. The period will be extended for increments of six months upon written request, payment of a new fee, and a showing of good cause, such as weather delays, natural disasters, governmental entity coordination delays, or other technical problems not within the control of the applicant. However, in no event shall the period extend beyond 24 consecutive months. The Department reserves the right to remove any temporary connection upon expiration of the permit.

4. Indemnification

An indemnity agreement shall be executed by the applicant wherein it is agreed that the Department shall be indemnified, defended, and held harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:

- a. Any act or omission by the applicant or the applicant's contractors, agents, servants, or employees in connection with any construction activities undertaken pursuant to the connection permit.
- b. The negligence of the applicant or negligence of the applicant's contractors, agents, servants, or employees.
- c. Any other event or act that is the result of, or proximately caused by, the applicant or the applicant's contractors, agents, servants, or employees in constructing or maintaining the connection or any other features.

(13) 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 or other state agencies.

(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.)

In January 2019, PennDOT, via e-mail, requested comments and suggestions from the regulated community and partners, including:

1. County Commissioners Association of Pennsylvania

2. Pennsylvania State Association of Boroughs
3. Pennsylvania State Association of Township Supervisors
4. Pennsylvania Municipal League
5. Pennsylvania Builders Association (Members include small businesses)
6. International Council of Shopping Centers (Members include small businesses)
7. Pennsylvania Food Merchants Association (Members include small businesses)
8. National Association of Convenience Stores (Members include small businesses)
9. Pennsylvania Petroleum Association (Members include small businesses)
10. Pennsylvania Economic Development Association
11. PA Retailers' Association (Members include small businesses)
12. American Council of Engineering Companies of Pennsylvania (Members include small businesses)
13. National Utility & Excavation Contractors – Pennsylvania (Members include small businesses)
14. Pa Utility Highway Liaison Committee
15. Marcellus Shale Coalition Road Users Group
16. Pa Department of Community and Economic Development
17. Pa Department of Environmental Protection
18. Pennsylvania Turnpike Commission

PennDOT received comments/suggestions from the following and addressed those comments:

1. Pa. Builders Association, where a portion of their members are small businesses
2. PSATS
3. Marcellus Shale Coalition Road Users Group
4. McCormick Taylor

(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?

Any person, business (including small businesses) or local government intending to obtain access to or from a roadway under PennDOT's jurisdiction will be affected by the regulation. PennDOT has statutory authority to regulate access under 36 P.S. § 670-420. Currently PennDOT issues approximately 3,000 such highway occupancy permits (HOPs) each year. As explained below, for the

purposes of determining the economic impact on small business, PennDOT will assume that a large number of HOP applicants, especially for low volume or minimum use driveways, are small businesses as that term is defined by the SBA and Pennsylvania's Regulatory Review Act.

According to the Small Business Administration (SBA), there are approximately 1,079,103 businesses in Pennsylvania; of which 1,074,787 are small businesses. Of the 1,074,787 small businesses, 225,751 are small employers (those with fewer than 500 employees) and the remaining 849,036 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses. With regard to HOP applications, many of the applicants are builders or construction companies. According to the SBA table of size standards, new single-family housing construction (NAICS Code 236115), new multifamily housing construction (NAICS Code 236116), new housing for-sale builder (NAICS Code 236117), industrial building construction (NAICS Code 236210), and commercial institutional building construction (NAICS Code 236220) are all considered to be a small business if their revenue per year is less than \$45.0 in millions of dollars. For businesses categorized as "land subdivision" (NAICS Code 237210) the limit is \$34.0 in millions of dollars annually. These businesses are typically applying for minimum use driveways or local roads.

Other categories of HOP applicants are supermarkets and other grocery retailers (NAICS Code 445110), and convenience retailers (NAICS Code 445131) whose revenues may not exceed \$40.0 and \$36.5, respectively, in millions of dollars of receipts annually to qualify as a small business. HOP applicants for commercial driveways also include gasoline stations with convenience stores (NAICS Code 45110) whose revenues may not exceed \$36.5 million and other gasoline stations (NAICS Code 457120) whose revenues may not exceed \$33.5 million to qualify as a small business. Commercial banking (NAICS Code 522110), credit unions (NAICS Code 522130) and savings institutions and other depository credit intermediation (NAICS Code 522180), whose revenues may not exceed \$850 million in assets to qualify as a small business are also applying for commercial driveways.

Restaurants both full-service (NAICS Code 722511) and limited-service (NAICS Code 722513), whose revenues may not exceed \$11.5 million and \$13.5 million, respectively, to qualify as a small business, are applying for commercial driveways. Finally, another large number of HOP applicants for commercial driveways are warehouse clubs and supercenters (NAICS Code 455211) whose revenues may not exceed \$47.0 million to be qualified as a small business.

The definition of "small business" in Section 3 of the Regulatory Review Act points to "small businesses" as defined in 13 C.F.R. Section 121.201. Many HOP applicants are considered "small businesses" as defined in the federal regulations; however, PennDOT does not collect information on the size of the business applying for the HOP and has no practical way of verifying how many builders or other applicants submitting HOP applications are small businesses or otherwise. PennDOT's objective with respect to the highway occupancy permit program, is to establish uniform controls governing the location, design, construction and maintenance of driveway and local road connections to the state highway system. As part of the application process, the applicant must provide the Department proof of ownership of property seeking access, the type and amount of traffic anticipated, and other design information relating to the requested access. However, as noted above, for the purposes of determining the economic impact on small business, PennDOT will assume that a large number of HOP applicants, especially for low volume or minimum use driveways, are small businesses as that term is defined by the SBA and Pennsylvania's Regulatory Review Act.

Minimum Use Driveways

Out of the 3,000 HOPs issued per year under this regulation, approximately 56% are driveways classified as minimum-use. 90% of the minimum-use driveway permits are for either residential land uses (64%) or industrial/agricultural (26%). The overwhelming majority of minimum-use driveway permits for residential land uses are for single family homes. The top two industrial/agricultural land uses are Marcellus shale related and utilities.

Commercial Driveways

Out of the 3,000 HOPs issued per year under this regulation, approximately 18% are commercial driveways classified as either Low Volume, Medium Volume or High Volume driveways. Retail and services are the top two land use categories being served by one of these driveway classifications. They include, but are not limited to, land uses such as shopping centers, discount stores and superstores, supermarkets, convenience stores with gasoline pumps, home improvement stores, banks, and restaurants. More than half the permittees in CY 2021 were limited liability companies and limited partnerships who either owned the property or had a sales agreement to purchase the property in which an HOP for a commercial driveway(s) was issued.

Local Roads

Out of the 3,000 HOPs issued per year under this regulation, approximately 3% are classified as local roads. Local roads are accesses serving more than three properties or act as a connecting link between two or more roadways. The majority of local road permits are issued for planned residential subdivisions.

Temporary Accesses

Out of the 3,000 HOPs issued per year under this regulation, approximately 8% are classified as temporary accesses. The overwhelming majority (>80%) of temporary access permits are issued for industrial/agricultural purposes such as for cross country pipeline/transmission line construction. PennDOT is currently issuing Temporary Access Permits with a condition on the permit that states the access must be removed prior to permit expiration. The minimum use driveway permit fee is typically applied.

Other/Miscellaneous

Out of the 3,000 HOPs issued per year under this regulation, approximately 15% are for work such as curb installation, sidewalk installation, embankment alterations, drainage installations and other miscellaneous work within the highway right-of-way. The permits are issued to either the local governments or adjacent property owners.

All categories of permit applicants are affected by the regulation's amendments as follows:

1. Definitions

All categories of permittees will benefit from the increased clarity in the updates to the definition section.

2. Who can apply for a permit

Applicants for commercial driveways will benefit from the proposed rulemaking regarding "who can

apply” because many developers have sales agreements with the fee title holder that are contingent upon permit approvals. The new definition of “owner” will allow those with a sales agreement, or an option to purchase, to apply for a permit and obtain preliminary approval for the occupancy in order to close on the purchase of the property, though permits will not be issued until the developer is the fee title owner of the property. With 1.1 million small businesses in Pennsylvania, this change will most likely have a large impact on small businesses as well as any other business that is not the fee owner but is applying for a driveway permit.

3. Design standards/requirements

All driveway applicants will be impacted by revisions and additions to the proposed rulemaking regarding temporary accesses and/or sight distance criteria. The additional provision relating to temporary accesses benefits applicants by formalizing current policy that allows for temporary access. Revisions to sight distance requirements remove outdated sight distance tables and formulas and replace them with a reference to PennDOT’s design manual which has adopted the national sight distance standards found in AASHTO’s A Policy on Geometric Design of Highways and Streets.

1. Automatic Indemnification

All driveway applicants will benefit by revisions that remove the requirement to executed separate indemnification agreements or forms and by making these provisions consistent with the existing automatic indemnification in § 441.6(13).

(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.

Any person, business (including small businesses) or local government intending to obtain access to or from a roadway under the jurisdiction of PennDOT will be affected by the regulation. An approximate number of people who will desire to do so at any given time cannot be calculated. Currently PennDOT issues approximately 3,000 such HOPs each year. As stated above PennDOT has no way of determining how many of the HOP applicants are “small businesses.” PennDOT does not receive information regarding the applicant’s size when an applicant applies for a permit. As part of the application process, the applicant must provide the Department proof of ownership of property seeking access, the type and amount of traffic anticipated, and other design information relating to the requested access. The overwhelming majority are one-time customers, however, there is a small percentage that are return customers, such as 24-hour convenience store owners/developers, discount store owners/developers, and utilities to name a few.

(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.

Economically, financially, and socially, because the proposed rulemaking streamlines the process, it should be easier for the regulated community as a whole to understand and comply with the regulation. Socially, the traveling public will benefit from safe access to our state highways. The regulations are modernized to address current traffic engineering standards and PennDOT's current practices, which results in efficiencies that will benefit the regulated community and the traveling public as a whole from an economic, financial, and social standpoint.

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

The objectives of this proposed rulemaking are to establish uniform controls governing the location, design, construction, maintenance and drainage of access driveways, local roads, and other property within state highway right-of-way for security, economy of maintenance, preservation of proper drainage and safe and reasonable access.

The benefits of the proposed changes are to improve highway safety, provide consistency, and streamline the permitting process.

Insufficient sight distance can be a contributing factor in intersection traffic crashes. It is important for approaching motorists on a major road to see side street vehicles approaching a stop sign, and for minor road motorists to see approaching major road vehicles before entering the intersection. Poor sight distance can lead to rear-end crashes on the approaches and angle crashes within the intersection because motorists may be unable to see and react to traffic control devices or approaching vehicles. The section in the regulation on sight distance is being updated to reflect current national policy guidance and to be consistent with other PennDOT documents.

With the advent of PennDOT's EPS, both applicants as well as PennDOT have experienced cost savings, improved efficiency, transparency, accountability, and predictability. The proposed regulations seek to incorporate current processes used by EPS.

Pre-EPS, applicants had to mail or hand deliver their applications to the County or District offices; applicants were unable to track the status of PennDOT reviews; there was a lack of accountability and consistency. With EPS, applicants can submit their applications on-line from anywhere they have internet service at any time of the day; applicants can track their application on-line and can see who is reviewing/processing their application; Districts and Central office staff can track/search applications much easier, saving valuable time; and all applications are processed consistently.

Additionally, in light of the Governor's Executive Order 2023-07, which was issued to eliminate barriers to economic development, and increase efficiency in the processing and the approval of Commonwealth-issued permits, licenses, and certifications, PennDOT has assembled an HOP Improvement Team to identify various issues in the HOP review process that has the potential to be streamlined. Currently, the team has identified 20+ strategies that the team plans to address in phases over the next 3 years.

To the extent that fee-title owners' rights are impacted by HOPs (which is a possibility under the current regulations), PennDOT considered feedback in a prior rulemaking and took steps to ensure that fee-title

owners are aware of and can exercise available legal rights and remedies. PennDOT believes these remedies are reasonable and affordable. The fee-title owners' rights are in the Administrative Code, which have been in place and that we are not changing. There are no costs to the remedies other than a small filing fee and the cost of hiring an attorney, should they choose to do so.

(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.

There are no additional legal, accounting or consulting procedures required by the changes in the regulation. The proposed rulemaking will eliminate the need for several forms related to indemnification, which will streamline the application process and may eliminate the need for additional legal or consulting procedures. We estimate that the regulated community will see no additional costs or savings associated with compliance as the proposed amendments are revenue neutral.

(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 regulation will not result in any costs or savings to local governments. The proposed rulemaking clarifies what a "municipality" is so that there is no doubt that counties, cities, boroughs and incorporated towns or townships are all included.

However, local governments are encouraged to take advantage of EPS, which has been in place for many years, by gaining access to EPS's Local Government Partner Portal, which provides notice via e-mail to local governments when an HOP application is submitted within their jurisdiction, and it also allows the local government access to all applications/HOPs submitted/issued under this regulation.

(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.

EPS was implemented in 2011 and has been improving since that time with additional updates occurring periodically every year. So, efficiencies have been gained over the years since the implementation of EPS, which this proposed rulemaking formally implements. It is difficult to estimate the savings to state government associated with the formal implementation of EPS as the system has actually been in place

since 2011. State government will benefit from the efficiencies gained by the proposed rulemaking, and there are no additional costs in terms of legal, accounting or consulting procedures.

(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.

The proposed amendments to the regulation do not add any additional legal, accounting, consulting, reporting or recordkeeping procedures on the regulated community, local governments, or state governments as a result of the regulation.

(22a) Are forms required for implementation of the regulation?

One new form is required for implementation of the regulation, see attached form M-950 R Agreement of Release. PennDOT anticipates the elimination of a few forms (relating to indemnification). The M-950 R is an old form that was discontinued years ago, which we are bringing back now that we are going to consider allowing portions of driveways be constructed outside of the property frontage boundary line. The form is required because it provides the applicant the ability to access the state highway if their property frontage is insufficient to allow the entire driveway to be constructed fully within the boundaries of their property. This form makes it easier for applicants with limited road frontage to obtain a permit without having to purchase additional property or redesign or relocate the proposed access, which may not always be an option.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

We propose to eliminate the indemnification forms, which will remove five forms. The following forms will be eliminated: Forms [M-950IA](#), [M-950ID](#), [M-950IDW](#), [M-950IFO](#), and [M-950IC](#). Only the M-950 R Agreement of Release is newly required as a result of this regulation. A list of Highway Occupancy Permit forms are available at <https://www.penndot.gov/Doing-Business/Permits/HighwayOccupancyPermits/Documents/HOP%20Related%20Forms.pdf>.

(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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0
(23a) Provide the past three year expenditure history for programs affected by the regulation.						
Program	FY -3	FY -2	FY -1	Current FY		
Highway Occupancy Permits	\$13.2 Million	\$14.1 Million	\$18.5 Million	\$18 Million		

<p>(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:</p> <p>(a) An identification and estimate of the number of small businesses subject to the regulation.</p> <p>As noted in the answer to question 15, PennDOT believes that many HOP applicants, especially applicants for low volume driveway permits, are small businesses. We have no way of knowing how many small businesses apply for HOPs because applicants do not disclose that information to PennDOT. As part of the application process, the applicant must provide the Department proof of ownership of property seeking access, the type and amount of traffic anticipated, and other design information relating to the requested access.</p> <p>(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.</p> <p>There is only one new form required for implementing the regulation and five current forms being eliminated. The new form will be Form M-950R. The following forms will be eliminated: Forms M-950IA, M-950ID, M-950IDW, M-950IFO, and M-950IC. We do not anticipate any significant reporting, recordkeeping or other administrative costs other than what is currently required of HOP applicants.</p> <p>(c) A statement of probable effect on impacted small businesses.</p> <p>The anticipated decrease in the waiting time gained by efficiencies and in streamlining the HOP application and review process will positively impact small businesses.</p> <p>(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.</p> <p>There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.</p> <p>There is minimal ascertainable adverse impact on small businesses with the proposed amendments due to its applicability to all prospective HOP applicants. Because PennDOT does not collect data on an applicant's business size, gross income or other such indicators, it cannot determine, with specificity, the impacts to small business. The proposed amendments will benefit all persons and businesses of all sizes for the reasons stated through this document.</p>				

(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.

The provisions allowing non-fee owners to apply for a permit and be preliminary approved benefit developers who enter into sales agreements that are contingent on permit approvals. No other special provisions 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. This regulation will apply to all applicants. To the extent that a permit application impacts the needs of such affected groups or persons, the law provides an adequate mechanism by which affected groups or persons may file requests to intervene in the permitting process or appeal the issuance of a HOP through PennDOT's administrative docket.

(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.

No alternative regulatory provisions were considered; however, PennDOT did consider and incorporate proposed revisions provided by stakeholders noted in paragraph 14 above.

(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 performance 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.

PennDOT offers the following:

(a) All businesses (small and large) intending to access real property owned or leased by them (and adjacent to PennDOT right-of-way) are required to comply with these amendments to the regulation; thus less stringent requirements are not feasible. Each applicant is required to submit an application and supporting documents including, but not limited to proof of ownership, construction plans, and traffic and drainage impact reports if warranted.

(b) In view of the broad applicability to all prospective HOP applicants, there are no less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(c) Again, in view of the broad applicability of the regulation consolidation or simplification of compliance or reporting requirements for small businesses is not practical. Each applicant is required to submit an application and supporting documents including, but not limited to proof of ownership, construction plans, and traffic and drainage impact reports if warranted.

(d) This regulatory package is not one to which performance standards for small business can be different. The regulation's purpose is to regulate the location, design, construction, maintenance and drainage of access driveways, local roads, and other property within State highway right-of-way for the purpose of security, economy of maintenance, preservation of proper drainage and safe and reasonable access.

(e) Lastly, due to the broad applicability of this regulation to all prospective HOP applicants, assisting small businesses is impracticable.

These amended regulations are consistent with existing PennDOT policies and practices.

(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.

Data does not form the basis for this regulation.

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

- | | |
|--|-------------------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>To be determined.</u> |
| C. The expected date of delivery of the final-form regulation: | <u>To be determined.</u> |
| D. The expected effective date of the final-form regulation:
<u>in the <i>Pennsylvania Bulletin</i>.</u> | <u>Upon final publication</u> |
| E. The expected date by which compliance with the final-form regulation will be required:
<u>in the <i>Pennsylvania Bulletin</i>.</u> | <u>Upon final publication</u> |

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

N/A

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

These regulations will be reviewed periodically as appropriate to ensure continued effectiveness.



pennsylvania

DEPARTMENT OF TRANSPORTATION

www.penndot.pa.gov

AGREEMENT OF RELEASE

(SECTION 441.8(D) - PROPERTY LINE CLEARANCE RELEASE)

COUNTY	APPLICATION/PERMIT NO.
MUNICIPALITY	APPLICANT/PERMITTEE
S.R.-SEGMENT-OFFSET	

THIS INDENTURE, made _____ this day of _____, 20 ,
by, _____

owner(s) of property adjacent to the access or improvement being constructed at the above mentioned State Route (SR) pursuant to the above referenced application/permit, their heirs, executors, administrators, successors and/or assigns, hereinafter, whether singular or plural, called the OWNER, which property is described on Exhibit A, title to which is evidenced by a deed dated _____, and recorded in the Office of the Recorder of Deeds of _____ County in Deed Book _____, Page _____, and the Commonwealth of Pennsylvania, Department of Transportation, hereinafter, whether singular or plural, called the COMMONWEALTH,

WITNESSETH:

In consideration of the benefits accruing to the above OWNER as a result of the aforesaid construction, the OWNER does hereby remise, release, quitclaim and forever discharge the COMMONWEALTH its agents, employees and representatives of and from all suits, damages, claims and demands of any type arising against it as a result of granting of the permit to permittee including any claim which the OWNER might otherwise have been entitled to assert under the provisions of the Eminent Domain Code, Act of June 22, 1964, P.L. 84 as amended (26 P.S. 1-101 et. seq. as amended), for or on account of any injury, destruction or interference with access to the aforesaid property of the OWNER through or by reason of the aforesaid access or improvement being constructed outside of the permittee's property frontage boundary line pursuant to the above referenced application/permit.

In WITNESS WHEREOF, the OWNER has executed or caused to be executed these presents, intending to be legally bound thereby.

INDIVIDUALS

ENTITIES*

OWNER:

(Name of Entity)

By:

By:

*Use this block for a corporation, partnership, LLC, government entity, school district, church, trust, club, association, POA, attorney-in-fact, executor, administrator or any other entity. See R/W Manual Section 3.06.

INDIVIDUAL	ENTITY
<p>STATE OF _____</p> <p>COUNTY of _____</p> <p>On this _____ day of _____, 20____.</p> <p>before me, _____,</p> <p>the undersigned officer, personally</p> <p>appeared _____</p> <p>_____</p> <p>known to me (or satisfactorily proven) to be the person(s)</p> <p>whose name(s) _____,</p> <p>subscribed to the within instrument, and acknowledged that</p> <p>_____ executed the instrument for the</p> <p>purposes contained in it.</p> <p>In witness whereof, I hereto set my hand and official seal.</p> <p>_____ (Signature)</p> <p>_____ (Title)</p> <p>[SEAL]</p>	<p>STATE OF _____</p> <p>COUNTY of _____</p> <p>On this _____ day of _____, 20____.</p> <p>before me, _____,</p> <p>the undersigned officer, personally</p> <p>appeared _____</p> <p>who acknowledged _____ self to be the _____</p> <p>_____ (Title) of</p> <p>_____ (Name of Entity,)</p> <p>and that as such _____ (Title)</p> <p>being authorized to do so, executed the foregoing</p> <p>instrument for the purposes contained in it by signing on</p> <p>behalf of the entity as _____ (Title)</p> <p>In witness whereof, I hereto set my hand and official seal.</p> <p>_____ (Signature)</p> <p>_____ (Title)</p> <p>[SEAL]</p>



APPLICATION SUMMARY

Application: 61282	Cycle: 1	Draft
Applicant/Owner: Address Line 1: Address Line 2: City: State: PA Postal Code:		Paper Application Number: BP ID: 000XXX Phone Number: (717) XXX-XXX Ext: Fax Number: Email Address: XXXXXXX@XXXX.com Additional Email Address 1: Additional Email Address 2:
Created By: Andy Applette01/PennDOT BP-000780		

Application Details Information District: County: Municipality:	Permit Group: HOP Permit Type: Driveway Permit Sub Type: High Volume(3,001 ADT and higher) Permit Use: Retail Permit Sub Use: Convenience Market (including with Gasoline Pumps)
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CoApplicant Info						
Firm Name	Contact Name	Business Partner ID	Email	Additional Email Address 1	Additional Email Address 2	Phone Number
No records found.						

Engineering Firm Info						
Firm Name	Contact Name	Business Partner ID	Email	Additional Email Address 1	Additional Email Address 2	Phone Number
		XXXXXX	XXX@email.gov			(XXX) XXX-XXXX

Applicant Contact Info

Work and Location Details																		
Work ID: 1																		
Work Summary: Install a low volume driveway																		
<table border="1" style="width: 100%;"> <tr> <th>County</th> <th>S.R.</th> </tr> <tr> <td>Adams</td> <td>0233</td> </tr> </table>	County	S.R.	Adams	0233	<table border="1" style="width: 100%;"> <tr> <th>Location Detail</th> <th>From</th> <th>To</th> </tr> <tr> <td>Segment(s)</td> <td>0030</td> <td>0030</td> </tr> <tr> <td>Offset(s)</td> <td>0400</td> <td>0400</td> </tr> <tr> <td>Driveway Indicator</td> <td>Left</td> <td></td> </tr> </table>		Location Detail	From	To	Segment(s)	0030	0030	Offset(s)	0400	0400	Driveway Indicator	Left	
County	S.R.																	
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Location Detail	From	To																
Segment(s)	0030	0030																
Offset(s)	0400	0400																
Driveway Indicator	Left																	
<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <ul style="list-style-type: none"> There is planned or in-progress maintenance at one </div> <div style="flex: 1; border-left: 1px solid black; padding-left: 10px;"> <table border="0" style="width: 100%;"> <tr> <th style="text-align: left;">Work Description ID</th> <th style="text-align: left;">Work Description Code</th> <th style="text-align: left;">Work Description</th> </tr> <tr> <td colspan="3" style="color: red;">No records found.</td> </tr> </table> </div> </div>			Work Description ID	Work Description Code	Work Description	No records found.												
Work Description ID	Work Description Code	Work Description																
No records found.																		

or more sections of this work location.

Note: Activities alerted here, may not appear in MPMS-IQ.

Additional Details

Date work is scheduled to begin : 07/01/2024

Pre-EPS Application: No

Approximate date when work will be completed : 10/01/2024

Driveway

Anticipated Average Daily Traffic (ADT)

Cars : 3,000

Trucks : 10

Busses : 1

Total : 3,011

Is any portion of the property reserved for a person with a disability or a severely disabled veteran? N

Permit Information

Permit No:
Supplement Permit No:

Issue Date:
Effective Date:
Expiration Date:
Close-Out Date:
Physical Work Completion Date:

Fee Information

Fee Description	Regulation Section	Regulation Reference No.	Unit Fee	Number Of Units	Item Fee
Inspection Fee - High Volume Driveway	441	B.4	50.00	1	50.00
Issuance Fee - High Volume Driveway	441	A.1.iv	50.00	1	50.00
Permit Fee:					100.00

Fee Paid Information

Payment By: Credit Card

Invoice Number:

Fee Paid Amount:

How to Pay Using Credit Card - Please Read this.

Please read the instructions carefully, since you chose Credit Card as a method of payment.

1. Just before issuance of this permit/supplement, PennDOT will generate an Invoice and send to PennDOT's Finance Department.
2. This Invoice Number is updated in the PayPennDOT system.
3. The Applicant Team will then receive an email from the ePermitting system requesting payment.
4. A secured payment link can be found in the email. [Here are the Instructions.](#)
5. Please pay the Invoice by using a Credit Card, using the following link [Pay Here.](#)
6. After the payment is processed, PennDOT will issue the permit/supplement.

7. The Applicant Team will receive an email notification of permit issuance.

Estimated Construction Costs

Is the estimated construction cost for the work under this application captured under a separate associated application? If Yes, check the box. ☐

Estimated On-site Construction Cost 200000

On-site Construction Cost – Costs associated with all improvements constructed within PennDOT right-of-way abutting the applicant's property necessary for the ingress or egress to the applicant's property at specified access points (e.g. auxiliary lanes, signing, pavement markings, curbing, traffic signals). Enter zero if there are no costs.

Estimated Off-site Construction Cost 100000

Off-site Construction Costs – Costs associated with all improvements constructed within PennDOT right-of-way other than the on-site improvements. This could include associated applications. Enter zero if there are no costs.

Total Estimated Construction Cost 300000

Checklist

Plans are Satisfactory?:
Traffic Control Plan Consistent with Chapter
212/213:
M-930:
Limited Access Highway:
Continuous Inspection:
Drainage Problem:
Permit:
On-Site Review by:

Returned on:

Returned on:

Reviewed On:

Reference Information

Origination:
Right Of Way Required:
Detour Required:
Traffic Impact Study:

Review Goal Date:

Date TIS Completed:

Application Setup

- Applicant Team
- Attachments
- Work Summary and Locations
- Application Identification

FEE INFORMATION & ESTIMATED CONSTRUCTION COSTS

- Application Summary
- Maintenance and Operation Information
- Reference Material and Forms
- Link HOP/TSP List
- Utility Sketch Application

Internal

- Checklist Information
- Reference Information

Workflow

- Review Team
- Response Letter

Permit

- Inspections & Closeout

You are currently logged in as **Andy Applette01**.

Release: 49.0

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Tue Apr 02 10:32:57 EDT 2024
Official ePermit Date/Time

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

(Pursuant to Commonwealth Documents Law)

RECEIVED

Independent Regulatory
Review Commission

December 11, 2024

DO NOT WRITE IN THIS SPACE

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

By: Amy M. Elliott
(Deputy Attorney General)

11/26/2024

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. 18-481

DATE OF ADOPTION _____

BY [Signature]
Secretary of Transportation

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

BY [Signature]

10/29/2024

(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

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

The Pennsylvania Department of Transportation (Department), under section 420 of the State Highway Law (act) (36 P.S. § 670-420), proposes to amend 67 Pa. Code Chapter 441 (relating to access to and occupancy of highways by driveways and local roads) to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is proposed under the authority of Section 420 of the act. Specifically, section 420(a) of the act provides: “The secretary is empowered to make reasonable rules and regulations governing the use of all State highways....”

Furthermore, section 420(b) of the act states that, “The secretary may issue permits for the opening of streets and driveways onto State highways and for the opening of the surface and occupancy of State highways on terms and conditions established in department regulations.”

Background and Need for the Amendments

Chapter 441 is an exercise of the Department’s statutory authority to promulgate a regulation controlling the safe location, design, construction, and maintenance of: driveways; local roads; drainage facilities; structures; means of ingress, egress and access; and other property within the State highway right-of-way. The purpose of this proposed rulemaking is: 1) to amend and clarify the provisions relating to who may apply for and

who may be issued a permit to construct or alter driveways; local roads; drainage facilities; structures; means of ingress, egress, and access; and other property within the State highway right-of-way; 2) to amend definitions and terminology to make the definitions and terminology consistent with current industry-accepted and Department usages; 3) to update sight distance requirements by replacing the values, tables and formulas with a reference to the Department's Design Manual Part 2, Highway Design which uses the American Association of State Highway and Transportation Officials' (AASHTO) *Sight Distance* standards; 4) to replace driveway design criteria and layout figures with a reference to the Department's Highway Occupancy Permit Operations Manual, which references established engineering standards necessary to ensure that the highway system is operated in an efficient and safe manner; 5) to formally include the Electronic Permitting System; 6) to regulate nonvehicular access to the state highways; 7) to eliminate five indemnification forms and instead provide for automatic indemnification in accordance with current law; 8) to allow the Department to remove an unpermitted access that the Department determines is unsafe and the property owner or facility owner fails to remove the same after receiving notice; and 9) to ensure that all official documents use gender neutral language consistent with the Department's policy and commitment.

It is important to note that current Chapter 441 incorporates multiple Department publications, some of which are no longer in use or applicable. The Department is updating references to eliminate publication numbers, and instead providing the name of the referenced manuals throughout the proposed rulemaking. The Department's manuals are required to be maintained by the Federal Highway Administration (FHWA) as a condition

of receipt of federal funding and provide references to industry-accepted engineering standards that are approved by the FHWA in accordance with the Federal-Aid Highways Stewardship and Oversight Agreement between Pennsylvania and the FHWA. The agreement is intended to ensure efficient and effective management of public funds consistent with federal law relating to highway funding and it is entered into in accordance with 23 U.S.C. § 106 (relating to project approval and oversight). The agreement can be accessed at <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>.

The proposed regulatory revisions will ensure that modifications to the highway system brought about by the issuance of highway occupancy permits are implemented in the safest and least disruptive way for the overall efficiency and operation of the highway system and that the modifications comply with federally accepted standards.

Description of the Proposed Amendments

Significant amendments to the chapter include the following:

Section 441.1

The Department proposes to amend § 441.1 (relating to definitions) to delete, modify, and add terms as follows based on current industry standards, Department practice, and the desire to simplify, where possible, the requirements to apply and obtain a permit.

The Department proposes to amend the definition of “access” to include non-vehicular facilities used to enter or exit the highway that require opening of the surface or occupancy of the highway. The term “street” is proposed to be replaced by the term “local road” as the definition of “local road” includes a street. The Department proposes to replace

“drainage structures” with the proposed defined term “drainage facilities,” to remove ambiguity. The Department proposes to remove the phrase “of vehicles” because the Department has historically issued permits for drainage facilities, as well as other pedestrian facilities such as sidewalks and ramps, under Chapter 441. The statutory authority to issue permits for these facilities can be found under section 420(b)(2) of the State Highway Law which states that no person “shall open a driveway unto a state highway or open the surface of or occupy a state highway without a permit.” 36 P.S. §§ 670-420(b)(2). The additional clarity afforded by this amendment also addresses a problematic result in a recent Commonwealth Court case, *N-Jie v. Dep't of Transportation*, 300 A.3d 1131 (Pa. Cmwlth. 2023), which considered the Department’s removal of a pedestrian bridge occupying the State highway right of way without the Department’s permission. In *N-Jie*, the court opined that § 441.6(4)(ii) did not authorize the Department to remove a pedestrian bridge on which a permit had never been issued. The court held that this subparagraph of the regulation only applies where a highway occupancy permit has been issued. *Id.* at 1140. In a footnote, the Commonwealth Court noted that § 441.10 (related to penalties and enforcement) did not authorize the Department to remove a pedestrian bridge where the regulation only allowed the Department to block “driveways.” *Id.* at FN 9. The Commonwealth Court pointed out that the regulation’s definition of “driveway” did not include a pedestrian bridge. *Id.* The Department seeks to amend the definition of “access,” in addition to proposing other amendments, to continue its existing practices of exercising its duty under the State Highway Law in furtherance of the safety of the traveling public.

The Department proposes to add a definition of “authorized agent” to reflect the Department’s practice of allowing engineers or other representatives to submit applications on behalf of an applicant.

The Department proposes to delete “Central Permit Office” from the definitions as the only section in which the term is used, section 441.5(i)(relating to issuance of permits) is proposed to be deleted.

The Department proposes to delete “combination” from the definitions as the only sections in which the term is used, sections 441.8 (relating to sight distance and 441.9 (relating to driveway figures) are proposed to be deleted.

The Department proposes to add “department specifications” to the definitions to replace “Form 408”, which is Department Publication 408, with a more general term to eliminate the risk that the current publication number will become obsolete in the future. This publication is amended and updated periodically via a process whereby changes are vetted by appropriate third-party stakeholders and approved by the U.S. Department of Transportation, Federal Highway Administration (FHWA).

The Department proposes to add “Deputy Secretary” to the definitions to replace the definition of “director,” which is now obsolete as explained below. The Department believes that the authority that was vested in the director should reside with the Deputy Secretary.

The Department proposes to delete “director” from the definitions because it is no longer a title the Department uses for officials with authority under Chapter 441. For the same reason, the Department proposes to replace the term “director” in the remainder of

Chapter 441 with “Deputy Secretary or designee. In addition, the Department’s Bureau of Highway Services, which is currently referenced in the definition of “director,” no longer exists. The director had the authority to waive design requirements, approve requests to remove median divisors, and revoke a permit for nonpayment of a fee; this authority now rests with the Deputy Secretary or designee.

The Department proposes to add “Design Manual Part 2” a Department publication, to the definitions to refer applicants to design requirements, criteria and figures found in this publication throughout various sections of Chapter 441. This publication is amended and updated periodically via a process whereby changes are vetted by appropriate third-party stakeholders and approved by the U.S. Department of Transportation, Federal Highway Administration (FHWA).

The Department proposes to add “drainage facility” to the definitions because section 441.3(a) requires a permit for drainage facilities within the State highway right of way but there is no definition setting forth what constitutes a “drainage facility.”

The Department proposes to add “Electronic Permitting System” or “EPS” to the definitions because since this chapter was last amended, the Department has implemented an electronic system to allow for more efficient processing of permit applications. Applicants are required to submit their applications via the Electronic Permitting System (EPS). The EPS has been operational since 2011.

The Department proposes to delete “Form 408” from the definitions in favor of the more general term “Department specifications” to eliminate the risk that the current publication number will become obsolete in the future.

The Department proposes to add “Highway Occupancy Permit Operations Manual” to the definitions and refer to it in various sections of Chapter 441. The manual is intended for anyone who wishes to obtain guidance or information on the Department’s highway occupancy permit program. It includes but is not limited to the following: 1) an overview of the Department’s highway occupancy permit program, how it is staffed, and how staff collectively administers the program; 2) a detailed walkthrough from application submission to application review to permit issuance to construction, inspection, and closeout of permitted work; 4) guidance on resolving highway occupancy permit-related disputes and complaints; and 6) guidance on the use of all highway occupancy permit-related Department forms. The Highway Occupancy Permit Operation Manual is approved by the Federal Highway Administration (FHWA) and is required pursuant to the Federal-Aid Highways Stewardship and Oversight Agreement between Pennsylvania and the FHWA. The agreement is intended to ensure efficient and effective management of public funds consistent with federal law relating to highway funding and it is entered into in accordance with 23 U.S.C. §106. The agreement can be accessed at <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>.

The Department proposes to delete “intermediate island” from the definitions as the term is not used in Chapter 441.

The Department proposes to amend “low volume driveway,” which currently includes driveways that are used by up to 749 vehicles per day, to include driveways expected to generate 750 vehicles per day. Due to an oversight, chapter 441 currently does

not include or classify a driveway that generates exactly 750 vehicles per day. This amendment remedies that oversight.

The Department proposes to amend “medium volume driveway” to include and classify a driveway that is expected to generate 1,500 vehicles per day as a medium volume driveway. Chapter 441 currently does not include or classify a driveway that generates 1,500 vehicles per day. This amendment remedies that oversight.

The Department proposes to add “municipality” to the definitions to clarify what governmental units are considered municipalities. This definition is consistent with the definition of municipality provided in 1 Pa.C.S. § 1991 (relating to definitions) and Title 53 (regarding municipalities generally) of the Pennsylvania Consolidated Statutes.

The Department proposes to amend “owner” to clarify who may apply for a permit under the permit application procedure provided in § 441.3. The amendment would remove persons with a sales agreement or option to purchase property. Sales agreements for developments are often conditioned on receipt of permits. Those with a sales agreement or option to purchase property would still be able to apply for a permit and obtain preliminary permit approval; but would not be issued a permit until title to the property is transferred. Section 441.3(b) currently requires an application to be in the name of an "owner," which is confusing in light of the definition we are seeking to change. The proposed § 441.3(b) would allow an application to be submitted by an "owner," and applicants with equitable interests in the property under a sales agreement would be able to apply without (1) the seller (the fee title owner) having to consent to the application, (2) without the applicant having to further indemnify the Department in accordance with

section 441.3(7), and (3) without the need to execute and record a covenant running with the land indicating the ongoing indemnification requirement. This would allow developers who condition their sales agreements on permitting to be able to submit applications and work through the review process. This will streamline the permit process for developers by eliminating many of the steps and expense currently necessary for developers operating under a sales agreement to apply for a permit. With 1.1 million small businesses in Pennsylvania, this change will most likely have a large impact on small businesses and other businesses that are not fee owners that are applying for a driveway permit.

The Department proposes to delete “Publication 43,” “Publication 68,” “Publication 90” from the definitions because the publications are obsolete.

The Department proposes to amend “roadway” to rectify an inconsistency with the definition of “shoulder.” Under the definition of “shoulder,” the shoulder is considered a part of the roadway; under the definition of “roadway,” shoulders are excluded. Shoulders should be considered a part of the roadway. This amendment removes the exclusion of the shoulder from the definition of roadway to make the two terms consistent.

The Department proposes to amend “roadway construction standards” by removing the publication number in case it is changed in the future and to indicate that the publication can be found on the Department’s website. This publication is amended and updated periodically via a process whereby changes are vetted by appropriate third-party stakeholders and approved by the FHWA.

The Department proposes to delete “setback” from the definitions as the term is not used in Chapter 441.

The Department proposes to delete “turning radius” from the definitions as the term is not used in Chapter 441.

Section 441.2

The Department proposes to amend subsection (a) to use the proposed amended definitions, remove redundancy, and clarify that Chapter 441 applies to both vehicular and non-vehicular access to the highway right of way.

Section 441.3

The Department proposes to replace the term “driveway, local road, or drainage facility or structure” with the term “access” in subsection (a) to clean up the language and avoid redundancy. Because of the Commonwealth Court’s recent discussion of Chapter 441 in *N-Jie*, described above, the Department desires to make clear that non-vehicular accesses, such as pedestrian facilities that require “the opening of the surface and occupancy of the State highway,” are included in its regulations and a permit is required. The proposed amendment will alleviate the problematic result under the *N-Jie* decision’s reasoning and allow the Department to remove unauthorized non-vehicular accesses in furtherance of the safety of the traveling public. Without this amendment, unpermitted pedestrian facilities that cause a safety hazard could not be removed without the Department bringing an action in trespass and obtaining a court order for its removal. The Department seeks to have the same ability to block, sever or remove such facilities as it currently has to block, sever, or remove driveways and drainage facilities constructed without a permit or in violation of the regulations.

The Department proposes in subsection (b) to make clear who may apply for a highway occupancy permit. The proposed revision simplifies the definition of “owner” while still allowing persons with an equitable interest in property under a sales agreement to apply, accommodating the reality that developers will often condition sales agreements on the ability to obtain permits. Applicants for commercial driveways will benefit from the proposed amendment to this section because many developers of commercial driveways have sales agreements with the fee title holder that are contingent upon permit approvals. The new definition of “owner” will allow those with a sales agreement, or an option to purchase, to apply for a permit and obtain preliminary approval for the occupancy to close on the purchase of the property, though permits will not be issued until the developer is the fee title owner of the property. With 1.1 million small businesses in Pennsylvania, this change will most likely have a large impact on small businesses and other businesses that are not fee owners that apply for a driveway permit. The current requirement for the applicant to provide notice to the fee title holder has been moved to § 441.3(e)(7).

The Department proposes to amend § 441.3(c) to provide for submission of permit applications through the Electronic Permitting System, while still allowing paper applications at the Department’s discretion.

The Department proposes, in § 441.3(c.1), to require applicants who are not the owner of fee title to property or who will not be the owner of fee title to property prior to permit issuance to indemnify the Commonwealth against actions brought by the fee title holder of the property because of the granting of the permit to the non-fee owner applicant.

This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by eliminating the necessity to execute a specific form. This addition is proposed to replace the current § 441.3(e)(7)(ii), but simplifies that requirement by not having a separate indemnification form to execute and by not requiring a covenant running with land.

Section 441.3(d), relating to when to submit an application, is proposed to be amended by adding the term “access” and removing the term “driveway” to clarify that permit applications shall be submitted for construction involving any access to the State highway, whether vehicular or non-vehicular.

§ 441.3(e) relating to application procedures and submission of the permit application, is proposed to be amended to accommodate the use of EPS. In addition, section 441.3(e)(6) and (7) would distinguish between application requirements for fee owners, owners with an estate or other legal interest in property other than fee title, and owners and persons with an equitable interest in property under a sales agreement or an option to purchase. Sections 441.3(e)(7)(ii) and (iii) are proposed to be deleted as an applicant other than the fee owner will automatically indemnify the Commonwealth against actions brought by the fee title owner of property per proposed addition of § 441.3(c.1). This would simplify the current process and reduce the time required to submit an application by eliminating the need to draft and execute a form. It would also reduce the time required to review an application by eliminating the need for the Department to seek a legal review.

The Department proposes to amend § 441.3(f) to remove references to Publications 43 and 90 because those publications are obsolete. The amendment references the

appropriate regulation governing temporary traffic control, which references the current manual and publication related to temporary traffic control (the Manual on Uniform Traffic Control Devices (MUTCD) and Department Publication 213).

The Department proposes to amend § 441.3(g) to indicate that a drainage control plan must be signed and sealed by a professional engineer or other persons authorized by law. Subsection (g)(1)(vii) and (g)(3) are proposed to be added because a facility that uses best management practices (BMPs), as defined by 25 Pa. Code Chapter 102 (relating to erosion and sediment control), is prohibited under section 421 of the State Highway Law (36 P.S. § 670-421) from discharging stormwater onto highway right of way. Chapter 102 of 25 Pa. Code contains the Department of Environmental Protection's regulations addressing stormwater runoff. Because stormwater runoff is prohibited on the State highway, permit applicants should not be exploiting a highway right of way to handle the stormwater runoff generated as a result of constructing a facility that uses best management practices as defined by 25 Pa. Code Chapter 102. Stormwater runoff is limited to runoff from the transportation facilities into the drainage and its facilities, and not from runoff from adjacent properties.

The Department proposes to amend § 441.3(h) to require applicants who cannot obtain a drainage release from an affected property owner to automatically indemnify the Commonwealth against actions brought by the fee title holder of the property because of the granting of the permit. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by reducing the time required to submit an application by eliminating the need to draft and execute a form. This

would also reduce the time required to review an application by eliminating the need for the Department to seek a legal review. The obsolete drainage release form numbers mentioned in this subsection are being removed and the language instead directs the applicant to the Department's website for the current form.

The Department proposes to amend § 441.3(j) by deleting the word “driveway” to clarify that municipalities, planning commissions, and zoning boards shall have the ability to review any access points to State highways within their jurisdictions, whether for vehicles or not, and that applications for access must be accompanied by evidence indicating that the location and type of access requested has been reviewed by that municipality or agency.

Section 441.4

The Department proposes to amend subsections (a)-(d) to modernize spelling and grammar. The Department proposes in subsection (e) to eliminate the requirement for a permittee to provide their copy of the permit if requesting a refund. Historically, the permit was a carbon copy form, but now is an easily-accessible PDF stored in the Department's electronic storage system.

The Department proposes to amend subsection (f), relating to miscellaneous fees, to break up the provision regarding permit recording into its own subsection (g). This will enhance the readability of the section. We are retaining the language in the prior subsection (f) and making a new subsection (g) with a few additions that are explained below. In the new subsection (g) the Department proposes to layout when permits are to be recorded. Proposed changes from the prior subsection (f) include a new reference to the Department's

website for a copy of the form. This amendment is being proposed to make the form reference more general so that there is not a risk of the reference becoming obsolete in the future. The Department also proposes adding new paragraphs (4) and (5) from what was in the prior subsection (f) to add to the list of reasons a permit needs to be recorded at a County Office of the Recorder of Deeds. This includes when the permittee must indemnify the Commonwealth as specified in § 441.3(c.1) and (h), § 441.5(e)(1)(v), or § 441.8(j)(5), and when a release is executed as specified in §§ 441.3(h) and 441.8(d). This amendment is being proposed because recording allows potential purchasers of properties that have permitted highway occupancies to be on notice of the obligations attached to the permit that are binding on successors and assigns per § 441.6(1). The Department proposes, under a new subsection (h), to provide for a waiver of the recording requirement for temporary access permits.

Section 441.5

The Department proposes to amend § 441.5 to reflect modernization of the permitting process, including provisions reflecting the use of the EPS.

§ 441.5(a), relating to the issuance of permits generally, is proposed to be amended to remove the fact that the permit will also serve as a receipt for the fees accompanying the application. The Department proposes to delete this because payment of the permit fees is documented in the Department's Electronic Permitting System.

§ 441.5(b), relating to permits only being issued to the property owner, is proposed to be amended to indicate that an applicant with a sales agreement or option to purchase may receive preliminary permit approval but will not be issued a permit until the applicant

submits proof of ownership of the property. Developers often indicate that they must obtain the required permits before closing on the property. This addition is intended to assist developers in moving forward with financing prior to the issuance of a permit and closing.

The Department proposes to amend § 441.5(e)(1)(v), relating to indemnification for the waiver of design requirements, to replace the phrase found in the existing regulation, “an indemnity agreement satisfactory to the Commonwealth,” with language that automatically indemnifies the Department. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by reducing the time required to submit an application by eliminating the need to draft and execute a form; and reducing the time required to review an application by eliminating the need for the Department to seek a legal review.

The Department proposes in § 441.5(e)(2) to delete “for extracting natural resources for a period of no more than one year” to encompass more situations where temporary access may be permitted, and to replace district “engineer” with district “executive” to be consistent with current terminology.

In § 441.5(f), relating to permits requiring agreements, the Department proposes to require the permittee to provide security when the permittee is performing a substantial amount of work, as authorized under section 420 of the act (36 P.S. § 670-420).

In § 441.5(h), relating to work completion notifications, the Department proposes to replace the need for the permittee to mail a self-addressed post card (Form M-945G) with written notification to the district office when the permitted work is complete.

The Department proposes to reserve § 441.5(i) because the Department no longer uses microfilm as permanent record of the permit. Instead, the permit is stored electronically in the Department's electronic document storage system.

Section 441.6

The Department proposes to reserve § 441.6(1)(vi) and (vii), relating to scope of permit, because the information is inaccurate. Disputes arising from the permit are not within the jurisdiction of the Board of Claims. Disputes between the permittee and the Department are governed by 2 Pa.C.S. § § 501—508 (relating to practice and procedure of Commonwealth agencies) and 67 Pa. Code Chapter 491 (relating to practice and procedure before the Department), rather than Form 408.

The Department proposes to amend § 441.6(1)(viii) to allow the Department to provide notice of intent to revoke a permit and to provide the permittee 30 calendar days to either apply for the appropriate permit classification or request a hearing if the actual traffic volume of a driveway exceeds its permit classification.

Paragraph (2) is proposed to be amended to remove outdated statutory references.

The Department proposes to add paragraph (2.1) to incorporate applicable federal standards because the Department must comply with those standards in order to receive federal highway funds. Therefore, the Department must ensure that any work done in the right of way under a permit also complies with those standards.

The Department proposes to amend § 441.6(3), relating to work to conform to Department standards, to update the applicable reference that work must conform to because the reference in the section is obsolete.

The Department proposes to amend § 441.6(4) to permit the Department to remove structures, equipment or property belonging to a permittee from the highway right-of-way and to restore the right-of way to its former condition. This provision is statutorily authorized by sections 401 and 407 of the act (36 P.S. §§ 670-401 and 670-407).

In § 441.6(9), relating to traffic protection and maintenance, the Department proposes to update the applicable reference regarding maintenance and protection of traffic to Department regulations at 67 Pa. Code Chapter 212, Subchapter E (relating to temporary traffic control). The Department proposes to rescind subparagraphs (i)—(iii) as these provisions are covered in Subchapter E.

The Department proposes to amend § 441.6(10) to provide proper terminology for guide rail and drainage pipes.

The Department proposes to amend § 441.6(16)(i), relating to future additional driveways and access covenants, to further clarify when the Department may consider restricting access and removes and replaces the referenced form (Form CC-14) that is no longer in use with a form available on the Department's website.

The Department proposes to amend § 441.6(17), relating to use of highway prohibited, to delete the referenced figures from subsection (ii), as proposed amendments remove all figures from Section 441.9. The figures are outdated and are no longer used when designing land uses with fuel pumps. Land use has changed considerably by the expansion of the convenience stores, the amount of fuel pumps and the amount of traffic generated.

Section 441.7

The Department proposes to amend subsections (b), (c), (d) and (f) to make the terminology consistent with the intent of the department in promulgating this rulemaking. The Department proposes to add subsection (g) to allow for the issuance of temporary access permits for temporary driveways or local roads related to activities such as fairs, construction projects, extraction of natural resources or other activities for which the property owner does not need to have permanent access. In these cases, this proposed amendment would allow the Department to permit coarse aggregate material to be placed on a temporary access surface in lieu of paving, thereby reducing the property owner's costs without inconveniencing the public or adversely affecting the highway infrastructure.

Section 441.8

In general, proposed amendments to § 441.8 would clarify design requirements to reflect current engineering standards, remove outdated figures, and instead reference figures in the Department's Highway Occupancy Permit Operations Manual.

Subsection (a) is proposed to be amended to clarify that the examples are most applicable when one driveway serves the property. Subsection (d), relating to property line clearance, is proposed to be amended to allow a portion of the proposed access to be outside of the applicant's property frontage boundary line if a release is obtained from the affected property owner and submitted with the application.

The Department proposes to amend subsection (e) to add the term "tangential" to eliminate any confusion of where to measure from. Adding the term clearly describes that the distance is measured between the ends of the radii of both driveways. A tangent is a

straight line or plane that touches a curve. Additionally, the section is being amended to provide the Department discretion in requiring permanent curbing be between driveways if less than 50 feet apart. There are instances where it does not make sense to place permanent curbing, such as in rural areas where curbing is not expected.

The Department proposes to amend subsection (h) to remove the existing *desirable* sight distance values in Tables 1 through 6 and the *minimum acceptable sight distance* formula, and to establish a general rule that *optimal driveway sight distance* must be considered. In addition, the amendment allows the use of the stopping sight distance formula in cases where it is impractical or infeasible to achieve intersection sight distance. Both formulas are identified in the Department's Design Manual Part 2, Highway Design.

The Department proposes to amend subsection (i) to provide Department discretion regarding the need for a pipe under the driveway in paragraph (2). Additionally, in paragraph (2), the form reference is proposed to be deleted. In paragraph (3), reference to Figure 6 is being deleted as the figure is being removed. Also, additional wording is proposed to be added to describe when a maximum 10:1 driveway embankment slope is not needed.

The Department proposes to amend subsection (j), relating to auxiliary lanes, to update obsolete references and to require automatic indemnification if the permittee is unsuccessful in securing the other property owner's approval for a lane in front of the other property. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by reducing the time required to submit an application by eliminating the need to draft and execute a form. It will also reduce the

time required to review an application by eliminating the need for the Department to seek a legal review.

The Department proposes to amend subsection (k) to clarify the difference between a driveway and an access. The reference to Form 408 is also replaced with a more general term to eliminate the risk that the current publication number will become obsolete in the future.

The Department similarly proposes to amend subsection (l) to clarify the difference between an access and a driveway. An editorial change is also made to correct a spelling error.

The Department proposes to amend subsection (m), as the Deputy Secretary is replacing the director with the authority to approve requests to remove median divisors.

The Department proposes to amend subsection (o)(2) to eliminate the traffic signal permit form number and rather refer to Department approval of a traffic signal. The Department proposes replacing “municipality” with “local authority” to be consistent with § 6122 of Title 75 (Vehicle Code) relating to the authority to erect traffic-control devices. Lastly, this section is being amended to acknowledge this section will not apply to Department-managed signals under 74 Pa.C.S. § 9202(i) (relating to Department-managed signals).

Section 441.9

The Department proposes to reserve this section, removing the driveway layout illustrations. Although the illustrations provide a range of dimensions based on types of vehicles and roadway speed, strict adherence to the dimensions are not always achievable

due to site constraints, the size of certain vehicles, and while considering other roadways users such as bicyclists and pedestrians. Today, driveways are often designed using commercially available, vehicle turning-template software which provides dimensions for the driveway to function safely and efficiently as an integral component of the highway system. The illustrations are located in the Department's Highway Occupancy Permit Operations Manual with additional guidance provided regarding the geometric designs of the various classifications of driveways.

Section 441.10

Proposed amendments to § 441.10 would expand a violation to include failure to obtain a required permit and failure to comply with permit conditions. In subsection (a)(4), the Department proposes to replace the term “driveway” with the term “access,” as a driveway is included in the definition of “access.” This proposed amendment is in consideration of the *N-Jie* case, which noted that a pedestrian bridge could not be blocked under chapter 441 as the definition of a driveway did not include non-vehicular traffic. Proposed subsection (a)(5) would allow the Department to remove any or all unpermitted accesses, structures, or equipment, or property from the legal limits of the right-of-way and to restore the right-of-way to its former condition after the Department determines that there is a threat to public safety and after notice to the property or facility owner. Current language in subsection (a)(5) is proposed to be removed because the Department is already granted authority to do what is provided by the language.

Persons and Entities Affected

This regulation affects all applicants for highway occupancy permits who intend to create an access point, drainage facility or structure within the State highway or to change the design, operation or location of existing access points, drainage facilities or structures within the State highway right-of-way. These applicants include municipalities and owners of properties who require access to exercise their property rights, such as easement holders and mineral estate holders, as well as fee title holders. In some cases, the regulations can affect neighboring property owners.

Fiscal Impact

This proposed rulemaking is revenue neutral because the Department's current resources are already being used to administer this program. This proposed rulemaking only modernizes, clarifies, and implements what the Department is already doing.

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), on December 11, 2024, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. 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 in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Department, the General Assembly and the Governor of comments, recommendations, or objections raised.

Sunset Provisions

The Department is not establishing a sunset date for these regulations because 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, suggested edits or objections regarding this proposed rulemaking to: Victoria P. Edwards, Regulatory Counsel, Office of Chief Counsel, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania 17120-8212, victoredwa@pa.gov, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this regulation is Michael J. Dzurko, Highway Occupancy Permit Program Manager, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania 17120-8212; Telephone number (717) 783-6080; and e-mail address: mdzurko@pa.gov.

Michael Carroll
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] local road or other means of passage [of vehicles] between the highway and abutting property, including acceleration and deceleration lanes and such drainage [structures] facilities as may be necessary for the proper construction and maintenance thereof.

Authorized Agent—A person who is authorized to act on behalf of an owner.

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

Department of Transportation

Central Permit Office

400 North Street, 6th Floor

Harrisburg, Pennsylvania 17120-0041

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

* * * * *

Department—The Department of Transportation of the Commonwealth.

Department Specifications—A Department publication containing current highway construction requirements, which is available on the Department’s website.

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

Deputy Secretary—Deputy Secretary for the Department’s Highway Administration.

Design Manual Part 2 – A Department publication containing current highway geometric design criteria and other design and engineering principles for highways, which is available on the Department’s website.

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

Divided highway—A highway divided into two or more roadways and so constructed as to impede vehicular traffic between the roadways by providing an intervening space, physical barrier, or clearly indicated divided highway.

Drainage facility—A facility that conveys water away from the roadway to prevent erosion or damage to the roadway, saturation of the subgrade, and standing water or ice on the roadway.

Driveway—Every entrance or exit used by vehicular traffic to or from properties abutting a highway. The term includes proposed streets, lanes, alleys, courts, and ways.

* * * * *

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

EPS - Electronic Permitting System— The Department’s electronic system that accepts, reviews, tracks, issues and stores 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.

[*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.

* * * * *

Highway—A highway or bridge on the system of State highways and bridges, including the entire width between right-of-way lines, over which the Department has assumed or has been legislatively given jurisdiction.

Highway Occupancy Permit Operations Manual – A Department publication providing regulatory and technical knowledge, policy, process and procedure for permitting access to or occupancy of the State system of highways, which is available on the Department’s website.

Improved area—The area within the right-of-way which has been constructed for highway purposes, including roadbed, pavement, shoulders, slope, sidewalks, drainage facilities, and any other appurtenances.

* * * * *

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

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 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.

* * * * *

Municipality—a county, city, borough, incorporated town or township.

Owner—A person holding:

- (i) fee title to property, or
- (ii) an estate or other legal interest in property, such as an easement, a lease, a license or subsurface rights₂[, or
- (iii) an equitable interest in property under a sales agreement or an option to purchase;

provided that the estate or other legal or equitable interest in property includes the use requested in the permit] provided that the right to access is clearly established in the legal document granting the property interest.

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

Permanent curbing—Plain or reinforced cement concrete curb which meets Department standards.

Permit—A highway occupancy permit (Form M-945P) issued by a district office pursuant to this chapter.

Person—An individual, business entity, association, political subdivision, authority, Federal or Commonwealth agency, or other entity recognized by law.

* * * * *

[*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 [or shoulder].

Roadway construction standards—Department [Publication No. 72] publication containing the Department's [design] standards for roadway construction, which is available on the Department's website.

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.

* * * * *

[*Traveled way*—The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.] (Editor's Note: this definition has been added below to maintain alphabetical order)

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.

Traveled way—The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

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

* * * * *

§ 441.2. Purpose and application.

(a) *General rule.* It is in the public interest to regulate the location, design, construction, maintenance and drainage of [access driveways, local roads,] accesses and other property within State highway right-of-way for the purpose of security, economy of maintenance, preservation of proper drainage and safe and reasonable [access] travel and use.

* * * * *

§ 441.3. Permit application procedure.

(a) *General rule.* No access [driveway, local road or drainage facility or structure] shall be constructed or altered within State highway right-of-way and no drainage facility of the Department may be altered or connected onto without first obtaining a permit from the Department. A permit may not be required for maintenance.

(b) *Who may apply for a permit.* [Permit applications shall be submitted in the name of the owner of the property. If the applicant does not hold fee title to the property, the applicant shall notify the fee title holder that an application has been submitted.] Permit applications may be submitted by the applicant or by an authorized agent on behalf of the applicant if the application is accompanied by written authorization from the applicant. An applicant shall be one of the following:

(1) the owner of the property.

(2) a person with an equitable interest in property under a sales agreement or an option to purchase.

(c) *Where to submit application.* 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] must be submitted to the Department's Electronic Permitting System, which can be accessed through the Department's website. The Department may accept, at its discretion, paper applications and supporting documents in lieu of an electronic submission.

(c.1) For an applicant who is a person holding an estate or other legal interest in property, such as an easement, a lease, a license or subsurface rights, the applicant agrees to indemnify, save harmless and defend (if requested) the Commonwealth against all suits, damages, claims and demands of any type whatsoever by the fee title holder of the property because of granting the permit to the applicant.

(d) *When to submit applications.* Permit applications shall be submitted prior to the construction of any building which the proposed [driveway] access will serve to assure that the [driveway] access can be constructed in accordance with this chapter.

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

(1) Shall be submitted to 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 [Form M-945 A] application form.

(2) Shall be submitted [signed] by the applicant or their authorized agent.

(3) Shall include [five sets of] plans in an electronic or other format acceptable to the Department, of a quality, type and content sufficient for [microfilming] reproduction, electronic scanning, storage and recording, detailing the location and pertinent dimensions of both the proposed installation and related highway features.

(4) Shall [be accompanied by a check or money order, payable to the Department,] include payment 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 that the applicant is an owner or a person with an equitable interest in property under a sales agreement or an option to purchase. The proof shall be in the form of a copy of the valid legal document or court order verifying the applicant's legal estate or interest in the property, or a valid legal agreement for the sale of the property.

(7) Shall, when submitted by [an applicant other than a fee title holder], or on behalf of, an owner with an estate or other legal interest in property other than fee title or a person with an equitable interest in property under a sales agreement or an option to purchase, contain[:

(i) Proof] proof of one of the following:

(A) The fee title holder consents to the application.

(B) The applicant provided written notice of the submission of the application to the fee title holder apprising the fee title holder of the administrative rights relative to the permit application under I Pa. Code §§ 35.23, 35.24 and 35.27—35.32. The Department will not grant or deny the

permit application until 30 days after receipt of the written notice by the fee title holder. The applicant shall submit proof of receipt of the notice.

(ii) [A signed written statement, whereby the applicant agrees to indemnify and defend the Commonwealth (if requested) from all suits, damages, claims and demands of any type whatsoever by the fee title holder of the property because of granting the permit to the applicant, such as a failure of the permittee or other person to comply with the permit or any other statutes, ordinances or regulations in connection with the permit.] (Reserved.)

(iii) [Proof that the applicant executed and recorded in the Office of the Recorder of Deeds in the appropriate county or counties, a covenant running with the land providing that all subsequent purchasers, heirs, assigns or transferees of the property take the property subject to the indemnification in subparagraph (ii), unless released by the Department.] (Reserved.)

(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] specific figure as described in 67 Pa. Code § 212.403 (relating to temporary traffic-control plans), provided the referenced [standard drawing] specific figure properly depicts the work area and completely addresses the needed traffic control.

* * * * *

(g) *Drainage control plan for other than minimum use driveways.* Drainage control plan for other than minimum use driveways shall be as follows:

(1) If it can reasonably be anticipated that there will be an increase in the flow of water onto the highway or into highway drainage facilities as a result of action by the applicant, or that there will be an increase in the flow of water onto the property of some other person as a result of any action authorized by the permit, a drainage control plan signed and sealed by a professional engineer or other persons authorized by law shall be submitted with the application. The drainage control plan shall contain the following:

- (i) Source of water.
- (ii) Existing flow in cubic feet per second.
- (iii) Predicted flow in cubic feet per second.
- (iv) Where drainage currently flows.
- (v) Where drainage ultimately outlets.
- (vi) Hydraulic computations showing effect of additional flow on existing highway drainage system.
- (vii) All post construction stormwater management plans, riparian buffer management plans, or any other erosion and sediment control measures required by 25 Pa. Code Chapter 102 for the source property, or a written and signed statement confirming no such plans exist.

(2) Issuance of a permit shall be conditioned upon the Department's approval of the drainage control plan.

(3) A permit will not be issued if any of the documents provided in accordance with subsection (g)(1)(vii) provides for the location of any post construction stormwater management controls or riparian buffer improvements required by 25 Pa. Code. Chapter 102 within the State Route's right of way.

(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—]on a form prescribed by the Department, available on the Department's website 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]. If the applicant has not obtained a drainage release, the applicant shall fully indemnify, save harmless and defend (if requested) the Commonwealth, its agents and employees, against any action which the affected property owner may bring against the Commonwealth relating to an increase in the flow of water onto another property as a result of work performed under the permit, including any action brought pursuant to the provisions of the Eminent Domain Code, 26 Pa. C.S. § 101 et seq.

(i) *Plans for other than minimum use driveways.* The permit application for all driveways other than those classified as minimum use shall include a plan which illustrates, as a minimum, the following, including dimensions where applicable:

* * * * *

(j) *Review by municipalities, planning commissions, and zoning boards.*

(1) Certain local governments [governing bodies] wish to review [driveway] State highway access permit applications within their jurisdictions.

(2) A listing of these municipalities and local agencies is available from the appropriate district office.

(3) Each application for an access [driveway] within one of these jurisdictions must be accompanied by evidence which indicates that the location and type of access [driveway] being requested has been reviewed by that municipality or agency.

(4) The Department will consider any comments or recommendations resulting from this review prior to approving the access permit.

* * * * *

§ 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.

* * * * *

(2) Supplement fee for 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] ensure compliance with the permit and this chapter; they shall be as follows:

* * * * *

(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 [employees] employees 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.

(e) *Refunds.* The Department will refund the general permit inspection fees on unused permits. In order to be eligible to receive such a refund, the permittee shall deliver the request [with the permittee's copy of the permit] to the issuing district permit office on or before the permit expiration date.

(1) A refund processing fee of \$10 shall be deducted from the general permit inspection fees.

(2) The permit issuance fee shall not be refundable on unused permits.

(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:

- (1) a permit requires drainage facilities to be installed and maintained;
- (2) a permit authorizes one or more high volume driveways to be constructed; or
- (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).]

(g) Recording permits. Permits shall be recorded whenever deemed necessary by the Department, including when:

- (1) a permit requires drainage facilities to be installed and maintained.
- (2) a permit authorizes one or more high volume driveways to be constructed.
- (3) an access covenant on a form prescribed by the Department, available on the Department's website, is executed with the permit as specified in paragraph (16) of § 441.6 of this title (relating to general conditions).
- (4) a permit requires indemnification per §§ 441.3(c.1) and (h), 441.5(e)(1)(v), or 441.8(j)(5).
- (5) a permit requires a release per § 441.8(d) (relating to driveway design requirements) or § 441.3(h) (relating to an increase in the flow of water onto the property of some other person).

(h) *Waiver of recording.* The Department may waive the recording requirement for permits issued pursuant to § 441.7(g) (relating to temporary access).

§ 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].

(b) *Permit issued only to property owner.* Permits will be issued only to the owners of the property. Permits for applicants under § 441.3(b)(2)(relating to permit application procedure) may be preliminarily approved, but will not be issued until the applicant submits proof of ownership of the property. Permits will not be issued to contractors of the property owner nor to any person other than the owner of the property.

* * * * *

(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 designee may waive the requirement if all of the following conditions are satisfied:

- (i) no other reasonable access is available[;].
- (ii) the applicant has done all that can reasonably be done to satisfy the design requirements[;].

(iii) if additional land is required, the applicant provides satisfactory evidence that it cannot be purchased at a reasonable price[;].

(iv) no traffic problem will be created[; and].

(v) the applicant[executes an indemnity agreement satisfactory to the Commonwealth]
indemnifies, saves harmless and defends, if requested, the Commonwealth, its agents and employees, against any action which may be brought against the Commonwealth relating to the waiver of design requirements.

(2) In the case of a temporary access [for extracting natural resources for a period of no more than one year], any design requirement set forth in this chapter which cannot be met may be waived by the district [engineer] executive, provided conditions (i), (ii), (iii), and (v) of paragraph (1) of this subsection are satisfied.

* * * * *

(f) *Permit requiring agreement or security*. Where the applicant will be required to perform a substantial amount of work, the Department may require the applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the permit. If security is required, it shall be delivered to the Department in a form and amount acceptable to the Department and shall guarantee construction, inspection, indemnification, restoration and maintenance of the highway made necessary by the permitted work and the obligations and conditions of the permit for a period not in excess of two years from the Department's acknowledgment of completion of the work.

* * * * *

(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.] (Reserved.)

§ 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.

* * * * *

(vi) [The permittee shall be the only party in interest in any action against the Department before the Board of Claims involving disputes arising from the permit.] (Reserved.)

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

(viii) A permit shall be valid only as long as the traffic volume of the driveway does not exceed the approved driveway classification as set forth in § 441.8(a) of this title (relating to driveway design requirements). If the actual traffic volume of a driveway exceeds its permit classification, the Department may issue a notice of intent to revoke the permit and provide the permittee 30 calendar days to either apply for the appropriate permit classification or request a hearing in accordance with 2 Pa.C.S. § § 501—508 (relating to practice and procedure of

Commonwealth agencies) and 67 Pa. Code Chapter 491 (relating to practice and procedure before the Department).

(2) *Additional restrictions.* All work authorized by the permit shall be subject to the following:

(i) All applicable laws, rules, and regulations[,]. [including but not limited to the following:

(A) Act of October 26, 1972 (P. L. 1017, No. 247) (53 P. S. § 1611), concerning environmental control measures related to pollution and the preservation of public natural resources.

(B) Act of December 10, 1974 (P. L. 852, No. 287) (73 P. S. § § 176—182), concerning protection of the public health and safety by preventing excavation or demolition work from damaging underground utility facilities.

(C) Act of October 5, 1978 (P. L. 1104, No. 260) (72 P. S. § § 4651-1—4651-10) which provides that the Board of Claims shall have jurisdiction of claims against the Commonwealth arising from contracts.

(D) O.S.H.A. construction safety and health regulations, 39 Fed. Reg. 22801 (June 24, 1974) and 29 CFR § 1926.1 *et seq.*

(E) 42 U.S.C. § 2000d, as implemented by 49 CFR § 21 and 23 CFR § 230.101 *et seq.*

(F) Ordinances enacted by local municipalities which contain more stringent minimum safety requirements than this chapter.]

(ii) Any rights of any person.

(iii) The conditions, restrictions, and provisions of the permit.

(2.1) *Federal Standards.* The Federal Highway Administration, Department of Transportation regulatory provisions in 23 CFR Part 625 (relating to Design Standards for Highways) are incorporated by reference to the extent that these provisions are applicable and not contrary to the law of the Commonwealth. In the event of a conflict between a Federal regulatory

provision and a regulation of the Commonwealth, the provision expressly set out in this chapter shall be applied unless the Federal provision is more stringent.

(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] plans and specifications approved by the Department [including, but not limited to, Form 408] consistent with Article IV of the State Highway Law (36 P.S. §§ 670-401 – 670-425). 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.

(4) *Permittee responsibilities.* Permittee responsibilities shall be as follows:

(i) The permittee shall pay all fees, costs, and expenses incident to or arising from the project, including the cost of related highway improvements which increased traffic or surface drainage may necessitate. The permittee shall reimburse the Department for any and all inspection costs within 30 days after receipt of the Department's invoice.

(ii) In the event of failure or neglect by the permittee to perform and comply with the permit or the provisions of this chapter, the Department may immediately revoke and annul the permit and order and direct the permittee to remove any or all structures, equipment, or property belonging to the permittee or its contractors from the legal limits of the right-of-

way and to restore the right-of-way to its former condition. In the event the Department determines that such structures, equipment, or property pose a threat to the public safety and the permittee fails to remove the same after notice from the Department to do so, the Secretary or [his] Department may authorize its own staff or engage a contractor to remove any or all structures, equipment, or property belonging to the permittee or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition [attorneys, or any attorney of any court of record shall be authorized to appear for the permittee, and to enter an amicable action of ejectment and confess judgment against the permittee; and the attorney shall be authorized to issue forthwith a writ of possession without leave of court,] all at the cost of the permittee.

(iii) If work is stopped on a project for any reason, other than at the end of any normal work day, and any ditch or trench, in the opinion of the Department, remains open for an unreasonable period, the permittee, if so directed, shall refill the ditch or trench and work shall not be resumed until the permittee is prepared to proceed immediately with the work to its completion. In the event the permittee fails to refill the ditch or trench or proceed to completion of the work upon notice from the Department to do so, the Department may perform the necessary and required work and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Department's invoice.

(iv) If the permittee, after making an opening in the surface to place or repair a drainage facility or for any other purpose, fails to restore any portion of the right-of-way to conform with

Department specifications upon notice from the Department to do so, the Department may perform the work and the permittee shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice.

* * * * *

(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 [Publication 43 and Publication 90] Department regulations at 67 Pa. Code Chapter 212, Subchapter E (relating to temporary traffic control).

[(i) The permittee shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the district office. A traffic control plan shall be submitted to and approved by the district office before closing any portion of a lane to vehicular traffic.

(ii) Traffic control devices shall be provided in accordance with 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 Publication 68.

(iii) Designated employees shall be assigned by the permittee to direct one lane traffic. Flagmen shall be provided as specified in the permit and in accordance with Publication 43 and Publication 90.]

(10) *Restoration.* All disturbed portions of the highway, including slopes and all appurtenances and structures such as [guard]guide rail or [drain]drainage pipes, shall be restored by the permittee to a condition at least equal to that which existed before the start of any work authorized by the permit. This includes providing appropriate end treatments on [guard]guide rail systems where existing [guard]guide rail is being broken by the driveway.

* * * * *

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

(i) If the Department anticipates that a property may be developed, subdivided or utilized [and that such subdivision will result], resulting 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)] on a form prescribed by the Department, available on the Department's website, 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.

* * * * *

(b) *General location restrictions.* [Access driveway] Driveways shall be permitted at locations in which:

(1) Sight distance is adequate to safely allow each permitted movement to be made into or out of the [access] driveway.

(2) The free movement of normal highway traffic is not impaired.

(3) The driveway will not create a hazard.

(4) The driveway will not create an area of undue traffic congestion on the highway.

(c) *Specific location restrictions.* Specific location restrictions shall include the following:

(1) [Access driveway] Driveways may not be located at interchanges, ramp areas, or locations that would interfere with the placement and proper functioning of highway signs, signals, detectors, lighting or other devices that affect traffic control.

(2) The location of a driveway near a signalized intersection may include a requirement that the permittee provide, in cooperation with the municipality, new or relocated detectors, signal heads, controller and the like, for the control of traffic movements from the driveway.

(3) [Access to a property] A driveway which abuts two or more intersecting streets or highways may be restricted to only that roadway which can more safely accommodate its traffic.

(4) The Department may require the permittee to locate [an access] a driveway directly across from [a highway, local road, or access driveway] another access on the opposite side of the roadway if it is judged that offset driveways will not permit left turns to be made safely or that [access across] crossing the roadway from one access to the other will create a safety hazard.

(d) [*Local roads.*] Driveways serving more than three properties. [An access] A driveway intended to serve more than three properties or to act as a connecting link between two or more roadways shall be, for the purpose of this chapter, considered a local road and not a driveway regardless of its ownership. As such, its design must be in accordance with the Department's current standards governing the design of local roads. All other requirements of this chapter shall be complied with before the local road will be allowed access onto a State highway.

* * * * *

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

- (1) The location and angle of [an access] a driveway approach in relation to the highway intersection shall be such that a vehicle entering or leaving the driveway may do so in an orderly and safe manner and with a minimum of interference to highway traffic.
- (2) Where the [access] driveway approach and highway pavement meet, flaring of the approach may be necessary to allow safe, easy turning of vehicular traffic.
- (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.]

(g) Temporary access. The Department may authorize, by permit, the temporary occupancy of highway right-of-way by an access.

(1) Applicants may request a temporary permit to accommodate access for any of the following time periods:

(i) up to one month (for example, for a single event such as a fair).

(ii) up to six months (for example, for a construction project).

(iii) up to one year (for example, for extracting natural resources such as timber from private property).

(2) The Department may allow coarse aggregate material to be placed on a temporary access surface in lieu of paving, as long as no material is deposited onto the highway pavement or shoulder and as long as the temporary access is continuously maintained.

(3) Prior to the expiration of a temporary permit, the temporary access shall be removed and the highway shall be restored as directed by the Department.

§ 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:] The following list contains a description of each

driveway classification and examples of typical uses associated with the classification when a property is served by one driveway:

(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 the [attendant figures] Department's Design Manual Part 2 and the Department's Highway Occupancy Permit Operations Manual 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] The angle of access of the driveway approach shall [include the following] be as follows:

(1) [Access driveway] 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].

(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].

* * * * *

(d) *Property line clearance.* Except for joint-use driveways, no portion of any driveway shall be located outside of the property frontage boundary line unless a release is submitted with the

application. The release shall be from the affected property owner and shall release the Commonwealth from any liability resulting from the issuance of the permit. Releases must be obtained, by and at the expense of the applicant, from all the affected property owners on a form prescribed by the Department, available on the Department's website. All releases must be notarized and recorded, by and at the expense of the applicant, in the County Office of the Recorder of Deeds.

(e) *Multiple driveways.* Multiple driveways serving the same property must be separated by a minimum tangential distance of 15 feet measured along the right-of-way line and 20 feet measured along the shoulder, ditch line, or curb. When the tangential 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.

(f) *Site requirements.* Site requirements shall be as follows:

(1) All nonresidential buildings shall be located a sufficient distance from the right-of-way line to provide ample driving area and parking off the right-of-way to prevent storage of vehicles on the [access] driveways and to prevent the back-up and turning of vehicles on the highway pavement.

* * * * *

(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 1—Safe Sight Distance for passenger cars and single unit trucks exiting from driveways onto two-lane roads.

<i>Posted Safe Sight Speed (mph)</i>	<i>Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right¹ (feet)</i>
25	250	195
35	440	350
45	635	570
55	845	875

¹ Measured from a vehicle ten feet back of the pavement edge.

Table 2—Safe Sight Distance for buses and combinations exiting from driveways onto two-lane roads.

<i>Posted Safe Sight Speed (mph)</i>	<i>Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right¹ (feet)</i>
25	400	300
35	675	625
45	1225	1225
55	2050	2050

¹ Measured from a vehicle ten feet back of the pavement edge.

Table 3—Safe Sight Distance for passenger cars and single unit trucks exiting from driveways onto four and six-lane roads.

<i>Posted Safe Sight Speed (mph)</i>	<i>Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right² (feet)</i>
25	175	195
35	300	350
45	500	570
55	785	875

¹ Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the outside lane.

² Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the median lane.

Table 4—Safe Sight Distance for buses and combinations exiting from driveways onto four and six-lane roads.

<i>Posted Safe Sight Speed (mph)</i>	<i>Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right² (feet)</i>
25	300	300
35	625	625
45	1225	1225
55	2050	2050

¹ Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the outside lane.

² Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the median lane.

Table 5—Safe Sight Distance for passenger cars and single unit trucks entering driveways by left turns.

<i>Posted Speed</i>	<i>Safe Sight Distance in Feet ¹</i>		
<i>(mph)</i>	<i>2-Lane</i>	<i>4-Lane</i>	<i>6-Lane</i>
25	190	205	220
35	300	320	345
45	445	470	500
55	610	645	680

¹ Measured from the point where a left-turning vehicle stops to a vehicle in the outside lane.

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

<i>Posted Speed</i>	<i>Safe Sight Distance in Feet ¹</i>		
<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.

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

(i) Tables 2, 4, and 6 shall be used in lieu of Tables 1, 3, and 5 only when combination traffic exceeds 5.0% of the total traffic using the proposed driveway.

(ii) Posted speeds shall be used unless operating speeds vary from the posted speed by more than ten miles per hour, in which case the Department may require that operating speeds be used.

(iii) The sight distances in Tables 1 through 4 apply only when highway grades are zero to 3.0%, either up or down.

(A) When the highway grade in the section to be used for acceleration, after leaving the driveway, ascends at 3.0—5.0%, the sight distance in the direction of approaching ascending traffic may be increased by a factor of 1.4.

(B) When the highway grade ascends at greater than 5.0%, sight distance may be increased by a factor of 1.7.

(C) When the highway grade in the section to be used for acceleration after leaving the driveway descends at 3.0—5.0%, sight distance in the direction of approaching descending highway traffic may be reduced by a factor of 0.6.

(D) When the road descends at greater than 5.0%, sight distance may be reduced by a factor of 0.5.

(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.

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

- (i) prohibit left turns by exiting vehicles;
- (ii) restrict turning movements to right turns in and out of a driveway;
- (iii) require installation of a right turn acceleration lane or deceleration lane;
- (iv) require installation of a separate left turn standby lane;
- (v) alter the horizontal or vertical geometry of the roadway; or
- (vi) deny access to the highway.]

Achieving optimal sight distance along the property frontage must be considered when determining the location of the driveway. The following shall apply:

(1) For intersection sight distance, a driveway must be located at a point within the property frontage limits which provides at least the minimum intersection sight distance as required by 23 CFR § 625.4 (relating to standards, policies, and standard specifications), and as set forth in the Department's Design Manual Part 2.

(2) For stopping sight distance, the stopping sight distance formula, as required by 23 CFR § 625.4 (relating to standards, policies, and standard specifications), and as set forth in the Department's Design Manual Part 2, may be used to determine the minimum acceptable sight distance values for a driveway only if it is impractical or infeasible to achieve intersection sight distance values by locating the driveway at any point within the property frontage boundaries. For the purpose of measuring the available sight distance, the driver's eye, when exiting from the driveway, should be assumed to be a minimum ten feet back from the near edge of the traveled way.

* * * * *

(i) *Grade of [access] driveway.* [Grade of access] The grade of the 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] the Department's Design Manual Part 2 and the Department's Specifications. 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.], unless the roadway slope is steeper than 3:1 and guide rail exists at the top of the roadway slope.

(4) Grade requirements in uncurbed shoulders within the right-of-way shall conform to [Figure 1] criteria identified in the Department's Design Manual Part 2.

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

(5) Grade requirements where curbs and sidewalks are present shall conform to criteria identified in the Department's Design Manual Part 2.

[(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.

(ii) The difference between the cross slope of the roadway and the upward grade of the driveway approach shall not exceed 8.0%.

(iii) When a planted area exists in front of the sidewalk, one of the following three cases shall apply:

(A) When the grass strip between the curb and the sidewalk is wide enough to maintain an 8.0% maximum driveway approach grade, construct the driveway as shown in Figure 2.

(B) If the driveway grade would exceed 8.0%, depress the outer edge of the sidewalk and maintain a maximum sidewalk cross slope of 6.0%. This will enable the driveway slope to stay within the 8.0% slope limit. See Figure 3.

(C) If the sidewalk cross slope would exceed 6.0%, as indicated in clause (B) of this subparagraph, depress the entire sidewalk. The amount of depression shall not exceed 1 1/2 inches at the inner edge of the sidewalk. The longitudinal slope of the sidewalk shall not exceed two inches per foot. See Figure 3.

(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] be subject to the following:

* * * * *

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

(5) *Lane in front of another property.* If an auxiliary lane must be located in front of property of another person, the applicant shall be required to make reasonable efforts to secure the approval of the other person [or]. If approval of the other person is not obtained, the applicant agrees to indemnify, save harmless and defend, if requested, the Commonwealth against any action which the other person may bring against the Commonwealth under the Eminent Domain Code.

* * * * *

(k) *[Access driveway]* Driveway pavement. *[Access driveways]* 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 408] the Department's Specifications. The driveway pavement shall be at least four inches thick within the right-of-way.

(l) *Driveways relative to ramps*. Ramps are intended to provide access from one roadway or roadway system to another with a minimum amount of conflict or interference from other traffic. To *[insure]* ensure the integrity of this intended function, no *[access]* driveway will be permitted on a ramp or within 50 feet of the intersection of the edge of pavement of the ramp or its speed change lane with the edge of pavement of the intersecting roadway. Exceptions will be considered only if the enforcement of this subsection would result in the prohibition of reasonable access from the adjacent property to the highway system.

(m) *Median openings*. Median openings shall *[consist of]* be subject to the following:

* * * * *

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

* * * * *

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

(1) *Nonelectrically powered devices.* The permittee shall, at [his]the permittee's own expense, install and maintain all nonelectrically powered traffic control devices, as specified in the permit, which are required to provide for the safe and orderly movement of vehicular or pedestrian traffic, or both. These devices shall include, but not be limited to, any required regulatory, warning or guide signs, delineators, and pavement markings.

(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 permit (Form TE 964) shall be obtained in addition to the occupancy permit. The permit to own and operate a traffic control device] Departmental approval shall be obtained for the traffic signal in addition to a highway occupancy permit. Except for Department-managed signals under 74 Pa.C.S. § 9202(i) (relating to Department-managed signals, the traffic signal shall be requested by and Departmental approval issued to only the appropriate [municipality] local authority, in accordance with 75 Pa.C.S. § 6122 and 67 Pa. Code Chapter 212 (related to official traffic control devices).

* * * * *

§ 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.

(a) *General rule.* [A violation] Failure to obtain the required permit, violating any provision of this chapter or violating the permit requirements or conditions shall constitute grounds for imposition of any or all of the following penalties:

(1) Upon receipt of oral or written notice of a violation from the authorized representative of the Department or a police officer [whose] with jurisdiction [includes the permitted work area], the [permittee] violation shall cease using an unpermitted access or cease to perform further work in the [permitted area] State highway right-of-way except to restore the area to a safe condition. Further work may not commence [in the permitted area] within the State highway right-of-way until the violation has been remedied. If the violation or permittee has received oral notice of the violation, written notice shall be sent to the permittee within 10 days of receipt of the oral notice.

(2) Confiscation of the applicant's permit by a police officer or authorized representative of the Department.

(3) Revocation of the applicant's permit by the Department.

(4) The Department may block [a driveway] an access or sever, remove or block drainage facilities constructed without a permit or in violation of this chapter.

(5) [The fines, imprisonment or other penalties as are provided by law,] Where a property owner has constructed an access without a permit and the Department determines that such access, facilities, structures, equipment, or property pose a threat to the public safety and the

property owner or facility owner fails to remove the same after notice from the Department to do so, the Secretary or Department may authorize its own staff or engage a contractor to remove any or all unpermitted accesses, structures, equipment, or property from the legal limits of the right-of-way and to restore the right-of-way to its former condition [attorneys, or any attorney of any court of record shall be authorized to appear for the permittee, and to enter an amicable action of ejectment and confess judgment against the permittee; and the attorney shall be authorized to issue forthwith a writ of possession without leave of court,] all at the cost of the permittee.

(6) [The other action as may be deemed necessary or proper after consultation with the Office of Chief Counsel.] The Department may bring any other action and seek any other penalties as permitted by law.

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

(1) The Secretary may revoke a permit whenever [he] the Secretary determines that the driveway or approaches or their use constitute a hazard to traffic or interferes with the proper use of the highway by the Department or the public.

(2) The [director] Deputy Secretary or 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.

(c) *Revocation procedure.* Prior to revocation of a permit except for nonpayment as specified in paragraph (2), the applicant shall be given an opportunity for a hearing in accordance with 2 Pa.C.S. § § 501—508 (relating to practice and procedure of Commonwealth agencies) and 67 Pa. Code Chapter 491 (relating to practice and procedure before the Department).

18-481 - Access to and
Occupancy of Highways by
Driveways and Local Roads
Proposed Annex A

* * * * *



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 11, 2024

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

Re: Proposed Rulemaking
#18-481 – 67 Pa. Code, Chapter 441
Access to and Occupancy of Highways by Driveways and Local Roads

Dear Mr. Sumner:

Attached please find the Face Sheet, Preamble, Annex A, and Regulatory Analysis Form relative to the proposed amendments to Chapter 441 of the Department of Transportation (Department) regulations, which the Department 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*.

Copies of these materials were also delivered today to the Legislative Reference Bureau. Because these materials are being delivered during *sine die*, the materials will be delivered to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees no later than the second Monday after the date by which both committee designations have been published in the *Pennsylvania Bulletin*. Attached to my e-mail correspondence are read receipts evidencing the receipt of this proposed rulemaking package by the Legislative Reference Bureau. Upon delivery to the House and Senate Transportation Committees, we will provide you with proof of delivery.

The Department will provide the Independent Regulatory Review Commission with any assistance required to facilitate a thorough review of this proposed regulation. Thank you for your attention.

Very truly yours,

Victoria P. Edwards

Victoria P. Edwards
Regulatory Counsel

RECEIVED

From: [Bulletin](#)
To: [Edwards, Victoria](#)
Cc: [Spotts, Jeffrey M](#); [Domoto, Aaron](#); [Kayer, Kristin](#); [Fertenbaugh, Seth](#)
Subject: [External] Re: Proposed Rulemaking # 18-481 - 67 Pa Code, Chapter 441
Date: Wednesday, December 11, 2024 8:22:49 AM
Attachments: [image001.png](#)

Independent Regulatory
Review Commission

December 11, 2024

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Good morning Victoria!

Thank you for submitting proposed rulemaking #18-481. This proposed rulemaking has been scheduled for the January 4 issue of the Bulletin.

Have a great rest of your week!

Leah D. Brown

Legal Assistant

Pa. Code and Bulletin Office

647 Main Capitol Building

Harrisburg, PA

(717) 783-2272

From: Edwards, Victoria <victoredwa@pa.gov>
Sent: Wednesday, December 11, 2024 8:12 AM
To: Bulletin <bulletin@palrb.us>
Cc: Spotts, Jeffrey M <jespotts@pa.gov>; Domoto, Aaron <aardomoto@pa.gov>; Kayer, Kristin <kkayer@pa.gov>; Fertenbaugh, Seth <sfertenbau@pa.gov>
Subject: Proposed Rulemaking # 18-481 - 67 Pa Code, Chapter 441

Good morning,

As previously discussed, attached please find PennDOT's proposed rulemaking #18-481 – 67 Pa. Code, Chapter 441. It is our understanding that this package will be published in the *Pennsylvania Bulletin* on January 4, 2025. Please send me an email confirming your receipt of this email and the attachments.

Thank you,

Victoria



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