

RULES AND REGULATIONS

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 101]

Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic

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

Purpose of Chapter 101

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

Purpose of Final-Form Rulemaking

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

The Department adopted the Federal MUTCD in 2006. Chapter 101 is amended to more fully align with the current Federal standards, as the MUTCD was revised in 2009 with respect to safety apparel. Individuals currently covered under Chapter 101 as well as those being added in this final-form rulemaking should already be following the National safety apparel standards and training requirements in the MUTCD. This final-form rulemaking provides clarity and reinforces the applicability of the MUTCD.

Summary of Comments and Changes to this Final-Form Rulemaking

Notice of proposed rulemaking was published at 44 Pa.B. 7069 (November 8, 2014), with a 30-day public comment period. The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees. Two comments were received from the public and IRRC submitted several comments. The House and Senate Committees did not comment.

Kathleen K. Ryan, Esq., General Counsel and Chief Operating Office, Pennsylvania Funeral Directors Association, requested that licensed funeral directors be exempted from the training component of the proposed rulemaking. Her reasoning was that funeral directors are already subject to 6 hours of continuing education per renewal cycle and, furthermore, not all of them direct traffic. She believed that to require licensees to complete the training would be unduly burdensome to those who do not direct traffic.

In response to this comment, which was echoed by IRRC, the Department amended § 101.1 (relating to purpose) to clarify its scope. Additionally, to avoid confusion the Department deleted the language regarding training, which conforms this final-form rulemaking to the scope of the regulation prior to this amendment.

Matt Anderson, PE, PTOE, Roadway Engineer, Williams Midstream Service, LLC, submitted comments regarding §§ 101.2 and 101.3 (relating to persons authorized to direct traffic; and minimum attire). Regarding § 101.2(9), he requested that:

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

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

Regarding § 101.3, this commentator noted that "[t]he option of controlling traffic with a red flag at intersections was not mentioned." This comment appears to refer to text that was proposed to be deleted from former § 101.3(1). The Department determined that the use of a red flag at intersections is already permissible under § 212.412 (relating to flagger signaling devices); therefore it does not need to be repeated in this regulation.

This commentator suggested that industrial, mineral and natural resource sites be addressed in § 101.3 either in paragraph (7) or by adding relevant language to paragraph (1) "to make sure the industry is covered, and has clear direction." This comment appears to refer to text that was proposed to be deleted. Section 101.3 sets forth the minimum attire to be worn by those individuals authorized to direct traffic. Industrial, mineral and natural resource sites fall under § 101.2(9), as previously explained, and thus any further amendments are unnecessary. Cross-references to § 212.2 in this regulation add clear direction to the impacted industry and further explain responsibilities. Additional amendments are not necessary.

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

IRRC noted that more details were needed to determine whether rulemaking is in the public interest. In response, the Department added language in the “purpose of final-form rulemaking” section of this preamble to better explain this final-form rulemaking as it relates to Federal requirements relative to traffic control and updated the Regulatory Analysis Form (RAF) to further substantiate that this final-form rulemaking is in the public interest.

IRRC noted a contradiction between § 101.1 and proposed § 101.2(10) and stated the two provisions should be reconciled. In response, the Department deleted proposed § 101.2(10) to eliminate the contradictory language and provided further clarification to § 101.1.

IRRC noted several concerns regarding the details of the Department’s flagger training requirements. As a preliminary matter, former §§ 101.1—101.4 did not address training. The Department has met its obligations under the MUTCD and Federal regulations relative to training by requiring training by contract and as express conditions of permits, including without limitation highway occupancy permits governing ingress and egress from State highways. While the Department will consider future amendments to this and other relevant regulations, the Department agrees with IRRC’s comments and concerns regarding training. The proposed addition of training had the potential to confuse the regulated community. To avoid confusion, the Department deleted references in Chapter 101 to flagger training requirements and will continue to meet its obligations relative to public safety through contractual and permit-based programs. To the extent that it determines that additional clarity is required regarding training, the Department will either amend this or another of its regulations.

Regarding IRRC’s comment about the training requirement in § 101.2(8), based on Kathleen K. Ryan’s comment about the same matter, the Department amended the scope of § 101.1. Additionally, the Department deleted references in Chapter 101 to flagger training requirements for the reasons previously stated.

Additionally, deletion of references in Chapter 101 to flagger training requirements has rendered IRRC’s comments regarding Question 19 of the RAF moot and the RAF has been reviewed and amended to account for all comments.

IRRC also noted that the phrase “or an equivalent designated by the Department through publication in the *Pennsylvania Bulletin*” in proposed § 101.3(1) and (2) does not comply with the requirements of the Regulatory Review Act (71 P.S. §§ 745.1—745.14). The Department deleted this language.

IRRC raised concerns about future amendments to the requirements of the American National Standards Institute/International Safety Equipment Association (ANSI/ISEA). The Department deleted direct references to ANSI/ISEA or standards regarding the color of specific safety attire and instead references § 212.2 and its adoption of the current version of the MUTCD. The MUTCD already refers to the current version of the ANSI/ISEA. As ANSI/ISEA requirements change, the MUTCD will be amended and made applicable to the Department and regulated community under § 212.2.

Persons and Entities Affected

This final-form rulemaking will affect persons who are authorized to direct, control or regulate traffic in accordance with Chapter 101 and 75 Pa.C.S. § 3102. However,

those impacts are minimal as this final-form rulemaking ensures this chapter is consistent with Federal requirements.

Fiscal Impact

This final-form rulemaking should not require the expenditure of additional funds by the Commonwealth, local municipalities or persons referenced in Chapter 101 and 75 Pa.C.S. § 3102 as the regulated community has already incurred costs to meet FHWA standards that are already followed by the regulated community.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 28, 2014, the Department submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 7069, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 16, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 17, 2016, and approved the final-form rulemaking.

Sunset Provisions

This final-form rulemaking is effective upon publication. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code), Federal regulations and FHWA standards. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

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

Findings

The Department finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 44 Pa.B. 7069.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 101, are amended by amending §§ 101.1—101.4 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to IRRC and the Senate and House Committees as required under the Regulatory Review Act.

(c) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

LESLIE S. RICHARDS,
Secretary

(*Editor's Note:* See 46 Pa.B. 7603 (December 3, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 18-461 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

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

§ 101.1. Purpose.

This chapter indicates those persons, other than persons enumerated in 75 Pa.C.S. § 3102 (relating to obedience to authorized persons directing traffic), who are authorized to direct, control or regulate traffic, and prescribes minimum appropriate attire.

§ 101.2. Persons authorized to direct traffic.

Subject to § 212.2 (relating to adoption of Federal standards), which incorporates the Federal Highway Administration's Manual on Uniform Traffic Control Devices, available at <http://mutcd.fhwa.dot.gov>, the following persons are authorized to direct, control or regulate traffic:

- (1) Traffic control persons on utility, maintenance or construction projects.
- (2) Adult school crossing guards for assisting school children across busy or hazardous highways or for assisting the ingress or egress of vehicles to and from a school.
- (3) Railroad crossing guards at railroad grade crossings, for purposes of stopping vehicular traffic to permit the safe passage of trains.

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

(5) Personnel of emergency organizations such as fire departments, hospitals, river rescue associations, ambulance associations and personnel of emergency vehicles designated by the State Police under 75 Pa.C.S. § 6106 (relating to designation of emergency vehicles by the Pennsylvania State Police) while performing their duties.

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

(7) Department of Conservation and Natural Resources personnel while performing their official duties.

(8) Persons controlling traffic at authorized parades, processions or other public assemblies.

(9) Persons assisting to improve highway safety by the directing, control or regulation of traffic volumes created by the ingress or egress to or from a commercial, industrial, manufacturing, agricultural, or natural resource or mineral extraction operation.

§ 101.3. Minimum attire.

This section sets forth the minimum standards for high-visibility safety attire for authorized persons directing, controlling or regulating traffic so that they are more easily distinguishable. Appropriately attired persons including authorized persons directing, controlling or regulating traffic as identified in § 101.2 (relating to persons authorized to direct traffic) shall wear high-visibility safety attire that is intended to provide conspicuity during daytime and nighttime usage and that meets the requirements of the Manual on Uniform Traffic Control Devices incorporated by § 212.2 (relating to adoption of Federal standards).

§ 101.4. Emergencies.

(a) A person at the scene of an emergency may temporarily direct traffic, with or without being properly attired, until an authorized person as identified in § 101.2 (relating to persons authorized to direct traffic) or 75 Pa.C.S. § 3102 (relating to obedience to authorized persons directing traffic) arrives.

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

[Pa.B. Doc. No. 16-2302. Filed for public inspection December 30, 2016, 9:00 a.m.]