

## 23 §704. ENTRANCES TO HIGHWAYS REGULATED

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It is unlawful to construct or maintain any driveway, entrance or approach within the right-of-way of any state highway or state aid highway, as defined in section 53, that lies outside the compact area of an urban compact municipality, as defined in section 754, without a written permit from the Department of Transportation or, if within the compact area, without a written permit from the proper municipal officials. The right-of-way is considered the full width of the right-of-way as laid out by the State, the county or the municipality. [1999, c. 676, §1 (RPR).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Arterial highway" means a highway providing long-distance connections as approved by the Federal Highway Administration pursuant to 23 Code of Federal Regulations, Section 470.105(b)(1999). [1999, c. 676, §1 (NEW).]

B. "Forest management activities" includes timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands and other similar or associated activities. [1999, c. 676, §1 (NEW).]

C. "Forest management roads" includes a route or track consisting of a bed of exposed mineral soil, gravel or other surfacing material constructed for or created by the repeated passage of motorized vehicles and used primarily for forest management activities, including associated log yard and winter haul roads. [1999, c. 676, §1 (NEW).]

[ 1999, c. 676, §1 (NEW) .]

**2. State highways and state aid highways.** The Department of Transportation is directed and municipalities are authorized to adopt rules and regulations for the design, location and construction of driveways, entrances and approaches on state highways and state aid highways to adequately protect and promote the safety of the traveling public and maintain highway right-of-way drainage.

[ 1999, c. 676, §1 (NEW) .]

**3. Arterial highways.** For arterial highways that lie outside the compact area of an urban compact municipality, the Department of Transportation shall limit the number, spacing, design, location and construction of driveways, entrances or approaches to promote the maintenance of existing posted speeds and ensure safe travel.

[ 2003, c. 571, §1 (AMD) .]

**4. Unsafe arterial highways.** For those arterial highway corridors with driveway-related crash-per-mile rates that exceed the 1999 statewide average for arterial highways of the same posted speed limit, the permit applicant must avoid, minimize or mitigate any deterioration of safety or reduction of the posted speed limit.

[ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

**5. Exemptions.** A permit is not required for the following:

A. Any existing driveway, entrance or approach unless its grade, location or use is changed; or [1999, c. 676, §1 (NEW).]

B. A driveway, entrance or approach used solely for forest management purposes provided that construction and maintenance follows departmental permit by rule requirements. A written permit is required if the use of that driveway, entrance or approach is changed. [1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF).]

[ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

**6. Access denied.** The Department of Transportation and the municipalities shall deny ingress to and egress from property abutting the highway when access rights have been acquired by the department, except that the Commissioner of Transportation may allow access for the development of state and state aid highways and may approve a relocation of an existing break in a control of access consistent with the rules adopted pursuant to subsection 2.

[ 2003, c. 571, §2 (AMD) .]

**7. Reconsideration.** In writing, the Commissioner of Transportation shall either approve an application under this section setting forth any conditions or terms required for approval or disapprove the application setting forth the reasons for disapproval. An applicant has 30 days from the receipt of this decision to request reconsideration. This request must outline the findings and conclusions of the commissioner to which that person objects, the basis of the objections and the nature of the relief requested. Nothing in this section may be construed to limit a person's lawful right to appeal a final agency action.

[ 1999, c. 676, §1 (NEW) .]

**8. Violation.** A violation of this section or the rules adopted pursuant to this section is punishable by a fine of not more than \$100 per day per violation. The fine begins to accrue 30 days after the Department of Transportation sends notice of the violation to the landowner. The department shall establish procedures for administrative enforcement of this section, establishing fines and reconsideration and appeals of enforcement actions.

[ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

**9. Rules.** Rules adopted by the Department of Transportation pursuant to subsection 2 are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. Rules adopted pursuant to subsections 3 and 4, subsection 5, paragraph B and subsection 8 are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1999, c. 676, §1 (NEW) .]

**10. Requirements waived.** The department may waive the requirements of rules adopted pursuant to this section and may issue a permit for a driveway when the property abuts no other road affording vehicular access to a person's property and the property is outside the compact area of an urban compact municipality. The department may not deny a person the right to build on or to have vehicular access to property owned by that person unless the access is determined inconsistent with access management safety standards.

[ 2005, c. 188, §1 (NEW) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1999, c. 473, §C1 (AMD). 1999, c. 676, §2 (AFF). 1999, c. 676, §1 (RPR). 2001, c. 301, §1 (AMD). 2003, c. 571, §§1,2 (AMD). 2005, c. 188, §1 (AMD).

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