

STATEMENTS OF POLICY

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 455]

Consultant Highway Design Errors

The Department of Transportation (Department), under the authority in section 506 of The Administrative Code of 1929 (71 P. S. § 186), rescinds Chapter 455 to read as set forth in Annex A.

Purpose of Chapter

The purpose of Chapter 455 was to establish the official position of the Department regarding design errors committed by its consultants and to establish a uniform procedure for reviewing and responding to errors when they occurred.

Reasons for Rescission

Since its initial publication and amendment in 1997, the Department has found the process in Chapter 455 to be unduly burdensome and cumbersome to implement. In 2005, the Department adopted a similar but not identical “revised” process as part of the Department’s “Publication 93—Procedures for the Administration of Consultant Agreements” (Publication 93). The “revised” process has also proved cumbersome with multiple layers of group decision making so burdensome that the Department has never completed a review.

The current procedure is thus unwieldy and is also not favored by the Federal Highway Administration (FHWA). Since the Department is in the process of revising other components of Publication 93, it is appropriate to also revisit the revised design error review process as part of the revisions to Publication 93.

A recently issued National Cooperative Highway Research Program Report (NCHRP) (Project 20-07, Task 225) outlined a template for the resolution of design errors and omissions consistent with FHWA guidance and the current American Association of State Highway and Transportation Officials suggested process. The NCHRP report proposed six general concepts which are generally consistent with the Department’s proposed streamlined process. The design error process the Department is proposing streamlines the approach while maintaining the critical components needed to address the concepts in the NCHRP report. The newly proposed process provides for an assessment by Department midlevel professional engineers at the district level, an appeal process with the district executive and involvement of the Department’s Central Office and the Office of Chief Counsel early in the process.

In adopting the revised review process as part of comprehensive revisions to Publication 93, rather than replace the statement of policy in Chapter 455, the Department intends to maintain greater flexibility to respond efficiently to further recommendations from the NCHRP and the FHWA. In addition, the Department will be better and more efficiently able to adjust the process after it becomes implemented and the body of experience

in using the process grows. A formal statement of policy is more cumbersome to amend than a Department publication.

Persons and Entities Affected

The proposed new design error process has been discussed with the FHWA and with representatives of American Council of Engineering Companies of Pennsylvania (ACEC). In addition, the affected parties, including the ACEC, will have an opportunity to comment on the new process since revised Publication 93 will be issued by means of the Department’s Clearance Transmittal process. Insofar as the design consultant community is a limited and manageable universe that the Department interacts with regularly, both formally and informally, there is no need to also formally publish the new policy in the *Pennsylvania Code* to ensure that the affected community stays well informed. In addition, the Department’s highway design and construction partners are accustomed to looking for guidance in Department publications.

Fiscal Impact

Rescission of Chapter 455 will not require the expenditure of additional funds by the Commonwealth or local municipalities. The rescission of Chapter 455 will not impose additional costs on the regulated community. It should not impose additional costs on contractors.

Effective Date

The rescission of Chapter 455 will be effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about this statement of policy is Gary Kleist, P.E., Acting Section Chief, Consultant Agreement Section, Bureau of Design, P. O. Box 3060, Harrisburg, PA 17120-0094, (717) 783-9309.

Order

The Department orders that the statement of policy in Chapter 455 is rescinded.

BARRY J. SCHOCH, P.E.,
Secretary

(Editor’s Note: Title 67 of the Pennsylvania Code is amended by deleting the statement of policy in §§ 455.1—455.3 to read as set forth in Annex A.)

Fiscal Note: 18-417. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 455. (Reserved)

§§ 455.1—455.3. (Reserved).

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