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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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June 18, 2003

Honorable Allen D. Biehler, P.E., Secretary
Department of Transportation
Keystone Building, 8th Floor
400 North Street
Harrisburg, PA 17120

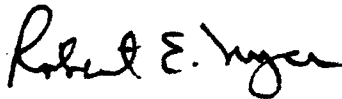
Re: Regulation #18-373 (IRRC #2338)
Department of Transportation
Official Traffic Control Devices

Dear Secretary Biehler:

Enclosed are the Commission's Comments for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The Comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,



Robert E. Nyce
Executive Director
wbg
Enclosure

cc: Honorable Richard A. Geist, Majority Chairman, House Transportation Committee
Honorable Keith R. McCall, Democratic Chairman, House Transportation Committee
Honorable Roger A. Madigan, Chairman, Senate Transportation Committee
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee

Comments of the Independent Regulatory Review Commission

on

Department of Transportation Regulation No. 18-373

Official Traffic Control Devices

June 18, 2003

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Transportation (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 19, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Deletion of Chapter 203. Work Zone Traffic Control. - Implementation procedures; Clarity.

This regulation adopts the national Manual on Uniform Traffic Control Devices and deletes existing chapters, including 67 Pa. Code Chapter 203. In 2002, the General Assembly passed Act 229, which set forth requirements for signs before and after construction zones. The Department's Statement of Policy for initial implementation of Act 229 states in 67 Pa. Code Section 204.1(b) that the specifications in Chapter 204 "are in addition to the traffic-control devices required by Chapter 203." Therefore, upon promulgation of this regulation, implementation of Act 229 would become confusing.

Under Section 21 of Act 229, the statement of policy "shall be effective for a period not to exceed two years" and must "be replaced by regulations which shall be promulgated, adopted and published as provided by law." To avoid confusion, the Department should consider publishing another proposed rulemaking to implement Act 229 and then combining the rulemakings as one final-form regulation. This would be consistent with the directives of Section 21 of Act 229 and would resolve our concern with the deletion of Chapter 203.

2. Omission of citations, cross-references or necessary details. - Reasonableness; Clarity

The requirements listed below are vague because they do not include the specific information needed in order to comply with the requirements. The Department should review these sections and add cross-references, citations or more detail so that the regulated parties have full notice of what is required. These sections include:

- Section 212.10(2) requires a request to include "sufficient information to allow the Department to make a ruling...."
- Section 212.105 requires all sign posts to be of a "Department-approved breakaway design."

- Section 212.108(b)(3) should cite or reference the “most recent high-crash rate or high-crash severity rate table developed by the Department.”
- Section 212.116(a)(1) requires the safe load capacity of a bridge to be determined “in accordance with Department standards....”
- Section 212.120(a) requires specific service signs to only be installed “in accordance with Department policy.”
- Section 212.404(b) states, “Portable sign supports shall be of a type approved by the Department.”

3. Section 212.1. Definitions. - Reasonableness; Clarity.

Engineering and traffic study

This definition describes the study as “conforming to generally accepted engineering standards and practices.” There are two concerns with this phrase.

First, if this phrase is intended to be a requirement, it would not be enforceable because it is in a definition. Therefore, the phrase should be moved to the body of the regulation.

Second, it is not clear what standard would be used to determine if a study conforms to “generally accepted engineering standards and practices.” A cross reference or further description is needed.

4. Section 212.3. Pennsylvania’s Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways. - Need; Reasonableness; Clarity.

This section states a published supplement “will include additional requirements for official traffic control devices contained in this chapter....” It is unclear what additional requirements the Department envisions. The Department should explain why additional requirements are needed and why these requirements are not included in the proposed regulation and subject to comment.

5. Section 212.109. Bridge speed limits. - Clarity.

In Subsection (a), is a “structural engineer” required to have qualifications such as a Professional Engineer license? If so, this requirement should be specified in the regulation.

6. Section 212.119. General motorist service signs. - Clarity.

This section states, “The application of general motorist service signs shall be in accordance with the Department’s Statewide policy, and will **generally be limited to** expressways and freeways....” (Emphasis added.) The phrase “generally be limited to” is vague. When would the application of general motorist service signs not be limited to expressways and freeways?

7. Section 212.408. Rumble strips. - Clarity.

The last sentence states, “When rumble strips are used, it is desirable to extend the rumble strip patterns onto the shoulder whenever possible....” Stating what is “desirable” is nonregulatory language. The regulation should clearly state what is required. If the intent of this provision is to advise providers of the Department’s preference, it may be more appropriate to include this information in a policy statement or other Department publication such as the publications listed in Section 212.12.