

# Regulatory Analysis Form

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(1) Agency

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Transportation

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

#18-407

IRRC Number:

2553

(3) Short Title

Prequalification of Bidders

(4) Pa. Code Cite

67 Pa. Code, Chapter 457

(5) Agency Contacts & Telephone Numbers

Primary Contact: Joseph F. Cribben, P.E.  
(717) 787-3733

Secondary Contact: Angela M. Howell  
(717) 787-7032

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this proposed rulemaking is to amend the existing table in § 457.5 (relating to classification) by deleting the specific classification for Rest Area Structures and Buildings.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The statutory authority for the regulation is Section 404.1 of the State Highway Law, Act of June 1, 1945, P.L. 1242, No. 428, as amended by the Act of September 20, 1961, P.L. 1529, No. 649, further amended by the Act of May 15, 1998, P.L. 358, No 57 (36 Pa.C.S. § 401.1)

(10) Is the regulation mandated by any federal or state law or court order, or federal regulations? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any federal or state law, court order or federal regulation, but the Federal Highway Administration strongly encourages states to have prequalification programs.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The "N" Work Code is a classification for "rest areas, structures." This Code was implemented at a time the Department contracted projects to construct the interstate highway system. Presently, the Department does very little contracting for the construction of buildings. Highway contractors generally do not have experience in building construction and only a limited amount of prequalified contractors have the necessary work classification codes to bid on the few projects which are proposed. Such construction activities should more readily be classified as "miscellaneous work."

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Failure to delete the "N" Work Code may result in limiting the amount of competent contractors and subcontractors willing to competitively bid for the limited amount of projects relating to rest area structures and buildings. Limited competition increases the cost of such construction projects.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Contractors and subcontractors will benefit from the revised regulation. The Commonwealth's taxpayers will benefit from the availability of a greater number of contractors to bid on their building construction work..

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There should be no adverse affects on either the Department or construction contractors and subcontractors.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

These regulations affect all contractors and subcontractors who apply to bid on and perform rest area structure and building work in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department of Transportation conferred with individuals from the Department of General Services (“DGS”). DGS is largely responsible for contracting for buildings and structures for the Commonwealth.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting of consulting procedures which may be required.

These proposed revisions to the regulations will impose no additional costs to contractors and subcontractors.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

These proposed revisions to the regulations would not impose any additional costs to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

It is anticipated that the Commonwealth experience a reduction in the cost of constructing rest area structures and buildings with the availability of a greater number of contractors able to bid on this work.

(20) 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 + 1 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community:	NONE	NONE	NONE	NONE	NONE	NONE

Local Government:	NONE	NONE	NONE	NONE	NONE	NONE
State Government:	NONE	NONE	NONE	NONE	NONE	NONE
Total Savings	NONE	NONE	NONE	NONE	NONE	NONE
COSTS:						
Regulated Community	NONE	NONE	NONE	NONE	NONE	NONE
Local Government	NONE	NONE	NONE	NONE	NONE	NONE
State Government	NONE	NONE	NONE	NONE	NONE	NONE
Total Costs	NONE	NONE	NONE	NONE	NONE	NONE
REVENUE LOSSES:						
Regulated Community	NONE	NONE	NONE	NONE	NONE	NONE
Local Government	NONE	NONE	NONE	NONE	NONE	NONE
State Government	NONE	NONE	NONE	NONE	NONE	NONE
Total Revenue Losses	NONE	NONE	NONE	NONE	NONE	NONE

(20a) Explain how the cost estimates listed above were derived.

N/A

(20b) Provide the three-year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY 2006-07
Appropriation 185	\$150,000,000	\$150,000,000	\$150,000,000	\$150,000,000

(21) Using cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no additional costs anticipated from this amendment to the regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There were no nonregulatory alternatives considered.

(23) Describe alternative regulatory schemes and the costs associated with those schemes. Provide the reasons for their dismissal.

There were no alternative regulatory schemes available for consideration.

(24) 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 regulation.

Federal standards do not require prequalification.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation is equal or superior to regulations of some states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will only affect the existing Chapter 457 of the regulations of the Department.

(27) Will any public hearings or informal meetings be scheduled? Please provide the dates, times and locations, if available.

No public hearings or informal meetings will be scheduled other than those scheduled through the promulgation process.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulations will not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There were no special provisions developed to the particular needs of affected groups.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department anticipates publication of the rulemaking in final form sometime mid-year 2006.

(31) Provide the schedule for continual review of the regulation.

The regulation will be continuously reviewed and monitored for its effectiveness by the Department and the affected contractor industry.

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

(Pursuant to Commonwealth Documents Law)

W2553

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

By: \_\_\_\_\_  
(Deputy Attorney General)

\_\_\_\_\_  
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. 18-407

DATE OF ADOPTION \_\_\_\_\_

BY Allen D. Buchler  
Secretary of Transportation

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

Andrew C. Clark  
BY

SEP 29 2006

(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.

**Title 67. Transportation**

**Part I. Department of Transportation**

**Subpart B. Nonvehicle Code Provisions**

**Article III. Highways**

**Chapter 457. Prequalification of Bidders**

**Final Rulemaking**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF  
TRANSPORTATION**

**SUBPART B. NONVEHICLE CODE PROVISIONS**

**ARTICLE III. HIGHWAYS**

**CHAPTER 457. PREQUALIFICATION OF BIDDERS**

**Notice of Final Rulemaking**

**Preamble**

Notice is hereby given that the Department of Transportation, pursuant to the authority contained in Section 404.1 of the State Highway Law, Act of June 1, 1945, P.L 1242, *as amended* (36 P.S. § 670—404.1), hereby adopts amendments to Chapter 457 of the Department of Transportation Regulations, Title 67, as set forth in Annex A to this Notice.

***Purpose of this Chapter***

The purpose of this chapter is to provide a method and manner, determined to be desirable by the Secretary, to prequalify all contractors and subcontractors who seek to perform highway project work in the Commonwealth.

***Purpose of these Regulations***

The purpose of this rulemaking is to amend the existing table in § 457.5 (relating to classification) by deleting the specific classification for Rest Area Structures and Buildings.



This rulemaking is necessary because work associated with the "N" Work Classification Code (rest area structures, buildings) is not traditionally performed by highway construction contractors. Contractors who have expertise in such work are generally not prequalified by the Department of Transportation. In order to attract a greater number of competent bidders, this type of work should be classified as miscellaneous work.

***Statutory Authority***

These regulations are amended under the authority contained in Section 404.1 of the State Highway Law, Act of June 1, 1945, P.L. 1242, *as amended* (36 P.S. § 670—404.1)

***Persons and Entities Affected***

These regulations affect contractors who desire to perform project work relating to the construction of rest area structures and buildings along highways in the Commonwealth.

***Fiscal Impact***

These regulations will have little or no fiscal impact on contractors. The Commonwealth may realize cost savings in the construction of rest area structures and buildings in the availability of a greater number of contractors able to bid on such work.

***Regulatory Review***

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a), on June 21, 2006, the Department submitted a copy of the notice of the proposed rulemaking, published at 36 Pa. B

3273, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees for review and comment. No comments were received from the public, the Committees or from IRRC.

In preparing this final-form rulemaking, the Department has made no changes to the rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_, this final-form regulation was deemed approved by the House and Senate Transportation Committees and on \_\_\_\_\_, was deemed approved by IRRC.

### ***Sunset Provisions***

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required pursuant to the State Highway Law (36 Pa.C.S. § 670-101, *et seq.*). These regulations will be continuously monitored for their effectiveness by the Department and the affected industry.

### ***Contact Person***

The contact person for this proposed rulemaking is Joseph F. Cribben, P.E., Contract Evaluation Engineer, Contract Management Division, Bureau of Construction and Materials, P.O. Box 2855, Harrisburg, PA 17105-2855.

### ***Order***

The Department of Transportation orders that:

- (A) The regulations of the Department of Transportation, 67 Pa. Code, are amended by the adoption of the amendments to Chapter 457 as set forth in Annex A.
- (B) The Secretary of the Department of Transportation shall submit this Order and Annex A hereto to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.
- (C) The Secretary shall certify this Order and Annex A and deposit the same with the Legislative Reference Bureau, as required by law.
- (D) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

Allen D. Biehler, P.E.  
Secretary of Transportation

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF  
TRANSPORTATION**

**SUBPART B. NON-VEHICLE CODE PROVISIONS**

**ARTICLE III. HIGHWAYS**

**CHAPTER 457. PREQUALIFICATION OF BIDDERS**

\* \* \* \* \*

**§ 457.5. Classification.**

(a) The contractor or subcontractor shall be classified according to the type of work and amount of work for which his experience and financial capacity will qualify him to bid. The types of work, as described in Department of Transportation Specifications, Publication 408, are listed as follows:

WORK	CODE	SECT.	CLASSIFICATION
EARTHWORK	A	200	CLEARING & GRUBBING
	B	200	BUILDING DEMOLITION
	C	200	EXCAVATING & GRADING
BASE COURSE	D	300	RIGID BASE COURSE
	E	300	FLEXIBLE BASE COURSE
PAVEMENT	F	400	BITUMINOUS PAVEMENT
	F1	400	BITUMINOUS PAVEMENT PATCHING AND REPAIR
	G	500	RIGID PAVEMENT
	G1	500	RIGID PAVEMENT PATCHING & REPAIR
INCIDENTAL CONSTRUCTION	H	600	DRAINAGE, WATER MAIN, STORM SEWER
	J	600	GUIDE RAIL, STEEL MEDIAN BARRIER, FENCES
	J1	600	CONCRETE MEDIAN

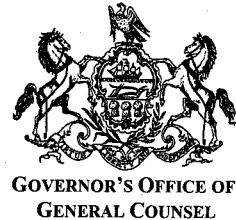
			BARRIER
	K	600	CURBS, SIDEWALKS, INLETS, MANHOLES, ETC.
	L	600	SLAPJACKING- SUBSEALING
ROADSIDE DEVELOPMENT	M	800	LANDSCAPING
	[ N		REST AREA STRUCTURES, BUILDINGS ]
TRAFFIC ACCOMMODATIONS AND CONTROL	O	900	PAVEMENT MARKINGS
	P	900	HIGHWAY/SIGN LIGHTING, SIGNAL CONTROL
	Q	900	MAINTENANCE AND PROTECTION OF TRAFFIC
	R	900	SIGN PLACEMENT (POST/ STRUCTURE MOUNTED)
	R1	900	SIGN STRUCTURES
STRUCTURES	S	1000	CEMENT CONCRETE STRUCTURES
	S1	1000	CULVERTS & SINGLE SPAN BRIDGES TO 80 FT
	S2	1000	REPAIR AND REHABILITATION OF STRUCTURES
	S3	1000	MODIFIED CONCRETE DECK OVERLAYS
	T	1050	ERECTION (STRUCTURAL MEMBERS)
	T1	1018	BRIDGE REMOVAL
	U	1005	PILE DRIVING
	V	1070	STEEL PAINTING (HIGH PERFORMANCE)
	V1	1071	STEEL PAINTING (CONVENTIONAL)
MISCELLANEOUS	Y		OTHERS

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

OFFICE OF CHIEF COUNSEL  
GENERAL LAW DIVISION  
POST OFFICE BOX 8212  
HARRISBURG, PA 17105-8212  
TELEPHONE: (717) 787-5299  
FACSIMILE: (717) 772-2741



February 5, 2007

Kim Kaufman  
Executive Director  
14<sup>th</sup> Floor Harristown 2  
333 Market Street  
Harrisburg, PA 17101

**Re: Final Rulemaking  
Regulation # 18-407, 67 Pa. Code Chapter 457 —  
Prequalification of Bidders — Final Rulemaking**

Dear Mr. Kaufman:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form for amendment to Chapter 457 of Department regulations which the Department of Transportation intends to adopt in accordance with the provisions of Section 204 of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, 45 P.S. § 1204.

Copies of these materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department of Transportation will provide you with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. F. J. Martin", with a long horizontal flourish extending to the right.

Stephen F. J. Martin  
Regulatory Counsel

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: #18-407  
SUBJECT: Prequalification of Bidders  
67 Pa. Code, Chapter 457  
AGENCY: Department of Transportation

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REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/5/07	<u><i>Patricia E. Gilroy</i></u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
2/5/07	<u><i>Mary K. Kahaney</i></u> for Minority Chair	
2/5/07	<u><i>Stana A. Rito</i></u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
2/5/07	<u><i>Shelly Warner</i></u> for Minority Chair	
2/5/07	<u><i>Kathy Cooper</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		LEGISLATIVE REFERENCE BUREAU

Date: February 5, 2007