

Regulatory Analysis Form		This space for use by IRRC RECEIVED 2009 MAR 17 PM 3:30 INDEPENDENT REGULATORY REVIEW COMMISSION	
(1) Agency Transportation		(2) I.D. Number (Governor's Office Use) # 18-371	
(3) Short Title Chapter 449. Liquid Fuels Tax Funds		IRRC Number: 2335	
(4) PA Code Cite 67 Pa. Code, Chapter 449		(5) Agency Contacts & Telephone Numbers Primary Contact: Sherri B. Zimmerman (717) 787-2183 Secondary Contact: Richard G. Zerbe (717) 783-8588	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rulemaking <input type="checkbox"/> Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	

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

The amended regulations update and revise the existing provisions of Chapter 449 as a consequence of the creation of the Department of Community and Economic Development by the Community and Economic Development Enhancement Act, Act No. 1996-58 (71 P.S. Sections 1709.101--1709.2106). The act merged the former Departments of Commerce and Community Affairs and changed the annual reporting forms and documents needed for annual qualification for Liquid Fuels Funds. These regulations reflect those changes. Amendments to Municipal and County codes, effective September 8, 1990, have superseded certain provisions of Chapter 449 increasing the threshold level from \$4,000 to \$10,000, for competitive bidding, advertising and

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bonding requirements. Quotation procedures were established for all contracts that exceed \$4,000 but are less than the \$10,000 threshold for advertising and competitive bidding. The bond charts included in sections 449.7 and 449.9 have also been revised to reflect current bonding requirements. Section 449.7(e) has been revised to include Intergovernmental agencies as authorized entities for piggy-back purchases, consistent with the Commonwealth Procurement Code, Act 57 of 1998, Pa. C. S. Title 62. Finally, sections 449.7 and 449.9 have been updated to include metric measurements.

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

The statutory authority for these regulations is contained in the Act of June 1, 1956 (P.L. (1955) 1944, No. 655) (72 P.S. Sections 2615.1--2615.10), Section 10 of the Liquid Fuels Tax Act (72 P.S. 2611j) and Section 9511 of the Vehicle Code (75 Pa. C.S. Sections 6103 and 9511).

(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.

These regulations are not mandated by Federal law or regulation, or court order.

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

The compelling public interest that justifies these regulations is to avoid the anomaly of having regulations which conflict with the authorizing statutes.

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

There are no public health, safety, environmental or general welfare risks associated with non-regulation.

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

These regulations benefit over 2,600 municipalities and their contractors in maintaining and constructing the roads, streets and bridges for which they are legally responsible. They will also serve to expedite the certification of municipalities for payment of their annual liquid fuels allocation, used to maintain their roads, streets and bridges, by clearly identifying the forms required for this process.

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(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.)

These regulations in themselves do not adversely impact officials, persons or entities. These amendments make the regulations consistent with provisions of the authorizing statutes.

(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 municipalities in the Commonwealth that seek to qualify and receive liquid fuels tax funds.

(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 proposed regulations have been circulated for comment within the Department, to the Auditor General, and each of the statewide municipal associations. These regulations will also be forwarded for review by the House and Senate Transportation Committees and the Independent Regulatory Review Commission.

(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.

No additional legal, accounting, or consultant procedures will be required by these regulations.

(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.

There regulations will not occasion any costs or savings 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.

There regulations will not impose additional costs or savings for state government.

(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

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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.

There are no savings, costs or revenue losses for state and local government.

(20b) Provide the three year expenditure history for programs affected by the regulation. The expenditure history is based on a distribution formula based 50% on population and 50% liquid fuels mileage for each municipality certified for liquid fuels funding. These are the aggregated amounts for all municipalities certified in the respective fiscal years.

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Program	FY-3 in 000's	FY-2 in 000's	FY-1 in 000's	Current FY in 000's
Local Road Maintenance & Construction Payments	\$ 174,992	\$ 179,302	\$ 180,772	\$ 184,879
Supplemental Local Road Maintenance & Construction Payments	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Local Roads – Excise Tax	\$ 36,499	\$ 37,133	\$ 39,092	\$ 39,817
Payments to Municipalities	\$ 26,661	\$ 25,653	\$ 27,357	\$ 27,872

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

These regulations were drafted in a manner which maximizes the difference between potential benefits and costs since they impose no costs.

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

No alternative approaches were considered. The Department felt that the change incorporated in this package could only be accomplished through the proposed rulemaking process.

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

No alternative regulatory schemes were considered.

(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.

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No, the provisions of these regulations are not more stringent than federal standards since the Federal Government does not promulgate standards regarding the administration of state liquid fuels tax funds.

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

Pennsylvania is the only state that has a state administered liquid fuels program. These regulations do not put Pennsylvania at a competitive disadvantage with other states. The reverse is true, since the regulations foster competitive bidding for local road, street and bridge maintenance and construction activities.

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

These regulations will not affect other existing or proposed regulations.

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

The Department has not scheduled any public hearings or informal meetings. These regulations, however will be considered by the IRRC at a public meeting scheduled by the same.

(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.

These regulations will not result in any additional 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.

These regulations do not include any special provisions to meet the needs of any affected groups or persons. These regulations were developed in a manner which will ensure fair and equal treatment of all participants.

(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?

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The Department anticipates publishing these regulations in 2003.

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

The Department has not established a sunset date for these regulations. The Department will continue to monitor these regulations for their effectiveness.

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<p>FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p>(Pursuant to Commonwealth Documents Law)</p> <p># 2335</p>	<p>2003 MAR 17 PM 3:30 INDUSTRIAL DEVELOPMENT REVIEW COMMISSION</p> <p>DO NOT WRITE IN THIS SPACE</p>
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<p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy of below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;">Department of Transportation (Agency)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>18-371</u></p> <p>DATE OF ADOPTION _____</p> <p>BY <u>Allen D. Biebler</u> Secretary of Transportation</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>By: <u>[Signature]</u> <u>3/13/03</u> (Date of Approval)</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike Inapplicable Title)</p> <p><input type="checkbox"/> Check if applicable. No attorney General Approval or Objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

Title 67. Transportation
Part I. Department of Transportation
Subpart B. Non Vehicle Code Provisions
Article III. Highways
Chapter 449. Liquid Fuels Tax Funds

Final Regulation with Notice of Proposed Rulemaking Omitted

Title 67. Transportation

Part I. Department of Transportation

Subpart B. Non Vehicle Code Provisions

Article III. Highways

Chapter 449. Liquid Fuels Tax Funds

Notice of Final Adoption with Proposed Rule Making Omitted

Preamble and Order

The Department of Transportation (Department), Office of Administration, Bureau of Municipal Services, by this order adopts these amendments to 67 Pa. Code, Chapter 449 (relating to liquid fuels tax funds) as set forth in Annex A.

The Department plans to make these amendments effective upon publication without notice of proposed rulemaking. Notice of proposed rulemaking has been omitted under the authority contained in Section 204(1) of the Commonwealth Documents Law, Act of July 31, 1968 (P.L. 769, No 240)(45 P.S. § 1204(1)(CDL). The administrative changes herein interpret and incorporate self-executing provisions in the Community and Economic Development Enhancement Act, (71 P.S. §§ 1709.101—1709.2106) and amendments to the Municipal and County Codes. The procedures specified in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202), are, in the circumstances, impracticable, unnecessary and contrary to the public interest.

Authority to amend these regulations is contained in Sections 6103 and 9511 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended*, (75 Pa. C.S. §§ 6103 and

9511) and Sections 1 through 10 of the Act of June 1, 1956, P.L. (1955) 1944, *as amended*, (72 P.S. §§ 2615.1—2615.10).

Purpose of this Chapter

The purpose of 67 Pa. Code, Chapter 449, Liquid Fuels Tax Funds, is to effect the fair and uniform administration of the provisions of the Act of June 1, 1956, P.L. (1955) 1944, *as amended*, (72 P.S. §§ 2615.1—2615.10) and 75 Pa. C.S. § 9511 (relating to allocation of proceeds), which provide a permanent allocation of a part of the liquid fuels, fuels and oil company franchise tax proceeds to counties, cities, boroughs, incorporated towns and townships for their road, street and bridge purposes.

Purpose of These Regulations

The purpose of these regulations is to update and revise existing provisions of Chapter 449 to be consistent with the provisions of The Community and Economic Development Enhancement Act, (71 P.S. §§ 1709.101—1709.2106), which created the Department of Community and Economic Development by the merger of the former Departments of Commerce and Community Affairs. As a result of that merger the annual reporting forms and documents were changed. These changes are reflected in the section 449.12, Annual Qualification, and are intended to eliminate the confusion caused by the out-dated information in the current regulation. Additionally, amendments to the Municipal and County Codes have superseded certain provisions of Chapter 449. These statutory amendments have affected townships of the first and second class, third class cities, boroughs, towns, counties of the third through eighth classes, and Councils of Governments.

Amendments to Section 449.3 reflect the statutory changes from \$4,000 to \$10,000 in the dollar thresholds for determining whether competitive bidding is required in the solicitation and award of contracts, and for determining whether a municipal contract is exempt from bidding, bonding and advertising.

In Sections 449.7 and 449.8, telephonic price quotations from at least three qualified and responsible contractors are required for contracts that exceed \$4,000 but are less than the \$10,000 threshold requiring advertising and competitive bidding, consistent with provisions in the statutes. These sections also provide that in lieu of the price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors service the market area within which it is practicable to obtain quotations. The file memorandum must be kept until the completion of an audit by the Department of the Auditor General which includes the transaction; such audits are conducted periodically according to law and regulation.

Additionally, the bond requirement charts included in sections 449.7 and 449.9 have been updated to reflect current statutory bonding requirements. This revision will eliminate the confusion, which has existed since the statutory changes, over the appropriate advertising, bidding and bonding requirements. Section 449.7(e) has also been revised to include Intergovernmental Agencies in the regulations dealing with advertising, bidding and bonding requirements for piggy-back purchases. This change was made to reflect the changes made to the Commonwealth Procurement Code, Pa. C. S. Title 62, contained in Act 57 of 1998. Sections 449.7 and 449.9 have also been updated to include metric measurements.

In developing these amendments to the regulations, the Bureau of Municipal Services met and discussed these amendments with state-wide municipal associations and with staff of the

Auditor General to ensure that the amendments would not conflict with applicable local laws and would be acceptable to all affected parties.

Persons and Entities Affected

These regulations affect all municipal governments in the state that seek to qualify and receive Liquid Fuels Tax Funds.

Fiscal Impact

These regulations do not impose an increased fiscal burden on state or local governments or private entities. They will facilitate the expeditious review and approval of liquid fuels tax fund activities. This will allow the Department to serve the municipalities of the Commonwealth in a more effective and professional manner and will promote more efficient utilization of liquid fuels tax funds. These regulations do not impose any additional reporting, record-keeping, or other paper-work requirements on the Commonwealth or local governments.

Regulatory Review

Under Section 5.1(c) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No 181), as amended by the Act of June 25, 1997 (P.L. 242, No. 24), 71 P.S. § 745.5a(c), the agency submitted a copy of the regulation with proposed rulemaking omitted on March 17, 2003 to the Independent Regulatory Review Commission (IRRC) and to the Chairmen of the House and Senate Transportation Committees. On the same date, the regulation was submitted to the Office of Attorney General for review and approval pursuant to the Commonwealth Attorneys Act. In accordance with Section 5.1(d) and (e) of the Regulatory Review Act, 71 P.S. § 745.5a(d) and (e), the regulation was (deemed) approved by the House Committee on _____

and (deemed) approved by the Senate Committee on _____. IRRC met on _____ and (deemed) approved the regulation.

In addition to submitting these regulations, the agency has provided the IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Sunset Date

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer the provisions required pursuant to the Act of June 1, 1956 (P.L. (1955) 1944, No. 655) (72 P.S. Sections 2615.1 - 2615.4), and Act No. 32 of 1931 (72 P.S. Section 2611j). The department will, however, continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for this regulation is Richard G. Zerbe, Bureau of Municipal Services, P.O. Box 8211, 400 North Street-6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105-8211, telephone-(717) 783-8588.

Findings

The Department finds that:

(1) Public notice of intention to adopt the amendments to this regulation has been omitted under sections 204(1) and (3) of the CDL, 45 P.S. § 1204(1) and (3), and the regulation promulgated thereunder at 1 Pa. Code § 7.4.

(2) The amendments to the regulation promulgated herein interpret and incorporate self executing changes made in the Community and Economic Development Enhancement Act, (71 P.S. §§ 1709.101—1709.2106)(CEDEA) and amendments to the various Municipal and County Codes. The CEDEA merged the former Departments of Commerce and Community Affairs, requiring changes in annual reporting forms and documents to reflect the consolidation of the two former agencies in the new Department of Community and Economic Development. The enactment of the CEDEA itself effected the change, the amendment to the regulation is a correction of the requirements therein to conform it to the changes made by the statute. Similarly, the Municipal and County Codes in Title 53 of the Pennsylvania Statutes have effected changes in the threshold dollar amounts which determine whether municipal contracts must be advertised and bid, and require bid and/or performance bonds. This amendment to Chapter 449 simply conforms the requirements specific to municipal contracts involving the expenditure of liquid fuels tax monies to the changes effected in the amendments to the statutes. Under the circumstances, there would be no fruitful purpose to publish these regulatory amendments as proposed regulations or to invite public comment. The substance of the regulatory amendments is dictated by the changes already controlling in the amended statutes. It would be impracticable, unnecessary and contrary to the public interest to invoke the provisions of sections 201 and 202 of the CDL, 45 P.S. §§ 1201 and 1202, in these circumstances.

(3) The adoption of this amendment, in the manner provided in this order, is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 449, are amended by amending the Chapter to read as set forth in Annex A.

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

(c) The Secretary of the Department shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

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

Allen D. Biehler
Secretary of Transportation

Annex A

Title 67. Transportation

Part I. Department of Transportation

Subpart B. Non Vehicle Code Provisions

Article III. Highways

Chapter 449. Liquid Fuels Tax Funds

* * * * *

§ 449.2 Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicated otherwise:

* * * * *

Intergovernmental agencies—Such councils of government, area governments or other affiliation of governments or government agencies as are authorized by the Chapter 19 of the Commonwealth Procurement Code (62 Pa. C.S. §§ 1901–1912) to participate in, sponsor, conduct or administer a cooperative purchasing agreement and which expend public monies for the procurement of supplies, services and construction.

* * * * *

§ 449.3 Advertising, bidding, and bond requirements.

(a) *General rule.* Advertising, bidding, and a performance bond are required by statute on purchases and contracts in excess of [\$4,000] \$10,000, with certain exceptions indicated in

subsection (b) of this section. See: sections 1.1 and 1.2 of the act of March 7, 1901 (P. L. 20, No. 14) (53 P. S. 23308.1 and 23308.2); sections 1901--1918 of the act of June 23, 1931 (P. L. 932, No. 317) (53 P. S. 36901--36918); sections 1401--1411 of the act of February 1, 1966 (P.L. (1956) 1656, No. 581) (53 P. S. 46401-46411); the act of May 27, 1953 (P. L. 244, No. 34) (53 P. S. 53201--53209); sections 1801--1811 of the act of June 24, 1931 (P. L. 1206, No. 331 (53 P. S. 56801--56811); sections 801--808 of the act of May 1, 1933 (P. L. 103, No.69) (53 P. S. 65801--65809); and the Public Works Contractors' Bond Law of 1967 (8 P. S. 191--202).

(b) *Evasion prohibited.* While it is lawful to make a purchase or contract for up to [\$4,000] \$10,000 without advertising and bidding, it is unlawful to enter into several less-than-[\$4,000] \$10,000 contracts with the same person or with several persons merely for the purpose of evading advertising and bidding requirements.

* * * * *

§ 449.5. Failure to receive bids.

If a purchase or contract over [\$4,000] \$10,000 is duly advertised and no bids are received, the municipality shall not proceed with the purchase or contract unless it is again advertised for bids. If again no bids are received, the municipality may negotiate such purchase or contract on the best terms available within 45 days of the second advertisement if no substantial changes are made in the terms, conditions, and specifications contained in the bid proposal. If substantial changes must be made [in order] to procure the purchase or contract, the purchase or contract must be re-advertised and bid on the basis of the changes.

* * * * *

§ 449.7. Purchase of materials and equipment.

(a) *Advertisement.* The advertisement for any purchase, whether to be picked up or delivered or, in case of materials, to be applied in place, shall contain a reasonably complete description and estimated quantities of the major items or categories of items. The advertisement shall also indicate the requirement of a bid or performance bond or both.

(b) *Proposal.* The proposal shall contain the approximate number of items or tons, gallons, square yards, [and the like], the metric equivalent, or other standard unit of measure, required, as reasonably estimated by the municipality.

* * * * *

(2) [Season's requirements b] Bids, without quantities, shall not be acceptable.

* * * * *

(4) Liquid asphalt must be purchased either:

(i) By weight.

(ii) By volume (gallons or liters) at 60° F or 15.5° C. Use the conversion table contained in the Department Bulletin 25, Publication # 27.

(c) *Bonds.* On purchases over [\$4,000], \$10,000 suppliers shall provide bonds in

accordance with the following chart:

	First, Second, & 2A-Class Cities	Third Class Cities	Boroughs	First Class Townships	Second Class Townships
Bid Bond	*	[At least 10%] <u>Discretionary with Council in a reasonable amount</u> (53 P.S. § 36901(f))	Discretionary with <u>Council, in an amount determined by Council</u> (53 P.S. § 46402(b))	Not required	Not required
Performance Bond	*	[Required within 20 days of award— amount unspecified] <u>Bond or irrevocable letter of credit, in amount sufficient to Council, furnished within 20 days, but not less than 10 days, of award as specified by Council.</u> (53 P.S. § 36901(g))	[50% a] <u>At Council's discretion. If required, not less than 10% nor greater than 100%, furnished within 20 days, but not less than 10 days, of award as specified by Council.</u> (53 P.S. § 46402(c))	[50% within 10 to 20 days of award] <u>Not less than 10% nor greater than 100%, furnished within 20 days, but not less than 10 days, of award as specified by township commissioners.</u> (53 P.S. § 56802(c))	[50% within 10 to 20 days of award] <u>Not less than 10% nor greater than 100%, as specified by township supervisors, furnished within 20 days of award.</u> (53 P.S. § 68102(g))

* See appropriate municipal code or charter.

NOTE: The provisions of the Public Works Contractors Bond Law of 1967 (P.L. 869, No. 385)(8 P.S. §§ 191 - 202) may supercede requirements of municipal codes. Please consult the appropriate statutes or consult with the appropriate municipal solicitor, or both, regarding bonding requirements for a particular contract or project.

(d) *Annual estimate of materials.* Each municipality shall make an annual estimate of its requirements of road construction and maintenance materials, and shall advertise for bids on all items and groups of like items ordinarily supplied by a single supplier—see subsection (b)(3)—which are estimated to exceed [\$4,000] \$10,000 for the year. For materials estimates between \$4,000 and \$10,000, three telephone price quotes shall be obtained prior to the selection of a supplier. In lieu of the price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors service the market area within which it is practicable to obtain

quotations until a satisfactory audit of the contract is completed by the Department of the Auditor General. If the cost during the year of an unadvertised item or group of like items ordinarily supplied by a single supplier exceeds [~~\$4,000~~] \$10,000, or if the cost was between \$4,000 and \$10,000 and three price quotes were not obtained, the entire cost shall be ineligible for payment from the liquid fuels tax fund unless it can be shown to the satisfaction of the Secretary that it was reasonably believed that the cost of the year's requirements of that item or group of like items would not exceed \$10,000 or be between \$4,000 and \$10,000 as specified above.

(e) *Purchases through Department of General Services or intergovernmental agencies.* Advertising, bidding and bonding requirements shall not apply to "piggyback" purchases from suppliers under contracts with the Department of General Services or intergovernmental agencies. Compliance by an intergovernmental agency with the advertising and bonding requirements in this chapter shall be sufficient to relieve a municipality cooperating in the same purchasing agreement from compliance with the advertising, bidding and bonding requirements.

* * * * *

§ 449.8 Equipment Rental.

(a) *General rule.* A contract in excess of [~~\$4,000~~] \$10,000 for the rental of equipment shall be advertised, bid, and bonded and a contract between \$4,000 and \$10,000 shall be awarded only after three telephone price quotes are obtained, unless the work is performed by the municipality's own employe[s local] forces. For contracts between \$4,000 and \$10,000, in lieu of the price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors service the market area within which it is practicable to obtain quotations until a satisfactory audit of the contract is completed by the Department of the Auditor General.

* * * * *

(4) On equipment rental contracts over [\$4,000] \$10,000, suppliers shall provide bonds in accordance with the chart in 449.7(c) (relating to purchase of materials and equipment).

* * * * *

(3) [In order t] To substantiate a determination that a project is a local forces job, all man-hours shall be identified on payroll records.

(c) *Lease-purchase contracts of equipment.* Where equipment is rented for general street and highway construction and maintenance use, rather than for a particular project, it may be desirable to enter into a lease containing a purchase option.

(1) If the total amount of the lease-purchase agreement, including trade-in allowance, all rentals and the amount paid under the purchase option, exceeds [\$4,000] \$10,000, advertising, bidding and a performance bond are required.

* * * * *

§ 449.9. Construction and maintenance contracts.

* * * * *

(b) *Advertisement.* The advertisement for a construction or maintenance contract shall contain a reasonably complete description of the project, including the scope of the project and the type of work involved, as well as bond requirements as indicated in § 449.9 (f).

(c) *Proposal.* The proposal shall contain the approximate number of tons or square yards of materials, or the metric equivalents, required, as reasonably estimated by the municipality. The bidder shall insert:

* * * * *

(f) *Bonds.* Construction and maintenance contractors are required to provide bonds in accordance with the following chart:

BOND REQUIREMENTS FOR CONSTRUCTION AND MAINTENANCE

	First, Second, & 2A-Class Cities	Third Class Cities	Boroughs	First Class Townships	Second Class Townships
Bid Bond	*	[At least 10%] <u>Requirement and reasonable amount discretionary with Council.</u> (53 P.S. § 36901(f))	Discretionary with Council, <u>in an amount determined by Council.</u> (53 P.S. § 46402(b))	Not required	Not required
Performance Bond [\$4,000 to \$5,000] <u>over \$10,000</u>	*	[Required within 20 days of award— amount unspecified] <u>Bond or irrevocable letter of credit, in amount sufficient to Council, furnished within 20 days, but not less than 10 days, of award as specified by Council.</u> (53 P.S. § 36901(g))	[50% a] <u>At Council's discretion. If required, not less than 10% nor greater than 100%, furnished within 20 days, but not less than 10 days, of award as specified by Council.</u> (53 P.S. § 46402(c))	[50% within 10 to 20 days of award] <u>Not less than 10% nor greater than 100%, furnished within 20 days, but not less than 10 days, of award as specified by township commissioners.</u> (53 P.S. § 56802(c))	[50% within 10 to 20 days of award] <u>Not less than 10% nor greater than 100%, as specified by township supervisors, furnished within 20 days of award.</u> (53 P.S. § 68102(g))
[Over \$5,000	100%	100%	100%	100%	100%]
Payment Bond [\$1,500 to \$5,000] <u>Over \$1,500</u>	*	<u>50% to 100% at discretion of city.</u> (53 P.S. § 36907)	<u>50% to 100% at discretion of the borough.</u> (53 P.S. § 46406)	<u>50% to 100% at discretion of the township.</u> (53 P.S. § 56804)	[50 to 100%] <u>Not required unless covered under the Public Works Contractors Bond Law.</u> (53 P.S. § 68105)
[Over \$5,000	100%	100%	100%	100%	100%]

* See appropriate municipal code or charter.

NOTE: [Requirements for construction and Maintenance Contracts over \$5,000 are based on] The provisions of the Public Works Contractors Bond Law of 1967 (P.L. 869, No. 385)(8 P.S. §§ 191 - 202 [et seq.]) [and] may supercede requirements of municipal codes. Please consult the appropriate statutes or consult with the appropriate municipal solicitor, or both, regarding bonding requirements for a particular contract or project.

§ 449.11. Twenty percent funds.

(a) *Accumulation of 20% funds.* A municipality may accumulate its road machinery and road equipment funds—20% funds—over a period of years subject to the following limitations:

(1) The full amount of 20% funds to be carried over from one year to the next shall be on deposit in the liquid fuels tax account at the end of the calendar year, and shall be carried as part of the maintenance fund balance [(Tab 1)] as reported on Form MS-965.

* * * * *

§ 449.12. Annual qualification.

(a) *Requirements.* [In order] To qualify for its annual liquid fuels tax allocation, each municipality shall submit to the Department the following documents and information:

(1) Evidence that its treasurer is bonded in accordance with law, or that its treasurer is a bank requiring no bond. This information is due on or before January [15] 31 each year and must be submitted on Department Form MS-[904]965.

(2) A report indicating the manner in which its liquid fuels tax allocation was expended in the preceding year, the manner in which it plans to expend its liquid fuels tax allocation in the current year and the amount of funds for road and street purposes to be raised by the levying of taxes in the current year. This information shall be due on or before January [15] 31 each year on Department Form MS-965.

(3) A [roster of all municipal] report of all elected and appointed officials, indicating the official and address to which liquid fuels tax allocations and correspondence shall be forwarded.

This information shall be due on or before January [15] 31 each year and must be submitted on the appropriate Department of Community and Economic Development [Affairs'] forms:

- (i) Form [DCA-BLGS] DCED-CLGS-19-2 for Cities
- (ii) Form [DCA-BLGS] DCED-CLGS-19-3 for Boroughs
- (iii) Form [DCA-BLGS] DCED-CLGS-19-4 for First Class Townships
- (iv) Form [DCA-BLGS] DCED-CLGS-19-5 for Second Class Townships

(4) A copy of [its annual audit and financial report for the preceding year. This information must be received in the Bureau of Municipal Services Central Office on or before March 15 of each year for payment on April 1. (Department of Community Affairs Report Form DCA-BLGS-30)] Form DCED-CLGS-69 (survey of financial condition). This completed form must be received by the Department of Community and Economic Development no later than March 15 each year.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us



**Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212**

March 17, 2003

**Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2, 333 Market Street
Harrisburg, PA 17101**

**Re: Re: Regulation #18-371: 67 Pa. Code, Chapter 449 —
Liquid Fuels Tax Funds**

Dear Director Nyce:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form for Amendments to 67 Pa. Code, Chapter 449, Liquid Fuels Tax Funds, which the Department of Transportation intends to adopt with proposed rulemaking omitted, 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.

In accordance with Section 745.5a of the Regulatory Review Act, 71 P.S. § 745.5a, the Commission has 30 days to review the regulatory package and approve or disapprove the regulation.

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

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". The signature is written in a cursive style and is positioned above the printed name of the signatory.

**Stephen F. J. Martin
Assistant Counsel**

cc: David J. DeVries, Executive Deputy General Counsel

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 18-371
 SUBJECT: Liquid Fuels Tax Funds
 67 Pa. Code Chapter 449
 AGENCY: Department of Transportation

RECEIVED
 2003 MAR 17 PM 3:30
 REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- 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
3/17/03	<i>Rep. Richard W. Best</i> <i>Timothy S. Nardas</i> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
3/17/03	<i>Mark D. Antea</i> for Minority Chair	
3-17-03	<i>C. E. Sh...</i> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
3-17-03	<i>J. Barry Stout</i> for Minority Chair	
3-17-03	<i>J. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
3-17-03	<i>mlm</i>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

Date: March 17, 2003