

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Council

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SECTION I: PROFILE

(1) Agency:

Department of Transportation

(2) Agency Number:

#18 - 415

IRRC Number: # 2779

(3) Short Title:

Transportation Enhancement Grants from Automated Red Light Enforcement Revenues

(4) PA Code Cite:

67 Pa. Code, Chapter 233

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

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(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this regulation is to implement the provisions of Section 3116(l)(2) of the Vehicle Code (75 Pa.C.S. 3116(l)(2)) which requires the Department to develop, by regulation, a Transportation Enhancements Grant Program for the use of revenue generated from automated red light enforcement systems.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: N/A
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: October 1, 2010
- D. The expected effective date of the final-form regulation: October 1, 2010
- E. The date by which compliance with the final-form regulation will be required: October 1, 2010
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

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

The Department of Transportation is not establishing a sunset date for this regulation, since this regulation is needed to administer provisions required by the Vehicle Code (75 Pa.C.S. 101, et seq.). The Department of Transportation, however, will continue to closely monitor this regulation for its effectiveness.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Authority for this regulation is found in Section 3116 of the Vehicle Code, Act of October 4, 2002, P.L. 845, No. 123, as amended (75 Pa.C.S. 3116).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Section 3116(l)(2) of the Vehicle Code (75 Pa.C.S. 3116(l)(2)) requires the Department to develop, by regulation, a Transportation Enhancements Grant Program for the use of revenue generated from automated red light enforcement systems. The regulation is not mandated by federal law or regulation. There have been no relevant state or federal court decisions.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Section 3116(l)(2) of the Vehicle Code (75 Pa.C.S. 3116(l)(2)) requires the Department to develop this regulation. The regulation will establish a process to help ensure that worthwhile transportation enhancement projects will be funded using the revenue generated from automated red light enforcement. Benefits from completed projects will accrue to transportation system users and owners, and ultimately the public at large. It is difficult at this time to quantify the benefits and the number of people who will benefit because this depends upon the amount of revenue generated. Revenue generated depends upon the number of red light enforcement systems deployed and motorist behavior over time with respect to red light running violations. A desired effect of improving safety by reducing red light violations would diminish the total revenue available to fund projects via grants. Also, the number and value of grants offered affects overall benefits.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

At this time, no scientific data, studies, or references are being used to justify this regulation.

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(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No individual or entity would be adversely affected.

(16) 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.

Entities that will be required to comply are sponsors that choose to apply for, or receive, a transportation enhancement grant under the provisions of this regulation. These include local authorities (county, municipal, and other local boards or bodies having authority to enact laws relating to traffic), metropolitan planning organizations, rural planning organizations, county planning organizations, or Commonwealth agencies. The Department will also be required to comply with this regulation. The number of people required to comply would depend upon the number of grant applicants.

SECTION III: COST AND IMPACT ANALYSIS

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

The regulation will not require the expenditure of significant additional funds by the Commonwealth or any other entity. The revenue for the Transportation Enhancements Grant Program comes from the collection of fines from red light running violators.

Entities seeking a grant would need to prepare a grant application. The recordkeeping and payment procedures prescribed in the proposed regulations would need to be followed by entities that accept a grant offer from the Department. While local governments may, therefore, incur some marginal cost in the application and grant process, no local entity is compelled to apply for a grant. In addition, while grants can also be used for a portion of a larger project if other funding sources are secured, no matching local funds are required to obtain a grant under the program. Consequently, the program does not per se result in any additional costs to local governments.

The Department would have various program administration and oversight duties. These include the review of grant applications, the selection of projects to be funded via grants, grant agreement processing, reviews of submissions, project reviews and inspections, and related activities. These costs are not significant at the present level of the program, but could become significant if the program were to expand with the use of ARLE systems statewide.

(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. Explain how the dollar estimates were derived.

See response to Item 17.

(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

Regulatory Analysis Form

be required. Explain how the dollar estimates were derived.

See response to Item 17.

(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 +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Insofar as this grant program is new, there is no expenditure history available.

Program	FY -3	FY -2	FY -1	Current FY

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

See responses to Items 13 and 17.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Since this regulation will provide a completely new funding source for worthwhile transportation enhancement projects, no formal outreach efforts were completed. Informal discussions were held with some City of Philadelphia officials and some members of the General Assembly.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

This regulation was modeled after other transportation-related grant programs administered by the Department.

(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 regulations.

There are no applicable federal standards.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation has no effect on Pennsylvania's competitiveness.

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

The regulation will not affect other regulations of the Department or any other Commonwealth agency.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Sections 233.5 through 233.16 of the regulation establish the implementation procedures.

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(28) 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.

No special provisions have been developed.

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FOR FILING DOCUMENTS
WITH THE
LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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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. 18-415

DATE OF ADOPTION _____

BY Allen D. Beckler
Secretary of Transportation

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

BY Andrew C. Clark

JUL 19 2010

(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.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF TRANSPORTATION

Title 67. Transportation

PART 1. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 233

**TRANSPORTATION ENHANCEMENT GRANTS FROM AUTOMATED RED LIGHT
ENFORCEMENT SYSTEM REVENUES**

TITLE 67. TRANSPORTATION
PART 1. DEPARTMENT OF TRANSPORTATION
SUBPART A. VEHICLE CODE PROVISIONS
ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT
CHAPTER 233
TRANSPORTATION ENHANCEMENT GRANTS FROM AUTOMATED
RED LIGHT ENFORCEMENT SYSTEM REVENUES
NOTICE OF FINAL RULEMAKING

Preamble

The Department of Transportation (Department), Bureau of Highway Safety and Traffic Engineering, under 75 Pa.C.S. §3116 (relating to automated red light enforcement systems in first class cities) proposes to add Chapter 233(relating to transportation enhancement grants from automated red light enforcement system revenues) as set forth in Annex A.

Purpose of this Chapter

The purpose of this Chapter is to implement 75 Pa.C.S. §3116(1)(2)) which requires the Department to develop, by regulation, a Transportation Enhancements Grant Program (Program) for the use of revenue generated from automated red light enforcement systems.

Summary of Comments and Changes in Final Adopted Regulation

The amendments to the regulation were published as a proposed rulemaking in the August 1, 2009 issue of the Pennsylvania Bulletin. The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees of the Pennsylvania General Assembly.

Comments were received from the Honorable Representative Richard A. Geist, Minority Chair of the House Transportation Committee, the Pennsylvania State Association of Township Supervisors (PSATS), the City of Philadelphia, the Philadelphia Parking Authority (PPA), the Honorable George Kenney State Representative Emeritus, and IRRC. All of the responses received related to the distribution of revenues received from fines levied through the Automated Red Light Enforcement (ARLE) pilot program for the funding of grants under this proposed rulemaking. Two distinct positions for the distribution of grant funds appeared in the comments. One position taken by the City of Philadelphia, the PPA, and State Representative Emeritus Kenney, suggests that insofar as all of the money is generated in the City of Philadelphia, it should be distributed to fund grants in the place of origin, i.e. Philadelphia. The other position, taken by the Representative Geist and PSATS, suggests that the intent of the General Assembly in directing the Department to establish this grant program was to establish a statewide program with all municipalities eligible for a Transportation Enhancement Grant. IRRC, in its comments, urged that the Department address the issue and explain how the grants will be geographically distributed.

The Department also participated in a House Transportation Committee Hearing on the ARLE Program in which the City of Philadelphia and the Philadelphia Parking Authority also participated. The opposing positions were again aired at the hearing.

In response to the divergent positions regarding the distribution of grants, the Department has included in the Final Rulemaking a new subsection — § 233.8(g) — distributing the grant funds in a manner patterned somewhat after the methodology in 42 Pa. C.S. § 3571(b)(3) for the disbursement of fines collected for convictions of violation of provisions of the Vehicle Code. The new section in the regulation provides that the local government in which a violation was prosecuted will be entitled to 50% of the total grant revenues generated by that local government through the Automated Red Light Enforcement (ARLE) Program. The remaining 50% of the grant revenues generated by the ARLE Program will be available for grants to any eligible sponsor, including those governments generating the revenues. The Department believes this approach strikes a balance between the opposing positions voiced in the comments to the proposed rulemaking and at the House Transportation Committee hearing.

In its comments, IRRC also suggested revisions to the definitions of “Sponsor” and “Secretary” contained in Section 233.2. The suggested modification to the definition of “Sponsor” is not necessary in light of the new subsection (g) in § 233.8 noted above. The definition has been amended, however, to replace the term “authority” with “government.” The definition of “Secretary” has been removed as recommended because the term is not used in the regulation.

Consistent with its comment that all revenues generated in Philadelphia by the use of ARLE should be allocated to Philadelphia, the City of Philadelphia commented that the terms “Highway” and “Sponsor” are too broadly defined in the regulation. Insofar as the Department has clarified and refined the distribution of ARLE grant revenues, the Department respectfully retains the current definitions and use of these terms.

IRRC commented in Section 233.5 that the Department should limit the current language of “other information” to information pertaining only to the project being considered. The Department has revised Section 233.5 accordingly to reflect this limitation.

IRRC commented in Section 233.6 that the phrase “in a timely fashion” is too vague and should be replaced with a definite time frame. The Department has revised Section 233.6 to indicate that technically incomplete applications will have to be completed within three weeks after the close of the application period.

PSATS also raised concerns regarding Section 233.8, noting that the section could be interpreted to mean that the award of a grant during the “next fiscal year” required the project to be completed during the next fiscal year as well. It was also noted that the section include a specific timeframe for the Department to make decisions on the award of grants. In response to this comment, the Department notes that it was not the intention in the Proposed Rulemaking to require that projects be completed within the same fiscal year that a grant was awarded. To clarify further, the Department has modified the language in § 233.9(d) of the Final Rulemaking to clarify that the time frame for the

completion of a funded project will be determined as a condition of the grant. The Department notes that § 233.5(c)(6) requires the applicant to submit a proposed schedule for the completion of the project as part of the application. It should be understood that the proposed schedule in the application will be taken into consideration in determining the timeframe established as a condition of the grant. With regard to establishing a more specific time period for the Department to evaluate the grant applications and make grant awards, the Department respectfully declines to do so. The number and variety of applications that will be submitted in any given year is an unknown; the Department cannot commit to a specific time frame with the limited resources it will have to administer the program. The Department has, however, amended § 233.8(a) to provide that grant offers will be made during the calendar year in which applications are submitted.

IRRC commented that the phrase “and other factors,” in Section 233.8(c), be removed from this section urging that all of the factors should be spelled out in subsections (d) and (e). The Department agrees and has modified Section 233.8(c) appropriately. IRRC also commented that in Section 233.8(d)(8) the wording “other criteria which the Department determines should be considered” was unspecific and raised the possibility of approval or denial of a grant based on criteria outside the parameters of the regulation. IRRC recommended that the subsection be deleted. The Department believes that, with respect to any given grant application, there may be other factors to also be considered. The Department has, therefore, modified this subsection to

provide more clarification and indicate that traffic safety and mobility priorities may also be considered.

IRRC commented in Section 233.11(a)(5) that the phrase “the standards of this chapter” is vague and should be modified to more clearly define the intent. The Department has modified the subsection to clearly delineate that the applicable time frame after which the return of interest earned on payments made would be required will be specified in the terms and conditions of the grant agreement.

Additional clarification was made to § 233.11(a)(3) as to the purpose for requiring adequate accounting records.

Persons and Entities Affected

This proposed rulemaking affects various entities involved with the current automated red light enforcement program within the City. These include the City, who is the only permissible host community for automated red light enforcement based on the enabling legislation; the Philadelphia Parking Authority, who is the designated system administrator in the enabling legislation; and the Traffic Engineering Division of the City of Philadelphia, Department of Streets, who owns, operates, and maintains the traffic signals at which automated red light enforcement systems are installed within the City.

Other affected entities are sponsors that choose to apply for, or receive, a transportation enhancement grant under the provisions of the proposed regulations. These include local authorities (county, municipal, and other local boards or bodies

having authority to enact laws relating to traffic), metropolitan planning organizations, rural planning organizations, county planning organizations, or Commonwealth agencies.

The Department is certainly affected since it will be administering the Transportation Enhancements Grant Program established by the proposed regulations. Section 3116 of the Vehicle Code defines various other Department roles and responsibilities related to the automated red light enforcement program. The Department is also affected by virtue of the fact that most of the automated red light enforcement system equipment is installed on State-designated highways.

In the future, other local authorities would be affected if the Vehicle Code is amended to permit automated red light enforcement systems in other Commonwealth jurisdictions beyond the City.

Fiscal Impact

The proposed regulations will not require the expenditure of significant additional funds by the Commonwealth or any other entity. The revenue for the Program comes from the collection of fines from red light running violators. Almost all of these violations would not have been detected without the automated system or a large, ongoing expenditure to provide significant police presence for expanded, conventional enforcement efforts.

Entities seeking a grant would need to prepare a grant application. The recordkeeping and payment procedures prescribed in the proposed regulations would

need to be followed by entities that accept a grant offer from the Department. While local governments may, therefore, incur some marginal cost in the application and grant process, no local entity is compelled to apply for a grant. In addition, while grants can also be used for a portion of a larger project if other funding sources are secured, no matching local funds are required to obtain a grant under the program. Consequently, the program does not per se result in any additional costs to local governments.

The Department would have various program administration and oversight duties. These include the review of grant applications, the selection of projects to be funded via grants, grant agreement processing, reviews of submissions, project reviews and inspections, and related activities. These costs are not significant at the present level of the program, but could become significant if the program were to expand with the use of ARLE systems statewide.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on July 21, 2009, the agency submitted a copy of this proposed rulemaking on July 21, 2009, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees (Committees) for review and comment. In preparing this final-form regulation, the Department has considered all comments received from the public, IRRC and the Committees.

Effective Date

The Department of Transportation will make these regulations effective upon publication in final form.

Sunset Date

The Department of Transportation is not establishing a sunset date for this rulemaking, since this rulemaking to administer provisions required by the Vehicle Code. The Department of Transportation, however, will continue to closely monitor this rulemaking for its effectiveness.

Contact Person

The contact person is Daryl R. St. Clair, P.E., Acting Director, Bureau of Highway Safety and Traffic Engineering, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120-0064, (717) 787-7350.

Order

The Department of Transportation orders that:

- (A) The regulations of the Department of Transportation, 67 Pa. Code, Chapter 233 are amended as set forth in Annex A.

- (B) The Secretary of the Department of Transportation shall submit this Order and Annex A hereto 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 1. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 233

TRANSPORTATION ENHANCEMENT GRANTS FROM AUTOMATED RED
LIGHT ENFORCEMENT SYSTEM REVENUES

§ 233.1. Purpose.

This chapter sets forth requirements and criteria relating to transportation enhancement grants from automated red light enforcement system revenues.

§ 233.2. Definitions.

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

Automated red light enforcement system—A vehicle sensor installed to work in conjunction with a traffic-control signal which automatically produces one or more recorded images of a vehicle at the time the vehicle is used or operated in a manner which is a violation under 75 Pa.C.S. § 3112(a)(3).

Department—The Department of Transportation of the Commonwealth.

Director—The Director of the Center for Program Development and Management of the Department.

Grant—An offer of funding assistance from the Department to a sponsor for a project governed by this chapter.

Highway—

(i) The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(ii) The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historic park.

Local ~~authorities~~ GOVERNMENT—County, municipal, and other local boards or bodies having authority to enact laws relating to traffic.

Official traffic-control devices—Signs, signals, markings, and devices not inconsistent with 75 Pa.C.S. (relating to Vehicle Code) placed or erected by authority of a

public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

Recorded image—An image recorded by an automated red light enforcement system on a photograph, a digital image, or any other image-capture technology.

~~Secretary—The Secretary of Transportation of the Commonwealth.~~

Sponsor— A local authority GOVERNMENT, metropolitan planning organization, rural planning organization, county planning organization, or Commonwealth agency applying for, or receiving, a transportation enhancement grant under this chapter.

Traffic—Pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances, whether singly or together, using any highway for purposes of travel.

Traffic-control signal—A device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

Vehicle—

(i) Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

(ii) The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.

§ 233.3. Eligibility requirements and criteria.

(a) The minimum requirement for eligibility to apply for a transportation enhancement grant under this Chapter is that the project shall involve improvement to highway safety and mobility within this Commonwealth.

(b) It is the intent of this grant program to fund worthwhile projects that can be completed at a relatively low cost.

(c) All projects may be considered for a transportation enhancement grant from automated red light enforcement system revenues, with the exception of transportation impact studies and highway improvements that are the responsibility of the applicant for a Department Highway Occupancy Permit.

§ 233.4. Limits of funding.

Grants under this Chapter may cover the entire cost of an eligible project, so matching funds are not required. Grants may also be used for a portion of a larger project if other funding sources are secured.

§ 233.5. Application procedure.

(a) A sponsor shall submit a written request in the form of an application to the Director: Attention — Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues, BUREAU OF PROGRAM DEVELOPMENT AND MANAGEMENT, 400 NORTH STREET; 6TH FLOOR, HARRISBURG, PA 17120, OR E-MAIL ELECTRONICALLY TO: ARLE_Grants@state.pa.us.

(b) The application shall be prepared in accordance with instructions provided by the Department. The application must contain sufficient information to enable the Department to complete its evaluation of the proposed project.

(c) An application must set forth, as a minimum, the following information:

(1) Project description. Provide a general description of the project and the objectives that are desired to be achieved.

(2) Project location. Provide a location map. Clearly identify the beginning and ending points of the project, the associated counties, municipalities, routes, segments, and offsets. Provide a general description of the location of the project and the surrounding area. Indicate roadway type/classification and length of the project in miles. Provide information on annual average daily traffic (AADT).

current roadway geometry (number of lanes), speed limits, adjoining land uses, and number/location of signalized intersections.

(3) *Official traffic-control device description.* For projects involving official traffic-control devices, briefly describe the existing official traffic-control devices.

(4) *Project justification.* Outline why this project is being nominated for this grant program and the benefits that would be obtained.

(5) *Potential improvements and cost.* Provide a description of the potential improvements, and their associated estimated costs. Estimated costs should be as detailed and accurate as possible, and include all aspects of the project (design, construction, and the like).

(6) *Schedule.* Provide information that indicates the timeframe necessary to complete the project. Indicate whether the project can be completed during 1 year or if it would be a multiyear project.

(7) *Other programmed projects.* Describe any other improvement projects that are in the vicinity of the proposed project and have been programmed on the Regional Transportation Improvement Program (include location, timeframe, cost, and the like).

(8) Anticipated development. Describe any known major developments that are anticipated within the next 10 years in the vicinity of the proposed project.

(9) Professional engineer. Identify the professional engineer or consulting engineering firm that will provide engineering services for the project.

(10) Contact person. Provide the name, address, telephone number, and e-mail address of a contact person for the sponsor.

(11) Other information. The sponsor shall provide any other information RELATED TO THE PROJECT that the sponsor believes may justify the project or that is requested by the Department.

(d) The sponsor shall complete the application and submit it before the deadline under § 233.6 (relating to deadline for applications).

§ 233.6. Deadline for applications.

(a) Applications for transportation enhancement grants under this chapter will be considered on an annual basis. From the completed applications on file for a given year, projects will be selected for grants. Applications on file, but incomplete, may be excluded from consideration for grants in that year.

(b) DURING THE INITIAL YEAR OF THE GRANT PROGRAM, SPONSORS MAY SUBMIT A COMPLETED APPLICATION WITHIN THE TIME PERIOD ESTABLISHED BY THE DEPARTMENT BY NOTICE IN THE *PENNSYLVANIA BULLETIN*. IN YEARS FOLLOWING THE INITIAL YEAR OF THE GRANT PROGRAM, Sponsors may submit a completed application for a transportation enhancement grant under this chapter beginning on June 1 of each year until the close of business on June 30 of that year.

(c) If the deadline for applications occurs on a weekend or legal holiday when Commonwealth offices are closed, the deadline will be the close of the next business day.

(d) The Department may consider applications for transportation enhancement grants under this chapter which may be technically incomplete on the application deadline, but which are made complete in a timely fashion WITHIN THREE WEEKS OF THE CLOSE OF THE APPLICATION PERIOD.

§ 233.7. Public records.

An application for a transportation enhancement grant under this chapter will be considered a public record at the time of filing, and will be made available for inspection.

§ 233.8. Grant selection process and criteria.

(a) Consideration. Following the closing date for receipt of applications, properly completed applications filed within the application period will be considered for funding during the next fiscal year GRANTS TO BE AWARDED DURING THE CURRENT CALENDAR YEAR.

(b) Additional information. If it is determined that an application is incomplete and that additional information is necessary, the sponsor shall provide that additional information to allow further consideration of the application.

(c) Review by Director. The Director will review and evaluate applications with respect to applicable criteria for project funding, available funds, AND current priorities for traffic safety and mobility, ~~and other factors.~~

(d) Criteria used in review. In considering an application, the Director will give weight and consideration to the following criteria:

(1) The sponsor's past maintenance and operational history for traffic-control signals, official traffic-control devices, or other items of work that are project components.

(2) The anticipated benefits of the project considering traffic safety benefits, mobility benefits and delay reduction, energy savings, and greenhouse gas reductions.

- (3) The estimated cost of the project.
- (4) The local and regional impact of the project.
- (5) The results of similar types of projects that have already been completed.
- (6) The results of previous projects completed by the sponsor.
- (7) Cost sharing by sponsor or other entities.
- (8) Other criteria which the Department determines should be considered
DEPARTMENT TRAFFIC SAFETY AND MOBILITY PRIORITIES.

(e) Discretion in evaluation. In consideration of the various criteria applicable to the review of an application, the Department may take into account unique or special factors that may arise in the administration of the grant program.

(f) Debriefing. At the request of a sponsor, the Department will conduct a debriefing with a sponsor whose application has been denied.

(G) DISTRIBUTION OF GRANT FUNDING. DISTRIBUTION OF GRANT FUNDING SHALL BE AS FOLLOWS:

(1) 50% OF THE GRANT REVENUES GENERATED THROUGH AN AUTOMATED RED LIGHT ENFORCEMENT PROGRAM WILL BE USED EXCLUSIVELY FOR FUNDING OF TRANSPORTATION ENHANCEMENT GRANTS IN THE LOCAL GOVERNMENT ENTITY IN WHICH THE VIOLATION WAS PROSECUTED.

(2) THE REMAINING 50% OF THE GRANT REVENUES GENERATED THROUGH THE AUTOMATED RED LIGHT ENFORCEMENT PROGRAM WILL BE AVAILABLE FOR FUNDING OF TRANSPORTATION ENHANCEMENT GRANTS TO ELIGIBLE SPONSORS THROUGHOUT THE COMMONWEALTH.

§ 233.9. Offer and acceptance of a grant.

(a) Issuance of grant offers. The Department will, in writing, notify each sponsor who has submitted an application whether or not they will receive a grant offer.

(b) Grant agreement. A grant offer issued to a sponsor will describe any specific grant conditions and include such conditions as terms in the accompanying grant agreement.

(c) Grant conditions. The Department may or may not fully fund the entire cost of the project; the grant agreement will specify the total amount to be funded under the grant offer, the scope of the project, and the items of work to be included, AND AN

ANTICIPATED PROJECT COMPLETION DATE. The Department may also require sponsors to conduct before and after studies to determine project effectiveness.

(d) Acceptance. A sponsor who has received a grant offer shall, within 30 days indicate, by registered mail, acceptance of the offer.

(1) Acceptance of an offer is not binding on a sponsor until the execution of the grant agreement between the Department and the sponsor.

(2) Failure of a sponsor to indicate acceptance of the terms of an offer within the 30-day response period will be considered as a rejection of the offer and withdrawal of the application.

(e) Discretion of Department. Unless otherwise restricted by statute, the Department has absolute discretion in the selection of projects and in the determination of funding levels, priorities, critical project selection criteria, project phasing, project design and specifications, and performance criteria.

(f) Amendments to projects. In the consideration of an application, the Department may determine that a proposed project should be amended to accommodate available funding, application traffic design criteria, anticipated use, or to better accommodate potential user needs. The Department may offer a transportation enhancement grant

under this chapter for a project whose cost, specifications, terms, or scope have been modified by the Department.

(g) Consultation does not insure offer. In the event that the Department confers with a sponsor to amend a proposed project, the sponsor should understand that consultation and amendment does not insure that an offer will be made.

§ 233.10. Standards, methods, techniques, designs, and special conditions.

(a) The Department reserves the right to specify or make determinations as to the standards, methods, techniques, designs, and dimensional criteria acceptable in projects funded by transportation enhancement grants under this chapter.

(b) The design and construction of an approved project are subject to the review and approval of the Department, including costs, materials, plans, specifications, and design and operational details.

(c) Failure to meet special conditions, performance criteria, or specifications may result in the withdrawal of the transportation enhancement grant, disqualification from future consideration for a transportation enhancement grant under this chapter, or declaration of a sponsor to be in default of the terms of the grant agreement.

§ 233.11. Audit and recordkeeping.

(a) General.

(1) A sponsor receiving a transportation enhancement grant under this chapter shall keep records as the Department may prescribe, including records which fully disclose the amount and the disposition by the sponsor of the grant proceeds, the total cost of the plan or program in connection with which the transportation enhancement grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, as well as records that will facilitate an effective audit.

(2) The Department will have access, for the purpose of audit and examination, to books, documents, papers, and records of the sponsor that are pertinent to a transportation enhancement grant issued under this chapter. This includes progress audits during the project.

(3) A sponsor is required to establish and maintain an adequate accounting record for an individual project, which will allow the Department to ~~determine the~~ allowability of ~~VERIFY THE~~ costs incurred for the project.

- (4) A sponsor shall maintain effective control over and accountability for all funds, property, and other assets. Sponsors shall adequately safeguard assets and shall assure that they are used solely for authorized purposes.
- (5) A sponsor shall establish procedures to minimize the time elapsing between the transfer of funds from the Department and the disbursement by the sponsor whenever funds are advanced by the Department. If this elapsed time exceeds the standards of this chapter, TIME FRAME DELINEATED IN THE TERMS OF THE GRANT AGREEMENT the Department may require the return of interest earned on payments made.
- (6) The sponsor shall include, in any contract related to the grant, a clause which allows the Department access to the sponsor's contractor's records for purposes of accounting and audit.

(b) Retention of records.

- (1) A sponsor shall retain, for a period of 3 years after the date of the submission of the final Department payment, documentary evidence such as invoices, cost estimates, and negotiation documents relating to any item of project cost. These documents shall include, but are not limited to, vendor's invoices, applicable purchase orders, receiving reports, inventory records, method of pricing, returns,

catalog cuts, plans, inspection reports, final inspection report showing acceptance of the project, and a record of disposition or correction of unsatisfactory work.

(2) A sponsor shall retain for a period of 3 years after the date of the submission of the final Department payment, evidence of payments for items of project costs including, but not limited to, vouchers, cancelled checks or warrants, and receipts for cash payments.

(3) If audit findings have not been resolved, records shall be retained until the findings have been resolved.

§ 233.12. Inspection.

(a) The Department or an agency of the Commonwealth, or both, or person designated or authorized by the Department has the absolute right to inspect, without notice, the project sites, proposed project sites, records, and construction materials relating to a project funded by a transportation enhancement grant from automated red light enforcement system revenues.

(b) An inspection ordered by the Department or conducted under its authority may include, but not necessarily be limited to, the reproduction and examination of records, the taking of samples applicable to evaluation or project quality control, or the assessment of any factor relevant to a project, application, or contracts and terms related

to the process for transportation enhancement grants from automated red light enforcement system revenues.

(c) A sponsor's denial of access to records, failure to produce records, or obstruction with an inspection may result in withdrawal of the transportation enhancement grant and disqualification from future consideration for a transportation enhancement grant under this Chapter.

§ 233.13 Payment procedures.

Unless otherwise specified by the Department, the following general procedures are to be used for funds from a transportation enhancement grant under this chapter:

- (1) Prior to disbursement of funds, the Department reserves the right to conduct inspections or testing, or to review and audit records or accounts to validate, to the satisfaction of the Department, that disbursement of funds is warranted.

- (2) A sponsor, having received payment or partial payment or reimbursement under a transportation enhancement grant under this chapter, shall make payments, within 30 calendar days from receipt of funds, to vendors and contractors for services and materials properly invoiced under the project.

(3) A sponsor shall forward requests for payment to the Department on the forms provided or in a manner specified by the Department. A request shall include submission of actual cost documentation, consisting of approved contract estimates of work-in-place, approved invoices or other evidence of incurred costs, satisfactory to the Department. The final 10% of the total payment will not be paid by the sponsor until final inspection and approval of the project by the Department.

(4) Payment requests shall be limited to monthly submissions.

§ 233.14 Liability; forfeiture of funds; repayment.

If a sponsor fails to comply with the terms of a transportation enhancement grant issued under this chapter, the sponsor shall immediately reimburse the Department the amount for which a demand is made by the Department.

§ 233.15 Waiver.

(a) *Waiver of requirements.* The Department may waive requirements to submit specific maps, reports, plans, information, or data normally required for a grant application. The waivers may be granted only after written request to the Director and formal written response to the sponsor by the Director prior to submission of the completed application to the Bureau.

(b) Special projects procedures. The Department may develop modified procedures for grant applications pertaining to Department-specified projects funded by transportation enhancement grants under this Chapter

§ 233.16 Appeal.

A person aggrieved by a decision of the Department under § 23314 (relating to liability; forfeiture of funds; repayment) may take an appeal under 2 Pa.C.S. §§ 501 –508 and 701 – 704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

TITLE 67. TRANSPORTATION

PART 1. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 233

TRANSPORTATION ENHANCEMENT GRANTS FROM AUTOMATED

RED LIGHT ENFORCEMENT SYSTEM REVENUES

NOTICE OF FINAL RULEMAKING

List of Commenters

Honorable Representative Richard A. Geist
Minority Chair of the House Transportation Committee
144 Main Capitol Building, P.O. Box 202079
Harrisburg, PA 17120-2079

Pennsylvania State Association of Township Supervisors (PSATS)
Elam M. Herr, Asst. Executive Director
4855 Woodland Drive
Enola, PA 17025-0930

City of Philadelphia
Rina Cutler, Deputy Mayor for Transportation and Utilities
1401 John F. Kennedy Blvd., Suite 1430
Philadelphia, PA 19102-1683

Philadelphia Parking Authority
Vincent J. Fenerty, Jr., Executive Director
3101 Market Street, Second Floor
Philadelphia, PA 19104

The Honorable George Kenney State Representative Emeritus
14020 Trevoise Road
Philadelphia, PA 19116



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 3, 2010

Kim Kaufman
Executive Director
14th Floor Harrisstown 2
333 Market Street
Harrisburg, PA 17101

**Re: Final Rulemaking
Regulation # 18-415, 67 Pa. Code Chapter 233 —
Transportation Enhancement Grants from Automated
Red Light Enforcement Revenues**

Dear Mr. Kaufman:

Enclosed please find a copy of the Face Sheet, Preamble, revised Annex A and Regulatory Analysis Form for the new Chapter 233 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

cc: Natasha S. Schock, Director, Department of Transportation Policy Office

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

I.D. NUMBER: #18-415

SUBJECT: Transportation Enhancement Grants from Automated Red Light Enforcement Revenues, 67 Pa. Code, Chapter 233

AGENCY: Department of Transportation

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

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
8/3	<u>Pat Lahn</u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION The Honorable John C. Rafferty, Jr. Majority Chairman
8/3	<u>Clayton L. Hicks</u> for Minority Chair	The Honorable J. Barry Stout Minority Chairman
8/3	<u>Amanda L. Wolfe</u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION The Honorable Joseph F. Markosek Majority Chairman
8-3-10	<u>Kesley Shupman</u> for Minority Chair	The Honorable Richard A. Geist Minority Chairman
8/3/10	<u>K Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION

Date: August 3, 2010