

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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:

Glenn C. Rowe, P.E., PTOE
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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(1)(2) of the Vehicle Code (75 Pa.C.S. 3116(1)(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: August 31, 2009
- 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: December 31, 2009
- D. The expected effective date of the final-form regulation: December 31, 2009
- E. The date by which compliance with the final-form regulation will be required: June 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

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effectiveness.

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.

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(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.

(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 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. The Transportation Enhancements Grant Program provides an additional revenue source to fund worthwhile projects. While entities must compete for a grant through an application process, entities are not compelled to apply for grants, nor are matching funds required. 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. 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.

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(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 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.

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

(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.

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(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.

(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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(Pursuant to Commonwealth Documents Law)

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

By: Amy M. Elliott

(Deputy Attorney General)

JUL 16 2009

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. Buckler
Secretary of Transportation

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

BY Andrew C. Clark

JUN 24 2009

(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 PROPOSED 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 PROPOSED RULEMAKING

Preamble

The Department of Transportation, Bureau of Highway Safety and Traffic Engineering, pursuant to the authority contained in Section 3116 of the Vehicle Code, Act of October 4, 2002, P.L. 845, No. 123, *as amended* (75 Pa.C.S. 3116) proposes to amend Title 67 of the Department of Transportation regulations by establishing Chapter 233, Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues, as set forth in Annex A to this Notice.

Purpose of this Chapter

The purpose of this Chapter is to implement the provisions of Section 3116(1)(2) of the Vehicle Code (75 Pa.C.S. 3116(1)(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.

Purpose of These Regulations

The purpose of these regulations is to prescribe how the Department will administer a Transportation Enhancements Grant Program for the use of revenue generated from automated red light enforcement systems, pursuant to Section 3116(l)(2) of the Vehicle Code (75 Pa.C.S. 3116(l)(2)).

The Transportation Enhancements Grant Program will be funded by revenues generated from fines paid by violators of Section 3112(a)(3) of the Vehicle Code (75 Pa.C.S. 3112(a)(3)), where the enforcement mechanism is approved automated red light enforcement systems located at signalized intersections approved by the Department.

At the present time, Section 3116 of the Vehicle Code (75 Pa.C.S. 3116) only provides legal authority to implement automated red light enforcement systems within the City of Philadelphia, and it designates the Philadelphia Parking Authority as the "system administrator."

Section 3116(l)(2) of the Vehicle Code (75 Pa.C.S. 3116(l)(2)) allows the system administrator to deduct automated red light enforcement program operation and maintenance costs from fine revenue before remitting the balance to the Department for deposit into the Motor License Fund.

The proposed regulations are written so they will still apply if the Vehicle Code is amended in the future to permit automated red light enforcement systems in other Commonwealth jurisdictions beyond the City of Philadelphia.

Summary of Significant Provisions

The definitions of local authorities and sponsor in Section 233.2 and the information in Section 233.5 indicate that 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 would be eligible to apply for a transportation enhancement grant from automated red light enforcement system revenues.

Section 233.3 indicates that all worthwhile projects that involve improvements to highway safety or mobility may be considered, with the exception of transportation impact studies and highway improvements that are the responsibility of the applicant for a Department Highway Occupancy Permit.

Section 233.4 provides that grants 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.

Section 233.5 describes the application procedure and required information.

Section 233.6 establishes an annual grant application period from June 1st through June 30th.

The criteria to be used in the review of grant applications are set forth in Section 233.8. A debriefing would be available for unsuccessful applicants upon request.

Provisions pertaining to offers and acceptance of a grant, standards and special conditions, audits and recordkeeping, inspections, and payment procedures are addressed in Sections 233.9, 233.10, 233.11, 233.12, and 233.13 respectively.

Persons and Entities Affected

These regulations affect various entities involved with the current automated red light enforcement program within the City of Philadelphia. These include the City of Philadelphia, 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 (75 Pa.C.S. 3116) 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 of Philadelphia.

Fiscal Impact

The proposed regulations will not require the expenditure of 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. 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.

The Transportation Enhancements Grant Program provides an additional revenue source to fund worthwhile projects. While entities must compete for a grant through an application process, entities are not compelled to apply for grants, nor are matching funds required. Grants can also be used for a portion of a larger project if other funding sources are secured.

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.

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.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. § 745.5(a), the agency submitted a copy of these proposed regulations on July 21, 2009 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations, or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations, or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly, and the Governor of comments, recommendations, or objections.

Sunset Date

The Department of Transportation is not establishing a sunset date for these regulations, since these regulations are 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 these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendments to Glenn C. Rowe, P.E., PTOE, 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, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person is Glenn C. Rowe, P.E., PTOE, 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.

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—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. 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—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. § 101 *et seq.* 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, 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—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. 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.

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

(c) An application shall 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 county(s), municipality(s), route(s), 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 limit(s), 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, etc.).

- (6) Schedule – Provide information that indicates the timeframe necessary to complete the project. Indicate whether the project can be completed during one year or if it would be a multi-year 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, etc.).

- (8) Anticipated Development – Describe any known major developments that are anticipated within the next ten 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 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) 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.

§ 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.

(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, 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.
- (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.

§ 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. 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 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, 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 § XXX.14 (relating to liability; forfeiture of funds; repayment) may take an appeal under 2 Pa.C.S. § § 501 –508 and 701 – 704 (relating to practices and procedure of Commonwealth agencies and judicial review of Commonwealth agency action) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 21, 2009

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

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

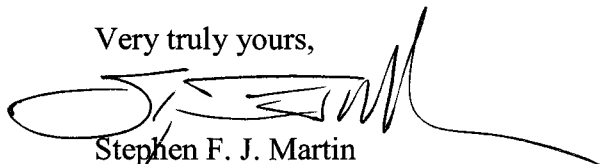
Dear Mr. Kaufman:

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



Stephen F. J. Martin
Regulatory Counsel

cc: Danielle J. Guyer, Governor's Office of the Budget w/o attachments
Judith Bailets, Staff Assistant, Governor's Policy Office w/o attachments
Danielle K. Spila, 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

- X 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
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7/21/09	<u><i>J. Merrick</i></u> for Majority Chair Hon. Robert C. Wonderling	SENATE COMMITTEE ON TRANSPORTATION
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7/21/09	<u><i>M. Flaherty</i></u> for Minority Chair Hon. J. Barry Stout	
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	<u><i>Tara Lueil</i></u> for Majority Chair Hon. Joseph F. Markosek	HOUSE COMMITTEE ON TRANSPORTATION
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7/21/09	<u><i>A. Weaver</i></u> for Minority Chair Hon. Richard A. Geist	
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7/21/09	<u><i>A. Belmont</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
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7/21/09	<u><i>N. Lathrop</i></u>	LEGISLATIVE REFERENCE BUREAU
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Date: July 21, 2009

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 JUL 21 PM 3:50

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