

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

2007-11-14 2:11

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IRRC

(1) Agency: Transportation

(2) Agency Number:

Identification Number: 18-420

IRRC Number: 2922

(3) PA Code Cite: 67 Pa. Code, Chapter 427

(4) Short Title: Public Transportation – Sustainable Mobility

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

Primary Contact: Toby Fauver, Deputy Secretary for Local and Area Transportation, Pennsylvania Department of Transportation, 400 North Street, Harrisburg, Pa 17105, 717-705-4231, tfauver@state.pa.us

Secondary Contact: LaVerne Collins, Director, Bureau of Public Transportation, Pennsylvania Department of Transportation, 400 North Street, Harrisburg, PA 17105, 717-787-1214, lcollins@state.pa.us

(6) 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

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

The purpose of this Chapter is to implement the provisions of the Act of July 18, 2007, P.L. 169, No. 44, 74 Pa. C.S. §§ 1501 through 1520, as required by Section 1505 of the legislation. The regulation provides guidance for the application for, and awarding of financial assistance to public transportation entities, local match funding requirements, restriction on the use of capital and operating funds, establishment of minimum system performance criteria, and the impact of performance on future funding. The regulation also delineates requirements for procurement undertaken by the regulated entities.

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

Section 1505 of Act 44 of 2007, 74 Pa. C.S. §1502 provides the authority for the promulgation of this regulation.

(9) 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.

The regulation is mandated by Section 1505 of Act 44 of 2007, 74 Pa. C.S. §1502. Authority to promulgate the Temporary Regulation expired two years following the effective date of the legislation. Section 1505 requires promulgation of a permanent regulation following the promulgation of the Temporary Regulation.

(10) 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.

Act 44 of 2007 revamped the legislative authority and formulae for funding public transportation. As authorized by the Act, the Department promulgated Temporary Regulation to formally implement the provisions of the legislation and assure compliance by public transportation organizations in using the financial assistance that is annually provided. Experience under the Temporary Regulation has resulted in the identification of sections in the regulations that should be clarified, strengthened or otherwise amended to better implement the provisions of the Act.

The Commonwealth of Pennsylvania, public transportation passengers, and the public transportation organizations that receive funding will benefit from the effective use of the funds provided. The specific benefits will vary by entity, and cannot be quantified until the required periodic performance reviews are conducted and recommended actions are implemented and assessed.

(11) 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.

Yes. These regulations reflect the Commonwealth's interest in performance, in the efficient and effective use of Commonwealth investments in public transportation and the Commonwealth's responsibility to monitor public transportation systems receiving these funds. For existing public transportation systems, there are no performance criteria or minimum performance standards.

The Commonwealth annually provides approximately \$3 for every \$1 that the Federal Transit Administration (FTA) annually provides for transit operating and capital assistance (i.e., \$1 to \$1.2 billion in Commonwealth funds versus \$400 million in federal funds), it is appropriate for the proposed Regulation to be more stringent than the Federal regulations and requirements.

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

This regulation relates to the provision of public transportation within the Commonwealth. There is no competition with other states in the provision of intrastate public transportation.

(13) 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 Department regulations or the regulations of any other Commonwealth agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Representatives of the Pennsylvania Public Transportation Association (PPTA), were directly involved in the development of the temporary regulation, in particular the proposed performance study requirements, and were offered an opportunity to comment on the proposed Regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This regulation was submitted as a Proposed Rulemaking prior to the enactment of the amendments to the Regulatory Review Act, Act 76 of 2012.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All urban, rural, community transportation, intercity bus and intercity rail systems that receive funding under the enabling legislation will be required to comply with the regulations. There are presently 37 public fixed route transportation systems, 34 public community transportation systems, six intercity bus operators and one intercity rail system eligible for funding under the enabling legislation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Commonwealth of Pennsylvania, public transportation passengers, and the public transportation organizations that receive funding will all benefit from the effective use of the public transit funds that will result from the promulgation of this regulation. The specific benefits will vary by entity, and cannot be quantified until the required periodic performance reviews are conducted and recommended actions are implemented and assessed.

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

The required transit system performance reviews are expected to result in a combination of cost savings and revenue enhancements. Potential cost savings include reduced labor costs, reduced operating costs and reduced legacy costs. Potential revenue enhancements include increased fare revenue and increased advertising revenue. The dollar amounts of these projected benefits will vary by entity and cannot be determined until the system performance reviews are actually conducted, performance recommendations are implemented and changes are evaluated.

The accountability and resulting efficiencies effected by this regulation clearly outweigh the minimal costs or adverse effects that may result from promulgation of the regulation.

(19) 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.

There should be no additional costs to the regulated community imposed by this regulation. Performance reviews will be conducted by the Department. Therefore, there should be no cost to the transit systems/local transportation organizations.

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

There should be no costs or savings to local governments related to compliance with these regulations.

(21) Provide a specific estimate of the costs and/or savings to the **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.

The estimated cost to the Commonwealth for the performance reviews is \$4 million for the five year period needed to conduct all 37 system reviews — an average annual cost of \$800,000 per year.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

N/A

(23) 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	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government	\$800,000	\$800,000	\$800,000	\$800,000	\$800,000	\$800,000
Total Costs	\$800,000	\$800,000	\$800,000	\$800,000	\$800,000	\$800,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State Public Transportation Assistance Program	\$1.219 billion	\$1.231 billion	\$1.082 billion	unknown

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This regulation was submitted as a Proposed Rulemaking prior to the enactment of the amendments to the Regulatory Review Act, Act 76 of 2012.

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

No special provisions were developed to meet the particular needs of affected groups or persons.

(26) 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.

Since the Temporary Regulation was promulgated, the Department's experience with managing the public transportation programs authorized by the Act indicates that additional clarification is needed in several areas. The Regulation further defines eligible sources of local matching funds, and additional requirements associated with using advertising revenue, route guarantee funds and private sources of local match. In addition, the original financial review procedures are being revised to more appropriately assign responsibilities to the grantee and to the Department. The proposed Regulation is limited to the areas where additional legislative clarification and guidance are most needed to help assure grantee compliance with the purposes for which financial assistance is being provided. The areas not covered by these regulations can be addressed by Department policies and procedures to minimize the burden to grantees. The proposed Regulation represents the least burdensome alternative that could have been selected given the requirement in the enabling legislation that the Department promulgate regulations to help assure that the financial assistance that is being annually provided is being used efficiently and effectively.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This regulation was submitted as a Proposed Rulemaking prior to the enactment of the amendments to the Regulatory Review Act, Act 76 of 2012.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data was not the basis for this regulation.

(29) 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: 03/01/14
- D. The expected effective date of the final-form regulation: 03/01/14
- E. The date by which compliance with the final-form regulation will be required: 03/01/14
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will be conducting performance reviews of transportation organizations on a regular basis and through that process can continually evaluate the effectiveness of this regulation.

**FACE SHEET
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WITH THE
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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: _____
(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. 18-420

DATE OF ADOPTION _____

BY [Signature]
Secretary of Transportation

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

[Signature]
BY

SHAWN E. SMITH

DEC 09 2013
(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 I – Department of Transportation
Subpart B. Nonvehicle Code Provisions
Article II – Mass Transit
Chapter 427 – Public Transportation – Sustainable Mobility**

TITLE 67, TRANSPORTATION

Part I – Department of Transportation

Subpart B. Nonvehicle Code Provisions

Article II – Mass Transit

Chapter 427 – Public Transportation – Sustainable Mobility

Final Rulemaking

Preamble

The Department of Transportation, Bureau of Public Transportation, pursuant to the authority contained in Section 1505 of the Act of July 18, 2007, P.L. 169, no. 44, 74 Pa. C.S. §1505 (“the Act”), hereby adopts amendments to Title 67 of the Department of Transportation regulations by amending Chapter 427, Public Transportation – Sustainable Mobility to read as set forth in Annex A.

Purpose of this Chapter and these Amendments

The purpose of this Chapter is to implement the provisions of the Act of July 18, 2007, P.L. 169, no. 44, 74 Pa. C.S. §§ 1501 through 1520 (the Act), as required by Section 1505 of the legislation. Section 1505 directed the Department of Transportation to promulgate temporary regulations within two years of the effective date of the legislation, by July 18, 2009, and thereafter to promulgate permanent regulations. The Department has used the period during which the temporary regulations have been effective to test and refine the regulations to assure compliance in carrying out the purposes for which the Act provides financial assistance for public transportation services and infrastructure in Pennsylvania. These amendments are the result of that experience under the temporary regulations

Summary of Comments and Changes in the Final Adopted Regulation

The amendments to the regulations were published as a proposed rulemaking in the November 12, 2011 issue of the *Pennsylvania Bulletin*. The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Transportation Committees of the General Assembly.

No comments were received from the public or the Committees.

The IRRC provided comments as follows:

First, IRRC noted that, insofar as this promulgation of permanent regulations is intended to supplant the temporary regulations promulgated pursuant to the statute, that the rulemaking designate the full text of the regulation in compliance with IRRC regulations at 1 Pa. Code § 307.3a. The Department will comply and the full text of the Chapter will be formatted in accordance with the IRRC regulations.

Second, IRRC noted that in Section 427.4(a)(6) of the Department rulemaking, the term “swaptions” was used. IRRC recommended that the term either be defined or deleted. The term has been deleted. IRRC also noted that in (b)(4) and (c)(3) the phrase “schedules as required by the Department” was vague and should be clarified. The provisions have been clarified to refer to “supplemental audit schedules” required by the Department.

IRRC also noted that in section 427.5(b) of the rulemaking, the phrase “failure to comply with any applicable requirement” could result in ineligibility for future funding. IRRC found the phrase to be vague and recommended that it be clarified. The provision has been amended to make clear that what grantees must adhere to in order to avoid ineligibility for future funding

are the “procurement requirements” which are applicable; which requirements are applicable will be dependent on whether the source of funding is federal, state or local.

In section 427.6(a)(3), IRRC noted that shorthand references to various provisions of the enabling statute were unclear. The substance of this section is to provide that request for approval of the use of operating funds for capital assistance must be supported by written justification documenting that the required level of funds transferred is needed to fund a capital project that cannot be funded from any other available source of State capital assistance. The shorthand references merely provided examples of other such other potential sources of capital assistance. The Department has determined that the list is unnecessary and it has been deleted.

IRRC also asked for clarity in section 427.7 with respect to the audit standards to be applicable under the rulemaking. The Department has clarified this section to refer specifically to the Generally Accepted Accounting Procedures (GAAP) which are the standard in the accounting industry. In subsection 427.7(a)(4)(v), IRRC again found the phrase “supplemental schedules as required by the Department” to be vague. The stand-alone provision has been determined to be unnecessary and has been deleted.

In response to further IRRC comments, in section 427.11, the reference to “section 1513 operating assistance funds” was clarified to refer to “operating assistance funds under 74 Pa. C.S. § 1513.

Finally, with reference to section 427.12 of the rulemaking, IRRC requested a specific website reference for the performance review policy and recommended that the performance review process be included in the rulemaking. The rulemaking as proposed delineates in considerable detail, in § 427.12, the elements and methodology of reviews of the performance of transportation organizations under the act and the rulemaking. Establishing the review

procedures themselves in the regulation would eliminate all flexibility or discretion in the Department to allocate staff resources and time to the review process and would unnecessarily subject any identified need to tweak or adjust the procedures to the lengthy and time consuming regulatory review process. The interests of the transportation organizations and the public in having an knowable and transparent review of performance are amply protected in the detailed elements and methodologies already delineated in the rulemaking. At the suggestion of the IRRC, however, the Department has included a link in the rulemaking to the performance review policy guidance of the Department for performance reviews.

Persons and Entities Affected

These regulations affect various private and public entities involved the provision of public transportation services through the Commonwealth.

The Department of Transportation is affected as the administrator of the funding provided under the Act.

Fiscal Impact

The regulation as amended will not require any additional expenditure of funds by the affected entities or by the Commonwealth.

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), on November 1, 2011, the Department submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 6089, to the Independent

Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees for review and comment. No comments were received from the public or from the Committees.

In preparing this final-form regulation, the Department has considered all comments received from the IRRC.

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 Act (74 Pa.C.S. §1501 et seq.) The Department of Transportation, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person is Laverne Collins, Director, Bureau of Public Transportation, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0064, (717) 787-1214

Order

The Department of Transportation orders that:

- (A) The regulations of the Department of Transportation, 67 Pa Code, Chapter 427 are amended as set forth in Annex A.

- (B) The Secretary of the Department of Transportation shall submit this order and Annex A hereto to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.
- (C) The Secretary shall certify this Order and Annex A and deposit the same with the Legislative reference Bureau, as required by law.
- (D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

Barry J. Schoch, P.E.

Secretary of Transportation

TITLE 67, TRANSPORTATION

Part I – Department of Transportation

Subpart B. Nonvehicle Code Provisions

Article II – Mass Transit

Chapter 427 – Public Transportation – Sustainable Mobility

Final Rulemaking

Annex A

GENERAL REQUIREMENTS

§ 427.1. Definitions.

(a) The terms and definitions in 74 Pa. C.S. § 1503 (relating to definitions are adopted herein as if fully set forth.

(b) In addition, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act – 74 Pa. C.S. Chapter 15 (relating to sustainable mobility options).

Department – The Department of Transportation of the Commonwealth.

Route guarantee – A conditional commitment, either express or implied, by a private or public entity to a local transportation organization to provide financial compensation in return for the provision of public transportation service to a designated area or destination which would not be served without the financial compensation.

§ 427.2. Purpose.

The purpose of this chapter is to implement the act which requires the Department to initiate and maintain a program of financial and performance review and oversight for all

programs receiving financial assistance under the act.

§ 437.3 Application procedure.

(a) Local transportation organizations shall apply for funding under this chapter using the Department's electronic grants management system.

(b) Local transportation organizations shall supply the information and documentation requested by the department.

§ 427.4. Local matching funds.

(a) Eligible sources for required annual local matching funds.

(1) For a private transportation company receiving grants directly from the department under the act, eligible annual local matching funds shall only consist of contributed cash income that was generated by the transportation company from its nonsubsidized activities.

(2) Except for those local transportation organizations using [private sources of] local matching funds from private third-party contractors prior to the enactment of the act, eligible sources of local matching funds for a local transportation organization shall be cash contributions provided by one or more municipalities or private entities in accordance with paragraphs (1) and (10).

(i) The total amount of municipal local match cash contributions for operating assistance cannot be less than the total amount of municipal local match cash contributed in the prior fiscal year

(ii) If the required local match is 15% of the State funding for operating assistance, the municipal local match contribution can be reduced proportionate to any reduction in State operating assistance funding.

(3) Advertising revenue may be considered an eligible source of local matching funds for operating assistance grants if the municipalities responsible for providing all of the local matching funds annually pass a resolution which does the following:

(i) Acknowledges their responsibility for providing the local matching funds.

(ii) Agrees to offset any shortfall in advertising revenue received during the fiscal year which results in insufficient local matching funds.

(iii) Acknowledges that any reduction in service or increase in fares due to the net loss of operating revenue associated with the use of advertising revenue as local match is the responsibility of the municipalities which provide local match.

(4) If a shortfall in advertising revenue causes the local transportation organization to obtain less than its required operating assistance local matching funds in any fiscal year and the municipality does not offset the shortfall to bring the local match to the minimum required for State operating assistance funding, the following apply:

(i) Advertising revenue will no longer be considered an eligible source of local matching funds for the affected local transportation organization in future fiscal years.

(ii) The State operating assistance funding for the fiscal year in which the shortfall occurs will be prorated in accordance with subsection (e)(4).

(5) All categories of local transportation organization operating revenue, including passenger fares; public or private payments provided in lieu of fares including route guarantees (unless the route guarantee revenue is allowed as local match in accordance with paragraph (9)); charter or school bus revenue; advertising revenue (unless the advertising revenue is approved for use as local match in accordance with paragraph (3));

and interest income or other miscellaneous sources of revenue do not constitute eligible sources of local matching funds.

(6) Local bonds issued by local transportation organizations and guaranteed in whole or in part by State funding sources, including interest arbitrage instruments such as “swaptions,” do not constitute eligible sources of local matching funds for State grants.

(7) Income generated from the subsidized public passenger transportation service is not eligible to be used as a source of local matching funds.

(8) For a local transportation organization using funds provided by a private third-party contractor as a source of local matching funds prior to the enactment of the act, the following apply with regard to operating assistance:

(i) Local matching funds equal to the local matching funds provided by third-party contractors in State Fiscal Year 2009-10 may continue to come from private third-party contractor sources provided the following requirements are met. The private third-party contractor source of local matching funds must:

(A) Segregate finances for all business entities.

(B) Maintain separate accounting records for each business entity.

(C) Submit an independently prepared audit for each business entity.

The audit must clearly identify revenue sources used for local matching funds.

(ii) Local matching funds in excess of the local matching funds provided in State Fiscal Year 2009-10 must be provided in accordance with paragraph (2). Funding from private third-party contractor sources is not eligible for this portion of the local matching funds.

(iii) If the amount of local matching funds provided by the private third-party contractor is ever decreased to an amount less than the local matching funds provided in State Fiscal Year 2009-10, the lower amount will become the maximum amount of local matching funds which can be provided by the private third-party contractor. All local matching funds in excess of the lower amount must be provided in accordance with paragraph (2). Private third-party contractor sources are not eligible for this portion of the local matching funds.

(9) For a local transportation organization using route guarantee funds as a source of local matching funds prior to the enactment of the act, the following apply for operating assistance funding:

(i) Local matching funds equal to the local matching funds provided by route guarantee funds in State Fiscal Year 2009-10 may continue to come from route guarantee funds.

(ii) Local matching funds in excess of the local matching funds provided in State Fiscal Year 2009-10 must be provided in accordance with paragraph (2). Route guarantee funds are not eligible for this portion of the local matching funds.

(iii) If the amount of local matching funds provided through route guarantee funds is ever decreased to an amount less than the local matching funds provided in State Fiscal Year 2009-10, the lower amount will become the maximum amount of local matching funds which can be provided through route guarantee funds. All local matching funds in excess of the lower amount must be provided in accordance with paragraph (2). Route guarantee funds are not eligible for this portion of the local matching funds.

(10) Private sources other than funding from private third-party contractors and route guarantees may be eligible as local match provided that a local transportation organization has:

(i) Requested in writing Department approval of the source and amount of the local match from private sources.

(ii) Provided a written contract between the private source and the local transportation organization prior to submitting an application for State funding.

(11) Local transportation organizations may use uncommitted local match reserves for operating assistance if the following apply:

(i) The total local match reserve amount is identified in the most recent audit report and can be traced through transaction detail to the source of the local match.

(ii) The board of the local transportation organization passes a resolution which certifies that the local match reserve to be used for operating assistance is not committed to any other project.

(iii) The local transportation organization provides to the municipalities responsible for providing the local match written notification of the amount of local match reserve that will be used in a fiscal year to offset shortfalls in local match payments.

(b) Documentation of availability and schedule for payment of local matching funds.

(1) For a private transportation provider, the private transportation provider must submit to the Department a certification, signed by the company's chief operating officer, assuring that the amount of required eligible local matching funds will be provided by the

end of the State Fiscal Year for which a grant is made.

(2) For local transportation organizations:

(i) Each local transportation organization shall submit a resolution, approved by its governing body, certifying that the required amount of eligible local matching funds will be secured no later than the end of the State Fiscal Year for which a grant is made. The local transportation organization shall submit the resolution to the Department as part of its state grant application.

(ii) A local municipality responsible for providing the required local matching funds shall submit to the local transportation provider an approved/adopted resolution or budget transmitted by letter signed by the municipality's chief executive officer certifying the amount that it shall provide the local transportation organization no later than the end of the State Fiscal Year. The local transportation organization shall submit all resolutions or budgets with the transmittal letter signed by the municipality's chief executive officer to the Department as part of its State grant application.

(3) For a local transportation organization receiving local matching funds through a private third-party contractor source, the private source of local matching funds must provide the following:

(i) Documentation of the amount of local matching funds to be provided.

(ii) Documentation of segregation of finances and accounting records.

(iii) Documentation of agreement to provide an audit for every business.

(4) The audit referred to in paragraph (b)(3)(iii) must include THE SUPPLEMENTAL AUDIT schedules as required by the Department.

(5) If the availability of required local matching funds is not certified, the Department may not execute a grant agreement.

(6) If less than the full amount of local matching funds is certified, the Department will prorate the State grant amount on a proportional basis to the local amount that is certified.

(c) *Required recordkeeping.*

(1) For both local transportation organizations and private transportation companies, the local funding provided to meet local matching funds requirements must be deposited and retained in a separate interest bearing account until used for eligible public transportation program expenses.

(2) Interest earned on these funds must only be used for public transportation purposes.

(3) Interest earned and expended shall be reported in the annual audit report on THE SUPPLEMENTAL AUDIT schedules as required by the Department.

(d) *Required minimum local matching funds.* The minimum local matching funds shall be as stated in section 1513 – 1516 of the act.

(e) *Insufficient local matching funds.*

(1) If the required minimum local matching funds are not provided by the end of the project period, the following fiscal year's allocation will be reduced to reflect a proration of the prior year's grant based on the amount of local funds provided and the established local matching funds percentage.

(2) If the amount of local matching funds in arrears from the previous fiscal year is provided within a grace period of 90 days after the beginning of the fiscal year, the full

State allocation will be restored.

(3) A grant recipient is eligible for a grace period for receipt of local matching funds no more frequently than once every 3 years.

(4) Prorates shall be calculated as follows:

(i) Calculate the State funding supplied for every dollar of local matching funds.

(ii) Multiply the local matching funds shortfall times the State funding supplied for every dollar of local matching funds.

(iii) Reduce funding in the subsequent fiscal year equal to the result of the calculation in subparagraph (ii).

§ 427.5. Procurement.

(a) Grantees receiving capital funding under this chapter shall follow the most stringent of any applicable Federal, State and local procurement procedures. Grantees shall have written procurement policies.

(b) Failure to comply with ~~any~~ THE PROCUREMENT REQUIREMENTS applicable ~~procurement requirement~~ FOR THE FUNDING SOURCE FOR THE PROCUREMENT (FEDERAL, STATE OR LOCAL) may result in the ineligibility of the grantee to receive future State transit capital funds until the following conditions are met:

(1) The Department, or its representative, has conducted an audit of the grantee's compliance with procurement requirements.

(2) The grantee has resolved any findings in the audit to the satisfaction of the Department, or is working toward the resolution of any findings based on a Department approved action plan.

(c) The Department may require the grantee to pay for the audit cost directly, or may deduct the cost of the audit from any future State grant.

(d) Failure to comply with applicable procurement requirements may also result in a requirement that the grantee repay State grant funds used for the procurement.

(e) The Department may require a grantee to submit all procurement related documents to the Department for review and written concurrence prior to award to be eligible to receive State funds for that procurement.

(f) If a grantee is required to repay Federal funds due to noncompliance with procurement requirements, the grantee must also repay State matching funds related to that procurement.

§ 427.6. Restriction on use of funds.

(a) With the approval of the Department, operating assistance funds may be used for capital assistance under the following circumstances:

(1) The need for the alternative use of these funds is limited to one year.

(2) The proposed use of operating funds for capital assistance will not result in any of the following:

(i) A reduction in service

(ii) An increase in fare levels

(iii) An unbalanced operating budget in the year of the transfer and for 3 succeeding fiscal years.

(3) The request for approval of the use of operating funds for capital assistance must be supported by written justification documenting that the required level of funds transferred is needed to fund a capital project that cannot be funded from any other

available source of State capital assistance including current or carryover PTAF, Act 3, Section 1514 Bond or Section 1517 Capital Improvement assistance.

(4) The justification must demonstrate that the proposed capital project, for which the required operating funds will be used, cannot be deferred until a later year without incurring a significant identified hardship.

(b) With the approval of the Department, capital assistance funds may be used for operating assistance under the following circumstances:

(1) The need for the alternative use of these funds is limited to 1 year.

(2) The proposed use of capital funds for operating assistance is needed to support one of more of the following:

(i) To prevent a reduction in service.

(ii) To prevent an unreasonable fare increase.

(iii) To prevent a projected one-time unbalanced operating budget that is not expected to reoccur in the following and subsequent years.

(3) Written justification to support that the proposed one-time use of capital funds for operating assistance will not result in the deferral of any important capital project that could have been funded if the funds were not transferred.

(c) Operating funds may not be used to fund depreciation costs associated with capital assets procured using public funds.

§ 427.7. Audits.

(a) The Department will determine the frequency, content and format of reporting requirements, and may include requirements for audit testing procedures, for any entity receiving funding under this chapter.

(1) As an element of the application process, each applicant shall provide the name, address and contact information for the certified public accounting firm engaged for the financial audit.

(i) The applicant shall certify that the certified public accountant firm is aware of the Department's reporting requirements and deadlines.

(ii) The information shall be submitted to the Department by May 31 of the fiscal year preceding the year for which funds are requested.

(2) Within 90 days after the close of each fiscal year, each grant recipient will receive from the Department for confirmation, an accounting of funds received from the Department during the preceding fiscal year.

(3) The grant recipient shall convey directly to the certified public accounting firm the Department's confirmation of amounts identified in paragraph (2). The confirmed amounts shall become part of the financial audit report.

(4) Within 180 days after the close of a fiscal year, each grant recipient shall transmit to the Department an annual financial audit report prepared by the certified public accounting firm identified in paragraph (1).

(i) The audit shall be conducted in accordance with THE GENERALLY ACCEPTED ACCOUNTING PROCEDURES (GAAP) auditing standards ~~generally accepted in the United States~~. Those standards require the audit firm to plan and perform the audit to obtain reasonable assurance about whether financial statements are free of material misstatement. The audit must include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements and supplemental schedules.

(ii) The audit must meet all Department required reporting and formatting standards for presentation of information with regard to grant payments and uses.

(iii) The certified public accounting firm shall prepare all supplemental schedules as required by the Department.

(vi) The audit must include supplemental schedules as required by the Department.

(vii) The audit may not be submitted to the Department unless the local transportation finance officer and board have reviewed the audit for accuracy and have approved it.

(5) The grant recipient shall review the audit report, identify any inconsistencies between the supplemental schedules and other schedules and statements within the audit report and will provide an explanation satisfactory to the Department for the discrepancies.

(i) The grant recipient shall provide a written response to the Department answering any questions raised by the Department within 45 calendar days of receipt of the Department's questions.

(ii) Failure to comply with reporting requirements by the due date may result in delay or withholding of payments at the discretion of the Department.

(iii) If the grant recipient cannot produce a written response for each finding within 45 calendar days, the grant recipient shall request a time extension in writing to the Director of the Bureau of Public Transportation with justification for the request. The Director of the Bureau of Public Transportation's written response will accept or reject the request for a time extension.

(b) Failure to comply with reporting requirements may result in delay or withholding of payments at the discretion of the Department.

OPERATIONS

§ 427.11. Data submission and verification.

(a) Factors. The factors used to calculate the distribution of section 1513 operating assistance funds UNDER 74 PA. C.S. § 1513 in excess of the base operating allocation are the following for the most recently completed fiscal year, as defined in the act:

(1) The total number of Act 44 defined fixed route, ADA paratransit and other Department-approved passengers.

(2) The number of senior citizen passengers

(3) The number of Act 44 defined fixed route, ADA paratransit and other Department-approved revenue vehicle hours.

(4) The number of Act 44 defined fixed route, ADA paratransit and other Department-approved revenue vehicle miles.

(b) Submission. Each local transportation organization receiving section 1513 operating assistance funds UNDER 74 PA. C.S. § 1513 shall verify and submit to the Department the data set forth in subsection (a) by December 31 of the calendar year following the end of the preceding fiscal year.

(c) Certification. The chief operating officer of each local transportation organization must certify the accuracy of the data factors submitted under this section.

(d) Inaccurate data. The following apply, if the data used to calculate section 1513 operating assistance grants UNDER 74 PA. C.S. § 1513 is determined to be inaccurate:

(1) When the inaccurate data is greater than accurate data, resulting in receipt of a grant award greater than actually justified:

(i) The grant award for that grantee will be recalculated based on the accurate data.

(ii) The grant award for the following year will be reduced by 125% of the difference between the grant awarded in the previous fiscal year and the recalculated grant award for that year.

(2) When the inaccurate data is less than the accurate data, resulting in receipt of a grant award smaller than actually justified, there will be no recalculation and no change in the grant award.

§ 427.12. Performance reviews.

(a) Local transportation organizations receiving section 1513 operating assistance funding for fixed route or fixed guideway transit service will be subject to this section. Demand response services, including ADA paratransit, other paratransit and shared ride modes, are not subject to these requirements.

(b) Performance reviews will be undertaken for each local transportation organization on regular intervals at least every 5 years.

(1) A performance review will include, but is not limited to, a review of management, finance, operations, maintenance, capital projects and system performance.

(2) The Department will maintain on its website, at ftp://ftp.dot.state.pa.us/public/bureaus/PublicTransportation/GeneralInformation/TPR_Presentation.pdf a performance review policy that will discuss the process for conducting a performance review.

(c) Minimum performance standards will be established for each grant recipient during a performance review in accordance with the process outlined in this section.

(d) Performance reviews will be conducted as follows:

(1) Comparison to peers.

(i) The Department will identify at least five prospective peer systems for each mode of the local transportation organization being reviewed. The Department will finalize the peer group selection after consultation with the local transportation organization.

(ii) The peer selection process will include, without limitation, the following data items:

(A) Revenue vehicle hours (car hours for rail and fixed guideway).

(B) Revenue vehicle miles (car miles for rail and fixed guideway).

(C) Number of peak vehicles.

(D) Service area population.

(iii) The Department will evaluate the local transportation organization based on the following performance criteria in accordance with the act:

(A) Passengers per revenue vehicle hour.

(B) Operating costs per revenue vehicle hour.

(C) Operating revenue per revenue vehicle hour.

(D) Operating costs per passenger.

(vi) The local transportation organization will be determined at risk if one or more of the following apply:

(A) Passengers per revenue vehicle hour are below minus one standard deviation.

(B) Operating revenue per revenue vehicle hour [are] is below minus one standard deviation.

(C) Operating costs per revenue vehicle hour exceed plus one standard deviation.

(D) Operating cost per passenger exceeds plus one standard deviation.

(2) Trend analysis

(i) The Department will prepare a 5-year trend analysis for the local transportation organization under review and the peer systems by performance criteria and by mode.

(ii) If the 5-year trend for all performance criteria by mode is positive and consistent with the peer trend, the local transportation organization is in compliance.

(iii) If the 5-year trend for any performance criteria by mode is negative, but consistent with the peer trend, the local transportation organization may be in compliance based on Department determination.

(iv) If the 5-year trend for any performance criteria by mode is negative and not in keeping with peers, the local transportation organization will be determined to be at risk.

(3) Minimum performance standard.

(i) In consultation with the local transportation organization, the Department will establish minimum performance standards to be met within 5 years from the date the standards are established.

(ii) The local transportation organization shall develop and submit to the Department within 90 days of the final report of the performance review a strategic action plan focused on continually improving the system to achieve the established minimum performance standards. The Department will provide technical assistance upon request.

(iii) The local transportation organization shall submit the strategic action plan to its governing body.

(iv) The local transportation organization shall report to its governing body and to the Department on strategic action plan progress on at least a quarterly basis.

(v) A revised minimum performance standard for each performance criteria by mode will be established in each subsequent performance review.

(vi) Upon request by the local transportation organization and submission of proper justification, the Department may approve a revised minimum performance standards at times other than during a performance review.

(4) Review and report. Each year in the Pennsylvania Public Transportation Annual Performance Report, the local transportation organizations which have been reviewed during the preceding fiscal year will be identified. The report will include a summary of the reviews, the findings and the recommendations.

(e) The application of funding reduction will be as follows.

(1) Operating fund reductions in section 1513(g) of the act (relating to operating program) may be implemented for grantees subject to this section that are not satisfying the minimum performance standards, considering all other provisions of section 1513. A funding reduction may be assessed in cases when a local transportation organization fails to report progress or fails to implement the agreed upon strategic action plan, or both.

(2) Funding reductions may not exceed 5% of the total section 1513 of the act operating assistance allocation in any one fiscal year.

§ 427.13. Demonstration projects.

When a local transportation organization or an agency or instrumentality of the Commonwealth applies to the Department for reimbursement of operating costs related to demonstration program projects, the project must meet the following criteria:

(1) A feasibility study must be conducted and a report issued prior to application. The feasibility report must include annual estimates for the four performance criteria identified in section 1513(f) of the act (relating to operating program) for the determination of the success of the demonstration project.

(2) The Department must approve minimum performance standards for the demonstration project.

(3) The applicant shall provide documentation of local acceptance of the established minimum performance standards. The local acceptance document must indicate that the applicant and the local funding entity understand that:

(i) If the demonstration service meets the established minimum performance standards within the 3-year demonstration period, it may receive formula based operating assistance from section 1513 of the act funds if there is sufficient

funding available in section 1513 of the act to fund both existing services and the demonstration project.

(ii) If the demonstration project fails to meet the minimum performance standards within the 3-year period, the service is ineligible for State section 1513 operating assistance.

(A) The applicant or the local funding entity may elect to continue the service and provide all required operating assistance.

(B) The applicant or the local funding entity, or both, may elect to discontinue the service and notify all affected parties of the decision and take responsibility for that decision.

(4) The applicant shall demonstrate the support of the local funding entity providing local matching funds for the demonstration project and accepting responsibility for decisions made with regard to continuation/discontinuation of service by issuing the following resolutions:

(i) A resolution certifying that sufficient local funds will be made available based on a 5 year annual projection of operating budgets and funding sources.

(ii) A resolution acknowledging that the applicant and the local funding entity are responsible for determining continuation of service prior to the end of the 3-year demonstration period.

(5) During the 3-year demonstration period, the local matching funds must equal at least 15% of the State demonstration grant.

(6) Within 30 days of the end of each quarter, the applicant shall submit quarterly reports providing financial information and operating statistics in a format determined by

the Department within 30 days of the end of each quarter during the 3-year demonstration period to maintain eligibility for State funding.

NEW INITIATIVES

§ 427.21. Application requirements for new initiatives.

(a) Applications for new initiatives must be received by the Department by 5 p.m. on the second Monday of January.

(b) Any project that has received a rating of medium, medium-high or high under 49 U.S.C. § 5309 (relating to capital investment) is considered to have satisfied the project evaluation requirements of this chapter but must provide supporting documentation to the Department.

(1) The project sponsor shall submit to the Department a copy of the application documentation as submitted to the US DOT/FTA that resulted in the rating.

(2) Updates to the project application documentation shall be provided to the Department as they are approved by the Federal Transit Administration.

(c) A project that has received a rating of medium-low or low under 49 U.S.C. § 5309 or that has elected not to apply for funding under 49 U.S.C. § 5309 shall provide documentation supporting the following project evaluation requirements.

(1) *Investment optimization.* The applicant shall demonstrate that investments in the existing service areas have been optimized.

(i) The applicant shall document the steps taken to optimize existing services and the impacts of those steps on current ridership, revenues and customer satisfaction.

(ii) The applicant shall show how the proposed project will coordinate with other transit in the region, as well as with other transportation options when

appropriate, such as bicycle paths, high-occupancy vehicle (HOV) facilities, AMTRAK or other intercity rail.

(2) Cost/benefit. The applicant shall demonstrate that the investment in the project results in reasonable public benefits that are proportional to the investment.

(i) The applicant shall document likely impacts on total transit ridership, impacts on greenhouse gasses and overall air quality, travel time, user costs, accessibility to employment centers and service to historically under-represented populations.

(ii) The costs of the project over its design life must be calculated and include capital investments, operations and maintenance.

(iii) Project benefits and costs should be calculated to a net present value and a current dollar benefit/cost ratio must be calculated.

(iv) The project must demonstrate a benefit/cost ratio greater than 1.0 to satisfy the reasonable public benefit requirement.

(v) If requested, the applicant shall document how or if the project supports Statewide air quality and transportation policies

(3) Local funding commitments. The applicant shall demonstrate that it has secured commitments for local share of funding.

(i) The applicant shall provide documentation showing what local funds are available for both the capital and operating funding needs of the project, any limitations on those funds and, when in a designated metropolitan planning organization (MPO) area, affirm that the project is included in a cost affordable long range transportation plan.

(ii) A signed letter of commitment from the agency responsible for collecting capital, operations and maintenance funding must be included that documents the sources of the funding, the expiration date of the funding and a plan for extending the funding source's revenue period should it expire before the design life of the project.

(iii) Estimates of fare box revenues/recovery shall also be provided along with actionable strategies to cover any unexpected fare box shortfalls during the design life of the project.

(4) *Technical capacity.* The applicant shall provide a management plan for construction and operation of the project during the design life of the project.

(i) The management plan must identify in-house and consultant resources necessary to manage the project.

(ii) Where in-house services are to be used, it will be necessary to demonstrate those resources have sufficient experience managing projects of similar scope and scale.

(iii) Where outside services are to be used, the applicant shall document the expected costs of those services and include a plan to manage the services.

(5) *Integrated land use policies.* The applicant shall document relevant elements of local land use plans and policies that support efficient use of the transportation system in the project corridor.

(i) To demonstrate the integration, the applicant should cite relevant plans (comprehensive plan and zoning) as well as policies relating to parking

availability/cost, existing and allowable densities, mix of land use and affordable housing.

(ii) Documentation should include maps, tables, specific local policies and narrative that make the case that land use policies recognize the integral relationship between transportation and land use.

(iii) In areas where walk or bicycle access will be important to the overall demand for the project the applicant shall document how patrons of the project will safely access the system from nearby significant land uses.

(iv) If requested, the applicant shall provide signed letters from local governing bodies in municipalities where stations would be located documenting the level of commitment and actions undertaken to assure land use policies are supportive of the project.

(d) Applicants shall provide documentation sufficient to compare the benefits, costs, local policies, technical capacity and funding commitment of applicants so that findings can be succinctly summarized for the Pennsylvania Public Transportation Annual Performance Report.

(e) The Department may request additional supporting documentation from the applicant to complete the application.

(f) Applicants shall provide responses to or acknowledgement of requests for additional supporting documentation within 14 days of the request.

§ 427.22. New initiative project evaluation.

(a) The Department will provide a project summary in the Pennsylvania Public Transportation Annual Performance Report for each completed application.

(1) The project summary will include comparisons with their current operations for key measures outlined in statute.

(2) The project summary will include comparisons with other similar systems for key measures outlined in statute.

(b) Funding for new initiatives under this section is subject to appropriation by the Pennsylvania General Assembly.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 11, 2013

David Sumner, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

**Re: Final Rulemaking
18-420 — 67 Pa. Code, Chapter 427
Public Transportation – Sustainable Mobility**

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for amendments to Chapter 427 of Department regulations which the Department of Transportation intends to adopt in accordance with the provisions of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended*, specifically 71 P.S. § 745.5a.

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 IRRC 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 "Jeffrey M. Spotts", written over a horizontal line.

Jeffrey M. Spotts,

Bradley J. Billet,

Regulatory Counsel

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

I.D. NUMBER: #18-420
 SUBJECT: Public Transportation – Sustainable Mobility
 67 Pa. Code, Chapter 427
 AGENCY: Department of Transportation

RECEIVED
 IRRC
 12/11/13

TYPE OF REGULATION

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

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>12-11-13</u>	<u><i>Nicholas A. Micozzie</i></u> for Majority Chair Hon. Nicholas A. Micozzie	HOUSE COMMITTEE ON TRANSPORTATION
<u>12/11/13</u>	<u><i>Michael P. McGeehan</i></u> for Minority Chair Hon. Michael P. McGeehan	
<u>12-11-13</u>	<u><i>John C. Rafferty, Jr.</i></u> for Majority Chair Hon. John C. Rafferty, Jr.	SENATE COMMITTEE ON TRANSPORTATION
<u>12-11-13</u>	<u><i>John N. Wozniak</i></u> for Minority Chair Hon. John N. Wozniak	
<u> </u>	<u> N/A </u>	OFFICE OF ATTORNEY GENERAL
<u>12/11/13</u>	<u><i>Stephen F. ...</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u> </u>	<u> N/A </u>	LEGISLATIVE REFERENCE BUREAU

Date: December 10, 2013