

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

2014

AUG 14

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(1) Agency  
Transportation

(2) Agency Number:  
18-437

IRRC Number: 3071

(3) PA Code Cite:  
67 Pa. Code Chapter 429

(4) Short Title:  
Rail Freight Grants

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

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[gdeberry@pa.gov](mailto:gdeberry@pa.gov)

(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 regulation is to provide guidance on the application requirements, pre-award evaluation criteria, funding limits, and post-award requirements for the Commonwealth's two main rail freight grant programs, the Rail Freight Assistance Program (RFAP) and the Rail Transportation Assistance Program (RTAP).

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

Authority for this regulation is contained in The Rail Freight Preservation and Improvement Act, Act of July 5, 1984, P.L. 587, No 119, as amended, 55 P.S. § 696.9 (relating to rules and regulations of the Department).

(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 not mandated by any federal or state law, but the Rail Freight Preservation and Improvement Act, Act of July 5, 1984, P.L. 587, No 119, *as amended*, 55 P.S. § 696.1 *et seq.* authorizes the department to promulgate necessary rules and regulations and prescribe conditions and procedures in order to assure compliance in carrying out the purposes for which grants may be made thereunder.

(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.

The purpose of this regulation is to provide guidance on the application requirements, pre-award evaluation criteria, funding limits and post-award requirements for the Commonwealth's two main rail freight grant programs, RFAP and RTAP. The regulation will provide clear guidance to both the Department and potential grant applicants on the processes used to administer grant funds.

(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.

Federal Railroad Administration Grants. 1) Rail Line Relocation & Improvement Capital Grant Program (RLR). Currently not accepting applications. 2) Railroad Rehabilitation & Repair (Disaster Assistance). Currently not accepting applications. 3) Railroad Safety Technology Grant Program. Currently not accepting applications. 4) Transportation Investment Generating Economic Recovery (TIGER 2009, 2010, 2011, 2012, 2013). TIGER grants require that both an application and a benefit cost analysis be fully completed and submitted by the deadline date and time. The provisions here are no more stringent than the requirements for the programs noted above.

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

The regulation is no more stringent than regulations or policies found in any other state. By adopting this regulation, Pennsylvania's ability to compete with other states will be enhanced by having a clearly prescribed program that promotes safe railroad infrastructure and advances the economic vitality of the Commonwealth.

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

No.

(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.)

Stakeholders were invited to attend six (6) public meetings, two each in the eastern, central and western regions of Pennsylvania, and a website was developed (<http://pa-rail.wgianalytics.com>) to provide a source of information and another means of soliciting input. Meeting announcements were distributed to stakeholders and the railroad associations, and Metropolitan Planning Organizations (MPOs) and Rural Planning Organizations (RPOs) were contacted directly to request that they promote the meetings and the project website in both their newsletters and their committee meetings. Early versions of the draft regulations and policy recommendations, along with the outreach findings, were presented to the Rail Freight Advisory Committee (RFAC) and the Regulations and Policy Committee to solicit the direction and support of those two bodies.

Public meetings were held at: 1) Delaware Valley Regional Planning Commission (DVRPC) in Philadelphia on April 14, 2010; 2) SEDA-Council of Governments (SEDA-COG) in Lewisburg on April 15, 2010; 3) District 11-0 Office of the Pennsylvania Department of Transportation (PennDOT) in the Pittsburgh region on April 16, 2010; 4) Pennsylvania Rail Freight Seminar in Harrisburg on May 20, 2010 through May 21, 2010; 5) Blair County Planning Commission in Altoona on May 24, 2010; and 6) 4-0 District Office of PennDOT in Dunmore on May 28, 2010. The public meetings provided attendees the opportunity to comment on the development of the regulations and policy recommendations controlling RFAP and RTAP grant procedures. A presentation was also provided at the beginning of the meetings to provide attendees with a brief history of the programs, their purpose, the proposed regulations and policy updates, as well as guidance as to how to provide comments and feedback throughout the project. Verbal comments provided at the meetings were recorded in meeting minutes and written comments were gathered on comment forms provided to each attendee.

The project website included information such as a general project description, a history of the RFAP and RTAP programs, hyperlinks to the program's enabling legislation and similar rail freight programs throughout the United States, draft PDF copies of the regulation and policy recommendations, the dates and locations of the public meetings, including interactive maps and directions, and a form to enable project website visitors to provide input/comments. The website remained active throughout the project to inform stakeholders of project updates and to facilitate continuous feedback.

A project progress presentation was given to both the RFAC and the Regulations and Policy Committee at the Keystone Building in Harrisburg on April 28, 2010. The presentations provided attendees with the

opportunity to discuss, and ask questions about, the draft regulations and policy recommendations and how to provide comments and feedback throughout the project.

In addition to the publicized website which contained the proposed draft regulations, custom invitations were sent via e-mail and USPS mail to all prior grant recipients, all operating railroads in the Commonwealth, the RFAC, all Pennsylvania RPOs and MPOs and all consultants that have previously worked for various grantees and railroads.

Subsequent to public meetings, stakeholders remained engaged while the Department finalized and fine-tuned this regulation to reflect a comprehensive, finished product.

(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?

An agency or other entity that applies for a grant for a project governed by this Chapter will be affected by the regulation if enacted. Approximately 50 applicants pursue grant funding each calendar year in one or both grant programs. Grant applicants include railroad companies, rail users, municipalities, authorities, and transportation organizations.

The Pennsylvania Freight Rail Network is comprised of Four Class 1 Railroads, Two Class II Railroads (Regional), 32 Class III Railroads (Shot Line/Local Line), and 27 Local Switching & Terminal railroads or operators for a total of 65. The bureau's grant programs have funded 34 grants for railroads, 48 grants for businesses, 10 grants for authorities, and 10 grants for non-profit organizations for the years 2010, 2011, and 2012.

The Department does not have grantee information, such as employee numbers and gross income figures, which would be necessary to make a determination as to whether any individual grantee meets the definition of a "small business". The work effort / cost necessary to gather that information for all 67 railroad entities operating in Pennsylvania would be prohibitive.

(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.

Any entity or individual (railroad company, rail user, municipality, municipal authority, or transportation organization) that applies for a grant will be required to comply with the regulation. Approximately 50 applicants pursue grant funding each calendar year in one or both of the grant programs.

The Pennsylvania Freight Rail Network is comprised of Four Class 1 Railroads, Two Class II Railroads (Regional), 32 Class III Railroads (Shot Line/Local Line), and 27 Local Switching & Terminal railroads or operators for a total of 65. For the years 2010 through 2012, the bureau's grant programs funded 34 grants for railroads, 48 grants for businesses, 10 grants for authorities, and 10 grants for non-profit organizations.

(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.

All participants in the rail grant program will benefit as the regulations will provide clear guidance to both the Department and potential applicants on the processes used to administer grant funds. The resulting increased efficiencies will benefit participants as well as taxpayers generally.

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

There are no costs or adverse effects of the regulation. Applicants and Department staff will save time in the preparation and review of grant application packages by having clear guidance on the program's requirements, limits and protocols. Overall office efficiency will be improved saving employee time and energy.

(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 will be no costs or savings to the regulated community associated with compliance.

(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 will be no costs or savings to local governments associated with compliance.

(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.

Although not readily measurable, there will be savings to the Department resulting from the increased efficiencies brought about by the promulgation of these regulations.

(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.

There should be no change in paperwork, record keeping, consulting, accounting, legal procedures or additional reporting required as a result of the regulations.

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	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.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
Rail Freight Assistance Program (RFAP)	\$5.75 M	\$5.75 M	\$5.75 M	\$8 M
Rail Transportation	\$30 M	\$30 M	\$30 M	\$30 M

Assistance Program (RTAP)				
Marcellus Shale Fee Funds	\$0	\$0	\$1 M	\$1 M

(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.

A) The Pennsylvania Freight Rail Network is comprised of Four Class 1 Railroads, Two Class II Railroads (Regional), 32 Class III Railroads (Shot Line/Local Line), and 27 Local Switching & Terminal railroads or operators for a total of 65. The bureau's grant programs have funded 34 grants for railroads, 48 grants for businesses, 10 grants for authorities, and 10 grants for non-profit organizations for the years 2010, 2011, and 2012.

B) Record keeping as result of the grants is required to be maintained by the grantees for a period of five years after project completion. No additional skills will be required by any entity that applies for a grant. There will be no change in this due to the creation of regulations.

C) The impact on small businesses, if any, will be that applicants will be required to continue to complete grant applications properly and timely, meet commonwealth bidding requirements, and follow the bureau's reimbursement requirements.

D) The only less intrusive or less costly alternative available to the Bureau in lieu of creating regulations is to continue to manage the grant program according to current practice without governing regulations. However, in the absence of regulations, there are not sufficient controls built into the program to ensure proper utilization of the taxpayer monies that make up program grant funds.

(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 particular needs of affected groups or persons were identified and no special provisions were

developed.

(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.

Various regulatory provisions were considered including attaching an application review fee. Public comments were addressed to ensure that the program application and administration processes, as well as the types of projects, limits of funding, and the overall goals of the rail freight grant programs, are consistent with other applicable laws.

The least burdensome alternative to the various regulations was selected based on all public comments received and other applicable laws.

(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.

There should be no adverse impact on small businesses. As detailed in Item 16 and 24 these regulations should impose no additional or new requirements on grantees. The regulations should make the grant application process and the reimbursement process clearer. They will not burden the grantees with additional or new record keeping. The grantees will still be required to maintain their records of each project for a period of five years after project completion. Bureau projects remain subject to audits.

(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:                               | <u>05/31/14</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>N/A</u>      |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>08/15/14</u> |
| D. The expected effective date of the final-form regulation:                                | <u>10/30/14</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>10/31/14</u> |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>      |

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

The effectiveness of the regulation will be evaluated on an ongoing basis as the program is administered.

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

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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

By: *Amy M. Elliott*  
(Deputy Attorney General)

AUG 08 2014

Date of Approval

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. 18-437

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

BY *Benny J. Alus*  
Secretary of Transportation

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

*[Handwritten signature]*

MAY 29 2014

(Date of Approval)

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike Inapplicable Title)

Check if applicable  
Copy not approved. Objections attached.

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 I – Department of Transportation  
Subpart B. Nonvehicle Code Provisions  
Article IIa – Rail Transportation  
Chapter 429 – Rail Freight Grants**

**TITLE 67, TRANSPORTATION**

**Part I – Department of Transportation**

**Subpart B. Nonvehicle Code Provisions**

**Article IIa – Rail Transportation**

**Chapter 429 – Rail Freight Grants**

**Proposed Rulemaking**

**Preamble**

Notice is hereby given that the Department of Transportation, pursuant to the authority contained in the Rail Freight Preservation and Improvement Act, Act of July 5, 1984, P.L. 587, No. 119, *as amended*, 55 P.S. § 696.1 *et seq.*, specifically, 55 P.S. § 696.9 (relating to rules and regulations of the department), proposes to adopt a new chapter, 67 Pa. Code, Chapter 429, of the Department of Transportation Regulations (relating to rail freight grants), to read as set forth in Annex A to this Notice.

***Purpose of Proposed Chapter***

The purpose of Chapter 429 is to establish procedures and criteria for the application for and award of grants for rail freight projects to support economic development in the Commonwealth.

***Summary of Significant Provisions***

Section 429.1 provides the context for the promulgation of this proposed Chapter.

Section 429.2 provides definitions of significant terms used in this proposed Chapter.

Section 429.3 delineates the persons and entities eligible for grants issued pursuant to this proposed Chapter. Further, this section provides information on the local funding match requirements for grants. This section also provides information on the types of projects eligible

for grants. Finally, this section explains whether an applicant seeking funding should pursue a Rail Transportation Assistance Program (Rail TAP) or Rail Freight Assistance Program (RFAP) grant, depending on the nature of their project and/or the project cost.

Section 429.4 sets forth various Commonwealth funding constraints on both Rail TAP and RFAP grants. The section also makes clear that funding will be subject to approval and appropriation by the Pennsylvania General Assembly.

Section 429.5 makes clear that applications must be filed during the prescribed application period to be considered. The section also makes clear to applicants that the open application period for both Rail TAP and RFAP grants is to be determined on an annual basis and published in the Pennsylvania Bulletin during the month of January.

Section 429.6 delineates the Department's application submission procedure, including required criteria. The section also makes clear that grant applications shall be completed in accordance with the current policies and procedures of the Department, and that the Department may reject an application which does not conform to Department regulations or policies or other applicable laws or regulations.

Section 429.7 makes clear that the Pennsylvania Right to Know Law applies to all submissions to the Department.

Section 429.8 delineates the Department's grant selection process and sets forth criteria the Department will use in evaluating grant applications. The section also explains that the Department may work with an applicant to modify a proposed project, and that such collaboration shall not be construed as a commitment by the Department to offer a grant to the applicant.

Section 429.9 delineates the Department's process in offering grants. It further delineates

the obligations of an applicant who has been offered a grant to timely accept or decline the grant offer.

Section 429.10 provides the Department authority to specify standards, methods, techniques, and design and dimensional criteria acceptable for projects funded by grants under this proposed Chapter and to review and approve design and construction. It further provides for withdrawal of the grant funding for failure to abide by Department mandates in this regard. Finally, it makes clear that the Steel Products Procurement Act applies to projects funded by grants awarded pursuant to this proposed Chapter.

Section 429.11 makes clear that the Pennsylvania Prevailing Wage Act applies to grants awarded pursuant to this proposed Chapter.

Section 429.12 delineates various audit and recordkeeping requirements that applicants who receive a grant under this proposed Chapter must follow.

Section 429.13 provides the Department and other Commonwealth agencies the right to inspect the project site and records related to grants awarded under this proposed Chapter and provides for withdrawal of grant funding and disqualification from future consideration for grants for failure to comply.

Section 429.14 delineates procedures for payment of the grantee and its vendors and contractors, including mandating retention by the Department of 10 percent of each grant payment until final inspection and approval by the Department.

Section 429.15 delineates the consequences of a grantee's failure to comply with the terms and conditions of a grant issued pursuant to this proposed Chapter. Such consequences include reimbursement to the Department of grant funding awarded and disqualification from future consideration for grants issued pursuant to this proposed Chapter. Further, the Section

provides information on a grantee's right to appeal a Department decision issued pursuant to this proposed Chapter.

Section 429.16 provides that the Department may grant waivers regarding submission of certain specific information or data under certain circumstances.

***Persons and Entities Affected***

These regulations affect any applicant that seeks Commonwealth rail grant funding pursuant to the Rail Freight Preservation and Improvement Act.

***Fiscal Impact***

Implementation of these regulations will not require the expenditure of any additional funds by the Commonwealth. No additional costs, fees, or expenses are anticipated by implementing the regulation.

***Regulatory Review***

Under Section 5(a) of the Regulatory Review Act, Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. 745.5(a), the agency submitted a copy of this proposed regulation on August 14, 2014 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting these 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 Provisions***

The Department of Transportation will make these regulations effective upon publication in final form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required pursuant to the Rail Freight Preservation and Improvement Act, Act of July 5, 1984, P.L. 587, No. 119, *as amended*, 55 P.S. § 696.1 *e. seq.* The Department, 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 the regulations to Toby L. Fauver, AICP, Deputy Secretary of Multimodal Transportation, 400 North Street, 8<sup>th</sup> Floor, P.O. Box 3643, Harrisburg, PA 17105-3643, [tfauver@pa.gov](mailto:tfauver@pa.gov), within thirty days of the publication of this notice in the *Pennsylvania Bulletin*.

***Contact Person***

The contact person for technical questions about the proposed amendments to the regulations is Gary M. DeBerry, Planning Manager, Bureau of Rail Freight, Ports and Waterways, 400 North Street, 6<sup>th</sup> Floor, Harrisburg, PA 17120-0064, telephone number 717-214-1922, [gdeberry@pa.gov](mailto:gdeberry@pa.gov).

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Barry J. Schoch, P.E.  
Secretary of Transportation

**TITLE 67, TRANSPORTATION**

**Part I – Department of Transportation**

**Subpart B. Nonvehicle Code Provisions**

**Article IIa – Rail Transportation**

**Chapter 429 – Rail Freight Grants**

**Proposed Rulemaking**

**Annex A**

**§ 429.1. Purpose.**

This chapter sets forth requirements and criteria relating to grants funded, in whole or in part, by the Rail Freight Preservation and Improvement Act (55 P.S. Chapter 17G).

**§ 429.2 Definitions.**

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

*Bureau*—The Pennsylvania Department of Transportation Bureau of Rail Freight, Ports and Waterways, or any successor Bureau designated by publishing notice in the Pennsylvania Bulletin.

*Capital Budget Bill*—A bill passed by the Pennsylvania General Assembly that provides Commonwealth funding for capital projects.

*Capital project*—Acquisition of property, labor and materials for equipping, furnishing, constructing, reconstructing, rehabilitating or improving rail freight transportation systems or facilities. The term does not include a maintenance project.

*Department*—The Department of Transportation of the Commonwealth.

*Director*—The Director of the Bureau.



Grant—An offer of funding assistance from the Department to an applicant for a project governed by this Chapter.

Grant recipient/grantee—A recipient of funding assistance for a project governed by this Chapter.

Intermodal terminal—A facility where trains stop to load or unload freight for the purpose of transferring the freight to or from another mode of transportation.

Local government—A political subdivision of the Commonwealth.

Maintenance project—A project wherein maintenance or accelerated maintenance under 55 P.S. § 696.3 is performed, including the replacing of ties and other track and structural materials in quantities sufficient to restore a railroad line to the level necessary for compliance with Federal Railroad Administration Class I Track Safety Standards.

Rail Freight Assistance Program (RFAP)—A grant program under this Chapter that provides financial assistance for investment in rail freight facilities, systems or both..

Rail freight facilities—Freight cars, locomotives, wires, poles and equipment for electrification of rail lines, rails, tracks, roadbeds, elevated structures, buildings, stations, terminals, loading docks, sidetracks, shelters, parking areas, tunnels or other items, necessary to provide rail freight transportation services.

Rail freight systems—Rail lines, rail corridors or other real estate interests, including easements or other rights-of-way, necessary to provide rail freight transportation services.

Rail freight transportation services—Transportation of property by rail for compensation.

Rail Transportation Assistance Program (Rail TAP)—A grant program wherein individual projects are identified specifically in a Capital Budget.

Railroad company—Any person, firm or corporation rendering common carrier rail

freight transportation services in this Commonwealth, pursuant to authorization from the Public Utility Commission or the Interstate Commerce Commission.

Railroad crossing bed maintenance—The replacement of rail, ties, ballast, welds, blacktop and surfacing materials at an at-grade crossing of a railway line with a roadway.

Railroad user—Any person, firm or corporation that is a direct user or developer of any rail freight transportation system, facility or service in this Commonwealth.

Transportation organization—Any municipal authority, mass transportation, port or other authority, or any combination of such entities, organized under the laws of Pennsylvania, or pursuant to an interstate compact, empowered to render rail freight transportation services or assist in rendering rail freight transportation services in the Commonwealth of Pennsylvania.

### **§ 429.3. Eligibility.**

(a) Railroad companies, transportation organizations, municipalities, municipal authorities and railroad users are eligible grantees for grants issued pursuant to this chapter.

(b) Grants under this chapter will be matching grants requiring a local funding match of 30% of the total project costs.

(1) Projects funded through the RFAP may not use Rail TAP program funds for matching fund purposes.

(2) Projects funded through the Rail TAP may not use RFAP program funds for matching fund purposes.

(c) Types of projects eligible for grants are limited to Maintenance projects and Capital projects.

(1) Maintenance projects may include the replacement of ties, rails, plates, turnouts, and other track materials, structural materials and additional ballast to be

sufficient to functionally restore, improve, or maintain an existing railroad line to the level necessary for compliance with Federal Railroad Administration Class I Track Safety Standards.

(i) Eligible maintenance projects shall have an estimated useful life of at least five (5) years.

(ii) Eligible maintenance projects may not include costs for the acquisition of land, rights to land, buildings, or building materials to construct a new building or buildings.

(2) Eligible Capital projects shall have an estimated useful life of at least five (5) years and may include the cost to purchase any of the following:

(i) Ties, rail, ballast, other track materials, and structural materials in sufficient quantity to construct a railroad line where none exists or to restore or improve a rail associated facility to a level necessary for its operation or use.

(ii) Land or rights to land or buildings.

(iii) Materials to construct new building structures if such structures are used exclusively for rail freight operations.

(d) Applicants may apply for assistance for only one project per calendar year from the RFAP.

(e) Applicants may apply for assistance for only one project per calendar year from the RTAP.

#### **§429.4 Limits of Funding**

(a) Funding for projects under this Chapter is subject to approval and appropriation by the Pennsylvania General Assembly.

(b) The maximum Commonwealth contribution for projects funded under this Chapter is 70% of the total project costs.

(c) RFAP Funding Limits

(1) RFAP maximum Commonwealth contribution shall be published annually in the Pennsylvania Bulletin during the month of January.

(2) No more than 15% of the total grant amount shall be used for costs associated with railroad crossing bed maintenance or reconstruction.

(d) Rail TAP Funding Limits

(1) The maximum Commonwealth funding for a project shall be determined by line item in the Capital Budget but shall not exceed 70% of total project costs.

(2) No more than 50% of the grant shall be used for right-of-way acquisition costs under this Chapter.

(3) No more than 5% of the total grant amount shall be used for the acquisition or refurbishment of rolling stock, which shall mean non-motorized wheeled vehicles that are used for the transportation of freight by rail.

(4) No more than 15% of the total grant amount shall be used for costs associated with railroad crossing bed maintenance or reconstruction.

(5) No grant shall exceed 10% of the total program appropriation in any given calendar year.

**§ 429.5 Application Period and Deadlines**

(a) Applications shall be filed during the open application period.

(b) The open application period for RFAP shall be determined by the Department on an annual basis and published in the Pennsylvania Bulletin during the month of January.

(c) The open application period for Rail TAP shall be determined by the Department on an annual basis and published in the Pennsylvania Bulletin during the month of January.

(d) Only applications received during the open application period are considered to have met the application deadline for a particular fiscal year.

**§ 429.6 Application Submission Procedure**

(a) RFAP and Rail TAP applications shall be filed electronically using the dotGrants web-based application or as otherwise determined by the Department.

(b) Applications shall be fully completed by the applicant upon submission and shall include, among other criteria specified on the particular application:

(1) A detailed project schedule with identified milestones and completion date.

(2) Information demonstrating the applicant project's capacity to meet the following, as applicable:

(i) Track work inspection requirements.

(ii) Carloading requirements.

(iii) Standard contract provisions.

(iv) Competitive bid requirements.

(c) Applications for funding under the RFAP or Rail TAP programs shall be completed in accordance with Department grant application policies and procedures in place at the time the application period opens.

(d) The Department may reject any application which does not include all data required by the grant application, these regulations, grant program policy(ies), or any other applicable laws or regulations.

**§ 429.7 Public Records**

All submissions to the Department are subject to the requirements of the Right to Know Law (65 P.S. § 67.101 et seq.) and exceptions thereto.

**§ 429.8 Grant Selection Process and Criteria**

(a) The Bureau will evaluate each eligible RFAP and Rail TAP project in terms of its potential to:

(1) Meet the goals and objectives of the individual programs.

(2) Meet the goals and objectives of the statewide rail long-range plan.

(3) Meet the goals and objectives of the applicant's representative Metropolitan Planning Organization or Rural Planning Organization, including, but not limited to:

(i) Re-establishing or creating new rail service.

(ii) Improving public safety.

(iii) Providing economic development and job growth.

(iv) Achieving a positive benefit/cost ratio.

(v) Positively affecting the environment.

(vi) Increasing carloadings.

(b) Unless otherwise restricted by statute, the Department has 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.

(c) As part of the grant application evaluation process the Department may determine that the scope or specifications of a proposed project should be modified to accommodate available funding, anticipated use, or to better accommodate potential user needs.

(d) The Department may confer with an applicant to clarify the intent of, or to amend the scope or specifications of, a proposed project. Such consultation shall not be construed as a commitment by the Department to offer a grant under this Chapter.

(e) The Department may visit the site of a proposed project to clarify the intent of, or to amend the scope or specifications of, a proposed project. Such consultation shall not be construed as a commitment by the Department to offer a grant under this Chapter.

#### **§429.9 Offer and Acceptance**

(a) The Department will, in writing, notify each applicant who has submitted a completed application whether or not they will receive a grant offer.

(b) A written grant offer issued to an applicant will describe any specific grant conditions and include such conditions in the accompanying grant agreement.

(1) The grant offer shall have a clearly identified date of issuance or mailing.

(2) The grant offer shall contain a provision for the applicant to indicate acceptance or declination of the offer.

(c) The applicant shall, within 30 days of the date of issuance or mailing of the grant offer and via certified mail, notify the Department, on the portion of grant offer as provided in (b)(2) above, whether the offer is accepted or declined.

(d) If the applicant fails to accept the grant offer within the time limit set in subparagraph (c) above, the offer will lapse and become void. The Department may, at the discretion of the Director, extend the deadline for acceptance of the grant offer.

(e) If one or more offers are declined or voided in accordance with subsections (c) and (d) of this section, the Department may make a grant offer to an applicant initially notified

under subsection (a) that no offer would be made. Timely response to an offer made under this subsection shall be in accordance with the provisions of subsections (c) and (d) of this section.

**§ 429.10 Standards, Methods, Techniques, Designs and Special Conditions**

(a) The Department reserves the right to specify or make determination as to the standards, methods, techniques, design and dimensional criteria acceptable in projects funded by 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, design and operational details.

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

(d) Any steel products used in a project funded by a grant issued pursuant to this chapter, shall comply with the Steel Products Procurement Act, 73 P.S. § 1881 et seq.)

**§ 429.11 Prevailing Wage**

Projects funded by grants awarded under this Chapter are subject to prevailing wage requirements as required by the Pennsylvania Prevailing Wage Act (43 P.S. §§ 165.1-165.17).

**§ 429.12 Audits and Recordkeeping**

(a) General.

(1) An applicant receiving a grant under this Chapter shall keep records as the Department may prescribe, including records which fully disclose the amount and disposition by the applicant of the grant proceeds, the total cost of the plan or program in



connection for which the 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 shall have access, for the purpose of audit and examination, to books, documents, papers and records of the grant recipient that are pertinent to a grant issued under this Chapter. This includes progress audits during the project.

(3) A grant recipient shall establish and maintain an adequate accounting record for an individual project, which will allow the Department to determine the legitimacy of costs incurred for the project.

(4) The grant recipient shall maintain effective control over and accountability for all funds, property and other assets. Applicants shall adequately safeguard assets and shall assure that they are used solely for authorized purposes.

(5) A grant recipient shall establish procedures to minimize the time elapsing between the transfer of funds from the Department and the distribution by the applicant whenever funds are advanced by the Department.

(6) The grant recipient shall include, in any contract related to the grant, a clause, which allows the Department access to the applicant's contractor's records for purposes of accounting and audit.

(b) Retention of Records.

(1) A grant recipient shall retain, for a period of five 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 items 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; carloading compliance reports; plans; inspection reports; final inspection report showing acceptance for the project; and a record of disposition or correction of unsatisfactory work.

(2) A grant recipient shall retain for a period of five 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.

(c) Carloading Reports.

(1) The grant recipient shall submit, on a form approved by the Bureau, annual carloading reports for five (5) consecutive years, beginning in the year following project completion, comparing the average guaranteed carloadings achieved against the carloading projections contained in the grant agreement.

(2) The Bureau will note discrepancies between the carloadings documented in the report and the projected carloadings identified in the grant agreement and will identify actions, if any, to be taken to ensure that the project will achieve the projected carloadings within six (6) months.

(3) A record of the grant recipient's default may be entered into the Statewide Contractor Responsibility Program File for future consideration in any determination as to whether Commonwealth grants are to be extended to the grant recipient. The Bureau

may also reclaim any grant funds awarded or stop any future awards if the grantee fails to meet the carloading requirements on any grant and/or fails to properly report the carloading data to the Bureau.

(4) The carloading data submitted to the Bureau is subject to verification by Department Internal auditors or by external auditors contracted by the Bureau.

#### **§ 429.13 Inspection**

(a) The Department and/or an agency of the Commonwealth or any person designated or authorized by the Department has the absolute right to inspect the project sites, proposed project sites, records and construction materials relating to a project funded by a grant issued under this Chapter.

(b) An inspection ordered by the Department or conducted under this Chapter may include but not be limited to: the reproduction and examination of records; the taking of samples applicable to evaluation or project quality control; and the assessment of any factor relevant to the project, application or contract terms related to the grant process.

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

#### **§ 429.14 Payment Procedures**

(a) Prior to the disbursement of funds the Department may conduct inspections, testing, review or audit records of accounts to validate, to the satisfaction of the Department, that the disbursement of funds is warranted.

(b) A grant recipient, having received payment or partial payment or reimbursement under a grant under this Chapter, shall, within seven calendar days of receipt of grant funds from

the Department make payments to vendors and contractors for services and materials properly invoiced under the project.

(c) The grant recipient shall provide proof to the Department that payment for all project subcontractors has been made within 30 calendar days of receipt of grant funds.

(d) A grant recipient 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.

(e) Ten percent (10%) of each grant payment shall be withheld by the Department as retainage until final inspection and approval of the project by the Department.

(f) Payment requests may be made for projects in progress, but shall be limited to one request per month.

#### **§ 429.15 Liability; Forfeiture of Funds; Repayment**

(a) If a grant recipient fails to comply with the terms and conditions of a grant issued under this Chapter, the following conditions apply:

(1) The grant recipient shall immediately reimburse the Department the amount demanded by the Department, up to the total amount of the grant.

(2) The Department may, at the discretion of the Director, disqualify the grant recipient from future consideration for grants issued under this Chapter.

(b) A grant recipient aggrieved by a decision of the Department under this section may take an appeal under 2 P.A. C.S. §§ 501-508 and 701-704 (relating to practices and procedures of the Commonwealth agencies and judicial review of Commonwealth agency action) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

**§ 429.16 Waiver**

(a) The Department may waive requirements to submit specific information or data normally required for a grant application.

(b) Waivers may be granted after written request to the Director and formal written response to the applicant by the Director prior to submission of the completed application to the Bureau.

(c) In the event of an emergency or other event deemed of critical concern to the Commonwealth, the Secretary may waive any, or all, of the requirements of this Chapter otherwise not prohibited by statute.



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 14, 2014

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

Re: Proposed Rulemaking  
# 18-437 — 67 Pa. Code, Chapter 429  
Rail Freight Grants

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for the addition of Chapter 429 to the Department of Transportation's (Department) regulations which the Department intends to adopt in accordance with the provisions of Section 5 of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended*.

Copies of these materials were also delivered today to the Legislative Reference Bureau and to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees as evidenced by the enclosed, executed cover sheet.

The Department will provide the Independent Regulatory Review Commission with any assistance required to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

  
Jeffrey M. Spotts,  
Regulatory Counsel

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

I.D. NUMBER: #18-437  
SUBJECT: Rail Freight Grants  
67 Pa. Code, Chapter 429  
AGENCY: Department of Transportation

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IRRC

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

8-14-14 Shelia Eckhart HOUSE COMMITTEE ON  
for Majority Chair TRANSPORTATION  
Hon. Nicholas A. Micozzie

8-14-14 Lisa Kubeika  
for Minority Chair  
Hon. Michael P. McGeehan

8-14-14 C. Bohy SENATE COMMITTEE ON  
for Majority Chair TRANSPORTATION  
Hon. John C. Rafferty, Jr.

8-14-14 Tom Wozniak  
for Minority Chair  
Hon. John N. Wozniak

\_\_\_\_ N/A OFFICE OF ATTORNEY GENERAL

8/14/14 K Cooper INDEPENDENT REGULATORY  
REVIEW COMMISSION

8/14/14 Courinne Inaut LEGISLATIVE REFERENCE  
BUREAU

Date: August 14, 2014