

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF PHYSICAL THERAPY

#### [ 49 PA. CODE CH. 40 ]

#### Continuing Education Providers

The State Board of Physical Therapy (Board) amends § 40.63 (relating to continuing education) to read as set forth in Annex A.

#### *Description and Need for the Rulemaking*

Section 9(a) of the Physical Therapy Practice Act (act) (63 P. S. § 1309(a)) generally prohibits a physical therapist from treating human ailments by physical therapy except upon referral by a physician. However, under section 9(b) of the act, a physical therapist who meets certain qualifications may receive from the Board a certificate of authority to practice physical therapy without the required referral (often known as direct access). Under section 9(c)(1) of the act, a certificateholder shall complete a minimum amount of continuing education in each biennial renewal cycle to maintain direct access certification. The Board previously promulgated § 40.63 to set standards of continuing education for a direct access certificate holder.

Under § 40.63(d), a sponsor shall apply to the Board and obtain approval for each course or program of continuing education for the direct access certificateholder to receive credit that will satisfy the continuing education requirement. To avoid the need to apply for approval and review applications from providers that the Board knows currently meet the standards for approved continuing education courses, the Board proposed to preapprove those sponsors without requiring an application or specific review by the Board, to include the American Physical Therapy Association and its components, the Federation of State Boards of Physical Therapy, graduate education programs accredited by the Commission on Accreditation in Physical Therapy Education, and post-entry level doctorate of physical therapy programs in institutions accredited by the regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation. Additionally, § 40.63(d) does not currently set a time in which the sponsor shall apply for approval. The Board also proposed to require a continuing education sponsor to apply for approval at least 60 days in advance of the course or program so that the Board would have adequate time to review the application and to permit a sponsor to request a waiver of that time limitation for good cause shown. Finally, because a given course might be offered multiple times, the Board proposed to explicitly indicate through its regulations that approval of a course is good for multiple offerings of that course throughout the year.

#### *Summary of Comments and Responses to Proposed Rulemaking*

The Board published notice of proposed rulemaking at 39 Pa.B. 5435 (September 19, 2009) with a 30-day public comment period. The Board did not receive comments

from members of the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC first noted that § 40.63(d)(1) addresses “approved courses and providers” and recommended that this language referencing both courses and providers should be used consistently throughout the regulation. The Board agreed and revised the final-form rulemaking accordingly.

Regarding § 40.63(d)(6), which provides that a sponsor that is scheduling multiple presentations of a course or program shall indicate dates it is to be given, the HPLC requested an explanation of how the validity of approval is affected if dates for approval or courses and programs are not firm or change. This section was not intended to address validity of multiple presentations of the course or program. Rather, it was intended to apprise the Board that the course or program is being offered multiple times and when it is being offered. For a course or program offered a single time, the date of presentation is part of the application anyway. This requirement of notice of multiple presentations is simply to identify what the sponsor is asking the Board to approve.

The HPLC next requested an explanation of how a licensee will be informed of the approval or disapproval status of a course or program. The Board will directly notify the sponsor of approval or disapproval. The Board provides confirmation of licensure status online with LicensePA. This database also includes approved continuing education courses and programs. Moreover, the Board will provide confirmation to anyone who contacts the Board about a particular course or program.

Finally, the HPLC questioned how the Board will address distance learning. Existing § 40.63(e) provides that a certificateholder may accrue required hours in distance education courses offered by approved sponsors of continuing education so long as the course sponsor evaluates and assesses the extent of learning that has taken place. The Board sees nothing different about preapproved sponsors that would require deviation from this standard.

IRRC shared the concerns expressed by the HPLC as previously described and did not otherwise comment on the proposed rulemaking.

#### *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### *Effective Date*

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

The final-form rulemaking is authorized under section 3(a) of the act (63 P. S. § 1303(a)) and section 9(c) of the act.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5435, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 15, 2010, the final-form rulemaking was approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 16, 2010, and approved the final-form rulemaking.

*Additional Information*

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7134, st-physical@state.pa.us.

*Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 39 Pa.B. 5435.

(4) The final-form rulemaking is necessary and appropriate for the administration of the act.

*Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by amending § 40.63 to read as set forth in Annex A.

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

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

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES L. CLAHANE, PT,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5655 (October 2, 2010).)*

**Fiscal Note:** Fiscal Note 16A-6513 remains valid for the final adoption of the subject regulation.

**Annex A****TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS****PART I. DEPARTMENT OF STATE****Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS****CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY****Subchapter A. PHYSICAL THERAPISTS****PRACTICE WITHOUT PHYSICIAN REFERRAL****§ 40.63. Continuing education.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Certificateholder*—A licensed physical therapist who holds a certificate of authorization to practice physical therapy without a referral.

*Contact hour*—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program.

(b) *Continuing education requirement for renewal of certificate of authorization.* Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have completed during the preceding biennium a minimum of 20 contact hours of physical therapy continuing education related to keeping the certificateholder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 contact hours shall be in evaluative procedures to treat a person without a referral.

(c) *Reports to the Board.* A certificateholder shall certify compliance with the continuing education hours requirement at the time of biennial renewal of the certificate. A certificateholder shall retain for at least 4 years, certificates, transcripts or other documentation showing completion of the prescribed number of hours. These records are subject to audit by the Board.

(d) *Approved courses and programs.*

(1) Courses and programs approved by the Board will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificateholder to ascertain the approval status of the course or program before undertaking a continuing education activity.

(2) Irrespective of the sponsor, the Board reserves the right to reject a continuing education course or program submitted by a certificateholder if it is outside the scope of practice of physical therapy. The Board will not accept courses or programs which are unrelated to the actual practice of physical therapy—for example, instruction in office management or practice building. A certificateholder will be notified of a rejected course or program in writing, along with the reason for the rejection.

(3) Sponsors of physical therapy continuing education seeking Board approval of individual courses and programs shall submit an application at least 60 days prior to the date the continuing education course or program is due to take place on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a course or program unless the sponsor:

(i) Offers courses or programs, or both, with specific learning objectives geared to improve the professional competence of the participant.

(ii) Verifies attendance of the course.

(iii) Provides each attendee with a certificate which includes participant's name, date, place, course title, presenter and number of contact hours.

(4) The Board may withdraw approval of a sponsor for cause. The sponsor will be notified in writing of the reasons for withdrawal of approval.

(5) A sponsor seeking approval who is unable to submit the application at least 60 days prior to the date the course or program is given may request a waiver in writing setting forth the reasons why the 60-day requirement could not be met.

(6) Approval of a course or program shall be valid for 1 year after approval. In the event that the sponsor is scheduling multiple courses or programs, the sponsor shall indicate on the application each date the course or program is to be given.

(e) *Distance education.* A certificateholder may accrue all required hours in distance education courses offered by approved sponsors of continuing education as long as the course sponsor evaluates and assesses the extent of learning that has taken place.

(f) *Reinstatement of certificate.* Reinstatement of certificate shall be subject to the following conditions:

(1) A person whose certificate has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose certificate has been suspended or restricted shall show compliance with the continuing education requirement during the entire period of suspension or restriction.

(g) *Waivers; exemptions for continuing education.* The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. No waiver or extension of time will be granted unless a written request is submitted by the licensee; or in cases of physical disability or illness, by a physician licensed in this state or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. Necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted, require the applicant to make up all or part of the continuing education waived.

(h) *Preapproved sponsors.* In addition to sponsors whose specific courses and programs are approved, the Board finds the following entities have currently met the standards for approved courses and programs. Accordingly, courses or programs that otherwise meet all requirements for required continuing education are approved when offered by the following sponsors:

(1) The American Physical Therapy Association (APTA) and its components.

(2) The Federation of State Boards of Physical Therapy (FSBPT) and its jurisdictions.

(3) Graduate education programs accredited by The Commission on Accreditation in Physical Therapy Education (CAPTE).

(4) Postentry level doctorate of physical therapy programs in an academic institution accredited by a regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation.

[Pa.B. Doc. No. 10-2046. Filed for public inspection October 29, 2010, 9:00 a.m.]

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [ 67 PA. CODE CH. 233 ]

### Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues

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

#### *Purpose of this Chapter*

The purpose of Chapter 233 is to implement 75 Pa.C.S. § 3116(1)(2)), which requires the Department to develop, by regulation, a Transportation Enhancements Grant Program (Program) for the use of revenue generated from automated red light enforcement (ARLE) systems.

#### *Summary of Comments and Changes in Final-Form Rulemaking*

Notice of proposed rulemaking was published at 39 Pa.B. 4435 (August 1, 2009). The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees.

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

The Department also participated in a House Transportation Committee hearing on the ARLE Program in which

the City of Philadelphia and the PPA also participated. The opposing positions were again aired at the hearing.

In response to the divergent positions regarding the distribution of grants, in this final-form rulemaking, the Department added § 233.8(g) (relating to grant selection process and criteria), regarding the distribution of grant funds in a manner patterned somewhat after the methodology in 42 Pa.C.S. § 3571(b)(3) (relating to Commonwealth portion of fines, etc.) for the disbursement of fines collected for convictions of violation of 75 Pa.C.S. (relating to Vehicle Code). New subsection (g) provides that the local government in which a violation was prosecuted will be entitled to 50% of the total grant revenues generated by that local government through the ARLE Program. The remaining 50% of the grant revenues generated by the ARLE Program will be available for grants to eligible sponsors, including those governments generating the revenues. The Department believes this approach strikes a balance between the opposing positions voiced in the comments to the proposed rulemaking and at the House Transportation Committee hearing.

In its comments, IRRC also suggested revisions to the definitions of “sponsor” and “Secretary” in § 233.2 (relating to definitions). The suggested modification to the definition of “sponsor” is not necessary in light of § 233.8(g). The definition has been amended, however, to replace the term “authority” with “government.” The definition of “Secretary” has been deleted as recommended because the term is not used in Chapter 233.

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

IRRC commented in § 233.5 (relating to application procedure) that the Department should limit the current language of “other information” to information pertaining only to the project being considered. The Department revised § 233.5 accordingly to reflect this limitation.

IRRC commented in § 233.6 (relating to deadline for applications) that the phrase “in a timely fashion” is too vague and should be replaced with a definite time frame. The Department revised § 233.6 to indicate that technically incomplete applications will have to be completed within 3 weeks after the close of the application period.

PSATS also raised concerns regarding § 233.8, noting that the section could be interpreted to mean that the award of a grant during the “next fiscal year” required the project to be completed during the next fiscal year as well. It was also noted that the section include a specific time frame for the Department to make decisions on the award of grants. In response to this comment, the Department notes that it was not the intention in the proposed rulemaking to require that projects be completed within the same fiscal year that a grant was awarded. To clarify further, the Department revised the language in § 233.9(d) (relating to offer and acceptance of a grant) to clarify that the time frame for the completion of a funded project will be determined as a condition of the grant. The Department notes that § 233.5(c)(6) requires the applicant to submit a proposed schedule for the completion of the project as part of the application. It should be understood that the proposed schedule in the application will be taken into consideration in determin-

ing the time frame established as a condition of the grant. With regard to establishing a more specific time period for the Department to evaluate the grant applications and make grant awards, the Department respectfully declines to do so. The number and variety of applications that will be submitted in a given year is an unknown; the Department cannot commit to a specific time frame with the limited resources it will have to administer the Program. The Department has, however, amended § 233.8(a) to provide that grant offers will be made during the calendar year in which applications are submitted.

IRRC commented that the phrase “and other factors” in § 233.8(c) be deleted, urging that the factors should be spelled out in subsections (d) and (e). The Department agreed and revised § 233.8(c) appropriately. IRRC also commented that in § 233.8(d)(8) the wording “other criteria which the Department determines should be considered” was unspecific and raised the possibility of approval or denial of a grant based on criteria outside the parameters of the regulation. IRRC recommended that the subsection be deleted. The Department believes that, with respect to any given grant application, there may be other factors to also be considered. The Department, therefore, revised this subsection to provide more clarification and indicate that traffic safety and mobility priorities may also be considered.

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

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

#### *Persons and Entities Affected*

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

Other affected entities are sponsors that choose to apply for, or receive, a transportation enhancement grant under this final-form rulemaking. These include local authorities (county, municipal and other local boards or bodies having authority to enact laws relating to traffic), metropolitan planning organizations, rural planning organizations, county planning organizations or Commonwealth agencies.

The Department is certainly affected since it will be administering the ARLE Program established by the final-form rulemaking. Section 3116 of 75 Pa.C.S. defines various other Department roles and responsibilities regarding the ARLE Program. The Department is also affected by virtue of the fact that most of the ARLE system equipment is installed on State-designated highways.

In the future, other local authorities would be affected if 75 Pa.C.S. is amended to permit ARLE systems in other Commonwealth jurisdictions beyond the City of Philadelphia.

*Fiscal Impact*

The final-form rulemaking does not require the expenditure of significant additional funds by the Commonwealth or other entities. The revenue for the ARLE Program comes from the collection of fines from red light running violators. Almost all of these violations would not have been detected without the ARLE system or a large, ongoing expenditure to provide significant police presence for expanded, conventional enforcement efforts.

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

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 21, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 4435, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 16, 2010, and approved the final-form rulemaking.

*Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The Department is not establishing a sunset date for this final-form rulemaking, since Chapter 233 administrators provisions required under 75 Pa.C.S. The Department, however, will continue to closely monitor this final-form rulemaking for its effectiveness.

*Contact Person*

The contact person is Daryl R. St. Clair, P. E., Acting Director, Bureau of Highway Safety and Traffic Engineering, Department of Transportation, Commonwealth Key-

stone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120-0064, (717) 787-7350.

*Order*

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code, are amended by adding §§ 233.1—233.16 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of 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 them with the Legislative Reference Bureau as required by law.

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

ALLEN D. BIEHLER, P. E.,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5655 (October 2, 2010).)*

**Fiscal Note:** 18-415 No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF TRANSPORTATION**

**Subpart A. VEHICLE CODE PROVISIONS**

**ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT**

**CHAPTER 233. TRANSPORTATION ENHANCEMENT GRANTS FROM AUTOMATED RED LIGHT ENFORCEMENT SYSTEM REVENUES**

Sec.	
233.1.	Purpose.
233.2.	Definitions.
233.3.	Eligibility requirements and criteria.
233.4.	Limits of funding.
233.5.	Application procedure.
233.6.	Deadline for applications.
233.7.	Public records.
233.8.	Grant selection process and criteria.
233.9.	Offer and acceptance of a grant.
233.10.	Standards, methods, techniques, designs, and special conditions.
233.11.	Audit and recordkeeping.
233.12.	Inspection.
233.13.	Payment procedures.
233.14.	Liability; forfeiture of funds; repayment.
233.15.	Waiver.
233.16.	Appeal.

**§ 233.1. Purpose.**

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

**§ 233.2. Definitions.**

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

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

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

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

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

*Highway*—

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

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

*Local government*—County, municipal, and other local boards or bodies having authority to enact laws relating to traffic.

*Official traffic-control devices*—Signs, signals, markings and devices not inconsistent with 75 Pa.C.S. (relating to Vehicle Code) placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

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

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

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

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

*Vehicle*—

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

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

### § 233.3. Eligibility requirements and criteria.

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

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

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

### § 233.4. Limits of funding.

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

### § 233.5. Application procedure.

(a) A sponsor shall submit a written request in the form of an application to the Director: Attention—Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues, Bureau of Program Development and Management, 400 North Street; 6th Floor, Harrisburg, PA 17120, or e-mail to: ARLE\_Grants@state.pa.us.

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

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

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

(2) *Project location.* Provide a location map. Clearly identify the beginning and ending points of the project, the associated counties, municipalities, routes, segments, and offsets. Provide a general description of the location of the project and the surrounding area. Indicate roadway type/classification and length of the project in miles. Provide information on annual average daily traffic (AADT), current roadway geometry (number of lanes), speed limits, adjoining land uses, and number/location of signalized intersections.

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

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

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

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

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

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

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

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

(11) *Other information.* The sponsor shall provide any other information related to the project that the sponsor believes may justify the project or that is requested by the Department.

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

**§ 233.6. Deadline for applications.**

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

(b) During the initial year of the grant program, sponsors may submit a completed application within the time period established by the Department by notice in the *Pennsylvania Bulletin*. In years following the initial year of the grant program, sponsors may submit a completed application for a transportation enhancement grant under this chapter beginning on June 1 of each year until the close of business on June 30 of that year.

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

(d) The Department may consider applications for transportation enhancement grants under this chapter which may be technically incomplete on the application deadline, but which are made complete within 3 weeks of the close of the application period.

**§ 233.7. Public records.**

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

**§ 233.8. Grant selection process and criteria.**

(a) *Consideration.* Following the closing date for receipt of applications, properly completed applications filed within the application period will be considered for grants to be awarded during the current calendar year.

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

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

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

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

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

(3) The estimated cost of the project.

(4) The local and regional impact of the project.

(5) The results of similar types of projects that have already been completed.

(6) The results of previous projects completed by the sponsor.

(7) Cost sharing by sponsor or other entities.

(8) Other Department traffic safety and mobility priorities.

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

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

(g) *Distribution of grant funding.* Distribution of grant funding will be as follows:

(1) Fifty percent of the grant revenues generated through an automated red light enforcement program will be used exclusively for funding of transportation enhancement grants in the local government entity in which the violation was prosecuted.

(2) The remaining 50% of the grant revenues generated through the automated red light enforcement program will be available for funding of transportation enhancement grants to eligible sponsors throughout this Commonwealth.

**§ 233.9. Offer and acceptance of a grant.**

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

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

(c) *Grant conditions.* The Department may or may not fully fund the entire cost of the project. The grant agreement will specify the total amount to be funded under the grant offer, the scope of the project, the items of work to be included, and an anticipated project completion date. The Department may also require sponsors to conduct before and after studies to determine project effectiveness.

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

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

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

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

(f) *Amendments to projects.* In the consideration of an application, the Department may determine that a proposed project should be amended to accommodate available funding, application traffic design criteria, antici-

pated use, or to better accommodate potential user needs. The Department may offer a transportation enhancement grant under this chapter for a project whose cost, specifications, terms, or scope have been modified by the Department.

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

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

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

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

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

**§ 233.11. Audit and recordkeeping.**

(a) *General.*

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

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

(3) A sponsor is required to establish and maintain an adequate accounting record for an individual project, which will allow the Department to verify the costs incurred for the project.

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

(5) A sponsor shall establish procedures to minimize the time elapsing between the transfer of funds from the Department and the disbursement by the sponsor whenever funds are advanced by the Department. If this elapsed time exceeds the time frame delineated in the terms of the grant agreement, the Department may require the return of interest earned on payments made.

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

(b) *Retention of records.*

(1) A sponsor shall retain, for 3 years after the date of the submission of the final Department payment, documentary evidence such as invoices, cost estimates and negotiation documents relating to any item of project cost. These documents include, but are not limited to, vendor's invoices, applicable purchase orders, receiving reports, inventory records, method of pricing, returns, catalog cuts, plans, inspection reports, final inspection report showing acceptance of the project, and a record of disposition or correction of unsatisfactory work.

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

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

**§ 233.12. Inspection.**

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

(b) An inspection ordered by the Department or conducted under its authority may include, but not necessarily be limited to, the reproduction and examination of records, the taking of samples applicable to evaluation or project quality control, or the assessment of any factor relevant to a project, application, or contracts and terms related to the process for transportation enhancement grants from automated red light enforcement system revenues.

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

**§ 233.13. Payment procedures.**

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

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

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

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

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



**§ 233.14. Liability; forfeiture of funds; repayment.**

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

**§ 233.15. Waiver.**

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

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

**§ 233.16. Appeal.**

A person aggrieved by a decision of the Department under § 233.14 (relating to liability; forfeiture of funds; repayment) may take an appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

[Pa.B. Doc. No. 10-2047. Filed for public inspection October 29, 2010, 9:00 a.m.]

**DEPARTMENT OF TRANSPORTATION  
[ 67 PA. CODE CHS. 471, 473, 477 AND 479 ]  
Air Transportation**

The Department of Transportation (Department), under the authority in 74 Pa.C.S. Chapters 51, 53, 55, 57, 59 and 61, amends Chapters 471, 473, 477 and 479 to read as set forth in Annex A.

*Purpose of Final-Form Rulemaking*

This final-form rulemaking sets forth criteria for the rating and licensing of airports. The purpose of Chapter 471 (relating to airport rating and licensing) is to set forth the licensing criteria and requirements for aircraft landing facilities. Chapter 473 (relating to aviation development grants) sets forth criteria and requirements for the aviation development grant program. Chapter 477 (relating to local real estate tax reimbursement grants) sets forth criteria for the local real estate tax reimbursement grant program. Chapter 479 (relating to obstruction to aircraft) sets forth criteria and instructions for persons who wish to erect, add to or maintain obstructions to aircraft.

*Summary of Comments and Changes in Final-Form Rulemaking*

Notice of proposed rulemaking was published at 38 Pa.B. 4375 (August 8, 2008). The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees.

Comments were received from the Aviation Council of Pennsylvania, the Pennsylvania Aviation Advisory Committee, Lancaster Airport, the Pennsylvania State Association of Township Supervisors (PSATS) and IRRC.

*Chapter 471*

With respect to Chapter 471, the Aviation Council of Pennsylvania commented that, during the considerable outreach conducted to develop this rulemaking, additional language to § 471.1 (relating to purpose) had been discussed, but that language had not been included in the proposed rulemaking. The Pennsylvania Aviation Advisory Committee echoed that comment. The expanded language has been added to § 471.1 in this final-form rulemaking.

IRRC commented with regard to § 471.2 (relating to definitions), that the definitions of “airport,” “aviation-related areas” and “landing area” were inconsistent with the definitions of those terms in 74 Pa.C.S. Part III (relating to Aviation Code). IRRC urged that the final-form rulemaking simply reference the definitions in the Aviation Code and delete the inconsistent definitions. The Department agreed and made the recommended reference and deletions. IRRC also noted that other definitions in § 471.2 not addressed in the proposed rulemaking merely repeat the definitions in the Aviation Code and should also be deleted. The Department agreed and also deleted those definitions in this final-form rulemaking.

IRRC also commented that the definition of “commercial operations” in the proposed rulemaking was not needed insofar as the term was only used in § 471.3(b) (relating to airport licensing). IRRC recommended that the definitional language be included as part of § 471.3(b). The Department agreed and deleted the definition and added appropriate language to § 471.3(b).

IRRC also commented that the definition of “prepared landing site” contained substantive language not appropriate in a definition as well as that the definition included the term being defined. The Department deleted the definition as the term does not appear elsewhere in the final-form rulemaking.

IRRC also objected to the lack of clarity in the definition of “Waiver Advisory Board,” insofar as it did not include criteria for membership or clarification of the Bureau of Aviation’s (Bureau) Waiver Policy referenced in the definition. In response, the Department made extensive revisions to § 471.3(d) regarding waivers and the composition of the Waiver Advisory Board.

With respect to § 471.3, IRRC commented that the sentence “Current licensing criteria and procedures will be provided by the Bureau on request” was confusing and the section did not indicate where these criteria and “criteria for private groups,” also referenced in the section, could be found. The offending sentence should have been removed in the proposed rulemaking as the criteria for licensing are found in the amended appendices to the proposed rulemaking. It has been removed in the final-form rulemaking. Subsection (b) has also been rewritten to provide a specific reference to Appendix A, Criteria E for the “criteria established for private groups.”

IRRC also noted that the final-form rulemaking should explain under what circumstances the selling of fuel and flight instruction to the general public at private airports will be authorized. The clarifications to subsection (b)(2) in the final-form rulemaking make clear that, with respect to private airports, only those that meet or exceed the criteria for private group airports in Appendix A, Criteria E will be authorized to offer these services to the group but not to the general public.

With respect to § 471.3(d)(1), IRRC noted that there was not a time frame provided in which the Bureau staff and Waiver Advisory Board would make a decision on a

request for waiver. Time periods have been added to subsection (d)(1)(iv) and (vi) in the final-form rulemaking.

With regard to § 471.3(d)(2), IRRC commented that if the language “The Bureau will post the waiver procedure on the Department website” was intended to refer to binding requirements on waiver applicants, the requirements should be included in the final-form rulemaking. The subsection was not intended to refer to other procedures not in the regulation. The Department clarified the subsection to read: “The Bureau will post the procedures in this section on the Department web site.” IRRC also questioned the language in subsection (d)(4) which stated “Waiver of criteria or requirements may be inconsistent with this chapter.” This language in the proposed rulemaking inadvertently omitted the word “not.” The sentence has been further amended to read “. . . may not be inconsistent with the intent of this chapter” to clarify and reaffirm that a waiver of the requirements in the regulation should nevertheless be consistent with the overarching principles captured in the purpose of the regulation.

With regard to § 471.4 (relating to licensing fees (private airports only)), IRRC questioned the Department’s authority to allow periodic adjustments in the licensing/inspection fees. The Department revised this section to definitively establish the fees for licensing and inspection of private airports and for obtaining a temporary airport license. IRRC also questioned the authority of the Department to charge fees for private airports only. It should be noted that 74 Pa.C.S. § 6103(a)(3) (relating to service fees) expressly authorizes the establishment of fees for the issuance of private airport licenses but is silent with regard to public use airports. Moreover, fuel sales at public use airports are subject to the aviation fuel tax and provide restricted revenue supporting the operation of the Bureau and aviation grant programs. Consequently, the Department has historically not charged licensing fees to public use airports.

With regard to § 471.7(b)(7) (relating to licensing criteria and requirements), IRRC sought explanation of the language regarding notice to the flying public for an airport’s nonaeronautical use of aviation related areas. The Federal Aviation Administration (FAA) has a standard notification process and time frames; the subsection has been revised to include reference to FAA procedures and time frames. IRRC also sought clarification as to who would be included in the “flying public” to whom notice would be given. The term, in context, refers to aircraft operators, not the general public using air transportation. The term has been replaced with “aircraft operators” in the final-form rulemaking.

IRRC also recommended, with respect to § 471.7(b)(9)(i), that the Department establish by regulation the frequency of inspections, a time frame for the Bureau to issue a report on inspection and a time frame in which corrective action must be taken. The Department respectfully declines to do so. The wide variety and size of airports/heliports in private/public use in this Commonwealth requires flexibility in the inspection process and in resolution of deficiencies which may be identified. Rigid time frames would assume that all situations are the same and can be addressed identically regardless of the type or size of the facility and the nature of the deficiency. This is not the case. Appropriate guidance will be provided to individual regulated facilities on a case by case basis factoring in the resources of the facility and the complexity of the issues identified. Moreover, the recommendation that the regulation make all

corrective action mandatory under this subsection would render the provisions for waiver established in the regulation a nullity.

With regard to § 471.8 (relating to suspension, penalties and revocations), IRRC questioned whether the language of the section permitted an airport license to be suspended for a potential hazard to the general public in addition to the “users of the airport.” A hazard to the general public associated with the physical features of an airport would actually be a hazard to the users of the airport. It must also be remembered that the Department’s authority is limited to regulation of the airport and its operators and primarily the physical features of the facility as they relate to the safe take-off and landing of aircraft. It is not within the Department’s purview to determine whether an airport poses a nuisance or unwelcome neighbor to a community.

IRRC also commented that this section appeared to provide 90 days for an airport to respond to a Department notice of action. The concern was raised that an identified hazard could persist for some time before remedial action is taken. It should be noted that paragraph (1) provides the Department with discretion to require response within 90 days or less as deemed necessary by the Director. A hazard requiring more immediate remediation can thus be appropriately addressed.

With regard to Chapter 471, Appendix A, IRRC commented that the phrase “is recommended” appeared and suggested that advisory language is more appropriate in a statement of policy; language in a regulation is intended to be mandatory. The Department declines to do so. The inclusion of recommendatory language was purposeful. For consistency, some of the criteria that are listed as mandatory in the larger public airports were carried over and modified to recommendations in the criteria for smaller facilities, based on the airport and its operational use. The Department believes that it is important that some criteria which are mandatory for one category of facility, while not required in a lesser facility, should nevertheless be included as recommended criteria to assist airport operators in transitioning to another airport category if desired. The overall reach of the final-form rulemaking is to establish criteria and standards for all types of airports/heliports in this Commonwealth. The Department does not believe the inclusion of occasional less than mandatory standards in Appendix A is confusing to the regulated community. Rather, the Department believes that inclusion of those recommendations is a greater convenience and less confusing to the regulated community than the removal of the language and the creation of a separate statement of policy.

Finally, IRRC echoed the concerns of PSATS that the final-form rulemaking could impact municipalities and cause local governments unanticipated costs. Both IRRC and PSATS recommended that the waiver process in § 471.3 include input from the locality in which the subject airport is located. The Department emphasizes that it does not have authority to impose obligation on municipalities or adjoining property owners in the enforcement of these regulations and regulates only the airport facility. The Department also emphasizes that its authority does not extend to issues regarding public nuisance or compliance with local zoning or other municipal requirements. The forums available to the municipality to assert these issues are neither usurped nor overridden by the decision making of the Department under this chapter. Nevertheless, the Department included a provision in the final-form rulemaking to provide for a request

for waiver to be posted on the Department's web site so that interested local governments or citizens may be made aware when a request for waiver is submitted.

PSATS also expressed concern that Department's enforcement of these regulations or grant of waiver of its provisions, or both, could usurp local authority over land use and other municipal concerns. The aviation laws of the Commonwealth do not grant the Department this power. Nevertheless, additional language has been added to §§ 471.3 and 471.7 to make the limitation of the Department's authority clear.

#### *Chapter 473*

David Eberly of Lancaster Airport commented that the last two sentences in § 473.4(b) (relating to limits of funding) were confusing or superfluous, or both. The Department agreed and that language has been deleted in the final-form rulemaking.

IRRC also commented also that the language in this section regarding non-Federally eligible airports "was confusing and should be explained." Insofar as it is outside the purview of the Department to explain whether an airport is eligible for federal funding, the language has been deleted from the final rulemaking. IRRC also inquired as to the role of local governments in "state and local participation projects." The term refers to projects which local governments may have chosen to provide local funding in accordance with whatever local mechanism may be in place to provide funding.

IRRC also commented that the project selection process and criteria in § 473.5a(d) (relating to project selection process and criteria) lacked clarity and was more in the nature of a statement of policy than a regulation. It should be noted that this language is identical to existing § 473.9(e) (relating to offer and acceptance of an aviation development grant) and has simply been moved to be included in this new section to improve the readability and logical flow of the regulation. As noted earlier with respect to the criteria in Chapter 471, Appendix A, the variety of size and function of the airports/heliports in this Commonwealth as well as the changing availability of staff and funding resources make the establishment of rigid unmodifiable internal grant review procedures and mechanisms unworkable within the limited resources of the Bureau.

With regard to subsection (f)(10), IRRC objected to the vague "other criteria as may be considered from time to time" language and recommended that the subsection be either deleted or clarified. The Department agreed and deleted subsection (f)(10).

IRRC raised concerns similar to those concerns about to § 473.5a(d) that the language in subsection (g) in the section was not appropriate in a regulation. As with subsection (d), this language is not new but was simply moved from § 473.8(e) and relocated here for improved readability and flow. Nevertheless, the Department revised the subsection to eliminate its discretionary tone and capture the other less quantifiable considerations that will also factor in the evaluation of a grant application.

With respect to § 473.9(a), IRRC commented that this existing language indicating that a Department grant offer could fund an entire project seemed now to conflict with the new language in § 473.4(b) which caps state participation. Section 473.9(a) has been amended in the final-form rulemaking to remove the conflict.

IRRC also provided several suggestions of unnecessary and unclear language in §§ 471.3(d)(1), 471.7(b)(9),

473.5a(c) and (g), 473.6a(b)(2)—(6) and 473.13(4) as well as Chapter 741, Appendix B(a). The unnecessary language has been deleted in these sections. IRRC also opined without elaboration that the phrase "including but not limited to" in § 473.6a(1)(ii) (relating to project execution) is not necessary. The Department believes the language should remain to clarify that the list of items provided is not exhaustive.

The Department also included specific references to FAA regulations and guidelines when appropriate, as suggested by IRRC.

Finally, in response to concerns raised by PSATS similar to those raised with respect to Chapter 471, the Department included clarification in § 473.9(b)(3) that the offer or acceptance of a grant, or both, under this chapter to fund improvements at a facility does not usurp or relieve the grantee/sponsor from its obligations to comply with local zoning or other requirements in the completion of the funded project.

#### *Chapters 477 and 479*

No comments regarding the amendments to Chapters 477 and 479 were received from the public, IRRC or the House and Senate Transportation Committees.

#### *Persons and Entities Affected*

This final-form rulemaking affects owners and operators of aircraft landing facilities, including airports, heliports, seaplane bases, and the like.

#### *Fiscal Impact*

Implementation of this final-form rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. While this final-form rulemaking does adjust the licensing fees, additional cost to the regulated community will be nominal and are comparable to other licensing fees currently in place.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 21, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 4375, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 16, 2010, and approved the final-form rulemaking.

#### *Sunset Provisions*

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 74 Pa.C.S. Chapters 51, 53, 55, 57, 59 and 61. The Department, however, will continue to closely monitor these regulations for their effectiveness.

*Contact Person*

The contact person for technical questions about the final-form rulemaking is Brian Gearhart, P. E., Director, Bureau of Aviation, 400 North Street, Harrisburg, PA 17120, (717) 705-1200.

*Order*

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapters 471, 473, 477 and 479, are amended by amending Chapter 471, Appendix A and §§ 471.1—471.9, 473.2—473.4, 473.7, 473.9, 473.13, 477.2 and 479.2; by adding Chapter 471, Appendix B and §§ 473.5a, 473.5b and 473.6a; and by deleting §§ 473.5, 473.6 and 473.8 to read as set forth in Annex A.

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

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

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

ALLEN D. BIEHLER, P. E.,  
Secretary

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5655 (October 2, 2010).)*

**Fiscal Note:** Fiscal Note 18-409 remains valid for the final adoption of the subject regulations.

**Annex A****TITLE 67. TRANSPORTATION****PART I. DEPARTMENT OF TRANSPORTATION****Subpart B. NONVEHICLE CODE PROVISIONS****ARTICLE IV. AIR TRANSPORTATION****CHAPTER 471. AIRPORT RATING AND LICENSING****§ 471.1. Purpose.**

(a) This chapter sets forth criteria for the rating and licensing of airports and applies to the Bureau and airport owners throughout this Commonwealth.

(b) The Bureau has promulgated and will enforce this chapter as necessary for the promotion of aviation, airports and air safety within this Commonwealth. This chapter shall be consistent with, and conform to the Federal statutes and regulations governing aeronautics. The Department may revoke or suspend an airport license upon proof of any violation of law or regulation relating to aviation.

**§ 471.2. Definitions.**

In addition to the words and terms defined in section 5102 of the code (relating to definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Aviation restricted account*—The account into which revenues, generated from the sources in section 5103(b) of the code (relating to aviation restricted account), are deposited.

*Based aircraft*—An aircraft stored at a specific airport or heliport for more than 30 days.

*Bureau*—The Bureau of Aviation of the Department.

*Code*—74 Pa.C.S. §§ 5101—6169 (relating to the Aviation Code).

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

*Director*—The Director of the Bureau.

*FAA*—The Federal Aviation Administration.

*Grant*—An agreement and its accompanying assurances between the Department and a sponsor to provide funding assistance.

*Landing area*—An area used or intended to be used, for the landing and taking off of aircraft.

*NOTAM*—Notice to airmen.

*Operation*—An aircraft take-off or landing.

*Person*—

(i) A corporation, company, association, society, firm, partnership or joint stock company.

(ii) The term includes an individual, the Commonwealth and all political subdivisions of the Commonwealth or agencies or instrumentalities.

*Primary surface*—The area on the ground centered on a runway, provided to enhance the safety of aircraft operations by having the area free of objects, except for objects that need to be located in the primary surface for air navigation or aircraft ground maneuvering purposes.

*Private heliport*—A heliport which is privately owned and which is not open or intended to be open to the public.

*Project*—A compilation of all tasks or activities associated with an approved grant on behalf of an eligible sponsor qualified to receive grant assistance.

*Public heliport*—A heliport, which is either publicly or privately owned, and which is open to the public.

*Regional Project Management Team*—Bureau staff assigned responsibility for each step of the project completion process.

*Sponsor*—A person applying for, or having received, an aviation development grant for a public airport. The following are different types of sponsors eligible for funds:

(i) *Planning agency*. An agency designated by the Bureau that is authorized by the laws of the State or political subdivisions concerned to engage in area wide planning for the areas in which the grant assistance is to be used. Typical planning agencies include planning offices, aeronautics commissions and departments of transportation.

(ii) *Public agencies owning airports*. A State, municipality, county, airport authority or other political subdivision, or a tax supported organization or an Indian tribe or pueblo.

(iii) *Public agencies not owning airports*. A public agency as defined in subparagraph (i) that does not own an airport seeking master planning grants for new airports, acquisition of existing airports and noise program implementing projects which are included in a noise compatibility program prepared by a local airport sponsor and not disapproved by the FAA.

(iv) *Privately owned public use airport owner*. An individual, partnership, corporation, or other legal entity that owns a public use airport

*Visual runway*—A runway that is constructed for and intended solely for the operation of aircraft using only visual approach procedures.

*Waiver Advisory Board*—A board established under the Bureau’s Waiver Process described in the current Bureau Waiver Policy. The Board will be composed of individuals as described in § 471.3(d)(1)(v)(B) (relating to airport licensing) appointed by the Secretary of the Department and will include representation from the Aviation Council of Pennsylvania.

**§ 471.3. Airport licensing.**

(a) *Authority.* A person may not establish, maintain or operate an airport, or permit flight operations at an airport, unless authorized by the Bureau. This does not apply to an airport approved or maintained by the government of the United States, or to infrequent operations by helicopters or aircraft with characteristics permitting operation from sites not specially prepared therefore.

(b) *Written authority required.* Authority to establish, maintain or operate an airport will be provided in writing by the Bureau and will indicate whether the airport is public use, private use or otherwise restricted. An airport will be licensed by the ratings under §§ 471.5 and 471.6 (relating to airport rating—excluding heliports; and heliport rating).

(1) Commercial operations (operation of aircraft for compensation or hire, including flight instruction, aircraft maintenance, sale of aircraft, parts and fuel) shall be limited to public use airfields, or private airports that meet or exceed criteria established for private group airports. (See Appendix A, Criteria E)

(2) Private airport and private group operators are prohibited from selling fuel to the general public, and from performing flight instruction to the general public.

(c) *Temporary licenses.* A temporary license, public or private, may be issued by the Bureau for temporary operations or special occasions. An inspection fee of \$25 will be charged for a temporary license.

(d) *Waiver.* The Bureau may issue a waiver for conditions not in compliance with criteria listed in Appendix A if control measures are put in place or if those conditions are deemed to not cause undue hazard to persons or property. Waivers may be temporary or permanent, depending on the situation and circumstances. Any conditions having a current waiver in force will be deemed to be in conditional compliance with this chapter.

(1) Waiver of criteria or requirements in this chapter will be in accordance with the following procedures.

(i) Requests for waivers must be in writing.

(ii) A sponsor shall request a waiver using forms and instructions provided by the Bureau, and available on the Department web site.

(iii) A separate request shall be submitted for each item for which waiver is requested, and the request for waiver will be posted on the Department web site.

(iv) Bureau staff will review each request and provide recommendation within 30 calendar days of receipt.

(v) Upon a Bureau staff recommendation of denial, the request will be forwarded to the Waiver Advisory Board (Advisory Board).

(A) The Advisory Board shall consist of five members appointed by the Secretary of the Department.

(B) Each Advisory Board member shall be either a certificated pilot, an accredited airport executive, a licensed professional engineer with experience in airport

planning and design, or otherwise be an individual with a substantial aviation background.

(vi) The Advisory Board will review and analyze the waiver request and, within 75 calendar days of receipt of the request by the Advisory Board, provide a recommendation for disposition to the Bureau Director.

(vii) A denial of a waiver is subject to appeal under the appeal process described in § 471.9 (relating to appeal).

(2) The Bureau will also post the waiver procedures in this section on the Department web site.

(3) A nonexhaustive list of conditions for which the Bureau may grant a waiver is included in Appendix B.

(4) Waiver of criteria or requirements may not be inconsistent with the intent of this chapter.

(5) This chapter provides no authority for the Department to grant any waiver of local zoning or other municipal requirements.

(e) *Change of ownership.* A change of airport ownership requires a new license through the Bureau’s licensing process. Upon the change of ownership or status of an airport, a new license which includes prior waivers of nonstandard conditions, modifications of FAA standards, or determinations of no hazard, as applicable, will be issued provided that a review by the Bureau verifies that conditions at the airport have not significantly changed since the time the previous license and waivers were issued.

(f) *Existing airport.* An airport presently in existence and licensed under preexisting statutes and regulations is considered authorized.

(1) The Bureau may require an existing airport to correct or modify conditions which have arisen or significantly changed since the time any previous license or waiver was issued if they pose a significant threat to aviation safety.

(2) Determination that a condition poses a significant hazard to aviation safety will be based upon staff analysis by the Bureau after consultation with the Advisory Board.

(g) *Suspension or revocation of license.* The Bureau may revoke or suspend an airport license for reasonable cause, such as, but not limited to, failure to correct airport deficiencies, failure to cease unauthorized activities, or any violation of this chapter. See § 471.8 (relating to suspension, penalties and revocations).

(h) *Zoning.* Issuance of an airport license does not preempt requirements of local zoning authorities.

**§ 471.4. Licensing fees (private airports only).**

(a) A licensing fee shall be paid to the Department in form of a check, money order or bank draft, payable to “Pennsylvania Department of Transportation.” The Bureau will notify private airport licensees at the time of license renewal of the appropriate licensing fee and procedure for license renewal.

(b) Licensing and inspection fees shall be as follows:

(1) The fee of \$50 for both an initial site inspection and a final inspection will be paid at the time of the initial application for airport license. Subsequent inspections required to receive a license will be subject to an additional \$50 fee.

(2) A written request and fee of \$25 are required for any additional inspections.

(3) A licensing fee of \$25 per year is payable in 3-year intervals (\$75 for a 3-year renewal).

(4) Temporary licenses, as required under § 471.3(c) (relating to airport licensing), require an inspection fee.

**§ 471.5. Airport rating—excluding heliports.**

(a) The following are rating categories to be used by the Bureau for the issuance of an airport license:

(1) *Public airport.*

(i) *Scheduled service/general aviation.* An airport accommodating regularly scheduled air carrier or commuter service or general aviation operations, or both.

(ii) *Basic utility.* An airport with a visual runway, turf or paved, serving aircraft less than 12,500 pounds max gross weight, without beacon or runway edge lights, authorized for visual flight rules (VFR) use only and not intended for night time operations.

(iii) *Sport and ultralight.* A landing area for the use of sport or ultralight aircraft, or both, as those terms are defined by applicable Federal aviation regulations (FARs).

(iv) *Seaplane base.* An area of water used as a landing area.

(2) *Private airport.*

(i) *Individual.* A private airport used exclusively by the licensee.

(ii) *Group.* A private airport used exclusively by a partnership, organization or corporation which is restricted to members of that entity.

(iii) *Sport and ultralight.* A landing area for the use of sport or ultralight aircraft, or both as those terms are defined by applicable FARs.

(iv) *Seaplane.* An area of water used as a landing area.

(b) *Use of landing areas by another aircraft.*

(1) Aircraft operators are authorized to land at public airports within the capabilities of the pilot-in-command and the aircraft. Pertinent information regarding public airports is located in the FAA Airport Facilities Directory and also updated and disseminated by a NOTAM.

(2) For private airports, aircraft operators shall receive authorization from the airport owner prior to operating to or from the airport. A private airport owner/licensee may invite an aircraft operator to use his landing area if the owner has thoroughly briefed the invitee on the takeoff and landing data and any peculiarities of the landing area. The invitee's aircraft expected performance values and operational requirements may not exceed the capabilities or dimensions of the landing area.

**§ 471.6. Heliport rating.**

(a) *Rating categories.* The following represents the rating categories to be used by the Bureau for the issuance of heliport licenses:

(1) *Public heliport.* A heliport consisting of a landing area that is open to the public.

(2) *Private heliport.* A heliport not intended for public use (includes hospital heliports, corporate and privately owned heliports).

(b) *Use of landing area/heliport by another aircraft.*

(1) Aircraft operators are authorized to land at public heliports within the capabilities of the pilot-in-command and their aircraft. Pertinent information regarding public heliports is located in the FAA Airport Facilities Directory and also update and disseminated by a NOTAM.

(2) For private heliports, aircraft operators shall receive authorization from the heliport owner prior to

operating to or from the heliport. A private heliport owner/licensee may invite an aircraft operator to use his landing area if the owner has thoroughly briefed the invitee on the takeoff and landing data and any peculiarities of the landing area. The invitee's aircraft expected performance values and operational requirements shall not exceed the capabilities or dimensions of the landing area.

**§ 471.7. Licensing criteria and requirements.**

(a) Criteria for licensing of airports and heliports are described in Appendix A.

(b) The following are applicable to airports and heliports which have obtained a license:

(1) An owner or operator of an airport shall operate and maintain the airport safely and shall conform to existing statutes and this chapter, or as modified by existing waiver.

(2) An owner or operator of an airport shall give prompt written notice to the Bureau, using Bureau Form AV-19, of a proposed physical change in the airport that is likely to affect its safety or conformity with the criteria under which the airport was licensed by the Bureau.

(3) An owner or operator of an airport licensed by the Bureau shall immediately report altered, unsafe or hazardous conditions of a nontemporary nature (in excess of 72 hours) to the Bureau. Public airport owners shall also file a NOTAM with the FAA. Upon elimination of the condition, a report shall be submitted to the Bureau detailing corrective action taken. Information concerning permanent physical changes to the airport shall also be reported to the FAA for inclusion in the Airport Facilities Directory.

(4) An owner or operator of a public airport shall post, in a place visible to the public, written material required to be posted by the Bureau, the Commonwealth or the Federal government.

(5) Surface vehicles, such as, but not limited to, automobiles, trucks, mowing machines, graders or rollers may not be operated in the vicinity of runways or taxiways of a public airport without the airport manager's permission and coordination with the control tower, if existent. Surface vehicles must be marked with approved flags or flashing amber beacons in accordance with FAA guidelines when operating in air operations areas unless coordinated with the airport manager.

(6) Remote controlled model aircraft may not be operated from a public airport unless permission has been obtained from the airport manager.

(7) Nonaeronautical uses of a public airport's aviation related area require the airport sponsor to obtain Bureau approval by means of advance written notice. Failure of the Bureau to respond within 30 calendar days shall be deemed tacit approval. Airport operators shall provide advance notice to aircraft operators in accordance with FAA procedures and time frames, including a NOTAM.

(8) An abandoned or unlicensed airport shall have markers, wind direction indicators and aeronautical signs immediately removed by the owner or operator.

(9) The Bureau may randomly inspect any airport or heliport to determine compliance with the code and this chapter.

(i) Periodic safety inspections will be conducted at all scheduled service, general aviation and basic utility air-

ports. The Bureau will coordinate the inspection date with the airport owner. Following the inspection, the Bureau will provide written report of all inspection findings. Deficiencies identified shall be mitigated in a timely manner unless waived by the Bureau. The written report containing the inspection findings, as they specifically relate to the aviation code or aviation regulations, will itemize all deficiencies, except conditions having a current waiver in force. Any conditions having a current waiver in force is deemed to be in (conditional) compliance with this chapter.

(ii) Safety inspections at private use airports will be conducted on a random basis or at the request of the owner.

(iii) Airport sponsors who cannot mitigate airspace obstructions may submit an FAA Form 7460 for FAA evaluation and subsequent consideration for Bureau waiver.

(10) The Department may maintain an action in any court of competent jurisdiction against any licensee of an airport or aviation facility which is subject to regulation under this chapter, to prevent, restrain or enjoin any violation or threatened violation of this chapter.

**§ 471.8. Suspension, penalties and revocations.**

(a) The Department may suspend or revoke an airport license when the Department finds sufficient evidence that one of the following applies:

(1) A nonconforming condition exists under this chapter that is a potential hazard to the users of the airport and has been brought to the attention of the airport sponsor, by written notice, as requiring remediation under this chapter, and the airport sponsor has not responded or sought a waiver within 90 days or less of the notice as deemed necessary by the Director.

(2) A waiver request by the airport sponsor to waive a nonconforming condition has been finally denied and the airport sponsor refuses to take reasonable steps to remediate the condition to the satisfaction of the Bureau, to file an appeal to the Director of the Bureau, or to file a legal action in a court of competent jurisdiction appealing the denial of the waiver, within 90 days of notice of the waiver denial.

**§ 471.9. Appeal.**

A person aggrieved by a decision of the Bureau to grant, deny or revoke a license may make an appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to general rules of administrative procedure) in the following manner:

(1) The appeal shall be filed within 60 days of receipt of the Bureau’s decision.

(2) The appeal shall be filed with the Administrative Docket Clerk, Office of Chief Counsel, 400 North Street, 9th Floor, Harrisburg, PA 17120-0064, with a \$150 filing fee.

(3) The appeal must provide a detailed description of the decisions being appealed and the reasons for the appeal.

**APPENDIX A**

<i>Public Airport</i>	
Scheduled Service/General Aviation	Criteria A
Basic Utility	Criteria B
Sport/Ultralight	Criteria C
Seaplane	Criteria D
<i>Private Airport</i>	
Group	Criteria E
Individual	Criteria F
Sport/Ultralight	Criteria G
Seaplane	Criteria H
<i>Public Heliport</i>	Criteria I
<i>Private Heliport</i>	Criteria J

**CRITERIA A**

**Public Airport—Scheduled Service/General Aviation**

(a) The minimum runway length is 2,200 feet plus a 7% additional length factor for each 1,000 feet of elevation that the runway is above mean sea level, rounded up to the nearest 5 foot increment. Example: An airport at 500 feet above mean sea level would require a minimum length of 2280 feet.

(b) The minimum runway primary surface width is 250 feet or 125 feet either side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a turf runway is 100 feet. The minimum width of a paved runway surface is 50 feet.

(c) A paved runway shall have an obstacle free zone, extending 200 feet beyond the end of each visual utility runway, the same width as the primary surface.

(d) A runway end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are approach surface dimensions:

(1) The centerline of this surface shall extend outward and upward 5,000 feet along the runway extended centerline.

(2) The surface shall extend laterally 125 feet on each side of the centerline of the runway approach threshold and shall increase uniformly in width to 625 feet on each side of the centerline at a point 5,000 feet from the end of the primary surface.

(3) The approach surface shall begin at the runway end for a turf runway and 200 feet beyond the end of a paved runway.

(e) A runway other than visual shall conform to applicable FAR Part 77 Civil Airport Runway Approach Surfaces. The Bureau will acknowledge and consider mitigation factors as determined by the FAA when determining compliance with this criterion.

(f) A runway shall have an obstruction free transitional surface with a slope of 7 feet horizontal to 1 foot vertical extending from the side of the runway primary surface and the sides of the approach surface to an elevation 150 feet above the airport elevation.

(g) Runway thresholds shall be a minimum of 200 feet from airport property line as measured along the runway extended centerline.

(h) A runway shall be marked.

(1) *Turf runway.* Turf runway ends and displaced thresholds shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runway.* A paved runway shall be marked. For the dimensions and spacing of the markings see the current edition of the FAA Advisory Circular relating to runway markings.

(i) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing winds. Runway alignment other than into the prevailing winds, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(j) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted where night operations are to be conducted.

(k) The runway surface longitudinal and transverse grade may not exceed 2.0%. It is desirable that a line-of-sight standard exist along the entire length of the runway. Runway grade changes should be such that any 2 points 5 feet above the runway centerline will be mutually visible for the entire length of the runway.

(l) If night operations are to be conducted at the airport, runway edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area. Lights shall be installed in accordance with the current edition of the FAA Advisory Circular related to runway lighting.

(m) A rotating beacon shall be installed for night operations at public airports.

(n) Telephone service shall be available during hours of operation. Emergency contact information shall be posted near the telephone.

(o) A first aid kit shall be available.

(p) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(q) A favorable airspace determination by the FAA shall be required prior to final licensing.

(r) The airport license must be posted and visible to the aviation public.

(s) Fire extinguishing equipment shall be available for emergency fire protection. See NFPA Codes and local fire codes for appropriate guidelines.

(t) Where public fueling services are provided use NFPA Codes for guidelines for storage and distribution of fuels.

(u) Issuance of a license does not preempt other State, federal or local zoning or permitting requirements.

#### **CRITERIA B Public Airport—Basic Utility**

(a) The minimum runway length is 1,600 feet.

(1) The minimum required runway length will be increased where required to accommodate a family of airplanes having similar performance characteristics or a specific airplane needing the longest runway and will be based on the performance data obtained from the aircraft flight manuals.

(2) Runway length will be that length needed for take-off ground run or landing ground run whichever is greater, factored for density altitude (85°F day; runway elevation above sea level); plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10%

for conventional landing gear or 15% for tricycle landing gear will be used. An additional safety factor of 20% shall also be applied.

(3) If the aircraft performance data is not available from the aircraft flight manual, due to its vintage or modifications, the Bureau may accept a written statement by the applicant-aircraft owner-as to aircraft performance and runway length needed. Performance data may be considered, using less than maximum certificated takeoff weight-down loaded condition, if requested in writing by the applicant, to meet minimum runway length requirements.

(4) Displacement of runway thresholds may be used to reduce or eliminate approach slope obstructions as long as sufficient effective runway length remains.

(b) The minimum runway primary surface width is 180 feet or 90 feet either side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a paved runway is 50 feet. The minimum width of a turf runway is 100 feet. The runway primary surface shall extend 200 feet beyond the end of a paved runway and to the end of a turf runway.

(c) A runway end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are approach surface dimensions for a visual runway.

(1) The centerline of this surface shall extend outward and upward 5,000 feet along the runway extended centerline.

(2) The surface shall extend laterally from each edge of the primary surface at the runway approach threshold and increase uniformly in width to 625 feet on each side of the centerline at a point 5,000 feet from the end of the primary surface.

(3) The approach surface shall begin at the runway end for an unpaved runway and at a point 200 feet beyond the end of a paved runway.

(d) A runway shall have an obstruction free transitional surface with a slope of 7 feet horizontal to 1 foot vertical extending from the side of the runway primary surface and the sides of the approach surface to an elevation 150 feet above the airport elevation

(e) Runway landing thresholds shall be a minimum of 200 feet from the airport property line along the runway extended centerline.

(f) A runway shall be marked.

(1) *Turf runways.* Runway ends shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runway.* Runway numbers shall be marked at each end.

(3) Runway threshold displacements shall be marked.

(g) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing wind, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(h) Operations are intended for day, visual meteorological conditions (VMC).



(i) A wind indicator shall be installed at a location that adequately indicates surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted

(j) The runway longitudinal and transverse gradient should not exceed 4.0%.

(k) Telephone service should be available during hours of operation. Emergency contact information should be posted near the telephone.

(l) Fire extinguishing equipment should be available for emergency fire protection. See NFPA Codes and local fire codes for appropriate guidelines.

(m) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(n) A favorable airspace determination from the FAA shall be required prior to license.

(o) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

**CRITERIA C**

**Public Airport—Sport/Ultralight**

(a) The minimum runway length shall be 1,000 feet. The runway should be aligned within 40° of the prevailing wind. Longitudinal and transverse gradients should not exceed 4%.

(b) A runway end shall have an obstruction free approach surface with a slope of 15 feet horizontal to 1 foot vertical. The following are approach surface dimensions:

(1) The centerline of this surface shall extend outward and upward 1,000 feet along the extended runway centerline.

(2) The surface shall extend laterally 50 feet on each side of the centerline of the runway approach threshold and increase uniformly in width to 100 feet on each side of the centerline at a point 1,000 feet from the runway end.

(3) The approach surface shall begin at the runway end.

(c) The minimum runway width shall be 100 feet.

(d) A runway shall have an obstruction free transitional surface with a slope of 3 feet horizontal to 1 foot vertical extending from the side of the runway surface and the sides of the approach surface.

(e) Runway landing thresholds shall be a minimum of 200 feet from the airport property line as measured along the extended runway centerline.

(f) Runway ends shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(g) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing winds may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(h) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity.

(i) Night operations are not authorized.

(j) Telephone service should be available during hours of operation. Emergency contact information should be posted near the telephone.

(k) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(l) The airport license shall be posted and visible to the aviation public.

(m) The airport operator should provide fire extinguishing equipment for emergency fire protection.

(n) A favorable airspace determination from the FAA shall be required prior to final licensing.

(o) Issuance of a license does not preempt other State, federal or local zoning or permitting requirements.

**CRITERIA D**

**Public Airport—Seaplane**

(a) The minimum landing lane length is 2,500 feet. The length of the landing lane shall be increased by 7% per 1,000 feet of elevation above sea level. The additional length factor is calculated proportionately using a ratio of 7% for each 1000 feet of elevation that the runway is above mean sea level, rounded up to the nearest 5-foot increment. (i.e. An airport at 500 feet above mean sea level would require a minimum length of 2,590 feet)

(b) The minimum primary surface width is 200 feet or 100 feet each side of the landing lane centerline. The landing lane minimum width is at least 100 feet and centered within the primary surface.

(c) A minimum water depth of 3 feet is required at all points within the primary surface.

(d) A landing lane shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are the approach slope dimensions:

(1) The centerline shall extend outward and upward for 5,000 feet along the landing lane extended centerline.

(2) The surface shall extend laterally 100 feet each side of the centerline, beginning at the landing lane threshold and increase uniformly to 625 feet each side of the centerline at a point 5,000 feet from the end of the landing lane.

(e) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(f) Documentation of ownership or lease of suitable docking facilities and written authorization or permit to use the waterway shall be submitted with the application.

(g) If night operations are to be conducted at the airport, landing lane edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area.

(h) A public telephone should be available during airport operating hours. Emergency contact information telephone numbers shall be posted.

(i) The airport license shall be posted and visible to the aviation public.

(j) A traffic pattern diagram with altitudes shall be posted at the docking facility and visible to the aviation public.

(k) A powerboat shall be readily available for emergencies during normal operating hours.

(l) The airport operator should provide fire extinguishing equipment for emergency fire protection.

(m) Final airspace determination by FAA shall be required prior to final licensing.

(n) Issuance of a license does not preempt other State, federal or local zoning or permitting requirements.

**CRITERIA E**  
**Private Airport—Group**

(a) The minimum runway length is 1,200 feet.

(1) The minimum required runway length will be adjusted where required to accommodate the aircraft to be operated from the airport and will be based upon the performance data obtained from the aircraft flight manuals.

(2) Runway length will be that length needed for take-off ground run or landing ground run, whichever is greater, factored for density altitude temperature (85°F day); runway elevation above sea level); plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional landing gear or 15% for tricycle landing gear will be used. An additional safety factor of 20% shall also be applied.

(3) If the aircraft performance data is not available from the aircraft flight manual, due to its vintage, a statement by the applicant/aircraft owner as to aircraft performance and runway needed may be accepted by the Bureau.

(4) Performance data may be considered, using less than gross weight down loaded condition, if requested by the applicant, to meet minimum runway length requirements.

(5) Displacement of runway thresholds may be used to reduce or eliminate approach slope obstructions as long as sufficient effective runway length remains.

(6) The minimum runway primary surface width shall be 180 feet or 90 feet each side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a turf landing surface shall be 100 feet. The minimum width of a paved landing surface shall be 50 feet. A paved runway primary surface shall extend 200 feet beyond the end of a paved runway and to the end of a turf runway.

(b) A runway end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are the approach slope dimensions:

(1) The centerline of this surface shall extend outward and upward for 5,000 feet along the runway extended centerline.

(2) The surface shall extend laterally 90 feet on each side of the centerline of the runway approach threshold and shall increase uniformly in width to 625 feet on each side of the centerline at a point 5,000 feet from the end of the primary surface.

(c) Runway thresholds shall be a minimum of 200 feet from airport property line as measured along the runway extended centerline.

(d) A runway shall be marked.

(1) *Turf runways.* Runway ends shall be marked. Markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runways.* Runway numbers shall be marked at each end.

(3) Marked threshold displacement. Runway threshold displacements shall be marked.

(4) Displacements shall be lighted if night operations are to be conducted.

(e) For planning purposes, principal runway alignment for new airports should be in the direction of the prevail-

ing wind. Runway alignment, other than into the prevailing wind, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(f) A wind indicator shall be installed at a location that adequately indicates surface wind direction and velocity. It shall be lighted if night operations are to be conducted.

(g) The runway longitudinal and transverse gradient should not exceed 4%.

(h) If night operations are to be conducted at the airport, runway edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area. Lights will be installed in accordance with current applicable standards.

(i) Fire extinguishing equipment and first aid kits are recommended.

(j) Standard traffic patterns shall be established. Where a nonstandard traffic pattern is necessary, the information shall be made available to those authorized by the owners to use the airport.

(k) A favorable airspace determination from the FAA shall be required prior to license.

(l) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

**CRITERIA F**  
**Private Airport—Individual**

(a) The minimum Runway length is 1,200 feet.

(1) The minimum required runway length will be increased where required to accommodate the aircraft to be operated from the airport and will be based upon the performance data obtained from the aircraft flight manuals.

(2) Runway length will be that length needed for take-off ground run or landing ground run, whichever is greater, factored for density altitude (temperature - 85°F day; runway elevation above MSL); plus a factor for grass. The grass factor may be that required by the manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional gear or 15% for tricycle gear aircraft will be used. An additional safety factor of 20% shall also be applied.

(3) If the aircraft performance data is not available from the aircraft flight manual, due to its vintage or modifications, a statement by the applicant/aircraft owner as to the performance and runway needed may be accepted by the Bureau.

(4) Performance data may be considered, using less than maximum certificated takeoff weight down loaded condition, if requested by the applicant, to meet runway length requirements.

(5) Displacement of runway thresholds may be used to reduce or eliminate approach slope obstructions as long as sufficient effective runway minimum length remains.

(b) The minimum primary surface shall be 100 feet or 50 feet either side of the runway centerline. The landing surface shall be centered within the primary surface. The minimum width of a paved landing surface shall be 50 feet. The minimum width of a turf landing surface shall be 100 feet. The runway primary surface shall extend 200 feet beyond the end of a paved runway and to the end of a turf runway.

(c) A runway end will have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are approach surface dimensions for a runway:

(1) The centerline of this surface shall extend outward and upward 1,500 feet along the extended runway centerline.

(2) The surface shall extend laterally 50 feet each side of the centerline at the runway approach threshold and increase uniformly in width to 150 feet on each side of the centerline at a point 1,500 feet from the end of the primary surface.

(3) The approach surface shall begin at the runway end for an unpaved runway and at a point 200 feet beyond the end of a paved runway.

(d) The runway landing thresholds shall be a minimum of 200 feet from airport property line along the runway extended centerline.

(e) A runway shall be marked.

(1) *Turf runways.* Runway ends shall be marked. Edge markers shall be placed at intervals not exceeding 200 feet along each side of the runway for its entire length.

(2) *Paved runways.* Runway numbers shall be marked at each end.

(3) *Marked threshold displacement.* Runway threshold displacements shall be marked.

(f) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing wind, may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(g) A wind indicator shall be installed at a location that adequately indicates surface wind direction and velocity.

(h) The runway longitudinal and transverse gradient should not exceed 4%.

(j) Operations are intended for day, visual meteorological conditions (VMC).

(k) Fire extinguishing equipment and first aid kits are recommended.

(l) Standard traffic patterns shall be established. Where a non-standard pattern is necessary, the information shall be made available to those authorized by the owner to use the airport.

(m) A favorable airspace determination from the FAA shall be required prior to license.

(n) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

**CRITERIA G**

**Private Airport—Sport/Ultralight**

(a) Minimum runway dimensions of 500 feet in length x 100 feet in width aligned within 40° of the prevailing wind are required. Longitudinal and transverse gradients should not exceed 4.0%.

(b) The minimum runway length will be increased to accommodate sport aircraft where applicable and will be based on the performance data obtained from the aircraft flight manuals. Runway length will be that length needed for take-off ground run or landing ground run, whichever is greater, factored for density altitude (temperature 85 degrees F, runway elevation above MSL), plus a factor for grass. The grass factor may be that required by the

manufacturer. If the manufacturer requires no grass factor, a factor of 10% for conventional gear or 15% for tricycle gear will be used. An additional safety factor of 20% shall also be applied.

(c) A runway end shall have an obstruction free approach surface with a slope of 15 feet horizontal to 1 foot vertical. The following are approach surface dimensions:

(1) The centerline of this surface shall extend outward and upward 1,000 feet along the extended runway centerline.

(2) The surface shall extend laterally 50 feet on each side of the centerline of the runway approach threshold and increase uniformly in width to 100 feet on each side of the centerline at a point 1,000 feet from the runway end.

(3) The approach surface shall begin at the runway end.

(c) Runway landing thresholds shall be a minimum of 200 feet from the airport property line as measured along the extended runway centerline.

(d) Runway ends shall be marked. Runway edges shall be marked at intervals necessary to define the lateral runway limits.

(e) For planning purposes, principal runway alignment for new airports should be in the direction of the prevailing wind. Runway alignment, other than into the prevailing winds may restrict use of the airport during conditions where crosswind velocities exceed the crosswind component of the aircraft.

(f) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity.

(g) A favorable airspace determination from the FAA shall be required prior to license.

(h) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

**CRITERIA H**

**Private Airport—Seaplane**

(a) The minimum landing lane length is 2,500 feet. Landing lane length may be reduced if performance data is provided which indicates required take-off and landing distances of less than 2,500 feet.

(b) The minimum primary surface and landing lane width is 100 feet or 50 feet each side of the landing lane centerline. The landing lane minimum width is at least 100 feet and centered within the primary surface.

(c) A minimum water depth of 3 feet is required at all points within the primary surface.

(d) A landing lane end shall have an obstruction free approach surface with a slope of 20 feet horizontal to 1 foot vertical. The following are the approach surface dimensions:

(1) The centerline shall extend outward and upward for 1,500 feet along the landing lane extended centerline.

(2) The approach surface shall extend laterally 50 feet on each side of the centerline of the landing area, beginning at the landing lane threshold and increase uniformly in width to 300 feet at 1,500 feet from the end of the landing area.

(e) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(f) Documentation of ownership or lease of suitable docking facilities and written authorization or permit to use the waterway shall be submitted with the license application.

(g) If night operations are to be conducted at the airport, landing lane edge lighting shall be installed to define the lateral and longitudinal limits of the useable landing area.

(h) A favorable airspace approval from the FAA shall be required prior to final licensing.

(i) Standard traffic patterns shall be established. Where a nonstandard traffic pattern is necessary, the information shall be made available to those authorized by the owner to use the airport.

(j) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

### CRITERIA I

#### Public Heliport—General Aviation

(a) The least dimension (i.e. length, width, or diameter) of the final approach and take off area (FATO) shall be at least 1.5 times the overall length of the design helicopter rounded up to the next 5 foot increment, but not less than 60 feet.

(1) Helicopters located on raised platforms, piers, docks or buildings may have outer portions of the FATO extend beyond the platform.

(2) The FATO should be graded to provide a smooth surface. A slope gradient of no more than 2% is allowed for any part of the FATO on which a helicopter is expected to land.

(3) The FATO shall be free of objects.

(b) When the entire FATO is not load bearing, a paved or stabilized touch down and lift off area (TLOF) is recommended. The least dimension of the TLOF is recommended to be not less than the rotor diameter of the design helicopter.

(c) A safety area shall be provided around the FATO.

(1) The width of the safety area shall be 1/3 of the rotor diameter of the design helicopter, but not less than 20 feet.

(2) The safety area shall be free of objects.

(d) The heliport shall have two approach/take off paths separated by an arc of at least 90° and shall have unobstructed approach/take off surfaces with a slope of 8 feet horizontal to one foot vertical.

(1) The approach/take off paths may curve to avoid objects and/or noise sensitive areas and to use airspace above public lands.

(2) The approach/take off surface shall begin at the threshold, at the same width as the FATO, and shall extend outward and upward for 4,000 feet where its width is 500 feet.

(3) One approach/take off path may be acceptable if the approaches and take offs can be conducted safely and if it is unobstructed and crosswind to the prevailing winds.

(e) Transitional surface shall be unobstructed. Transitional surfaces shall extend outward and upward with a slope of two feet horizontal to one foot vertical from the edge of the approach/take off surfaces and the FATO for a distance of 250 feet from the center of the FATO and from the centerline of the approach/departure path.

(f) The FATO shall be marked with FAA standard markings for heliports.

(1) The FATO shall be designated by marking the outer perimeter boundary.

(2) If applicable, the TLOF shall also be marked. An H marking will identify the heliport as a public facility as well as mark the intended landing position. The H is oriented on the axis of the dominant approach/take off path. A bar may be placed under the H when it is necessary to distinguish the preferred approach direction.

(3) In ground or surface markings may be used to define either or both the FATO and TLOF.

(4) *Unpaved surfaces.* The perimeter of a turf FATO shall be identified with in ground markers that will not catch helicopter skids or create barriers to helicopter maneuvering. If raised markings are used, they shall be located at the outer boundary of the safety area and be no more than 8 inches in height. Markers are placed at the corners, and as needed along the edges of the FATO.

(5) *Paved surfaces.* A 12-inch dashed white line defines the limits of the FATO when the entire surface is paved.

(6) A 12-inch solid white line is used to define the limits of the TLOF.

(g) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The indicator shall be lighted if night operations are to be conducted.

(h) *Night operations.*

(1) The perimeter of the FATO and the TLOF shall be defined with lights colored in accordance with the current FAA Advisory Circular pertaining to heliport lighting. The lights may not penetrate the approach or transitional surface slopes.

(2) A minimum of four flush or raised fixtures is required per side of a square or rectangular FATO or TLOF. A light is located at each corner, with additional lights spaced uniformly between the corner lights with a maximum interval of 25 feet between lights.

(3) An even number of lights, at least 8, evenly spaced, is required to define a circular FATO or TLOF, with a maximum interval of 25 feet between lights.

(4) Raised light fixtures, modified to be not more than 8 inches in height, should be located 10 feet out from the FATO edge.

(5) Flush lights may be located on the TLOF edge or within 1 foot of the TLOF edge.

(6) When nonflush lights are used on a raised TLOF, light fixtures modified to no more than 8 inches in height may be used to define the TLOF. They must be located 10 feet out from the TLOF edge and must not penetrate a horizontal plane at the TLOF's elevation by more than 2 inches.

(7) Flood lighting may also be used in lieu of, or to supplement, perimeter lights. The flood lights shall be installed so they do not interfere with helicopter operations or interfere with pilot vision.

(8) Obstruction lights should be installed on objects near the approach surfaces or where deemed necessary by the Bureau.

(i) A rotating beacon is recommended to be installed for night operations at public heliports.

(j) When the TLOF is on a platform elevated more than 30 inches above its surroundings, a five foot wide safety net or shelf shall be provided. The safety net shall have a load carrying capability of at least 25 pounds per square foot. The net or shelf may not project above the level of the TLOF.

(k) *Rooftop heliports*

(1) The size of the FATO and the TLOF for a rooftop or elevated heliport shall be the same as for ground level.

(2) When the TLOF is less than the rotor diameter of the design helicopter, additional nonload bearing surface is required for support of the main rotor downwash ground effect. Load bearing surface size and designed load capacity shall be in accordance with the current edition of the FAA heliport design guide.

(1) Where practicable, wires within 500 feet of the FATO are recommended to be marked.

(m) A telephone shall be available to the public 24 hours a day. Emergency and aviation information telephone numbers shall be posted near the telephone.

(n) A traffic pattern diagram with altitudes shall be posted and visible to the aviation public.

(o) The heliport operator will provide fire extinguishing equipment for emergency fire protection.

(p) A favorable airspace determination from the FAA shall be required prior to final licensing.

(q) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

**CRITERIA J  
Private Heliport**

(a) The least dimension (i.e. length, width, or diameter) of the final approach and take off area (FATO) shall be 1.5 times the overall length of the design helicopter rounded up to the nearest 5 foot increment, but not less than 60 feet.

(1) Helicopters located on raised platforms, piers, docks or buildings may have outer portions of the FATO extend beyond the platform.

(2) The FATO should be graded to provide a smooth surface. A slope gradient of no more than 2% is allowed for any part of the FATO on which a helicopter is expected to land.

(3) The FATO shall be free of objects.

(b) When the entire FATO is not load bearing, a paved or stabilized touch down and lift off area (TLOF) is recommended. The least dimension of the TLOF is recommended to be not less than the rotor diameter of the design helicopter.

(c) A safety area will be provided around the FATO

(1) The width of the safety area shall be 1/3 of the rotor diameter of the design helicopter, but not less than 10 feet.

(2) The safety area shall be free of objects.

(d) The heliport shall have two approach/take off paths separated by an arc of at least 90° and shall have unobstructed approach/take off surfaces with a slope of 8 feet horizontal to 1 foot vertical.

(1) Approach/take off paths may curve to avoid objects an/or noise sensitive areas and to use airspace above public lands. Approach surface requirements are applicable for the entire route.

(2) The approach/take off surface shall begin at the threshold, at the same width as the FATO and shall extend upward and outward for a distance of 1,000 feet where its width is 200 feet.

(3) One approach/take off path may be acceptable if approaches can be conducted safely and if it is unobstructed and crosswind to the prevailing winds.

(e) The FATO shall be marked with FAA standard markings for heliports.

(1) The FATO shall be designated by marking the outer perimeter boundary.

(2) If applicable, the TLOF shall also be marked.

(3) The FATO or TLOF may be marked with company logo or name.

(4) A hospital heliport shall be identified by a red capital H centered on a white cross. The dimensions of the cross and H are described in the current edition of the FAA Heliport Design Advisory Circular.

(5) In ground or surface markings may be used to define either or both the FATO and TLOF.

(6) *Unpaved surfaces.* The perimeter of a turf FATO shall be identified with in ground markers that will not catch helicopter skids or create barriers to helicopter maneuvering. If raised markings are used, they shall be located at the outer boundary of the safety area and be no more than 8 inches in height.

(7) *Paved surfaces.* A 12-inch dashed white line defines the limits of the FATO when the entire surface is paved.

(8) A 12-inch solid white line is used to define the limits of the TLOF.

(f) A wind indicator shall be installed at a location that adequately indicates the surface wind direction and velocity. The wind indicator shall be lighted if night operations are to be conducted.

(g) *Night operations.*

(1) The perimeter of the FATO or the TLOF (but not both) shall be defined with lights colored in accordance with the current FAA Advisory Circular pertaining to heliport lighting.

(2) At least 8 evenly spaced lights are required to define a circular FATO or TLOF, with a maximum interval of 25 feet between lights.

(3) A minimum of three flush or raised fixtures is required per side of a square or rectangular FATO or TLOF. A light is located at each corner, with additional lights spaced uniformly between the corner lights with a maximum interval of 25 feet between lights.

(4) Raised light fixtures, modified to be not more than 8 inches in height, should be located 10 feet out from the FATO edge.

(5) Flush lights may be located on the TLOF edge or within 1 foot of the TLOG edge.

(6) When nonflush lights are used on a raised TLOF, light fixtures modified to no more than 8 inches in height may be used to define the TLOF. They must be located no more than 10 feet out from the TLOF edge and must not penetrate a horizontal plane at the TLOF's elevation by more than 2 inches.

(7) Flood lighting may also be used in lieu of, or to supplement, perimeter lights. The flood lights shall be installed so as not to interfere with helicopter operations or interfere with pilot vision.

(8) Obstruction lights should be installed on objects near the approach surfaces or where deemed necessary by the Bureau.

(h) When the TLOF is on a platform elevated more than 30 inches above its surroundings, a five foot wide safety net or shelf shall be provided. The safety net shall have a load carrying capability of at least 25 pounds per square foot. The net or shelf may not project above the level of the TLOF.

(i) *Rooftop heliports*

(1) The size of the FATO and TLOF for a rooftop or elevated heliport shall be the same as for ground level.

(2) When the TLOF is less than the rotor diameter of the design helicopter, additional non load bearing surface is required for support of the main rotor downwash ground effect. Load bearing surface size and designed load capacity shall be in accordance with the current edition of the FAA heliport design guide.

(j) Where practicable, wires within 500 feet of the FATO are recommended to be marked.

(k) The heliport operator will provide fire extinguishing equipment for emergency fire protection.

(l) A favorable airspace determination from the FAA shall be required prior to final licensing.

(m) Issuance of a license does not preempt other state, federal or local zoning or permitting requirements.

#### APPENDIX B

Section 471.3(d) allows the Bureau to waive, for "good cause," compliance with the licensing criteria and related requirements. No waivers will be granted for conditions which are inconsistent with FAA Grant Assurance obligations or other applicable FAA regulation unless permission is granted by the FAA.

The following is a nonexhaustive illustrative list of potential waivable conditions:

- (1) Runway Length
- (2) Runway Width
- (3) Runway Obstacle Free Zone
- (4) Approach Surface Penetrations
- (5) Runway Markings
- (6) Runway Alignment
- (7) Longitudinal and Transverse Grades
- (8) Telephone Requirements

When evaluating any nonstandard condition for a waiver, the following will be considered in determining "good cause:"

- (1) Type and performance characteristics of the critical aircraft operating at the facility.
- (2) History of incidents attributable to the non-standard conditions as determined by the FAA and/or NTSB.
- (3) Operational limitations, such as VFR-day only.
- (4) Physical constraints.
- (5) Financial feasibility of undertaking improvements to meet airport licensing criteria.
- (6) How similar issues have been handled with respect to other airports.
- (7) Facility preservation.

(8) Availability of visual guidance systems.

#### CHAPTER 473. AVIATION DEVELOPMENT GRANTS

##### § 473.2. Definitions.

The words and terms used in this chapter have the same meaning as they are given in § 471.2 (relating to definitions), unless the context clearly indicates otherwise.

##### § 473.3. Eligibility requirements and criteria.

(a) The minimum requirements and criteria for eligibility to apply for an aviation development grant is that the facility shall be an appropriately licensed public airport located in this Commonwealth and the applicant must be an eligible sponsor.

(b) The following are projects eligible for consideration of an offer of an aviation development grant:

- (1) Runway construction, including required safety areas.
- (2) Taxiway construction.
- (3) Runway overlays, rehabilitation or surface treatment.
- (4) Apron overlays, rehabilitation or surface treatment.
- (5) Taxiway overlays, rehabilitation or surface treatment.
- (6) Runway, taxiway and apron marking and lighting.
- (7) Aeronautical and airport beacons.
- (8) Runway identification and approach lighting.
- (9) Electronic and visual aids to aircraft navigation including weather reporting systems.
- (10) Wind indicator devices.
- (11) Removal, lighting and marking of obstructions.
- (12) Airport safety and security fencing.
- (13) Acquisition of land or interest therein for clear zone purposes.
- (14) Acquisition of land or easements for airport development.
- (15) Equipment and building, dedicated to aircraft rescue and firefighting purposes.
- (16) Equipment and equipment storage buildings dedicated to airport snow removal and ice control purposes.
- (17) Public areas of terminal buildings at scheduled passenger service airports.
- (18) Public use apron construction.
- (19) Necessary project/planning/environmental studies/engineering plans, specifications and cost estimates.
- (20) Airport planning, including, but not limited to master plans, noise and land use studies.
- (21) Airport access and service roads.
- (22) Pavement surface monitoring systems.
- (23) Other projects which, in the discretion of the Department, should be considered.

##### § 473.4. Limits of funding.

(a) *Federal aid projects.* The maximum grant to a sponsor may be up to 75% of the non-Federally funded eligible amount of the project.

(b) *Non-Federal aid projects.* The maximum grant to a sponsor for State participation projects will be flexible; however, State participation will not exceed 90% of the total project cost.

**§ 473.5. (Reserved).**

**§ 473.5a. Project selection process and criteria.**

(a) *Project selection.* Aviation development grants for projects on the 12 year plans and Airport Capital Improvement Programs (ACIPs) on file with and agreed to by the Bureau will be selected for consideration on an annual basis upon written request from sponsors.

(b) *Consideration.* Following the published closing date identified in § 473.5b (relating to important dates and notification procedure) or the receipt of applicable documentation, projects will be considered for funding for future fiscal years.

(c) *Incomplete documentation.* The Department may consider documentation for aviation development grants which is technically incomplete on the deadline identified in § 473.5b, but which will be made complete in a timely fashion. The decision to consider documentation which may be determined incomplete on the documentation deadline is made at the sole discretion of the Bureau.

(d) *Review process.* In evaluating the documentation, the Department may establish internal review procedures, review committees or other administrative mechanisms sufficient to handle the responsibilities of these programs. The Department will maintain an ongoing record of the specific review mechanisms used for the consideration of the documentation and to make available to applicants an outline of the current applicable internal review procedures.

(e) *Review by Bureau.* The Bureau will review and evaluate submitted documentation with respect to applicable criteria for project funding, available funds, current priorities for development of the airport and significant environmental or economic factors.

(f) *Criteria used in review.* In considering submitted documentation, the Bureau will give weight and consideration to the following criteria:

- (1) Improvement of the safety of airport operations.
- (2) The effects of the project on both the overall airport system and the local airport.
- (3) The impact of the project on the area surrounding the airport.
- (4) Availability of local funds for airport development.
- (5) The capture of Federal funds for airport development.
- (6) Current policy of the Commonwealth on transportation improvements and economic development.
- (7) Current and future demand for passenger service, based on itinerant aircraft and freight services.
- (8) Assurance that there is a viable network and reasonable distribution of services and safe facilities throughout this Commonwealth.
- (9) The extent to which the project would contribute to the welfare of the citizens of this Commonwealth.

(g) *Additional considerations.* In consideration of the various criteria applicable to the review of submitted documentation, the Bureau will also evaluate criteria in a manner which takes into account unique or special factors at any airport and emergency situations. Factors

making an airport unique from others may include the character of the market it serves, the type and use of based aircraft, the current or future role of the airport, nearby facilities offering similar services or other significant elements contributing to the character or utilization of the facility.

**§ 473.5b. Important dates and notification procedure.**

(a) The Bureau will publish annual critical dates for the upcoming calendar year in the first publication of the *Pennsylvania Bulletin* of the calendar year preceding the upcoming fiscal year. Additionally, the Bureau will provide direct notification to current sponsors.

(b) Documentation for aviation development grants is considered on an annual basis. From the completed planning documents on file for a given fiscal year, July 1 to June 30, projects will be selected for grants.

(c) Documents on file, but incomplete, may be excluded from consideration for grants in that fiscal year. The deadlines for submission of aviation development grant related documentation for a given fiscal year is the close of business of the published date (4:30 pm Eastern Time).

(d) The sponsor will receive a letter of intent for projects selected as described in § 473.9 (relating to offer and acceptance of an aviation development grant), which will authorize the sponsor to proceed with project formulation described in § 473.6a (relating to project execution).

(e) The Department will send a written conditional offer for a grant to a sponsor for a selected project in accordance with § 473.9.

**§ 473.6. (Reserved).**

**§ 473.6a. Project execution.**

(a) Upon receipt of a letter of intent in accordance with § 473.9 (relating to offer and acceptance of an aviation development grant), a sponsor may proceed with project formulation and the applicable plans, specifications, procurement of the necessary contracting services and other work necessary pursuant to the future phases of the project.

(1) If the intended project is an airport master planning, environmental planning or related planning study, or both, the applicant shall:

(i) Engage a professional planner or engineer, or both, with appropriate experience in the particular planning area to accomplish the planning study and related work items as required.

(ii) Provide required documentation including, but not limited to, the scope of services, objectives, work schedule, detailed cost schedule and contract documents required for Department review and approval prior to granting of funds.

(2) If the intended project is land acquisition or interest therein, or both, the applicant shall:

(i) Engage a professional engineer or surveyor registered in this Commonwealth to prepare a property map and provide legal descriptions prior to negotiations.

(ii) Provide other necessary maps, reports, environmental documentation and cost estimates as may be required for Department review and approval prior to the granting of funds.

(3) If the intended project is construction or facility modification, the applicant shall:

(i) Engage a professional engineer registered in this Commonwealth to prepare detailed construction plans and specifications and to provide construction engineering, inspection and material testing as required.

(ii) Provide certified maps, reports, detailed construction plans, specifications and contract documents as may be required for Department review and approval prior to granting of funds.

(4) If the intended project is an equipment procurement—ARFF or Snow Removal—the applicant shall:

(i) Prepare detailed procurement specifications.

(ii) Provide reports, detailed procurement specifications, contract documents and cost estimates as may be required for Department review and approval prior to granting funds.

(b) At the request of the Bureau, the sponsor shall submit:

(1) Estimated cost—by item quantity and unit cost item extended to total cost.

(2) A copy of approved airport layout plan.

(3) A copy of environmental finding.

(4) A copy of airspace determination.

(5) A copy of the Sponsor's Certification—if required by the Bureau.

(6) Other materials or information, or both, deemed necessary by the Department.

#### § 473.7. Public records.

An application for an aviation development grant made under this chapter is considered a document of public record at the time of filing, and will be made available to persons for inspection.

#### § 473.8. (Reserved).

#### § 473.9. Offer and acceptance of an aviation development grant.

(a) The Department will send a written conditional offer to a sponsor whose application has been approved. The Department's conditional offer may provide funding, in accordance with the limitations of § 473.4(b) (relating to limits of funding), for an entire eligible project as proposed, or for only a portion of an eligible project.

(b) Upon receipt of a conditional offer from the Department, a sponsor shall, within the time set forth in the conditional offer execute and submit the grant agreement.

(1) Failure of a sponsor to indicate acceptance of the terms of the grant agreement within the specified response period, will be considered as a rejection of the final offer.

(2) Acceptance of the grant agreement is not binding on a sponsor or the Department until the documents are fully executed between the Department and the sponsor.

(3) Neither the offer nor the acceptance of a grant under this chapter relieves the sponsor/grantee from compliance with local zoning or other municipal requirements.

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

(d) In the consideration of the documentation provided, the Department may determine that a proposed project should be amended to accommodate available funding, applicable airport design criteria, anticipated use or to better accommodate potential user needs. The Department may offer an aviation development grant for a project whose specifications, terms, or scope have been modified by the Department.

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

#### § 473.13. Payment procedures.

Unless otherwise specified by the Department, the following general procedures are to be used for funds from an aviation development grant:

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

(2) A sponsor, having received payment or partial payment or reimbursement under an aviation development grant, shall make payments, within 30 calendar days from receipt of funds, to vendors and contractors for services and materials properly invoiced under the applicable project.

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

(4) Payment requests shall be limited to monthly submissions. The Bureau may request additional submissions to facilitate the end of year and grant closeout requirements.

### CHAPTER 477. LOCAL REAL ESTATE TAX REIMBURSEMENT GRANTS

#### § 477.2. Definitions.

The words and terms used in this chapter have the same meaning as they are given in § 471.2 (relating to definitions), unless the context clearly indicates otherwise.

### CHAPTER 479. OBSTRUCTION TO AIRCRAFT

#### § 479.2. Definitions.

The words and terms used in this chapter have the same meaning as they are given in § 471.2 (relating to definitions), unless the context clearly indicates otherwise.

[Pa.B. Doc. No. 10-2048. Filed for public inspection October 29, 2010, 9:00 a.m.]