

PROPOSED RULEMAKINGS

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 23]

Delivery of Certificates of Title

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 1107, 1151.1 and 6103 (relating to delivery of certificate of title; program; and promulgation of rules and regulations by department), proposes to amend Chapter 23 (relating to delivery of certificates of title) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of Chapter 23 is to specify the manner of delivery of encumbered certificates of title and certificates of title which are issued by the Department free of a lien or encumbrance, as provided by 75 Pa.C.S. § 1107.

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to include electronic transmission of certificates of title consistent with the system developed under 75 Pa.C.S. § 1151 (relating to electronic media system for vehicle titles (expired)). These proposed amendments also correct typographical errors.

Summary of Significant Amendments

Proposed amendments to § 23.2 (relating to general rule) provide that a certificate of title containing a lienholder or encumbrancer may be either mailed or electronically transmitted to the first named lienholder or encumbrancer.

Persons and Entities Affected

The proposed rulemaking will affect the Department in the delivery of a certificate of title and a lienholder who may receive an encumbered certificate of title.

Fiscal Impact

Implementation of this proposed rulemaking will not require the expenditure of significant additional funds by the Commonwealth or local municipalities. Minimal additional effort or paperwork will be required to validate the identity of the person performing the verification.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 1, 2011, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior

to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Provisions

The Department will make these amendments effective upon final-form publication following appropriate evaluation of comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Penni Bernard, Customer Service Division, 3rd Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, pbernard@state.pa.us.

Contact Person

The contact person for this proposed rulemaking is Penni Bernard, Customer Service Division, 3rd Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, pbernard@state.pa.us.

BARRY J. SCHOCH, P.E.,
Secretary

Fiscal Note: 18-423. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE II. TITLE

CHAPTER 23. DELIVERY OF CERTIFICATES OF TITLE

§ 23.2. General rule.

* * * * *

(b) *Encumbered titles.* Every certificate of title issued by the Department of Transportation containing a lienholder or encumbrancer will be **either mailed or electronically transmitted** to the first named lienholder or encumbrancer.

§ 23.3. Exceptions.

* * * * *

(b) *Other.* The Director of the Bureau of Motor Vehicles or his designees may, at [**their**] his discretion, deliver a certificate of title, if [**its**] it is free and clear of a lien or encumbrance, to the owner or a person authorized by the owner showing good cause to be entitled to receive the certificate of title. The discretion shall be reserved for circumstances demonstrating exceptional or unusual need and may include, but [**shall**] not be limited to requests for the title for immediate resale of the vehicle, for shipment of a vehicle overseas, and for use of the title as collateral for a loan after submission to the Department of Transportation for correction of an error. Identification satisfactory to the Department of Transportation shall be

required of the owner or the person authorized by the owner prior to delivery of the certificate of title.

[Pa.B. Doc. No. 11-1933. Filed for public inspection November 11, 2011, 9:00 a.m.]

[67 PA. CODE CH. 427]

Public Transportation—Sustainable Mobility

The Department of Transportation (Department), Bureau of Public Transportation, under the authority in 74 Pa.C.S. § 1505 (relating to regulations), proposes to amend Chapter 427 (relating to public transportation—sustainable mobility) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of Chapter 427 is to implement 74 Pa.C.S. Chapter 15 (relating to sustainable mobility options), as required under 74 Pa.C.S. § 1505. Section 1505 of 74 Pa.C.S. directed the Department to promulgate temporary regulations within 2 years of the effective date of 74 Pa.C.S. Chapter 15, by July 18, 2009, and thereafter to promulgate permanent regulations. The Department has used the period during which the temporary regulations have been effective to test and refine the regulations to assure compliance in carrying out the purposes for which 74 Pa.C.S. Chapter 15 provides financial assistance for public transportation services and infrastructure in this Commonwealth. This proposed rulemaking is the result of that experience under the temporary regulations.

Summary of Significant Provisions

The Department's experience in managing the operating assistance program under the temporary regulations authorized by 74 Pa.C.S. Chapter 15 has identified a variety of sources of local match funds which were permissible under previous public transportation legislation, including route guarantees. Several transit systems have a long history of dependence on route guarantee funding as a source of local match funds. In addition, several transit systems have had difficulty recently securing sufficient local matching funds from traditional municipal sources and have proposed using other sources, including advertising revenue and local match reserves. To address pre-existing arrangements for local match which include route guarantees, and to address poor economic circumstances which make it difficult for transit systems to secure increases in local match (5% annually, as required under 74 Pa.C.S. Chapter 15), the proposed rulemaking grandfathers existing route guarantee funding as eligible local match funds and clarify eligibility requirements for using route guarantee, advertising revenue and local match reserves as current year local match funds for operating assistance.

Proposed amendments to § 427.4 (relating to local matching funds) clarify local match requirements regarding State operating assistance. Section 427.4(a)(2) further defines eligible sources of local match and minimum amounts required. Section 427.4(a)(3) further clarifies local municipal responsibilities when a transit agency uses advertising revenue (normally used as operating revenue to reduce the operating deficit) as local match funding. Section 427.4(a)(4) explains the consequences of shortages in local match funding regarding the use of advertising revenue as local match funds. Section 427.4(a)(5) clarifies the eligibility of route guarantee funding which had been used as local match prior to the enactment of 74 Pa.C.S. Chapter 15. Section 427.4(a)(9)

defines the limitations associated with using route guarantee funds as local match funds and the consequences for local match funding if route guarantee funds ever decrease. Section 427.4(a)(10) explains requirements associated with using other private sources of funds as local match funds. Section 427.4(a)(11) explains the requirements which a transit system shall meet to use uncommitted local match reserves as matching funds for a current State operating assistance grant.

The Department's experience with financial auditing under the temporary regulations has resulted in revisions to the financial review process. Section 427.7(a)(2) and (3) (relating to audits) transfers the responsibility of initiating payment confirmation from the grantee to the Department because the Department has readily available records of payments. This reduces the burden on the transit systems. Section 427.7(a)(4) requires the review and approval of the audit report by the local transportation financial officer and the board prior to submitting the audit report to the Department because the Department cannot effectively use draft reports which may be changed after review by the local transportation financial officer and the board. Section 427.7(a)(5) transfers responsibility for identifying inconsistencies between required supplemental schedules and the audit report from the Department to the grantee. The Department would have to review the reports line by line to identify inconsistencies. The grantee generates both reports and thus should be aware of inconsistencies and can identify them more easily than the Department. It is also the grantee's responsibility to explain the inconsistencies. The explanation can be generated concurrently with identifying inconsistencies, rather than the Department making the identification and then going back to the grantee for an explanation. It also identifies the potential consequences of failing to comply with reporting requirements.

Persons and Entities Affected

This proposed rulemaking affects various private and public entities involved with the provision of public transportation services through this Commonwealth. The Department is affected as the administrator of the funding provided under 74 Pa.C.S. Chapter 15.

Fiscal Impact

The proposed rulemaking will not require additional expenditure of funds by the affected entities or by the Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 1, 2011, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

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

Sunset Date

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. Chapter 15. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Laverne Collins, Director, Bureau of Local and Public Transportation, Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0064, (717) 787-1214 within 30 days of publication of this proposed rulemaking in the Pennsylvania Bulletin.

Contact Person

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

BARRY J. SCHOCH, P.E., Secretary

Fiscal Note: 18-420. (1) Fund; (2) Implementing Year 2011-12 is \$800,000; (3) 1st Succeeding Year 2012-13 is \$800,000; 2nd Succeeding Year 2013-14 is \$800,000; 3rd Succeeding Year 2014-15 is \$800,000; 4th Succeeding Year 2015-16 is \$800,000; (4) 2007-08 Program—\$1,172,000,000; 2008-09 Program—\$1,219,000,000; 2009-10 Program—\$1,231,000,000; 2010-11 Program—\$1,082,000,000; (7) State Public Transportation Assistance Program; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE II. MASS TRANSIT

CHAPTER 427. PUBLIC TRANSPORTATION—SUSTAINABLE MOBILITY

GENERAL REQUIREMENTS

§ 427.1. Definitions.

* * * * *

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

* * * * *

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

§ 427.4. Local matching funds.

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

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

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

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

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

(3) Advertising revenue may be considered an eligible source of local matching funds for [section 1513 of the act (relating to operating program)] operating assistance grants[,] if the municipalities responsible for providing all of the local matching funds annually pass a resolution which does the following:

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

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

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

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

* * * * *

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

(5) All categories of local transportation organization operating revenue, including passenger fares; public or private payments provided in lieu of fares including route guarantees (unless the route guarantee revenue is allowed as local match in accordance with paragraph (9)); charter or school bus revenue; advertising revenue (unless the advertising revenue is approved for use as local match in accordance with paragraph (3)); and interest income or other miscellaneous sources of revenue do not constitute eligible sources of local matching funds.

* * * * *

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

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

* * * * *

(ii) Local matching funds in excess of the local matching funds provided in State Fiscal [Yyear] Year 2009-10 must be provided in accordance with paragraph [(1)] (2). [Private sources are] Funding from private **third-party contractor** sources is not eligible for this portion of the local matching funds.

(iii) If the amount of local matching funds provided [through private sources] by the private **third-party contractor** is ever decreased to an amount less than the local matching funds provided in State Fiscal Year 2009-10, the lower amount will become the maximum amount of local matching funds which can be provided by the private [sources] **third-party contractor**. All local matching funds in excess of the lower amount must be provided in accordance with paragraph [(1)] (2). Private **third-party contractor** sources are not eligible for this portion of the local matching funds.

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

(2) For local transportation organizations:

* * * * *

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

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

* * * * *

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

* * * * *

(c) *Required recordkeeping.*

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

* * * * *

(3) Interest earned and expended shall be reported [**at a minimum**] in the annual audit report on schedules as required by the Department.

* * * * *

§ 427.5. Procurement.

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

(b) Failure to comply with any applicable procurement requirement may result in the ineligibility of the grantee to receive future State transit capital funds until the following conditions are met:

* * * * *

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

(c) [**The grantee shall be responsible for paying for the cost of any audit required under subsection (b).**] The Department may require the grantee to pay for the audit cost directly, or may deduct the cost of the audit from any future State grant.

* * * * *

(e) The Department may [**establish a procurement probationary period for a grantee who has conducted a procurement which did not comply with applicable procurement requirements**] require a grantee to submit all procurement related documents to the Department for review and written concurrence prior to award to be eligible to receive State funds for that procurement.

[(1) **During the probationary period, for all procurements involving State funds, the grantee must submit all procurement related documents to the Department for review and written concurrence prior to award in order to be eligible to receive State funds for that procurement.**

(2) **The grantee will be responsible for all costs associated with the Department's review of procurement related documents.**]

* * * * *

§ 427.7. Audits.

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

* * * * *

(2) Within 90 days after the close of each fiscal year, each grant recipient [**shall transmit to**] will receive from the Department for confirmation an accounting of funds received from the Department during the preceding fiscal year [**in a format as required by the Department**].

(3) The [**Department will confirm directly with**] grant recipient shall convey directly to the certified public accounting firm [**(with a copy to the grant recipient) the amount of funds paid to each grant recipient**] the Department's confirmation of amounts identified in paragraph (2). The confirmed amounts shall become part of the financial audit report.

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

(i) The audit shall be conducted in accordance with auditing standards generally accepted in the United States. Those standards require the audit firm to plan and perform the audit to obtain reasonable assurance about whether financial statements are free of material

misstatement. The audit must include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements **and supplemental schedules.**

* * * * *

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

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

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

(i) [**The grant recipient will have 45 calendar days to prepare and submit a written response to the Director of the Bureau of Public Transportation on each finding identified in the financial audit report and with regard to variances identified.**] The grant recipient shall provide a written response to the Department answering questions raised by the Department within 45 calendar days of receipt of the Department's questions.

(ii) [**The written response will include a corrective action plan for each finding.**] Failure to comply with reporting requirements by the due date may result in delay or withholding of payments at the discretion of the Department.

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

[(6) **The Department will review the audit report and notify the grant recipient of any variances between Department records and the audit report.**

(i) **The grant recipient will have 45 calendar days to prepare and submit a written response to the Director of the Bureau of Public Transportation on each finding identified in the financial audit report and with regard to variances identified.**

(ii) **The written response will include a corrective action plan for each finding.**

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

* * * * *

OPERATIONS

§ 427.11. Data submission and verification.

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

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

* * * * *

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

(4) The number of **Act 44 defined fixed route, ADA paratransit and other Department-approved** revenue vehicle miles [**for the most recently completed fiscal year, as defined in the act**].

* * * * *

§ 427.12. Performance reviews.

* * * * *

(d) Performance reviews will be conducted as follows:

(1) *Comparison to peers.*

* * * * *

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

* * * * *

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

* * * * *

(D) Operating [**revenue per revenue vehicle hour exceed**] **cost per passenger exceeds** plus one standard deviation.

* * * * *

[Pa.B. Doc. No. 11-1934. Filed for public inspection November 11, 2011, 9:00 a.m.]