

RULES AND REGULATIONS

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[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), adopts permanent regulations to replace temporary regulations in 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. §§ 1501—1520 (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. §§ 1501—1520, by July 18, 2009, and thereafter to promulgate permanent regulations. The Department used the effective period of the temporary regulations to test and refine the regulations to ensure compliance in carrying out the purposes for which 74 Pa.C.S. §§ 1501—1520 provide financial assistance for public transportation services and infrastructure in this Commonwealth. This final-form rulemaking is the result of that experience under the temporary regulations.

Summary of Comments and Changes in the Adopted Regulations

Notice of proposed rulemaking was published at 41 Pa.B. 6089 (November 12, 2011). The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Transportation Committees. Comments were not received from the public or the House and Senate Committees. IRRC's comments follow.

First, IRRC noted that, insofar, as this promulgation of permanent regulations is intended to supplant the temporary regulations promulgated under 74 Pa.C.S. §§ 1501—1520, the final-form rulemaking must designate the full text of Chapter 427 in compliance with IRRC regulations specifically 1 Pa. Code § 307.3a (relating to formatting the text of a final regulation). The Department complied and the full text of Chapter 427 was formatted in accordance with 1 Pa. Code § 307.3a and IRRC's subsequent guidance to publish Chapter 427 in its entirety. (*Editor's Note:* The version of this final-form rulemaking formatted to comply with 1 Pa. Code § 307.3a is available as a PDF document at http://www.irrc.state.pa.us/regulation_details.aspx?IRRCNo=2922 by clicking the "Download final regulation" link. This version shows bracketed, upper case and strikethrough text.)

Second, IRRC noted that in § 427.4(a)(6) (relating to local matching funds) the term "swaptions" was used. IRRC recommended that the term either be defined or deleted. The term has been deleted. IRRC also noted that in subsections (b)(4) and (c)(3) the phrase "schedules as required by the Department" was vague and should be clarified. The provisions have been clarified to refer to "supplemental audit schedules required by the Department."

IRRC also noted that in § 427.5(b) (relating to procurement) the phrase "failure to comply with any applicable

requirement" could result in ineligibility for future funding. IRRC found the phrase to be vague and recommended that it be clarified. The provision has been amended to make clear that what grantees must adhere to in order to avoid ineligibility for future funding are the "procurement requirements" which are applicable. Applicable requirements will be dependent on whether the source of funding is Federal, State or local.

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

IRRC also asked for clarity in § 427.7 (relating to audits) with respect to the audit standards to be applicable under the regulation. The Department clarified this section to refer specifically to the generally accepted accounting principles, the standard in the accounting industry. In § 427.7(a)(4)(v), IRRC found the phrase "supplemental schedules as required by the Department" to be vague. The stand-alone provision was determined to be unnecessary and has been deleted.

In response to further IRRC comments, in § 427.11 (relating to data submission and verification), the reference to "section 1513 operating assistance funds" was clarified to refer to "operating assistance funds under section 1513 of the act (relating to operating program)."

Finally, in reference to § 427.12 (relating to performance reviews), IRRC requested a specific web site reference for the performance review policy and recommended that the performance review process be included in the final-form rulemaking. The proposed rulemaking delineated in considerable detail the elements and methodology of reviews of the performance of transportation organizations under 74 Pa.C.S. §§ 1501—1520 and the regulations. Establishing the review procedures themselves in the regulations would eliminate flexibility or discretion in the Department to allocate staff resources and time to the review process and would unnecessarily subject any identified need to tweak or adjust the procedures to the lengthy and time consuming regulatory review process. The interests of the transportation organizations and the public in having a knowable and transparent review of performance are amply protected in the detailed elements and methodologies already delineated in the regulations. At the suggestion of the IRRC, however, the Department included a link in the final-form rulemaking to the performance review policy guidance of the Department for performance reviews.

In that certain changes made necessary because of IRRC's comments were not implemented in the final-form rulemaking initially presented to IRRC and House and Senate Committees, the Department requested tolling this final-form rulemaking on January 14, 2014, which was not objected to by IRRC. This final-form rulemaking incorporates the necessary changes and adds additional clarity.

Persons and Entities Affected

This final-form rulemaking affects various private and public entities involved the provision of public transportation services throughout this Commonwealth.

The Department is affected as the administrator of the funding provided under 74 Pa.C.S. §§ 1501—1520.

Fiscal Impact

The final-form 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 the notice of proposed rulemaking, published at 41 Pa.B. 6089, 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 February 26, 2014, 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 February 27, 2014, and approved the final-form rulemaking after tolling.

Sunset Date

The Department is not establishing a sunset date for these regulations, as these regulations are needed to administer provisions required under 74 Pa.C.S. §§ 1501—1520. The Department, however, will continue to closely monitor these regulations for their effectiveness.

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.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 427, are amended by amending and adopting as permanent regulations §§ 427.1, 427.4—427.7, 427.11 and 427.12 and adopting as permanent regulations §§ 427.2, 427.3, 427.13, 427.21 and 427.22 to read as set forth in Annex A.

(*Editor's Note:* Sections 427.2, 427.3, 427.6, 427.13, 427.21 and 427.22 were not included in the proposed rulemaking published at 41 Pa.B. 6089. This final-form rulemaking adopts these sections as permanent regulations.)

(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*.

BARRY J. SCHOCH, PE,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 1534 (March 15, 2014).)

Fiscal Note: Fiscal Note 18-420 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 II. MASS TRANSIT

CHAPTER 427. PUBLIC TRANSPORTATION—SUSTAINABLE MOBILITY

GENERAL REQUIREMENTS

§ 427.1. Definitions.

(a) The terms and definitions in section 1503 of the act (relating to definitions) are adopted herein as if fully set forth.

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

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

Department—The Department of Transportation of the Commonwealth.

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

§ 427.2. Purpose.

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

§ 427.3. Application procedure.

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

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

§ 427.4. Local matching funds.

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

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

(2) Except for those local transportation organizations using 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 organi-

zation shall be cash contributions provided by one or more municipalities or private entities in accordance with paragraphs (1) and (10).

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Local matching funds equal to the local matching funds provided by third-party contractors in State Fiscal Year 2009-10 may continue to come from private third-

party contractor sources provided the following requirements are met. The private third-party contractor source of local matching funds must:

(A) Segregate finances for all business entities.

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

(C) Submit an independently prepared audit for each business entity. The audit must clearly identify revenue sources used for local matching funds.

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

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

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

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

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

(iii) If the amount of local matching funds provided through route guarantee funds is ever decreased to an amount less than the local matching funds provided in State Fiscal Year 2009-10, the lower amount will become the maximum amount of local matching funds which can be provided through route guarantee funds. 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.*

(1) For a private transportation provider, the private transportation provider shall submit to the Department a certification, signed by the company's chief operating officer, assuring that the amount of required eligible local matching funds will be provided by the end of the State fiscal year for which a grant is made.

(2) For local transportation organizations:

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

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

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

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

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

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

(4) The audit referred to in paragraph (3)(iii) must include the supplemental audit schedules required by the Department.

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

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

(c) *Required recordkeeping.*

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

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

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

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

(e) *Insufficient local matching funds.*

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

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

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

(4) Prorates shall be calculated as follows:

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

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

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

§ 427.5. Procurement.

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

(b) Failure to comply with the procurement requirements applicable for the funding source for the procurement (Federal, State or local) may result in the ineligibility of the grantee to receive future State transit capital funds until the following conditions are met:

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

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

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

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

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

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

§ 427.6. Restriction on use of funds.

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

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

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

(i) A reduction in service.

(ii) An increase in fare levels.

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

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

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

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

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

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

(i) To prevent a reduction in service.

(ii) To prevent an unreasonable fare increase.

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

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

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

§ 427.7. Audits.

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

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

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

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

(2) Within 90 days after the close of each fiscal year, each grant recipient will receive from the Department for

confirmation an accounting of funds received from the Department during the preceding fiscal year.

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

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

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

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

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

(iv) Management letters and all schedules of findings based on the audit work shall become part of the annual financial audit report.

(v) If a single audit has been conducted, a copy of the single audit report shall also be submitted to the Department.

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

(5) The grant recipient shall review the audit report, identify 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 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) Failure to comply with reporting requirements by the due date may result in delay or withholding of payments at the discretion of the Department.

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

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

OPERATIONS

§ 427.11. Data submission and verification.

(a) *Factors.* The factors used to calculate the distribution of operating assistance funds under section 1513 of the act (relating to operating program) in excess of the

base operating allocation are the following for the most recently completed fiscal year, as defined in the act:

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

(2) The number of senior citizen passengers.

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

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

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

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

(d) *Inaccurate data.* The following apply if the data used to calculate operating assistance grants under section 1513 of the act is determined to be inaccurate:

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

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

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

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

§ 427.12. Performance reviews.

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

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

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

(2) The Department will maintain on its web site, at ftp://ftp.dot.state.pa.us/public/bureaus/publictransportation/generalinformation/tpr_presentation.pdf, a performance review policy that will discuss the process for conducting a performance review.

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

(d) Performance reviews will be conducted as follows:

(1) *Comparison to peers.*

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

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

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

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

(C) Number of peak vehicles.

(D) Service area population.

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

(A) Passengers per revenue vehicle hour.

(B) Operating costs per revenue vehicle hour.

(C) Operating revenue per revenue vehicle hour.

(D) Operating costs per passenger.

(iv) The Department will:

(A) Calculate the average of each performance criterion by mode for the peer group (which includes the local transportation organization under review), using the single most recent year for which data is available.

(B) Calculate the standard deviation for each performance criterion by mode for the peer group and local transportation organization under review.

(v) The local transportation organization under review will be in compliance if the following conditions are met:

(A) Passengers per revenue vehicle hour is within plus or minus one standard deviation or exceeds plus one standard deviation.

(B) Operating revenue per revenue vehicle hour is within plus or minus one standard deviation or exceeds plus one standard deviation.

(C) Operating costs per revenue vehicle hour is within plus or minus one standard deviation or is below minus one standard deviation.

(D) Operating costs per passenger is within plus or minus one standard deviation or is below minus one standard deviation.

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

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

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

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

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

(2) *Trend analysis.*

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

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

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

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

(3) *Minimum performance standard.*

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

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

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

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

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

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

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

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

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

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

§ 427.13. Demonstration projects.

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

(1) A feasibility study must be conducted and a report issued prior to application. The feasibility report must include annual estimates for the four performance criteria

identified in section 1513(f) of the act (relating to operating program) for the determination of the success of the demonstration project.

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

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

(i) If the demonstration service meets the established minimum performance standards within the 3-year demonstration period, it may receive formula based operating assistance from section 1513 of the act funds if there is sufficient funding available in section 1513 of the act to fund both existing services and the demonstration project.

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

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

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

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

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

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

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

(6) Within 30 days of the end of each quarter, the applicant shall submit quarterly reports providing financial information and operating statistics in a format determined by the Department within 30 days of the end of each quarter during the 3-year demonstration period to maintain eligibility for State funding.

NEW INITIATIVES

§ 427.21. Application requirements for new initiatives.

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

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

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

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

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

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

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

(ii) The applicant shall show how the proposed project will coordinate with other transit in the region, as well as with other transportation options when appropriate, such as bicycle paths, high-occupancy vehicle facilities, Amtrak or other intercity rail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) To demonstrate the integration, the applicant should cite relevant plans (comprehensive plan and zoning) as well as policies relating to parking availability/cost, existing and allowable densities, mix of land use and affordable housing.

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

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

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

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

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

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

§ 427.22. New initiative project evaluation.

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

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

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

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

[Pa.B. Doc. No. 14-814. Filed for public inspection April 18, 2014, 9:00 a.m.]