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CHAPTER 53C. RAIL FREIGHT ASSISTANCE PROGRAM

CHAPTER EXPIRATION DATE:

Expires on July 11, 2023.

SUBCHAPTER 1. PURPOSE AND SCOPE

16:53C-1.1 Purpose

(a) The New Jersey Statewide Freight Rail Strategic Plan (Plan) was developed for the purpose of maintaining and supporting an efficient freight rail system in the State of New Jersey. The Plan assesses the state and efficiency of the existing system; projects future freight rail demands; analyzes infrastructure improvements that are in progress and determines what needs to be done in order to complete those projects; and prioritizes a series of improvements and actions to ensure the efficiency and effectiveness of New Jersey's freight rail system.

(b) Consistent with the Statewide Freight Rail Strategic Plan, the New Jersey Rail Freight Assistance Program (RFAP) provides funding for capital improvements that result in the continuation of economically viable rail freight services. The purpose of the program is to support a safe, efficient, and effective rail freight system in the State of New Jersey through the provision of financial assistance to preserve, rehabilitate, and enhance rail freight facilities. This chapter governs the administration of the program. All projects must show a positive cost benefit ratio, taking into consideration such factors as job creation and increased railroad revenues. Sponsors are also required to continue freight service on the improved line for at least five years after completion of the project.

16:53C-1.2 Scope

(a) Financial assistance under the New Jersey Rail Freight Assistance Program (RFAP) is available to Class I, Class II, and Class III railroads. Class I, Class II, and Class III railroads are defined by regulations of the Interstate Commerce Commission (49 CFR Part 1201; General Instructions 1-1), and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

(b) Financial assistance may be made to owners of rail properties, operators of rail freight service, or responsible public agencies or authorities for projects included in the annual list of projects eligible for participation in the RFAP.

SUBCHAPTER 2. DEFINITIONS

16:53C-2.1 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such person as the Commissioner may designate, when legally permissible.

"Common carrier" means that entity providing railroad transportation for compensation and which is subject to the jurisdiction of the Interstate Commerce Commission.

"Demonstration project" means a project that uses methods or materials that are considered non-standard or experimental, which may require a more substantial initial capital investment than a project using traditional methods or materials, but has the potential to offer long-term cost savings or environmental benefit over the life of the material or facility.

"Department" means the New Jersey Department of Transportation.

"Facilities" means track, ties, roadbed, and related structures used or usable for rail freight operations.

"Rail line" means a section of track certificated by the United States Surface Transportation Board.

"Rehabilitation" means the work necessary to restore the structural integrity of portions of a rail line or bridge.

"Routine maintenance" means inspection and minor repairs and the planned program of periodic maintenance necessary to keep a line at its existing condition but not below specified Federal Railroad Administration safety standards.

"SAGE" means the Department's online grant management system, System for Administering Grants Electronically.

"Sponsor" means an applicant that has been awarded and has accepted financial assistance pursuant to this chapter.

16:53C-2.2 (Reserved)

16:53C-2.3 (Reserved)

SUBCHAPTER 3. NEW JERSEY RAIL FREIGHT ASSISTANCE PROGRAM

16:53C-3.1 General provisions

(a) The New Jersey Rail Freight Assistance Program (RFAP) (formerly known as the State Rail Plan) was established in 1976 and has been updated annually since October 1978. The RFAP and the updates are based on a comprehensive, coordinated, and continuing planning process and are developed with an opportunity for participation by all interested parties.

(b) Annually, the Department shall present the RFAP and current update at a public meeting. Public notice shall be provided at least 15 days in advance by publication in newspapers of general circulation throughout the State, the Department's web site at <http://www.state.nj.us/transportation/>, and letters sent to elected officials representing affected communities.

16:53C-3.2 (Reserved)

SUBCHAPTER 4. FINANCIAL ASSISTANCE

16:53C-4.1 Project eligibility

(a) Financial Assistance under the Rail Freight Assistance Program (RFAP) is limited to the following categories of projects:

1. Rail facility construction shall be as follows:

i. A project for the design and construction of rail facilities for the purpose of improving the safety, quality, and efficiency of existing rail freight service, or providing the benefits of rail service to users not located on existing rail lines. This includes, but is not limited to, new connections between two or more existing lines, relocation of lines or sidings, modernization of existing facilities, and construction of new facilities;

2. Rail line rehabilitation or reconstruction shall be as follows:

i. A project for the design and rehabilitation or reconstruction of a rail line or bridge, which requires a one-time investment of financial assistance in order to ensure the continuation or creation of safe, adequate, and efficient rail freight services on the rail line for a period of not less than five years; and

3. Demonstration projects shall be as follows:

i. A project for the design and rehabilitation, reconstruction, or construction of rail freight facilities that uses non-standard or experimental methods and materials.

(b) To be considered for financial assistance, owners of rail properties, operators of rail freight services, and responsible public agencies must apply to, and be selected for, inclusion in the New Jersey Rail Freight Assistance Pro-

gram (RFAP) pursuant to the provisions of this subchapter. This requirement may be waived at the discretion of the Commissioner when the project is of an emergency nature.

(c) Only projects for which the benefit/cost ratio has been determined by the Department to be greater than 1.0 are eligible to be included in the RFAP, unless a project is deemed to be a system critical link.

(d) Projects that will serve single users and do not have the potential to serve additional users are not eligible for inclusion in the RFAP.

(e) Projects for routine maintenance are not eligible for inclusion in the RFAP.

(f) Financial Assistance under the RFAP shall not be used to subsidize the operating costs of rail freight service.

16:53C-4.2 Amount and form of financial assistance

(a) Financial assistance may be provided to projects as follows:

1. For Class I railroads, financial assistance may be provided at 50 percent of the total eligible cost with the remaining 50 percent to be paid by the sponsor;

2. For Class II railroads, financial assistance may be provided at 70 percent of the total eligible cost with the remaining 30 percent to be paid by the sponsor; and

3. For Class III railroads, financial assistance may be provided at 90 percent of the total eligible cost with the remaining 10 percent to be paid by the sponsor.

(b) Financial assistance shall be paid on a reimbursement basis to the sponsor. Requests for payment shall be made on a State invoice form with supporting documentation deemed sufficient by the Department. The invoice is available on the Department's website at: www.state.nj.us/transportation/business/vendorhelp/. The Commissioner shall determine all financial terms and conditions of the grant, which shall be set forth in a project agreement.

(c) Eligible costs shall be limited to the cost of design, construction, including construction supervision, inspection, and material testing. The cost of right-of-way acquisition incidental to the project shall be borne totally by the sponsor.

16:53C-4.3 Duration of financial assistance

(a) Financial assistance for a project is limited in duration to a period not to exceed three years from the date of execution of the project agreement. Should circumstances dictate that a project's duration extend beyond the agreement's expiration date, the sponsor shall request such an extension from the Department in writing, including a detailed justification for the request.

(b) Circumstances to be considered upon a request for an extension of the duration of assistance shall include, but not be limited to: unanticipated additional work directly associated with the project; inability to accomplish the project within the specified time-frame due to circumstances beyond the sponsor's control; and forced staging of financing over a period greater than three years.

16:53C-4.4 Acquisition of real property

(a) Property, which the Department has identified as an essential component of a rail freight network vital to the economic well-being of the State is also eligible for acquisition by the State under the Rail Freight Assistance Program (RFAP). Such acquisitions may be funded up to 100 percent of the cost of the property. Inactive rail lines, which have value for future use as rail freight facilities or as components of an intermodal network are eligible. Property over which continued rail operations can be maintained through ownership by the private sector is not eligible.

(b) Sources other than RFAP funding will be sought before RFAP funds are expended for property acquisition.

SUBCHAPTER 5. PROJECT APPLICATION, SELECTION, AND AGREEMENT

16:53C-5.1 Application process

(a) The Department will notify the potential sponsors as to whether Rail Freight Assistance Program (RFAP) funding is anticipated for the following fiscal year on or about December 1 of each year. If funding is anticipated, the notification shall include instructions on completing an application using SAGE (System for Administering Grants Electronically), the Department's online grant management system, at <http://njsage.intelligrants.com>. Interested parties may request notification from the Manager, Bureau of Multimodal Grants and Programs, Division of Multimodal Services, New Jersey Department of Transportation, PO Box 600, Trenton, NJ 08625 or through the Department's website at <http://www.state.nj.us/transportation/airwater/multimodal/>.

(b) A hard copy of the completed application shall be submitted within 90 days of receiving notice or as otherwise specified in the notification. Each application submitted shall be dated and signed by an authorized agent of the entity submitting the application.

16:53C-5.2 Contents of application

(a) The Department's application form will require, but not be limited to:

1. The full name and principal business address of the applicant;
2. The name, title, address and phone number of the persons to whom correspondence regarding the application should be addressed;
3. A project description and benefits;
4. Data for Benefit/Cost analysis;
5. Photographs of the project area;
6. Scope of the work and current project cost estimate;
7. Assurances that the applicant is able to meet all the requirements of the financial assistance, including the provision of the sponsor's share of total project costs; and
8. A certification signed by the owner of the property granting permission to the applicant to undertake the project.

16:53C-5.3 Additional application contents for demonstration projects

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-4.2, applications for demonstration projects shall include:

1. A detailed description of methods or materials to be used in the project, including an estimate of useful life, long-term cost savings and a schedule for completion of the work;
2. Engineering or scientific evidence that the method or material to be used in the project does in fact offer long-term cost savings; and
3. Engineering or scientific evidence that the proposed method or material is safe for use.

16:53C-5.4 Project selection

(a) The total budget amount for funding projects within the Rail Freight Assistance Program (RFAP) is appropriated annually. The number and funding levels of individual projects shall be dependent upon the level of annual appropriations, the number of applications received, the amount of funding requested, and the merit of the application. Not all eligible projects will receive funding in a given year. If an eligible project does not receive funding under the RFAP, the sponsor may reapply for funding in the next fiscal year.

(b) At the discretion of the Commissioner, projects will be selected for funding on an annual basis from the projects contained in the list of eligible projects. The Department may require that cost estimates for projects from previous program years be updated by the sponsor to accurately reflect the anticipated costs in the current program year. Factors considered will include: economic benefit, efficient and responsive freight distribution, energy and environmental factors, and highway congestion mitigation.

(c) Applicants shall be notified of the status of their applications not later than 30 days after selection for funding by the Commissioner.

16:53C-5.5 Selection criteria

(a) During the selection process, the New Jersey Department of Transportation evaluates each project according to the extent that they advance the following criteria:

1. Economic growth, as follows:

i. The project supports and promotes economic activity in New Jersey by preserving and improving the freight transportation system;

ii. Increases employment potential with new or improved rail freight services and intermodal facilities;

iii. Increases the number of businesses served by rail freight; and

iv. Protects the critical corridors and connections to the national network;

2. Efficient and responsive freight distribution as follows:

i. The project ensures freight movement within the State serves customers efficiently and effectively;

ii. Supports rail and intermodal services that exhibit potential for long-term economic viability;

iii. Supports competitive freight transportation services where economically viable;

iv. Provides transportation facilities that satisfy the requirements of freight shippers and the industries they serve; and

v. Promotes joint private and public funding of rail freight and intermodal improvement projects;

3. Energy and environmental conservation as follows:

i. The project maximizes the conservation of energy and reduction in emissions by promoting the use of efficient freight systems;

ii. Supports energy efficient aspects of rail freight and intermodal transportation; and

iii. Supports rail freight and intermodal services that minimize detrimental environmental impacts; and

4. Highway congestion mitigation as follows:

i. The project reduces vehicular traffic by providing a viable alternative to long-haul over-the-road freight shipments;

ii. Supports the development of team track with freight distribution and storage facilities; and

iii. Supports the development of facilities where shipments are transferred from one mode of transportation to another and intermodal services.

16:53C-5.6 Project agreement

(a) After an applicant has been notified of selection and has accepted financial assistance for a project, a project agreement shall be executed.

(b) The project agreement will include, but not be limited to, the following terms and conditions:

1. The amount of the State and the sponsor's respective shares of the project costs;

2. A detailed scope of the work and detailed cost estimate;

3. Assurances that the sponsor will provide or cause to be provided common carrier service for a period of no less than five years utilizing the rail facilities that are the subject of assistance. In the event that the railroad receives approval for abandonment during that period, the State may seek reimbursement for a proportionate share of the amount of the funds expended;

4. Assurances that the sponsor will provide or cause to be provided continued maintenance on the improved facility for at least five years from the date the State deems the project complete;

5. That the State reserves the right to inspect the project, including materials and workmanship. The sponsor shall assist with all necessary arrangements for such inspection;

6. Proof that the sponsor has notified, in writing, the governing body of each affected municipality;

7. That the sponsor shall conform to all applicable State and Federal environmental laws and regulations;

8. That the sponsor shall provide professional engineering plans at the discretion of the Department;

9. That the sponsor shall agree to retain and make available to the Commissioner, for the purpose of audit and examination, any financial records, supporting documents, papers, statistical records, contracts, and all other records pertinent to, arising out of, or connected with the implementation of the project. The records shall be available for a period of three years after project closeout, or for any longer period necessary to resolve audit findings, following the payment by the Commissioner of the final invoice under the agreement; and

10. A certification signed by the applicant, or the owner of the property if other than the applicant, agreeing that the State may record a lien against the property in an amount equivalent to the full value of the Rail Freight Assistance Program funding as a guarantee that the applicant, or owner of the property if other than the applicant, will cause or use its best efforts to cause common rail freight service to be provided using the rail freight facilities or right-of-way that is the subject of assistance for a period of no less than five years from the date the State provides written notification of acceptance of the funded project is complete.

SUBCHAPTER 6. ANNUAL LISTING OF ELIGIBLE PROJECTS

16:53C-6.1 Listing of eligible projects

(a) Annually, the Department shall publish a list of projects that are eligible for assistance from the State Rail Freight Assistance Program on its website at <http://www.state.nj.us/transportation/freight/rail/>.

(b) The list shall include project descriptions and cost.

(c) Notice of the list's publication shall be provided to elected officials representing communities where the projects are located. Requests for hard copies may be addressed to:

New Jersey Department of Transportation
Bureau of Multimodal Grants and Programs
Division of Multimodal Services
Main Office Building, 3rd Floor
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600
Phone: (609) 530-2847

16:53C-6.2 (Reserved)

16:53C-6.3 (Reserved)

16:53C-6.4 (Reserved)

16:53C-6.5 (Reserved)

16:53C-6.6 (Reserved)

SUBCHAPTER 7. AUDIT

16:53C-7.1 General provisions

(a) Recipients of financial assistance shall comply with the State of New Jersey Single Audit Policy defined by the Department of the Treasury, Office of Management and Budget (OMB Circular 04-04 or as superseded). The circular is available in electronic format on the New Jersey Department of the Treasury, Office of Management and Budget website at: www.state.nj.us/infobank/circular/circindx.htm.

(b) A single audit of the recipient shall be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with the State of New Jersey Single Audit Policy.

(c) Audit costs incurred by the recipient to comply with this subchapter shall not be reimbursable.