

CHAPTER 53C**RAIL FREIGHT PROGRAM****Authority**

N.J.S.A. 27:1A-5, 27:1A-5.1, and 27:1A-6.

Source and Effective Date

R.1993 d.277, effective May 13, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

Executive Order No. 66(1978) Expiration Date

Chapter 53C, Rail Freight Program, expires on May 13, 1998.

Chapter Historical Note

Chapter 53C, Rail Freight Program, was adopted as R.1983 d.601, effective January 3, 1984. See: 15 N.J.R. 1563(a), 16 N.J.R. 52(b). Pursuant to Executive Order No. 66(1978), Chapter 53C was readopted as R.1988 d.317, effective June 16, 1988. See: 20 N.J.R. 966(a), 20 N.J.R. 1730(c). Pursuant to Executive Order No. 66(1978), Chapter 53C was readopted as R.1993 d.277. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. INTRODUCTION**16:53C-1.1 Definitions**

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

“Acquisition assistance” means funds the Rail Freight Assistance Program uses to cover the cost of acquiring, by purchase, or in such other manner the Department considers appropriate, a railroad line or other rail property for existing or future rail freight service.

“Cash” means the outlay of funds.

“Commissioner” means the Commissioner of the New Jersey Department of Transportation.

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

“Core Rail Freight System” denotes that system of rail lines deemed essential to the economic well-being of the State, as defined in “The State Rail Plan”.

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

“Maintenance” means inspection and light repairs, emergency repairs and the planned program of periodic maintenance necessary to keep a line at its existing condition but not below specified Federal Railroad Administration (FRA) safety standards.

“Rail facility construction assistance” means funds provided to cover the cost of constructing rail related facilities for the purpose of improving the quality and efficiency of existing rail freight service, or providing the benefits of rail service to industries not located on existing rail lines. This includes new connections between two or more existing lines, relocation of lines or sidings, modernization of existing facilities, construction of rail related freight facilities (for example, team track, intermodal transfer, etc.), and con-

struction of minor sections of new track (for example, passing tracks, crossovers, etc.).

“Rehabilitation or improvement assistance” means a one-time investment of funds to cover the cost of reconstruction, improvement or rehabilitation of rail properties.

“State Rail Plan” means the current edition, including all updates, revisions and amendments, documenting the methodology and analysis applied to the rail freight network and describing a specific recommendation for funding assistance.

“Substitute service assistance” means funds to cover the cost of reducing the transportation impacts of abandoned rail service in a manner less expensive than the continuation of the rail service and includes, but is not limited to, the acquisition, construction or improvement of substitute freight transportation facilities, for example, team track.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

SUBCHAPTER 2. STATE RAIL ASSISTANCE PROGRAM

16:53C-2.1 General provisions

(a) Scope of the program includes:

1. Acquisition assistance;
2. Rehabilitation or improvement assistance;
3. Rail facility construction assistance;
4. Substitute service assistance.

16:53C-2.2 Form of financial assistance

Financial assistance may be in the form of a grant to the owner of the rail properties, the operator of Rail Freight Service on the properties, or responsible public agency/authority. The Commissioner shall determine all financial terms and conditions of the grant.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

16:53C-2.3 Duration of assistance

Financial assistance is limited in duration to a period not to exceed three years from the date of project approval. Should circumstances dictate that a project extend beyond three years, the sponsor shall request such an extension of the Department in writing, including a detailed justification for the request. Circumstances to be considered eligible for an extension 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; forced staging of financing over a period greater than three years; or a project scope which is physically impossible to accomplish within three years.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

SUBCHAPTER 3. PROJECT ELIGIBILITY

16:53C-3.1 General requirements

(a) General eligibility requirements under the State Rail Assistance Program are as follows:

1. An analysis of a rail service related to the project must be included in the State Rail Plan (except when the project is of an emergency nature, in which case the State Rail Plan requirement may be waived, at the discretion of the Commissioner).
2. The cost/benefit ratio of any project must be greater than 1.0 as defined in the State Rail Plan.

16:53C-3.2 Acquisition assistance

(a) The rail freight properties which are eligible for acquisition assistance are those properties in the State identified as part of a core rail freight system which will be defined by the Department. In no case will the State acquire rail properties where continued rail operations can be maintained through ownership within the private sector. These properties may include inactive rail lines which have value for future use as rail freight facilities or as components of an intermodal system.

(b) Those rail properties identified as elements of the core rail freight system, which will not be continued in the private sector, are eligible for public acquisition with a maximum of 100 percent of the cost of acquisition being provided under this program.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

16:53C-3.3 Rehabilitation or improvement assistance

(a) The rail freight properties eligible for rehabilitation assistance are those properties (as defined by the Department), for which a one-time investment of capital assistance will seek to insure the continuation or creation of safe, adequate and efficient rail freight services for a period of not less than five years.

1. For a State-owned line, the operator of the freight service or other appropriate party is eligible to receive a grant of up to 100 percent of the total project cost to rehabilitate a rail line to Federal Railroad Administration (FRA) safety standards allowing rail operations at speeds appropriate for this line. On these properties trackage rights fees, or lease payments may be assessed in an amount sufficient to recoup acquisition and/or rehabilitation investments.

2. An operator or other responsible party, providing rail freight services on a rail line not owned by the State which is part of the core rail freight system, is eligible to receive a grant not to exceed 70 percent of the total cost of rehabilitating the rail line to FRA safety standards allowing rail operations at speeds appropriate for this line.

3. The operator or other responsible party, providing rail freight service on a rail line which is not an element of the core system, is eligible to receive a grant not to exceed 50 percent of the cost of rehabilitating the line to FRA safety standards allowing rail operations at speeds appropriate for this line.

4. Funding assistance available under this program shall not be available for maintenance as defined in N.J.A.C. 16:53C-1.

Amended by R.1988 d.317, effective July 18, 1988.

See: 20 N.J.R. 966(a), 20 N.J.R. 1730(a).

Changed grant from "not to exceed 70" to "of up to 100".

Amended by R.1993 d.277, effective June 7, 1993.

See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

16:53C-3.4 Rail facility construction assistance

In those instances, as defined in the State Rail Plan, where an improvement in the quality and efficiency of rail freight service can be provided through construction of a rail related facility, funding will be provided in an amount not to exceed 50 percent of the total cost of project construction for non-core, 70 percent for core.

Amended by R.1988 d.317, effective July 18, 1988.

See: 20 N.J.R. 966(a), 20 N.J.R. 1730(a).

Added "for non-core, 70 percent for core."

16:53C-3.5 Substitute rail service assistance

For industries located on rail segments where the continuation of rail service through acquisition, rehabilitation or rail facility construction assistance is not warranted, a grant not to exceed 50 percent of the total cost of project construction may be made available in order to provide alternative nonrail transportation facilities necessitated by the loss of rail service.

Amended by R.1988 d.317, effective July 18, 1988.

See: 20 N.J.R. 966(a), 20 N.J.R. 1730(a).

Added "may be made" and deleted "will be".

Amended by R.1993 d.277, effective June 7, 1993.

See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

SUBCHAPTER 4. STATE/LOCAL SHARE

16:53C-4.1 State share

The State share of allowable costs under this program shall be at the levels specified in N.J.A.C. 16:53C-3.

16:53C-4.2 Local share

The required local share of allowable costs under this program shall be provided in cash or by the value of labor and materials used as part of the eligible project.

SUBCHAPTER 5. REQUIREMENTS FOR THE STATE RAIL PLAN

16:53C-5.1 General provisions

(a) The State Rail Plan shall be based on a comprehensive, coordinated and continuing planning process. It shall be developed with an opportunity for participation by all interested parties. The Department shall schedule a public meeting upon revising the State Rail Plan. Public notice shall be given in accordance with applicable State law and practice.

(b) The State Rail Plan shall:

1. Specify the objectives of the State's Rail Assistance Program and describe how the implementation of the State Rail Plan will accomplish these objectives;

2. Specify the objectives, policies, and long-range expectations for the rail freight network;

3. Describe the relevant data sources, assumptions and analytical methodology used in developing the plan;

4. Contain a description, analysis and recommended action for rail lines in the State for which abandonment or discontinuance applications are pending;

5. Contain a description, analysis and recommended action for lines, other than those in (b)4 above, for which program assistance is contemplated;

6. For each line recommended for assistance, include the amount and source of funds anticipated for project implementation;

7. For rail lines receiving assistance, describe the revenue and cost information for the previous years' operations as well as any changes to the status of the line's condition based on revised data;

8. Provide revisions to information contained in previous submittals which is inaccurate as a result of project implementation, governmental action, action by a railroad, or other changed conditions;

9. Include a program of projects which identifies the projects, project priority, project costs, and anticipated construction schedule for lines recommended to receive program assistance;

10. Describe the planning process participation of local governmental entities, the railroads, rail service users and the public in general;

11. Describe the core rail system and the criteria used to define this system.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

SUBCHAPTER 6. APPLICATIONS

16:53C-6.1 General contents of applications

(a) Each application shall include:

1. Full name and principal business address of the applicant;
2. Name, title, address and phone number of the persons to whom correspondence regarding the application should be addressed;
3. Budget estimates for the total amount of assistance required; and
4. Applicant's intention to furnish the local share of total project costs, including copies of any executed third party agreements to provide the required local share, or a portion thereof.

(b) Applications for assistance may be addressed to: Manager, Bureau of Freight Services, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

16:53C-6.2 (Reserved)

Repealed by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).
Section was "Acquisition assistance".

16:53C-6.3 Rehabilitation or improvement assistance and rail facility construction assistance

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1, each application for rehabilitation or improvement assistance, and/or rail facility construction assistance shall include:

1. A detailed estimate of the materials and labor required to complete the work; the estimated numbers and kinds of ties and other materials; the milepost termini involved; and a schedule for completion of the work;
2. An assurance by an authorized agent of the applicant that:

i. The rehabilitated or improved facilities or newly constructed facilities will be maintained to prevent deterioration below the condition equivalent to that which existed upon completion of the facility improvement. This maintenance responsibility will be in force for the time period established as the payback period in the applicable State Rail Plan analysis.

3. A description of the arrangements made for the operation of rail service over the property including copies of the proposed operating agreements or leases and the proposed method of financing the operation of such service.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

16:53C-6.4 Substitute service assistance

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1, each application for substitute service assistance shall include:

1. A detailed description of the substitute service project, including evidence that the cost and scope of the project are limited to those requirements necessary to replace the rail service being discontinued.

16:53C-6.5 Execution and filing of applications

(a) Each original application shall bear the date of execution and be signed by an authorized agent of the entity submitting the application.

SUBCHAPTER 7. ENVIRONMENTAL IMPACT

16:53C-7.1 Requirements for application for assistance

Applications for assistance under the program shall conform to the requirements for environmental assessments under State and Federal regulations, laws, directives, or policies governing existing or new facility construction.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

SUBCHAPTER 8. GRANT AGREEMENT AND DISBURSEMENT

16:53C-8.1 Grant agreement

(a) Upon the approval of an application meeting the requirements of N.J.A.C. 16:53C-1 through 7, an agreement for the State share of the approved amount of the estimated project costs will be executed by the applicant and the Commissioner or his designated representative.

(b) The agreement will:

1. Identify the amount of the grantee's share of the program costs to be furnished in cash or through approved in-lieu-of-cash contributions as defined in N.J.A.C. 16:53C-4. The applicant shall expend a pro-rata share of its contributions at the same time payments of the State share are made available;

2. Provide assurances that the applicant will comply with applicable State laws, policies, directives, and regulations dealing with discrimination in employment and prevailing wage rate requirements on public contracts; and

3. Provide assurances by the applicant that a contingent interest shall be retained by the State for a period equal to the service life of the project. Further, that during any time within this period, the State's share shall be repaid, upon the sale, disposition or abandonment of the rail line receiving assistance.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

16:53C-8.2 Disbursement

The State share of project costs shall be provided on a cost reimbursement basis upon the submission of properly documented invoices and subject to a retainage of five percent of the invoiced amount pending final audit.

Amended by R.1988 d.333, effective July 18, 1988.
See: 20 N.J.R. 966(a), 20 N.J.R. 1730(a).
Changed percent from 10 to 5.

16:53C-8.3 Final settlement

Final settlement under the agreement will be made on the basis of a State audit which has determined the allowable costs over the entire term of the agreement. If the State audit determined that the allowable costs under the agreement are less than the amount of the agreement, the difference shall be refunded to the program at the end of the fiscal year in which the audit was performed.

Amended by R.1993 d.277, effective June 7, 1993.
See: 25 N.J.R. 1481(a), 25 N.J.R. 2503(a).

SUBCHAPTER 9. RECORD, AUDIT AND EXAMINATION
16:53C-9.1 General requirements

The grantee shall retain and make available to the Commissioner, or his designated representative, 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 Rail Assistance Program. The records shall be available for a period of three years after final settlement, or for any longer period necessary to resolve audit findings, following the payment by the Commissioner of the final billing under the agreement.