



MEETING AGENDA

Public Transportation Advisory Committee

Tuesday, July 25, 2017 | 1:00 P.M. (local time)

Texas Department of Transportation (TxDOT)

200 E. Riverside Drive, Room 1A.2

Austin, TX 78704

1. Call to Order.

2. Safety Briefing.

3. Approval of minutes from June 6, 2017 meeting. (Action)

4. TxDOT's Public Transportation Division Director's report to the Public Transportation Advisory Committee (PTAC) regarding public transportation matters.

5. Discussion of draft proposed rule changes to Title 43, Texas Administrative Code, Chapter 31. (Action)

6. Discussion and development of PTAC Work Plan based on PTAC's guiding principles and comments made at the January 22, 2015 meeting. (Action)

7. Public Comment – Public comment will only be accepted in person. The public is invited to attend the meeting in person or listen by phone at a listen-in toll-free number: 1-855-437-3563 [US] with attendee access code: 598 304 40. The meeting transcript will be placed on the Internet following the meeting.

8. Propose and discuss agenda items for next meeting; confirm date of next meeting. (Action)

9. Adjourn. (Action)

I certify that I have reviewed this document and that it conforms to all applicable *Texas Register* filing requirements.

CERTIFYING OFFICIAL: Joanne Wright, Deputy General Counsel, (512) 463-8630.

AGENDA ITEM 3

MINUTES FOR ADOPTION

Public Transportation Advisory Committee – Teleconference Meeting
3712 Jackson Avenue, Room 324, Austin, Texas
June 6, 2017 1:00 P.M.

Committee Members Present and Participating:

Rob Stephens, Chair
John McBeth, Vice Chair
J.R. Salazar

Committee Members Participating via Teleconference:

Jim Cline
Michelle Bloomer

TxDOT Present and Participating:

Eric Gleason, Director, Public Transportation Division (PTN)
Josh Ribakove, Communications Manager, PTN
Kelly Kirkland – Business Operations Project Manager, PTN

AGENDA ITEM 1: Call to Order.

Rob Stephens called the meeting to order at 1:00 P.M.

AGENDA ITEM 2: Safety Briefing.

Josh Ribakove gave a safety briefing for attendees at 1:01 P.M.

AGENDA ITEM 3: Introduction of Public Transportation Advisory Committee (PTAC) members and comments from PTAC members.

Rob Stephens opened this item at 1:02 P.M. He introduced the members who attended the meeting, both in person and via Webex/conference call. No member comments.

AGENDA ITEM 4: Approval of minutes from March 30, 2017 meeting (Action).

Rob Stephens opened this item at 1:03 P.M.

MOTION J.R. Salazar moved to approve the March 30, 2017 meeting minutes.

SECOND John McBeth seconded the motion.

The motion passed unanimously at 1:03 P.M.

AGENDA ITEM 5: TxDOT's Public Transportation Division Director's report to the committee regarding public transportation matters.

Eric Gleason began his report at 1:04 P.M. The report began with a legislative update which touched on a newly created funding category: Large Urban Transit Districts (population greater than 200,000); TxDOT's budget (approved, but not signed into law as of 6/6/2017); upcoming Commission awards; TxDOT's internal compliance requirement; federal apportionments; and TxDOT-PTN's upcoming Semiannual Transit Operators Business Meeting.

There were no questions or comments from the committee.

AGENDA ITEM 6: Review and discussion of areas of Texas Administrative Code under consideration for 2017 rulemaking efforts. Follow-up on the March 30, 2017 meeting's discussion plus discussion of state and federal funding formulas (Action).

Eric Gleason opened this item at 1:10 P.M. During this item, the committee recessed at 2:45 P.M. and reconvened at 3:02 P.M.

Mr. Gleason first gave a brief follow-up presentation focused on the section 5310 and 5339 programs. TxDOT program managers Kari Banta (section 5310) and Paul Moon (section 5339) were present as subject matter experts.

Mr. Gleason then gave a lengthier presentation focused on the state funding formula and federal rural (section 5311) programs.

Comments and discussion among Rob Stephens, Michelle Bloomer, Jim Cline, J.R. Salazar, John McBeth, and Eric Gleason.

No action taken.

Public comment from Dave Marsh, Capital Area Rural Transit System (CARTS).

AGENDA ITEM 7: Discussion and development of PTAC Work Plan based on PTAC's guiding principles and comments made at the January 22, 2015 meeting (Action).

Rob Stephens opened this item at 3:36 P.M.

No comments from the committee.

No action taken.

AGENDA ITEM 8: Public Comment

Rob Stephens introduced this item at 3:37 P.M.

There were no additional public comments.

AGENDA ITEM 9: Propose and discuss agenda items for next meeting; confirm date of next meeting (Action).

Rob Stephens initiated and led this discussion beginning at 3:40 P.M. The next meeting will include draft rules for committee discussion and potential approval.

The next meeting is scheduled for Tuesday, July 25, 2017 at 1 P.M. at 200 e. Riverside Drive, Room 1A.2, Austin.

No action taken.

AGENDA ITEM 12: Adjourn (Action).

MOTION J.R. Salazar moved to adjourn.

SECOND John McBeth seconded the motion.

Meeting adjourned at 3:41 P.M.

Prepared by:

Approved by:

Josh Ribakove

Rob Stephens, Chair

AGENDA ITEM 5

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As of July 20, 2017**

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SEMIANNUAL TRANSIT OPERATORS BUSINESS MEETING**

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SUBCHAPTER A. GENERAL

Rule §31.3 Definitions

To be amended

Thirteen Pages

1 SUBCHAPTER A. GENERAL

2 §31.3. Definitions. The following words and terms, when used
3 in this chapter, shall have the following meanings, unless the
4 context clearly indicates otherwise:

5 (1) Administrative expenses--Include, but are not
6 limited to, general administrative expenses such as salaries of
7 the project director, secretary, and bookkeeper; insurance
8 premiums or payments to a self-insurance reserve; office
9 supplies; facilities and equipment rental; and standard overhead
10 rates.

11 (2) Allocation--A preliminary distribution of grant
12 funds representing the maximum amount to be made available to an
13 entity during the fiscal year, subject to the entity's
14 completion of and compliance with all application requirements,
15 rules, and regulations applicable to the specific funding
16 program.

17 (3) Americans with Disabilities Act (ADA)--The
18 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et
19 seq.), which provides a comprehensive national mandate for the
20 elimination of discrimination against individuals with
21 disabilities. The ADA provides specific requirements related to
22 public transportation.

23 (4) Asset management plan--The transit asset
24 management plan prepared in accordance with 49 U.S.C. §5326 and
25 certified by the department. The plan includes at a minimum,
26 capital asset inventories and condition assessments, decision
27 support tools, and investment prioritization.

1 (5) Authority--A metropolitan transit or regional
2 transportation authority created under Transportation Code,
3 Chapter 451 or 452; a city transit department created under
4 Transportation Code, Chapter 453, by a municipality having a
5 population of not less than 200,000 at the time of its creation;
6 or a coordinated county authority created under Transportation
7 Code, Chapter 460.

8 (6) Average revenue vehicle capacity--The number of
9 seats in all revenue vehicles divided by the number of revenue
10 vehicles.

11 (7) Capital expenses--Include the acquisition,
12 construction, and improvement of public transit facilities and
13 equipment needed for a safe, efficient, and coordinated public
14 transportation system.

15 (8) Clean Air Act--The federal Clean Air Act (42
16 U.S.C. §7401 et seq.), which seeks to protect and enhance the
17 quality of the nation's air resources by promoting and financing
18 reasonable federal, state, and local governmental actions for
19 pollution prevention.

20 (9) Commission--The Texas Transportation Commission.

21 (10) 2 C.F.R. Part 200 and Part 1201 Uniform
22 Administrative Requirements, Cost Principles, and Audit
23 Requirements For Federal Awards [~~Common Rule -- 49 C.F.R. Part~~
24 ~~18, Uniform Administrative Requirements for Grants and~~
25 ~~Cooperative Agreements to State and Local Governments or 49~~
26 ~~C.F.R. Part 19, Uniform Administrative Requirements for Grants~~

~~and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.]~~

(11) Contractor--A recipient of public transportation funds through a contract or grant agreement with the department.

(12) Department--The Texas Department of Transportation.

(13) Designated recipient--The state, an authority, a municipality that is not included in an authority, a local governmental body, another political subdivision, or a nonprofit entity providing rural public transportation services, that receives federal or state public transportation money through the department or the Federal Transit Administration, or its successor.

(14) Director--The director of public transportation for the department.

(15) Disability--Disability as defined in the ADA (42 U.S.C. §12102), which includes a physical or mental impairment that substantially limits one or more major life activities of an individual.

(16) District--One of the 25 districts of the department for a designated geographic area.

(17) Employment-related transportation--Transportation to support services that assist individuals in job search or job preparation. Trips to daycare centers, one-stop workforce centers, jobs interviews, and vocational training are examples.

1 (18) Equipment--Tangible, nonexpendable, personal
2 property having a useful life of more than one year and an
3 acquisition cost of \$5,000 or more per unit.

4 (19) Executive director--The executive director of the
5 department.

6 (20) Fare box revenues--Fares paid by riders,
7 including those who are later reimbursed by a human service
8 agency or other user-side subsidy arrangement. This definition
9 includes subscription service fees, whether or not collected on-
10 board a transit vehicle. Payments made directly to the
11 transportation system by a human service agency are not
12 considered to be fare box revenues.

13 (21) Federal Transit Administration (FTA)--The Federal
14 Transit Administration of the United States Department of
15 Transportation.

16 (22) Federally funded project--A public transportation
17 project that is being funded in part under the provisions of the
18 Federal Transit Act, as amended, 49 U.S.C. §5301 et seq., the
19 Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. §101 et
20 seq., or any other federal program for funding public
21 transportation.

22 (23) Fiscal year--The state accounting period of 12
23 months that begins on September 1 of each calendar year and ends
24 on August 31 of the following calendar year.

25 (24) Good standing--A status indicating that the
26 department's director of public transportation has not sent a

1 letter to an entity signifying the entity is in noncompliance
2 with any aspect of a program.

3 (25) Incident--An intentional or unintentional act
4 that occurs on or in association with transit-controlled
5 property and that threatens or affects the safety or security of
6 an individual or property.

7 (26) Large Urban Transit District--A local
8 governmental entity or a political subdivision of the state that
9 provides and coordinates public transportation within an
10 urbanized area with a population greater than or equal to
11 200,000 in accordance with Transportation Code, Chapter 458,
12 providing service in an urbanized area. This definition
13 includes urban transportation providers under Transportation
14 Code, Chapter 456, that received state money through the
15 department on September 1, 1994. This definition excludes
16 authorities. [~~Job access project--A public transportation~~
17 ~~project relating to the development and maintenance of~~
18 ~~transportation services designed to transport welfare recipients~~
19 ~~and eligible low-income individuals to and from jobs and~~
20 ~~activities related to their employment, or as otherwise defined~~
21 ~~by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and~~
22 ~~Reverse Commute program as established under the Safe,~~
23 ~~Accountable, Flexible, Efficient Transportation Equity Act: A~~
24 ~~Legacy for Users (SAFETEA-LU).]~~

25 (27) Like-kind exchange--The trade-in or sale of a
26 transit vehicle before the end of its useful life to acquire a
27 replacement vehicle of like kind.

1 (28) Local funds--Directly generated funds, as defined
2 in the latest edition of the Federal Transit Administration
3 National Transit Database Reporting Manual. Examples include,
4 but are not limited to, passenger fares, special transit fares,
5 purchased transportation fares, park and ride revenue, other
6 transportation revenue, charter service revenue, freight
7 tariffs, station and vehicle concessions, advertising revenue,
8 funds dedicated to transit at their source, taxes, cash
9 contributions, contract revenue, general revenue, and in-kind
10 contributions.

11 (29) Local governmental entity--Any local unit of
12 government including a city, town, village, municipality,
13 county, city transit department, or authority.

14 (30) Local public entity --Includes a city, county, or
15 other political subdivision of the state, a public agency, or an
16 instrumentality of one or more states, municipalities, or
17 political subdivisions of states.

18 (31) Local share requirement--The amount of funds
19 required and eligible to match federally funded projects for the
20 improvement of public transportation.

21 (32) Low-income individual--An individual whose
22 family income is at or below 150 percent of the poverty line, as
23 that term is defined in the Community Services Block Grant Act
24 (42 U.S.C. §9902(2)), including any revision required by that
25 section, for a family of the size involved, or as otherwise
26 defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access
27 and Reverse Commute program as established under the Safe,

1 Accountable, Flexible, Efficient Transportation Equity Act: A
2 Legacy for Users.

3 (33) Metropolitan Planning Organization (MPO)--The
4 organization designated or redesignated by the governor under 23
5 U.S.C. §134 as the responsible entity for transportation
6 planning in urbanized areas over 50,000 in population.

7 (34) Mobility management--Eligible capital expenses
8 consisting of short-range planning and management activities and
9 projects for improving coordination among public transportation
10 and other transportation-service providers carried out by a
11 recipient or subrecipient through an agreement entered into with
12 a person, including a government entity, under 49 U.S.C. §5301
13 et seq. (other than §5309 and §5339). Mobility management
14 excludes operating public transportation services and excludes
15 equipment, tires, tubes, material, and reconstruction of
16 equipment and material described as associated capital
17 maintenance in the definition of "capital project" under 49
18 U.S.C. §5302.

19 (35) Net operating expenses--Those expenses that
20 remain after fare box revenues are subtracted from eligible
21 operating expenses.

22 (36) New public transportation services or
23 alternatives--An activity that, with respect to the New Freedom
24 program:

25 (A) is targeted toward people with disabilities;

26 (B) is beyond the ADA requirements;

1 (C) meets the intent of the program by removing
2 barriers to transportation and assisting persons with
3 disabilities with transportation, including transportation to
4 and from jobs and employment services; and

5 (D) is not included in a Transportation
6 Improvement Program or Statewide Transportation Improvement
7 Program prior to August 10, 2005.

8 (37) Nonprofit organization--A corporation or
9 association determined by the Secretary of the Treasury of the
10 United States to be an organization described by 26 U.S.C.
11 §501(c), one that is exempt from taxation under 26 U.S.C.
12 §504(a) or §101, or one that has been determined under state law
13 to be nonprofit and for which the state has received
14 documentation certifying the status of the organization.

15 (38) Nonurbanized area--An area outside an urbanized
16 area.

17 (39) Obligated funds--Monies made available under a
18 valid, unexpired contract or grant agreement between the
19 department and a public transportation subrecipient.

20 (40) Private--Pertaining to nonpublic entities. This
21 definition does not include municipalities or other political
22 subdivisions of the state; public agencies or instrumentalities
23 of one or more states; Native American tribes (except private
24 nonprofit corporations formed by Native American tribes); public
25 corporations, boards, or commissions established under the law
26 of any state; or entities subject to control by public
27 authority, whether state or municipal.

1 (41) Project--The public transportation activities to
2 be carried out by a subrecipient, as described in its
3 application for funding.

4 (42) Public transportation--Shared-ride transportation
5 of passengers and their hand-carried packages or baggage on a
6 regular or continuing basis by means of surface or water
7 conveyance by a governmental entity or by a private entity if
8 the private entity receives financial assistance for that
9 conveyance from any governmental entity. This definition
10 includes fixed guideway transportation and underground
11 transportation. This definition excludes services provided by
12 aircraft, ambulances, emergency vehicles, intercity passenger
13 rail transportation, charter bus service, school bus service,
14 sightseeing service, courtesy shuttle service for patrons of one
15 or more specific establishments, or intra-terminal and intra-
16 facility shuttle services.

17 (43) Public transportation safety plan--The agency
18 safety plan prepared in accordance with 49 U.S.C. §5329 and
19 certified by the department.

20 (44) Real property--Land, including improvements,
21 structures, and appurtenances, but excluding movable machinery
22 and equipment.

23 (45) Revenue service--Passenger transportation
24 occurring when a vehicle is available to the general public and
25 there is a reasonable expectation of carrying passengers that
26 directly pay fares, are subsidized by public policy, or provide
27 payment through some contractual agreement. This does not imply

1 that a cash fare must be paid. Vehicles operated in free fare
2 services are considered in revenue service.

3 (46) Revenue vehicle--The rolling stock used in
4 providing transit service for passengers. This definition does
5 not include a vehicle used in connection with keeping revenue
6 vehicles in operation, such as a tow truck or a staff car.

7 (47) Reverse commute project--A public transportation
8 project designed to transport residents of urbanized areas and
9 other than urbanized areas to suburban employment opportunities,
10 or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316,
11 the Job Access and Reverse Commute program as established under
12 the Safe, Accountable, Flexible, Efficient Transportation Equity
13 Act: A Legacy for Users.

14 (48) Ridership--Unlinked passenger trips.

15 (49) Rural area--A nonurbanized area.

16 (50) Rural transit district--A political subdivision
17 of the state that provides and coordinates rural public
18 transportation within its boundaries in accordance with the
19 provisions of Transportation Code, Chapter 458.

20 (51) Senior--An individual who is 65 years of age or
21 older.

22 (52) Small Urban Transit District--A local
23 governmental entity or a political subdivision of the state that
24 provides and coordinates public transportation within an
25 urbanized area with a population less than 200,000 in accordance
26 with Transportation Code, Chapter 458, providing service in an
27 urbanized area. This definition includes urban transportation

1 providers under Transportation Code, Chapter 456, that received
2 state money through the department on September 1, 1994. This
3 definition excludes authorities.

4 (53) Stakeholders--All individuals or groups that are
5 potentially affected by transportation decisions. Examples
6 include public health, work force, and human service agencies;
7 representatives of transportation agency employees or other
8 affected employees; private providers of transportation; non-
9 governmental agencies; local businesses; advocates for persons
10 in diverse and traditionally underserved communities, such as
11 seniors, individuals with disabilities, and persons with low
12 incomes; and other interested parties.

13 (54[53]) Subrecipient--An entity that receives state
14 or federal transportation funding from the department, rather
15 than directly from FTA or other state or federal funding source.

16 (55[54]) Uniform grant and contract management
17 standards--The standards contained in the Texas Administrative
18 Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant
19 and contract management standards for state agencies.

20 (56[55]) U.S. DOT--United States Department of
21 Transportation.

22 (57[56]) Unlinked passenger trips--The number of
23 passengers who board public transportation vehicles. A
24 passenger is counted each time the passenger boards a vehicle
25 even though the passenger might be on the same journey from
26 origin to destination.

1 (58[57]) Urban transit district--A local governmental
2 entity or a political subdivision of the state that provides and
3 coordinates public transportation within an urbanized area in
4 accordance with Transportation Code, Chapter 458. This
5 definition includes urban transportation providers under
6 Transportation Code, Chapter 456, that received state money
7 through the department on September 1, 1994. This definition
8 excludes authorities.

9 (59[58]) Urbanized area--A core area and the
10 surrounding densely populated area with a population of 50,000
11 or more, with boundaries fixed by the United States Census
12 Bureau.

13 (60[59]) Vehicle miles--The miles a vehicle travels
14 while in revenue service, plus deadhead miles. This definition
15 excludes miles a vehicle travels for charter service, school bus
16 service, operator training, or maintenance testing.

17 (61[60]) Vehicle revenue hours or miles--The hours or
18 miles a vehicle travels while in revenue service. This
19 definition includes layover and recovery, but excludes travel to
20 and from storage facilities, the training of operators prior to
21 revenue service, road tests, deadhead travel, and school bus and
22 charter service.

23 (62[61]) Vehicle utilization--Average daily passenger
24 trips per revenue vehicle, divided by average revenue vehicle
25 capacity. This definition provides a measure of an individual
26 system's ability to use existing seating capacity.

1 (63[62]) Welfare recipient--An individual who has
2 received assistance under a state or tribal program funded under
3 the Social Security Act, Title IV, Part A, at any time during
4 the previous three year period before the date on which the
5 applicant applies for a grant under 49 U.S.C. §5307 or §5311, or
6 as otherwise defined by 49 U.S.C. §5307 or §5311[, ~~or under 49~~
7 ~~U.S.C. §5316, the Job Access and Reverse Commute program as~~
8 ~~established under the Safe, Accountable, Flexible, Efficient~~
9 ~~Transportation Equity Act: A Legacy for Users~~].

SUBCHAPTER B. STATE PROGRAMS

Rule §31.11 Formula Program

To be amended

Ten Pages

1 SUBCHAPTER B. STATE PROGRAMS

2 §31.11. Formula Program.

3 (a) Purpose. Transportation Code, Chapter 456 requires the
4 commission to allocate, at the beginning of each fiscal
5 biennium, certain amounts appropriated for public
6 transportation. This section sets out the policies, procedures,
7 and requirements for that allocation.

8 (b) Formula allocation. At the beginning of each state
9 fiscal biennium, an amount equal to the amount appropriated from
10 all sources to the commission by the legislature for that
11 biennium for public transportation, other than federal funds and
12 amounts specifically appropriated for coordination, technical
13 support, or other costs of administration, will be allocated to
14 urban and rural transit districts.

15 (1) If the appropriated amount to which this
16 subsection applies is \$67,682,135~~[\$57,482,135 or less]~~, the
17 commission will allocate \$7,000,000 to large urban transit
18 districts, \$20,118,748~~[35 percent of the appropriated amount]~~
19 to small urban transit districts and \$40,563,386~~[65 percent of~~
20 ~~the appropriated amount]~~ to rural transit districts. If the
21 appropriated amount is less than \$67,682,135, the above
22 allocations will be reduced proportionate to the actual funds
23 appropriated.

24 (A) Urban funds available under this section will
25 be allocated to urban transit districts as provided by this
26 subparagraph.

1 (i) If at least \$67,683,135 is appropriated
2 as described in paragraph (1), then urban transit districts
3 receiving funds under Transportation Code, Section 456.006(b),
4 will be allocated each year a fixed amount of funds equal to the
5 amount received by such district in Fiscal Year 1997. This
6 includes The Cities of Arlington (amount \$341,663), Grand
7 Prairie (amount \$170,584), Mesquite (amount \$142,455), and North
8 Richland Hills (amount \$116,134). These allocations will be
9 assigned from the small urban transit district funds. If
10 appropriated funds are less than \$67,682,135 in the biennium,
11 then these amounts will be reduced proportionate to the actual
12 funds appropriated. If appropriated funds are greater than
13 \$67,683,135, then the urban transit districts described in this
14 clause are not eligible for additional funds as described in
15 paragraphs (2) or (3).~~Urban funds allocated under this~~
16 ~~paragraph will be divided into two tiers. Tier one will include~~
17 ~~urban transit districts that restrict transit eligibility for~~
18 ~~all public transportation services to seniors and individuals~~
19 ~~with disabilities. Funding available in tier one is calculated~~
20 ~~by multiplying the available urban funding by the population of~~
21 ~~seniors and individuals with disabilities in tier one providers,~~
22 ~~divided by the service eligible population of urbanized areas~~
23 ~~receiving funding under this subchapter. Tier two will include~~
24 ~~urban transit districts that provide any service to the general~~
25 ~~population. The funds for tier two will be the remaining~~
26 ~~balance of the available funds after the funds for tier one have~~
27 ~~been allocated.]~~

1 (ii) Small Urban Transit Districts. One-half
2 of the funds allocated for small urban transit districts~~[within~~
3 ~~each tier provided under clause (i) of this subparagraph will be~~
4 ~~allocated to urban transit districts as a need based~~
5 ~~allocation]~~ will be based on population by using the latest
6 census data available from~~[, and as defined by,]~~ the U.S. Census
7 Bureau for each small urbanized area relative to the sum of
8 all small urbanized areas. ~~[Any urban transit district whose~~
9 ~~urbanized area population is 200,000 or greater will have the~~
10 ~~population adjusted to reflect a population level of 199,999;~~
11 ~~except that any urban transit district receiving funds in tier~~
12 ~~one, as described in clause (i) of this subparagraph, will have~~
13 ~~the population adjusted to reflect a population level of~~
14 ~~199,999, or the urbanized area population of the place as~~
15 ~~defined by the U.S. Census Bureau, whichever is less.~~

16 (iii)] One-half of the funds in~~[allocated~~
17 ~~within each tier provided under clause (i) of]~~ this subparagraph
18 will be allocated to small urban transit districts as a
19 performance based allocation. A~~An~~ small urban transit
20 district is eligible for performance-based allocation [funding
21 under this clause] if it is in good standing with the department
22 and has no deficiencies and no findings of noncompliance. The
23 commission will award the performance based funding based on the
24 following weighted criteria: 30 percent for local funds per
25 operating expense, 20 percent for ridership per capita, 30
26 percent for ridership per revenue mile, and 20 percent for
27 revenue miles per operating expense. These criteria may be

1 calculated using the small urban transit district's annual audit
2 for the previously completed fiscal year, data from other
3 sources, or from the department's records.

4 (iii) Large Urban Transit Districts. One-
5 half of the funds allocated for large urban transit districts
6 will be based on population by using the latest census data
7 available from the U.S. Census Bureau for each large urbanized
8 area relative to the sum of all large urbanized areas served by
9 urban transit districts. Any large urban transit district whose
10 urbanized area population is 300,000 or greater will have the
11 population adjusted to reflect a population level of 299,999.
12 One-half of the funds in this subparagraph will be allocated to
13 large urban transit districts as a performance based allocation.
14 A large urban transit district is eligible for performance based
15 funding under this clause if it is in good standing with the
16 department and has no deficiencies and no findings of
17 noncompliance. The commission will award the performance based
18 funding based on the following weighted criteria: 30 percent for
19 local funds per operating expense, 20 percent for ridership per
20 capita, 30 percent for ridership per revenue mile, and 20
21 percent for revenue miles per operating expense. These criteria
22 may be calculated using the urban transit district's annual
23 audit for the previously completed fiscal year, data from other
24 sources, or from the department's records.

25 (iv) If an urban transit district experiences a negative
26 impact in its performance factor calculations due to the
27 acquisition or loss of service area, a natural disaster,

1 including wind, fire, or flood, or an unforeseen anomaly, the
2 department may mitigate that negative impact with an alternate
3 calculation addressing the specific situation. The alternate
4 calculation may be used in subsequent years at the discretion of
5 the department.

6 (B) Rural funds allocated under this paragraph
7 will be allocated only to rural transit districts in rural areas
8 based upon need and performance as described in clauses (i) and
9 (ii) of this subparagraph.

10 (i) Sixty-five percent of the funding under
11 this subparagraph will be allocated to rural transit districts
12 as a need based allocation giving consideration to population
13 weighted at 75 percent and on land area weighted at 25 percent
14 for each rural area relative to the sum of all rural areas.

15 (ii) Thirty-five percent of the funding
16 under this subparagraph will be allocated to rural transit
17 districts as a performance based allocation. A rural transit
18 district is eligible for funding under this clause if it is in
19 good standing with the department and has no deficiencies and no
20 findings of noncompliance. The commission will award the
21 funding by giving equal consideration to local funds per
22 operating expense, ridership per revenue mile, and revenue miles
23 per operating expense. These criteria may be calculated using
24 the rural transit district's annual audit for the previously
25 completed fiscal year, data from other sources, or from the
26 department's records.

1 (iii) If a rural transit district
2 experiences a negative impact in its performance factor
3 calculations due to the acquisition or loss of service area, a
4 natural disaster, such as wind, fire, or flood, or an unforeseen
5 anomaly, the department may mitigate that impact with an
6 alternate calculation addressing the specific situation. The
7 alternate calculation may be used in subsequent years at the
8 discretion of the department.

9 (C) Funds allocated under this section and any
10 local funds may be used for any transit-related activity except
11 that an urban transit district not included in a transit
12 authority but located in an urbanized area that includes one or
13 more transit authorities may use funds allocated under this
14 section only to provide up to:

15 (i) 65 percent of the local share
16 requirement for federally financed projects for capital
17 improvements;

18 (ii) 50 percent of the local share
19 requirement for projects for operating expenses and
20 administrative costs;

21 (iii) 50 percent of the total cost of a
22 public transportation capital improvement, if the urban transit
23 district certifies that federal money is unavailable for the
24 proposed project and the commission finds that the proposed
25 project is vitally important to the development of public
26 transportation in the state; and

1 (iv) 65 percent of the local share
2 requirement for federally financed planning activities.

3 (D) Subject to available appropriation, no award
4 to an urban or rural transit district under this paragraph will
5 be less than 90 percent of the award to that transit district
6 for the previous fiscal year. All allocations under subsection
7 (b)(1)(A) and (B) of this section are subject to revision to
8 comply with this standard.

9 ~~[(2) If the appropriated amount to which this~~
10 ~~subsection applies exceeds \$57,482,135, the commission will~~
11 ~~allocate \$57,482,135 in accordance with paragraph (1) of this~~
12 ~~subsection and will allocate all or a part of the excess amount,~~
13 ~~as necessary to mitigate changes in formula allocations~~
14 ~~described by subparagraph (A) or (B) of this paragraph, as~~
15 ~~appropriate, resulting from the application of the 2010 census~~
16 ~~data.~~

17 ~~_____ (A) For an urban transit district, a formula~~
18 ~~allocation impact may be mitigated if, using 2010 performance~~
19 ~~data, the total allocation to the district for the need based~~
20 ~~allocation, as described in subsection (b)(1)(A)(ii) of this~~
21 ~~section, plus the performance based allocation, as described in~~
22 ~~subsection (b)(1)(A)(iii) of this section, obtained using 2010~~
23 ~~census data, is less than the total corresponding allocation to~~
24 ~~the district obtained using 2000 census data.~~

25 ~~_____ (B) For a rural transit district, a formula~~
26 ~~allocation impact may be mitigated if, using 2010 performance~~
27 ~~data, the total allocation to the district for the need based~~

1 allocation, as described in subsection (b)(1)(B)(i) of this
2 section, plus the performance based allocation, as described in
3 subsection (b)(1)(B)(ii) of this section, obtained using 2010
4 census data, is less than the total corresponding allocation
5 obtained using 2000 census data.

6 ~~_____ (C) Allocations under this paragraph are not~~
7 ~~subject to subsection (b)(1)(D) of this section.~~

8 ~~_____ (D) This paragraph expires August 31, 2017.]~~

9 (2) A one-time allocation of FY 2018 state funds will be
10 made to eligible urban and rural transit districts, consistent
11 with the direction from HB 1140, 85th Legislature, Regular
12 Session, to address impacts of revisions to the state funding
13 formula. This paragraph expires August 31, 2018.

14 (3) The commission will award on a pro rata basis,
15 competitively, or using a combination of both any appropriated
16 amount that remains after other allocations made under this
17 subsection. In awarding funds under this paragraph,
18 consideration may be given to coordination and technical support
19 activities, compensation for unforeseen funding anomalies,
20 assistance with eliminating waste and ensuring efficiency,
21 maximum coverage in the provision of public transportation
22 services, funds needed to initiate public transportation service
23 in new designated urbanized areas, adjustment for reductions in
24 purchasing power, reductions in air pollution, or any other
25 appropriate factor. Awards under this paragraph are not subject
26 to subsection (b)(1)(D) of this section in succeeding fiscal
27 years.

1 (c) Change in service area. If part of an urban or rural
2 transit district's service area is changed due to declaration by
3 the U.S. Census Bureau, or if the service area is otherwise
4 altered, the department and the urban or rural transit district
5 shall negotiate an appropriate adjustment in the funding awarded
6 to that urban or rural transit district for that funding year or
7 any subsequent year, as appropriate. This negotiated adjustment
8 is not subject to subsection (b)(1)(D) of this section.

9 (d) Unobligated funds. Any money under this section that
10 an urban or rural transit district has not applied for before
11 the November commission meeting in the second year of a state
12 fiscal biennium will be administered by the commission under the
13 discretionary program described in §31.13 of this subchapter
14 (relating to Discretionary Program).

15 (e) Returned funds. Any money under this section that an
16 urban or rural transit district agrees to return to the
17 department will be administered by the commission under the
18 discretionary program described in §31.13 of this subchapter.

19 (f) Application. To receive funds allocated under this
20 section, a transit district must first submit a completed
21 application, in the form prescribed by the department. The
22 application must include certification that the proposed public
23 transportation project is consistent with continuing,
24 cooperating, and comprehensive regional transportation planning
25 implemented in accordance with 49 U.S.C. §5301. Federal
26 approval of a proposed public transportation project will be

1 accepted as a determination that all federal planning
2 requirements have been met.

3 (g) Project evaluation. In evaluating a project under this
4 section, the department will consider the need for fast, safe,
5 efficient, and economical public transportation and the approval
6 of the FTA, or its successor.

SUBCHAPTER C. FEDERAL PROGRAMS

§31.17 Section 5316 Grant Program

To be repealed

Thirteen Pages

1 SUBCHAPTER C. FEDERAL PROGRAMS

2 §§31.17. Section 5316 Grant Program.

3 (a) Applicability. The United States Congress repealed 49
4 U.S.C. §5316, with the passage of Moving Ahead for Progress in
5 the 21st Century (MAP-21). This section applies only to
6 subrecipients receiving grants with funds appropriated under
7 federal authorization bills prior to the enactment of MAP-21.

8 (b) Purpose. Section 5316, Federal Transit Act (49 U.S.C.
9 §5316), authorizes the Secretary of the U.S. DOT to make grants
10 for public transportation projects for access to jobs and
11 reverse commute purposes. The commission has been designated by
12 the governor to administer the §5316 program, known as the Job
13 Access and Reverse Commute program, or JARC, in areas with less
14 than 200,000 population.

15 (c) Goal and objectives. The department's goal in
16 administering the §5316 program is to promote the availability
17 of public transportation services targeted to employment and
18 employment-related transportation needs. To achieve this goal,
19 the department's objectives are to:

20 (1) promote the development of employment
21 transportation services throughout the state, in partnership
22 with local officials, public and private non-profit agencies,
23 and operators of public transportation services;

24 (2) fully integrate the §5316 program with other
25 federal and state programs supporting public, employment, and
26 human service transportation;

1 (3) foster the development of local, coordinated
2 public transit-human service transportation plans from which
3 JARC projects are derived;

4 (4) support local economic development; and

5 (5) improve the efficiency and effectiveness of the
6 §5316 program through the provision of technical assistance.

7 (d) Department role. The department acts as the designated
8 recipient for §5316 funds apportioned to the state for all
9 urbanized areas with less than 200,000 population and all
10 nonurbanized areas. The subrecipient shall retain control of
11 daily operations.

12 (e) Project types.

13 (1) Job access projects include:

14 (A) financing the eligible costs of projects that
15 provide public transportation services targeted to welfare
16 recipients and eligible low-income individuals;

17 (B) promoting public transportation use by low-
18 income workers, including the use of public transportation by
19 workers with nontraditional work schedules;

20 (C) promoting the use of employer-provided
21 transportation, including the transit pass benefit program under
22 Section 132 of the Internal Revenue Code of 1986;

23 (D) supporting mobility management and
24 coordination programs among public transportation providers and
25 other human service agencies providing employment or employment-
26 related transportation services; and

1 (E) otherwise facilitating or providing
2 transportation for employment or employment-related purposes by
3 welfare recipients and low-income persons.

4 (2) Reverse commute projects include:

5 (A) subsidizing the costs associated with adding
6 reverse commute bus, train, carpool, van routes, or service from
7 urbanized areas and other than urbanized areas to suburban
8 workplaces;

9 (B) subsidizing the purchase or lease by a
10 nonprofit organization or public agency of a van or bus
11 dedicated to shuttling employees from their residences to a
12 suburban workplace;

13 (C) supporting mobility management and
14 coordination programs among public transportation providers and
15 other human service agencies providing employment or employment-
16 related transportation services; and

17 (D) otherwise facilitating or providing public
18 transportation services to suburban employment opportunities.

19 (f) Eligible subrecipients.

20 (1) State agencies, local governmental entities,
21 private nonprofit organizations, private for-profit operators,
22 and operators of public transportation services are eligible to
23 receive §5316 funds through the department.

24 (2) Applicants who are subrecipients of public
25 transportation funds through another program administered by the
26 department must be in good standing with the department as
27 defined in §31.3 of this chapter (relating to Definitions).

1 (g) Eligible assistance categories.

2 (1) State administrative expenses. The department may
3 use up to 10 percent of the annual federal apportionment for
4 urbanized areas with less than 200,000 population and
5 nonurbanized areas to defray the expenses incurred for the
6 planning and administration of the §5316 program. State
7 administrative and technical assistance expenses do not require
8 a non-federal match.

9 (2) Capital expenses.

10 (A) Eligible items are:

11 (i) buses, vans, or other paratransit
12 vehicles, fare boxes, wheelchair lifts and restraints;

13 (ii) equipment for transporting bicycles on
14 public transit vehicles;

15 (iii) radios and communication equipment;

16 (iv) equipment installation costs;

17 (v) vehicle procurement, testing,
18 inspection, and acceptance costs;

19 (vi) preventive maintenance, including all
20 maintenance costs;

21 (vii) vehicle rebuilding or overhaul;

22 (viii) capital and operating support
23 including computer hardware or software, with prior department
24 approval;

25 (ix) transit-related intelligent
26 transportation systems;

1 (x) the introduction of new technology,
2 through innovative and improved products, into public
3 transportation;

4 (xi) passenger shelters, bus stop signs, and
5 similar passenger amenities, with prior department approval;

6 (xii) mobility management;

7 (xiii) the lease of vehicles or equipment,
8 provided that the subrecipient, with the concurrence of the
9 department, determines that a lease is more cost effective than
10 purchase after considering management efficiency, availability
11 of equipment, staffing capabilities, and guidelines on capital
12 leases as contained in 49 C.F.R. Part 639;

13 (xiv) the capital portions of costs for
14 service under contract; and

15 (xv) the provision of Americans with
16 Disabilities Act of 1990 (ADA) paratransit service directly
17 related to fixed route JARC services, which shall be used only
18 by subrecipients that are in compliance with ADA requirements
19 for both fixed route and demand responsive service.

20 (B) For reimbursement:

21 (i) federal funds may be used to reimburse
22 up to 80 percent of eligible capital expenditures;

23 (ii) the federal share may increase up to 90
24 percent for incremental costs related to compliance with the
25 Clean Air Act or with the ADA; and

1 (iii) eligibility standards for the higher
2 federal share are defined in FTA Circular 9050.1, or its latest
3 version.

4 (3) Project administration. Administrative costs
5 associated with a JARC project are eligible for a federal
6 reimbursement rate of 50 percent.

7 (4) Planning activities. The federal reimbursement
8 rate is 80 percent. Planning activities may include:

9 (A) studies relating to management, operations,
10 and capital requirements;

11 (B) evaluation of previously funded projects; and

12 (C) other similar or related activities prior to
13 and in preparation for the undertaking or improvement of JARC-
14 eligible services.

15 (5) Marketing projects. The federal reimbursement
16 rate is 80 percent. Marketing activities may include:

17 (A) market research;

18 (B) production of route maps and schedules;

19 (C) information delivery;

20 (D) website development;

21 (E) advertising;

22 (F) promotion of the use of transit vouchers by
23 welfare recipients and eligible low-income individuals; and

24 (G) promotion of employer-provided
25 transportation, including the Internal Revenue Service's transit
26 pass benefit.

1 (6) Operating expenses. Operating expenses are
2 reimbursed at 50 percent of net operating expenses. Operating
3 expenses are those costs directly tied to systems operations.
4 FTA Circular 9030.1C or its latest published version shall be
5 the guide for determining eligible operating expenses. Examples
6 are:

- 7 (A) fuel;
- 8 (B) oil;
- 9 (C) driver, dispatcher, and mechanic salaries;
- 10 (D) purchase of service; and
- 11 (E) purchase of vouchers.

12 (h) Ineligible expenses include:

13 (1) construction, except for passenger shelters,
14 signage, and similar passenger amenities specifically approved
15 by the department;

16 (2) extended vehicle warranties;

17 (3) purchase and/or maintenance of vehicles intended
18 for private use;

19 (4) purchase of transit passes for use on fixed route
20 or ADA complementary paratransit services; and

21 (5) other FTA-prohibited expenses.

22 (i) Local share requirements.

23 (1) Eligible match sources include local, state, or
24 federal programs, including funds disbursed from the Texas
25 Workforce Commission, local workforce development boards, human
26 service agencies, and the Medicaid Medical Transportation
27 Program. Unrestricted federal funds are also eligible as match,

1 such as Temporary Assistance for Needy Families (42 U.S.C.
2 §603(a)(5)(C)(vii)). With prior department approval, in-kind
3 contributions, volunteer services, and donations directly
4 attributable to the project are eligible as local share if the
5 value is documented.

6 (2) Other U.S. Department of Transportation program
7 funds cannot be used as the local share required for §5316
8 grants. Fares cannot be used as match for any expense but must,
9 instead, be used to determine the net operating expense to
10 reduce the amount of requested reimbursement.

11 (j) Planning requirement.

12 (1) Projects submitted in response to the department's
13 call for projects must be derived from a locally developed,
14 coordinated public transit-human service transportation plan.
15 The plan must be developed through a process that includes
16 representatives of public, private, and nonprofit transportation
17 and human service providers and participation by the public.

18 (2) The commission supports the development of
19 regional service plans that respond to the department's charge
20 in Transportation Code, §461.004 to identify:

21 (A) overlaps and gaps in the provision of public
22 transportation services, including services that could be more
23 effectively provided by existing, privately funded
24 transportation resources;

25 (B) underused equipment owned by public
26 transportation providers; and

1 (C) inefficiencies in the provision of public
2 transportation services by any public transportation provider.

3 (3) The commission anticipates that the regional
4 service planning process will be used to meet the requirements
5 of the local coordinated planning process described in paragraph
6 (1) of this subsection. Regions interested in participating in
7 the JARC program shall develop and prioritize §5316 projects in
8 response to the employment transportation deficiencies
9 identified in the regional planning process and documented in
10 the plan.

11 (4) A JARC project must:

12 (A) contain goals and objectives;

13 (B) discuss rider origination location and
14 employment and employment-related destinations and how the
15 project fills the transportation gap;

16 (C) describe how it implements the regional
17 service plan;

18 (D) describe the role of the local workforce
19 development board or its service provider in developing the
20 project;

21 (E) explain how the project will maximize use of
22 existing transportation service providers;

23 (F) provide a cost estimate; and

24 (G) identify match sources including employer-
25 provided or employer-assisted transportation service strategies
26 incorporated in the project.

1 (k) Allocation. As part of its administration of the §5316
2 program, the department is charged with ensuring that there is a
3 fair and equitable distribution of program funds within the
4 state.

5 (1) The department will act as the designated
6 recipient for projects in urbanized areas with less than 200,000
7 population and in nonurbanized areas. Of the amount apportioned
8 to these areas by FTA's annual publication in the Federal
9 Register, the department may use up to 10 percent of the total
10 for its administrative, planning, and technical assistance
11 activities to support the JARC program statewide.

12 (2) The department will allocate the remaining §5316
13 funds to subrecipients through a statewide competitive selection
14 process.

15 (3) Unless the governor certifies that all program
16 objectives are being met, funds apportioned to urbanized or to
17 nonurbanized areas will be available only to fund projects in
18 urbanized or nonurbanized areas, respectively.

19 (4) The origination location of the riders, not their
20 destination, shall be the basis for determining which
21 apportionment the department uses to fund an approved project.

22 (5) At a minimum, the department will publish a notice
23 in the Texas Register soliciting proposals for the award of
24 §5316 JARC grants. An eligible entity may submit a proposal for
25 an eligible project in response to the published notice.

26 (A) The proposal must include a detailed
27 description of:

1 (i) the project and the need for the
2 project;

3 (ii) how the award of transportation JARC
4 funds will expand the availability of employment related
5 transportation services;

6 (iii) how the project will:

7 (I) promote the development of
8 employment transportation services;

9 (II) support local economic development
10 and expand economic opportunity for economically disadvantaged
11 individuals;

12 (III) fully integrate the JARC program
13 with other federal and state programs supporting public,
14 employment, and human service transportation; and
15 (IV) improve the efficiency and
16 effectiveness of employment related transportation
17 opportunities.

18 (B) The proposal must describe the project's
19 relationship to the locally developed, coordinated public
20 transit-human service transportation plan.

21 (C) The department may require supplemental
22 information to clarify the issues described in subparagraphs (A)
23 and (B) of this paragraph.

24 (1) Grant award.

25 (1) After commission and FTA approval of the program
26 of projects, the department will enter into grant agreements

1 with individual subrecipients. A subrecipient must comply with
2 all rules and regulations applicable to the §5316 program.

3 (2) The commission will make the final selection of
4 projects and will select projects based on the potential of the
5 project to:

- 6 (A) reduce congestion;
- 7 (B) expand economic opportunity;
- 8 (C) enhance safety;
- 9 (D) improve air quality; and
- 10 (E) increase the value of transportation assets.

11 (3) Failure to expend funds in a timely manner may
12 cause the department to terminate the grant and re-award the
13 unobligated balance to another project.

14 (m) Vehicle leasing. Vehicles acquired under the §5316
15 program may be leased to other entities, with prior department
16 approval, such as local public entities or agencies, private
17 non-profit agencies, or private for-profit operators. The
18 lessee shall operate the vehicles on behalf of the §5316
19 subrecipient and provide the transportation services as
20 described in the grant application. The §5316 subrecipient is
21 responsible for seeing that all federal and state rules and
22 regulations are observed by the lessee.

23 (n) Incidental vehicle use. A vehicle that is purchased
24 with §5316 funds may be used for incidental uses that do not
25 conflict with the primary use of the vehicle to provide
26 transportation services for employment and employment-related
27 transportation. Examples of permissible incidental uses are

1 stopping for retail purchases en route home from the workday,
2 allowing riders not engaged in employment activities to occupy
3 vacant seats, delivering meals, or using the vehicle for other
4 public transportation activities when it is not required for
5 JARC project purposes. The vehicle shall not be altered in any
6 way to accommodate incidental use.

7 (o) Disposition of vehicles at end of the grant. If a
8 subrecipient is no longer receiving funds for a JARC project and
9 has purchased a vehicle with JARC funds, the vehicle may be
10 transferred to another subrecipient, in accordance with state
11 laws and procedures governing disposition requirements.

REPEATED

SUBCHAPTER C. FEDERAL PROGRAMS (Continued)

§31.18 Section 5317 Grant Program

To be repealed

Thirteen Pages

1 SUBCHAPTER C. FEDERAL PROGRAMS

2 §31.18. Section 5317 Grant Program.

3 (a) Applicability. The United States Congress repealed 49
4 U.S.C. §5317, with the passage of Moving Ahead for Progress in
5 the 21st Century (MAP-21). This section applies only to
6 subrecipients receiving grants with funds appropriated under
7 federal authorization bills prior to the enactment of MAP-21.

8 (b) Purpose. Section 5317, Federal Transit Act, (49 U.S.C.
9 §5317), authorizes the Secretary of the U.S. DOT to make grants
10 for public transportation projects that provide new public
11 transportation services and public transportation alternatives
12 beyond those currently required by the Americans with
13 Disabilities Act of 1990 (ADA) that assist individuals with
14 disabilities with transportation, including transportation to
15 and from jobs and employment support services. The commission
16 has been designated by the governor to administer the §5317
17 program, known as the New Freedom Program, or NF, in areas with
18 less than 200,000 population.

19 (c) Goal and objectives. The department's goal in
20 administering the §5317 program is to provide new or improved
21 public transportation services and alternatives, beyond the
22 requirements of the ADA, to assist individuals with
23 disabilities. To achieve this goal, the department's objectives
24 are to:

25 (1) promote the development and maintenance of a
26 network of transportation services and alternatives, beyond the
27 requirements of the ADA, for individuals with disabilities

1 throughout the state, in partnership with local officials,
2 public and private non-profit agencies, and operators of public
3 transportation services;

4 (2) fully integrate the §5317 program with other
5 federal, state, and local resources and programs that are
6 designed to serve similar populations;

7 (3) foster the development of local, coordinated
8 public transit-human service transportation plans from which NF
9 projects are derived;

10 (4) improve the efficiency, effectiveness, and safety
11 of §5317 project providers through the provision of technical
12 assistance; and

13 (5) include private sector operators in the overall
14 plan to provide NF program transportation services for
15 individuals with disabilities.

16 (d) Department role. The department acts as the designated
17 recipient for §5317 funds apportioned to the state for all
18 urbanized areas with less than 200,000 population and all
19 nonurbanized areas. The subrecipient shall retain control of
20 daily operations.

21 (e) Project types.

22 (1) New public transportation service projects,
23 "beyond ADA", include:

24 (A) providing paratransit services beyond minimum
25 requirements (3/4 mile to either side of a fixed route) for a
26 transit provider operating fixed route service;

1 (B) making accessibility improvements to existing
2 transit and intermodal stations not designated as key stations;
3 for example, adding an elevator or ramps, detectable warnings,
4 improving signage;

5 (C) building an accessible path to a bus stop
6 that is currently inaccessible, including curb cuts, sidewalks,
7 pedestrian signals or other accessible features;

8 (D) implementing technology improvements that
9 enhance accessibility for individuals with disabilities;

10 (E) implementing "same day" paratransit services;
11 and

12 (F) otherwise facilitating or providing
13 transportation services beyond ADA requirements, including
14 transportation to and from employment and employment-related
15 destinations.

16 (2) New public transportation alternatives, "beyond
17 ADA", include:

18 (A) purchasing vehicles and supporting accessible
19 taxi, ride-sharing, and vanpooling programs;

20 (B) supporting voucher programs for
21 transportation services offered by human service providers;

22 (C) supporting volunteer driver and aide
23 programs;

24 (D) acquiring transportation services by a
25 contract, lease, or other arrangement;

1 (E) supporting mobility management and
2 coordination programs among public transportation providers and
3 other human service agencies providing transportation;

4 (F) new feeder service (transit service that
5 provides access) to commuter rail, commuter bus, intercity rail
6 and intercity bus stations, for which complementary paratransit
7 service is not required under the ADA;

8 (G) new training programs for individual users on
9 awareness, knowledge, and skills of public and alternative
10 transportation options available in their communities. This
11 includes travel instruction and travel training services; and

12 (H) otherwise facilitating or providing new
13 transportation services for individuals with disabilities,
14 including transportation to and from employment and employment-
15 related destinations.

16 (f) Eligible subrecipients.

17 (1) State agencies, local governmental entities,
18 private nonprofit organizations, private for-profit operators,
19 and operators of public transportation services are eligible to
20 receive §5317 funds through the department.

21 (2) Applicants who are subrecipients of public
22 transportation funds through another program administered by the
23 department must be in good standing with the department as
24 defined in §31.3 of this chapter (relating to Definitions).

25 (g) Eligible assistance categories include:

26 (1) State administrative expenses. The department may
27 use up to 10 percent of the annual federal apportionment for

1 urbanized areas with less than 200,000 population and
2 nonurbanized areas to defray its expenses incurred for the
3 planning and administration of the §5317 program. State
4 administrative and technical assistance expenses do not require
5 a non-federal match.

6 (2) Capital expenses.

7 (A) Eligible items include:

- 8 (i) buses, vans, or other paratransit
9 vehicles, fare boxes, wheelchair lifts and restraints;
10 (ii) radios and communications equipment;
11 (iii) accessibility aids;
12 (iv) equipment installation costs;
13 (v) vehicle procurement, testing,
14 inspection, and acceptance costs;
15 (vi) vehicle rebuilding or overhaul;
16 (vii) capital and operational support
17 including computer hardware or software, with prior department
18 approval;
19 (viii) preventive maintenance, including all
20 maintenance costs, with prior department approval;
21 (ix) transit-related intelligent
22 transportation systems;
23 (x) the introduction of new technology,
24 through innovative and improved products, into public
25 transportation;
26 (xi) curb cuts, sidewalks, pedestrian
27 signals or other accessible features;

1 (xii) mobility management;
2 (xiii) the lease of vehicles or equipment,
3 provided that the subrecipient, with the concurrence of the
4 department, determines that a lease is more cost effective than
5 the purchase after considering management efficiency,
6 availability of equipment, staffing capabilities, and guidelines
7 on capital leases as contained in 49 C.F.R. Part 639; and
8 (xiv) the capital portions of costs for
9 service under contract.

10 (B) For reimbursement:

11 (i) federal funds may be used to reimburse
12 up to 80 percent of eligible capital expenditures;

13 (ii) the federal share may increase up to 90
14 percent for incremental costs related to compliance with the
15 Clean Air Act or with the ADA; and

16 (iii) eligibility standards for the higher
17 federal share are defined in FTA Circular 9045.1, or its latest
18 version.

19 (3) Project administration. Administrative costs
20 associated with a NF project are eligible for a federal
21 reimbursement rate of 50 percent.

22 (4) Operating expenses. Operating expenses are
23 reimbursed at 50 percent of net operating expenses. Operating
24 expenses are those costs directly tied to systems operations.
25 FTA Circular 9030.1C, or its latest published version, shall be
26 the guide for determining eligible operating expenses not
27 specifically listed in this paragraph. Examples are:

- 1 (A) fuel and oil;
- 2 (B) maintenance, with prior department approval;
- 3 (C) driver, dispatcher, and mechanic salaries;
- 4 (D) purchase of service;
- 5 (E) reimbursement of costs associated with a
- 6 volunteer driver program; and
- 7 (F) purchase of vouchers.

8 (h) Ineligible expenses include:

- 9 (1) extended vehicle warranties;
- 10 (2) purchase and/or maintenance of vehicles intended
- 11 for private use;
- 12 (3) marketing;
- 13 (4) planning;
- 14 (5) purchase of transit passes for use on fixed route
- 15 or ADA complementary paratransit services; and
- 16 (6) other FTA-prohibited expenses.

17 (i) Local share requirements.

18 (1) Eligible match sources include local, state, or

19 federal program funds disbursed from the Texas Workforce

20 Commission, local workforce development boards, human service

21 agencies and the Medicaid Medical Transportation Program.

22 Unrestricted federal funds are also eligible as match, such as

23 Temporary Assistance for Needy Families (42 U.S.C.

24 §603(a)(5)(C)(vii)). With prior department approval, in-kind

25 contributions, volunteer services, and donations directly

26 attributable to the project are eligible as local share if the

27 value is documented.

1 (2) Other U.S. Department of Transportation program
2 funds cannot be used as the local share required for §5317
3 grants. Fares cannot be used as match for any expense but must,
4 instead, be used to determine the net operating expense to
5 reduce the amount of requested reimbursement.

6 (j) Planning requirement.

7 (1) Projects submitted in response to the department's
8 call for projects must be derived from a locally developed,
9 coordinated public transit-human service transportation plan.
10 The plan must be developed through a process that includes
11 representatives of public, private, and nonprofit transportation
12 and human service providers and participation by the public.

13 (2) The commission supports the development of
14 regional service plans that respond to the department's charge
15 in Transportation Code, §461.004 to identify:

16 (A) overlaps and gaps in the provision of public
17 transportation services including services that could be more
18 effectively provided by existing, privately funded
19 transportation resources;

20 (B) underused equipment owned by public
21 transportation providers; and

22 (C) inefficiencies in the provision of public
23 transportation services by any public transportation provider.

24 (3) The commission anticipates that the regional
25 service planning process will be used to meet the requirements
26 of the local coordinated planning process defined in paragraph
27 (1) of this subsection. Regions interested in participating in

1 the NF program shall develop and prioritize §5317 projects in
2 response to the opportunities to improve transportation for
3 individuals with disabilities uncovered in the regional planning
4 process and documented in the plan.

5 (4) An NF project must:

6 (A) contain goals and objectives;

7 (B) discuss rider origination location and
8 destinations and how the project fills the transportation gap by
9 providing new transportation services or new transportation
10 alternatives beyond ADA requirements;

11 (C) describe how it implements the regional
12 service plan;

13 (D) explain how the project will maximize use of
14 existing transportation service providers;

15 (E) provide a cost estimate; and

16 (F) identify match sources.

17 (G) Where transportation to employment or
18 employment-related destinations is part of the project, any
19 employer-provided or employer-assisted transportation service
20 strategies incorporated in the project must also be identified.

21 (k) Allocation of funds. As part of its administration of
22 the §5317 program, the department is charged with ensuring that
23 there is a fair and equitable distribution of program funds
24 within the state.

25 (1) The department will act as the designated
26 recipient for projects in urbanized areas with less than 200,000
27 population and in nonurbanized areas. Of the amount apportioned

1 to these areas by FTA's annual publication in the Federal
2 Register, the department may use up to 10 percent of the total
3 for its administrative, planning, and technical assistance
4 activities to support the NF program statewide.

5 (2) The department will allocate the remaining §5317
6 funds to subrecipients through a competitive selection process.

7 (3) Funds apportioned to urbanized areas with less
8 than 200,000 population will be available only to fund projects
9 in these geographic areas.

10 (4) Funds apportioned to nonurbanized areas will be
11 available only for projects serving nonurbanized areas.

12 (5) The origin of the riders, not their destination,
13 shall be the basis for determining which apportionment the
14 department uses to fund an approved project.

15 (6) At a minimum, the department will publish a notice
16 in the Texas Register soliciting proposals for the award for
17 §5317 NF grants.

18 (A) An eligible entity may submit a proposal for
19 an eligible project in response to the published notice. The
20 proposal must include a detailed description of:

21 (i) the project and the need for the
22 project;

23 (ii) the methods by which the award of
24 transportation NF funds will provide new transportation services
25 or new alternatives, beyond ADA requirements, for individuals
26 with disabilities;

27 (iii) how the project will:

1 (I) promote the development and
2 maintenance of a network of transportation services for
3 individuals with disabilities;
4 (II) expand economic opportunity for
5 individuals with disabilities;
6 (III) fully integrate the NF program
7 with other federal, state, and local resources and programs that
8 are designed to serve similar populations; and
9 (IV) improve the efficiency,
10 effectiveness, and safety of transportation services for
11 individuals with disabilities.

12 (B) The proposal must describe the project's
13 relationship to the locally developed, coordinated public
14 transit-human service transportation plan.

15 (C) The department may require supplemental
16 information to clarify the issues described in paragraph (6)(A)
17 and (B) of this subsection.

18 (1) Grant Award.

19 (1) After commission and FTA approval of the program
20 of projects, the department will enter into grant agreements
21 with individual subrecipients. A subrecipient must comply with
22 all requirements, rules, and regulations applicable to the §5317
23 program.

24 (2) The commission will make the final selection of
25 projects and will select projects based on the potential of the
26 project to:

27 (A) reduce congestion;

- 1 (B) expand economic opportunity;
- 2 (C) enhance safety;
- 3 (D) improve air quality; and
- 4 (E) increase the value of transportation assets.

5 (3) Failure to expend funds in a timely manner may
6 cause the department to terminate the grant and re-award the
7 unobligated balance to another project.

8 (m) Vehicle leasing. Vehicles acquired under the §5317
9 program may be leased to other entities, with prior department
10 approval, such as local public entities or agencies, private
11 nonprofit agencies, or private for-profit operators. The lessee
12 shall operate the vehicles on behalf of the §5317 recipient and
13 provide the transportation services as described in the grant
14 application. The §5317 recipient is responsible for seeing that
15 all federal and state rules and regulations are observed by the
16 lessee.

17 (n) Incidental vehicle use. A vehicle that is purchased
18 with §5317 funds may be used for incidental uses that do not
19 conflict with the primary use of the vehicle to provide new or
20 alternative transportation services beyond ADA requirements.
21 Examples of permissible incidental uses are meal delivery,
22 allowing able-bodied persons to occupy vacant seats or using the
23 vehicle for other public transportation activities not required
24 for its NF project purposes. The vehicle shall not be altered
25 in any way to accommodate incidental use.

26 (o) Disposition of vehicles at end of the grant. If a
27 subrecipient is no longer receiving funds for an NF project and

1 has purchased a vehicle with NF funds, the vehicle may be
2 transferred to another subrecipient, in accordance with state
3 laws and procedures governing disposition requirements.

4

REPEALED

SUBCHAPTER C. FEDERAL PROGRAMS (Continued)

§31.30 Section 5339 Grant Program

To be amended

Four Pages

1 SUBCHAPTER C. FEDERAL PROGRAMS

2 §31.30. Section 5339 Grant Program.

3 (a) Purpose. Title 49 U.S.C. §5339 authorizes the
4 Secretary of the U.S. DOT to make grants for bus and bus
5 facilities.

6 (b) Eligible recipients. Section 5339 funds are available
7 to states and local public entities.

8 (c) Department role. The department acts as the designated
9 recipient for §5339 grants to §5307 transit ~~districts~~[agencies]
10 in small urbanized areas [~~with less than 200,000 population~~] and
11 §5311 rural transit ~~districts~~[agencies]. [~~As the administering~~
12 ~~agency, the department will:~~]

13 (d) Small urban transit districts. The department will:

14 (1) allocate the available program funds so that each
15 eligible recipient will receive a proportional share of
16 available funding based on the total vehicle miles reported to
17 the department on an annual basis with no eligible recipient
18 receiving less than one percent of the amount available;

19 (2) notify the FTA of the results of the allocation
20 calculations;

21 (3) notify the small urban transit districts of the
22 results of the allocation calculations; and

23 (4) authorize the small urban transit
24 districts to apply directly with FTA for the funds, due to their
25 status as direct recipients under the FTA §5307 program.

26 (e) Rural transit districts. The department will:

1 (1) allocate the available program funds so that each
2 eligible subrecipient will receive a proportional share of
3 available funding based on the total vehicle miles reported to
4 the department on an annual basis with no eligible subrecipient
5 receiving less than one percent of the amount available~~[allocate~~
6 ~~the available program funds so that each eligible subrecipient~~
7 ~~will receive a proportional share of available funding based on~~
8 ~~the remaining useful life of its public transportation fleet and~~
9 ~~the cost of replacing that fleet using the department's~~
10 ~~information system containing transit fleet data];~~

11 (2) develop application materials and disseminate
12 information to eligible subrecipients;

13 (3) prepare the state's funding application and submit
14 the application to the FTA for approval;

15 (4) negotiate and execute contracts with
16 subrecipients;

17 (5) prepare requests for federal reimbursement and
18 process payment requests from subrecipients;

19 (6) monitor and evaluate the progress of local
20 projects, including compliance with federal regulations; and

21 (7) provide technical assistance to subrecipients as
22 necessary.

23 (f[~~d~~]) Eligible assistance categories. Eligible projects
24 are those listed in FTA Circular 5100.1~~[9300.1B]~~ or its latest
25 version. ~~[While fleet condition will determine each agency's~~
26 ~~allocation, §5339 funds can be used for any eligible activity in~~
27 ~~FTA Circular 9300.1B or its latest version.]~~

1 (g[e]) Link to asset management plan. At such time as the
2 department implements the requirement of a transit asset
3 management plan, recipient or subrecipient projects must be
4 linked to the asset management plan required by §31.51 of this
5 chapter (relating to Asset Management) and 49 U.S.C. §5326.

6 (h[£]) Reimbursement rates. For reimbursement:

7 (1) federal funds may be used to defray up to 80
8 percent of the cost of eligible capital expenditures;

9 (2) the federal share may increase to up to 85 percent
10 of the net project cost for a project that involves acquiring
11 vehicles for the purpose of complying with the Americans with
12 Disabilities Act or the Clean Air Act; and

13 (3) the federal share may increase to up to 90 percent
14 for incremental costs related to compliance with the Clean Air
15 Act in areas of air quality non-attainment or with the Americans
16 with Disabilities Act.

17 (i[§]) Local share requirements. The non-federal share may
18 be provided by:

19 (1) cash from state or local governments;

20 (2) cash from non-government sources other than
21 revenues from providing public transportation services;

22 (3) revenues from the sale of advertising and
23 concessions;

24 (4) an undistributed cash surplus, a replacement or
25 depreciation cash fund or reserve, or new capital;

26 (5) service agreements with a state, local, or private
27 social service organization; or

1

(6) transportation development credits.

SUBCHAPTER C. FEDERAL PROGRAMS (Continued)

§31.31 Section 5310 Grant Program

To be amended

Thirteen Pages

1 §31.31. Section 5310 Grant Program.

2 (a) Purpose. Title 49 U.S.C. §5310 authorizes the
3 Secretary of the U.S. DOT to make grants for the provision of
4 transportation services meeting the special needs of seniors and
5 individuals with disabilities. The governor has designated the
6 department to administer the §5310 program.

7 (b) Goal and objectives. The department's goal in
8 administering the §5310 program is to promote the availability
9 of cost-effective, efficient, and coordinated passenger
10 transportation services planned, designed, and carried out to
11 meet the special needs of seniors and individuals with
12 disabilities when public transportation is insufficient,
13 inappropriate, or unavailable, using the most efficient
14 combination of financial and other resources. To achieve this
15 goal, the department's objectives are to:

16 (1) promote the development and maintenance of a
17 network of transportation services for seniors and individuals
18 with disabilities throughout the state, in partnership with
19 local stakeholders;

20 (2) fully integrate the §5310 program with other
21 federal, state, and local resources and programs that are
22 designed to serve similar populations;

23 (3) promote public transportation projects that exceed
24 the requirements of the Americans with Disabilities Act (ADA);

25 (4) promote public transportation projects that
26 decrease the reliance of individuals with disabilities on ADA
27 complementary paratransit services;

1 (5) promote and encourage local participation,
2 especially by seniors and individuals with disabilities or their
3 advocates, in decision-making;

4 (6) improve the efficiency, effectiveness, and safety
5 of §5310 transit systems through the provision of technical
6 assistance; and

7 (7) include private sector operators in the overall
8 plan to provide transportation services for seniors and
9 individuals with disabilities.

10 (c) Department role.

11 (1) The department acts as the designated recipient
12 for all §5310 funds appropriated to:

13 (A) a rural area;

14 (B) an urbanized area with less than 200,000
15 population; and

16 (C) an urbanized area with a population of
17 200,000 or more, on request of the metropolitan planning
18 organization of the urbanized area and concurrence by the
19 commission.

20 (2) The department recognizes the subrecipients as
21 partners who shall retain control of daily operations. As the
22 administering agency, the department will:

23 (A) develop application materials and disseminate
24 information to prospective applicants and other interested
25 parties;

26 (B) develop evaluation criteria and select
27 projects for funding, with input from local entities and local

1 individuals, in accordance with the standards set forth in
2 subsection (i) of this section;

3 (C) prepare the state's annual program of
4 projects and funding application and submit that material to the
5 FTA for approval;

6 (D) negotiate and execute contracts with local
7 §5310 recipients;

8 (E) prepare requests for federal reimbursement
9 and process payment requests from §5310 recipients;

10 (F) monitor and evaluate the progress of ongoing
11 transportation operations, including compliance with federal
12 regulations and coordination of services; and

13 (G) provide technical assistance to §5310
14 recipients to aid them in improving and coordinating transit
15 services.

16 (3) Failure to expend funds in a timely manner may
17 cause the department to terminate the grant and re-award the
18 unobligated balance to another project.

19 (d) Eligible recipients.

20 (1) Existing rural transit districts and urban transit
21 districts serving a population of less than 200,000, local
22 public entities, private non-profit organizations, state and
23 local government authorities that coordinate services for
24 seniors and individuals with disabilities, or private taxi
25 companies that provide shared-ride taxi service to the public or
26 to special categories of users (such as seniors or individuals

1 with disabilities) are ~~[will be the primary]~~ eligible recipients
2 of funds ~~[for their respective service areas].~~

3 (2) For an area included in a rural or urban transit
4 district's service area ~~[not covered by a transit provider or]~~
5 for which the existing transit district ~~[provider]~~ is not
6 willing or able to provide the transportation, the director may
7 choose a local public entity or a private organization as a~~n~~
8 ~~alternate]~~ recipient to receive §5310 funds. Private taxi
9 companies that provide shared-ride taxi service to the public or
10 to special categories of users (such as seniors or individuals
11 with disabilities) on a regular basis are also eligible
12 ~~[alternate] recipients. Any recipient that is not a transit~~
13 ~~district shall coordinate §5310 service with the existing~~
14 ~~transit district to ensure service is complementary to and not~~
15 ~~competitive with existing services.~~

16 (3) If the department is the designated recipient for
17 an urbanized area with 200,000 population or more, a recipient
18 for that area will be selected from local transportation
19 providers who are transit authorities or eligible alternate
20 recipients under this program.

21 (e) Eligible assistance categories. The following
22 categories of expenses are eligible for federal reimbursement
23 under the §5310 program.

24 (1) State administrative expenses. The department may
25 use up to 10 percent of the annual federal program apportionment
26 to defray its expenses incurred for the administration of the

1 §5310 program. State administrative expenses do not require a
2 non-federal match.

3 (2) Capital expenses.

4 (A) With department concurrence, eligible items
5 include:

6 (i) buses;

7 (ii) vans or other smaller accessible
8 [paratransit] vehicles;

9 (iii) the acquisition of transportation
10 services under a contract, lease, or other arrangement;

11 (iv) mobility management;

12 (v) curb cuts, sidewalks, pedestrian signals
13 or other accessible features;

14 (vi) radios and communication equipment;

15 (vii) vehicle shelters;

16 (viii) [wheelchair] lifts, ramps, and
17 securement devices [restraints];

18 (ix) vehicle rehabilitation, remanufacture,
19 or overhaul;

20 (x) [micro]computer hardware and software;

21 (xi) initial component installation costs;

22 (xii) vehicle procurement, testing,
23 inspection, and acceptance costs;

24 (xiii) vehicle extended warranties that do
25 not exceed industry standards;

26 (xiv) the lease of equipment, provided that
27 the local recipient determines a lease is more cost effective

1 than the purchase of equipment after considering management
2 efficiency, availability of equipment, staffing capabilities,
3 and guidelines on capital leases as contained in 49 C.F.R. Part
4 639;

5 (xv) transit-related intelligent
6 transportation systems;

7 (xvi) the introduction of new technology,
8 through innovative and improved products, into mass
9 transportation; and

10 (xvii) the acquisition of preventive
11 maintenance services and vehicle parts associated with
12 preventive maintenance services.

13 (B) For reimbursement:

14 (i) federal funds may be used to defray up
15 to 80 percent of the cost of eligible capital expenditures;

16 (ii) the federal share may increase to up to
17 85 percent of the net project cost for a project that involves
18 acquiring vehicles for the purpose of complying with the
19 Americans with Disabilities Act or the Clean Air Act; and

20 (iii) the federal share may increase to up
21 to 90 percent for incremental costs related to compliance with
22 the Clean Air Act in areas of air quality non-attainment or with
23 the Americans with Disabilities Act.

24 (3) Operating expenses.

25 (A) Operating expenses are costs that are
26 directly tied to systems operations, such as costs for fuel,

1 oil, and replacement parts, and driver, mechanic, and dispatcher
2 salaries.

3 (B) Operating expenses may be reimbursed at 50
4 percent of net operating expense.

5 (f) Local share requirements.

6 (1) Eligible sources to satisfy local share
7 requirements may be derived from the following:

8 (A) an undistributed cash surplus, or a
9 replacement or depreciation cash fund or reserve;

10 (B) a service agreement with a state or local
11 social service or workforce agency, or a private social service
12 organization;

13 (C) amounts appropriated or otherwise made
14 available to a U.S. department or agency that are eligible to be
15 expended for transportation;

16 (D) funds to carry out the federal lands highways
17 program established by 23 U.S.C. §204;

18 (E) funds available under §403(a)(5)(C)(vii) of
19 the Social Security Act (42 U.S.C. §603(a)(5)(C)(vii));

20 (F) in-kind contributions, volunteer services,
21 and donations attributable to the project if the value is
22 documented and previously approved by the department; or

23 (G) transportation development credits, with
24 prior department approval.

25 (2) Funds from any other U.S.DOT program are not
26 eligible for use as local matching funds.

1 (g) Funding distribution. After the state administrative
2 expenses described in subsection (e)(1) of this section are set
3 aside, funds will be allocated on a formula basis as provided by
4 this subsection.

5 (1) For urbanized areas with a population less than
6 200,000, 25 percent of the available funds will be allocated
7 equally, using department district boundaries of the districts
8 that include such an area. To allocate the remaining 75
9 percent, the department will:

10 (A) calculate the population of seniors and
11 individuals with disabilities in each of those urbanized areas
12 using the latest census figures available from the United States
13 Census Bureau; and

14 (B) divide each urbanized area's population of
15 seniors and individuals with disabilities, as determined under
16 subparagraph (A) of this paragraph, by the state's total
17 population for urbanized areas with less than 200,000 population
18 to determine that urbanized area's formula allocation.

19 (2) For rural areas, 25 percent of the available funds
20 will be allocated equally, using department district boundaries
21 of the districts that include such an area. To allocate the
22 remaining 75 percent, the department will:

23 (A) calculate the population of seniors and
24 individuals with disabilities in each department district using
25 the latest census figures for counties available from the United
26 States Census Bureau; and

1 (B) divide each department district's subtotal of
2 the population of seniors and individuals with disabilities, as
3 determined under subparagraph (A) of this paragraph, by the
4 state total of that population in rural areas to determine the
5 district's formula allocation.

6 (3) For urbanized areas with 200,000 population or
7 more for which the department is the designated recipient, funds
8 will be allocated to the respective urbanized area based on the
9 federal apportionment as published in the Federal Register.

10 (4) Residual funds.

11 (A) Urbanized areas with populations of less than
12 200,000 and rural areas. On completion of the project selection
13 procedures described in subsection (i) of this section, if any
14 portion of the allocation described in paragraph (1) or (2) of
15 this subsection is not needed, the commission or the executive
16 director may distribute the balances, as appropriate, to satisfy
17 unmet needs in other areas of the state. This action may
18 require the department to transfer funds, at the state level,
19 between urbanized and rural areas to fully obligate the state's
20 apportionment.

21 (B) Urbanized areas with populations of 200,000
22 or more. On completion of the project selection procedures
23 described in subsection (i) of this section, any unallocated
24 funds for urbanized areas with populations of 200,000 or more
25 will remain in that urbanized area until allocated at a future
26 date.

1 (h) Application requirements. A prospective applicant must
2 submit an application for §5310 grant funds at the time
3 specified by the department. The application must document the
4 need and demand for passenger transportation services for
5 seniors and individuals with disabilities, and also must
6 document inclusion of the project in the coordinated public
7 transit-human service transportation plan.

8 (i) Project selection. To select projects, the department
9 will consult with all local parties, including metropolitan
10 planning organizations, and follow the procedures set out in
11 this subsection.

12 (1) The department [personnel] will establish public
13 outreach processes involving[~~—after consultation with~~] local
14 stakeholders[~~—processes for local planning and project~~
15 development, and public outreach]. In an effort to streamline
16 decision-making processes and maximize coordination
17 opportunities, the department may choose to combine contiguous
18 department district boundaries for stakeholder engagement,
19 project selection, and public outreach. The stakeholder groups
20 should include representatives of the following groups, further
21 defined in FTA Circular 9070.1G[F], or its latest version:

- 22 (A) transportation partners;
23 (B) passengers and advocates;
24 (C) human service and work force agencies; and
25 (D) others, such as emergency management
26 agencies.

1 (2) In recommending projects, the department will
2 [stakeholder groups should] consider the program goals and
3 objectives set forth in subsection (b) of this section and
4 consider projects that:

5 (A) leverage existing resources and promote
6 innovation;

7 (B) are the only public transportation option for
8 the proposed service area;

9 (C) are sustainable over time;

10 (D) demonstrate efficient use of resources;

11 (E) involve partnerships that include
12 organizations [and for-profit transportation providers]; or

13 (F) provide service continuity.

14 (3) At least 55 percent of the funds allocated by
15 district boundaries or combination of district boundaries shall
16 be used for capital expenses.

17 (4[3]) Not more than 45 percent of the funds allocated
18 by district boundaries or combination of district boundaries may
19 be used for operating expenses. This cap applies to both
20 urbanized areas and rural areas, respectively.

21 (5[4]) The requirements of this subparagraph apply to
22 all projects recommended for funding.

23 (A) There must be a demonstrated need for any
24 capital purchases. Examples of items that may be used to
25 demonstrate need include a needs assessment that documents the
26 demand for new services, a vehicle inventory that establishes
27 the need for replacement of older equipment, dispatcher logs

1 that document requests for service that cannot be met with
2 existing equipment, and purchase of service contracts that
3 substantiate the need for additional vehicles.

4 (B) The proposed applicant must be able to
5 demonstrate its financial and managerial capability to carry out
6 the project. Examples of items that may be used to demonstrate
7 the capability include audited financial statements and review
8 letters from grantor agencies.

9 (C) Consideration should be given to the
10 applicant's past efforts to coordinate services and related
11 activities with other local entities. Examples showing those
12 efforts include contracts that outline purchase of service
13 agreements, shared maintenance or dispatching functions, and
14 joint training initiatives.

15 (D) There should be evidence of local support for
16 the proposal. Examples of that evidence include resolutions by
17 local governing bodies and endorsement letters from other
18 organizations or individuals.

19 (E) The project must be included in the
20 coordinated public transit-human service transportation plan.

21 (6[5]) Based on stakeholder input, department
22 personnel assigned to cover district areas will rank projects in
23 priority order.

24 (7[6]) On receipt of the applications recommended for
25 funding, the director, or the director's designee, will review
26 all funding requests for completeness and compliance with all
27 statutory and program administrative requirements. Following

1 commission approval, the department will negotiate a contract
2 with the selected local entities and organizations to implement
3 the projects selected for funding.

4 (j) Vehicle leasing. Vehicles acquired under the §5310
5 program may be leased to other entities, such as local public
6 entities or agencies, other private nonprofit agencies, or
7 private for-profit operators. The lessee shall operate the
8 vehicles on behalf of the §5310 recipient and provide the
9 transportation services as described in the original grant
10 application.

11 (k) Incidental vehicle use. A vehicle that is purchased
12 with §5310 funds may be used for incidental uses that do not
13 conflict with the primary use of the vehicle to provide
14 transportation services for seniors and individuals with
15 disabilities. Examples of permissible incidental uses are
16 allowing riders who are neither senior nor an individual with a
17 disability to occupy vacant seats, delivering meals, or using
18 the vehicle for other public transportation activities when it
19 is not required for seniors or individuals with disabilities
20 project purposes. The vehicle shall not be altered in any way
21 to accommodate incidental use.

22 (l) Private for-profit transportation business
23 participation. Taxi companies that provide only exclusive-ride
24 service are not eligible subrecipients; however, they may
25 participate in the §5310 program as contractors. Exclusive-ride
26 taxi companies may receive §5310 funds to purchase accessible
27 taxis under contract with an eligible subrecipient.

SUBCHAPTER C. FEDERAL PROGRAMS (Continued)

§31.36 Section 5311 Grant Program

To be amended

Fourteen Pages

1 §31.36. Section 5311 Grant Program.

2 (a) Purpose. Section 5311, Federal Transit Act (49 U.S.C.
3 §5311), authorizes the Secretary of the U.S. DOT to make grants
4 for public transportation projects in rural areas. The
5 department has been designated by the governor to administer the
6 §5311 program.

7 (b) Goal and objectives. The department's goal in
8 administering the §5311 program is to promote the availability
9 of cost-effective, efficient, and coordinated passenger
10 transportation services to the general public in rural areas
11 using the most efficient combination of financial and other
12 resources. To achieve this goal, the objectives of the
13 department are to:

14 (1) promote the development and maintenance of a
15 network of general public transportation services, including
16 intercity services, in rural areas throughout the state, in
17 partnership with local officials;

18 (2) fully integrate the §5311 program with other
19 federal, state, and local resources that are designed to serve
20 rural populations;

21 (3) improve the efficiency, effectiveness, and safety
22 of §5311 systems through the provision of technical assistance;
23 [and]

24 (4) include private sector operators in the overall
25 plan to provide public transportation services; and[-]

26 (5) minimize negative impacts from changes in public
27 transportation district boundaries.

1 (c) Department role. The department acts as the designated
2 recipient for all §5311 funds apportioned to the state and has
3 an oversight responsibility for all rural transit services
4 within the state. The department, however, recognizes the
5 subrecipients as partners who shall retain control of daily
6 operations. As the administering agency, the department will:

7 (1) develop application materials and disseminate
8 information to prospective applicants and other interested
9 parties;

10 (2) allocate the available program funds in a fair and
11 equitable manner as described in subsection (g) of this section
12 (the department will not provide §5311 funds to more than one
13 transit system in a geographical area);

14 (3) develop evaluation criteria and select projects
15 for funding;

16 (4) prepare the state's annual program of projects and
17 funding application and submit that material to the FTA for
18 approval;

19 (5) negotiate and execute contracts with local §5311
20 subrecipients;

21 (6) prepare requests for federal reimbursement, and
22 process payment requests from §5311 subrecipients;

23 (7) monitor and evaluate the progress of ongoing
24 transportation operations, including compliance with federal
25 regulations; and

26 (8) provide technical assistance to §5311
27 subrecipients to aid them in improving transit services.

1 (d) Eligible subrecipients. State agencies, local public
2 entities, private nonprofit organizations, Native American
3 tribes and organizations, and operators of public transportation
4 services are eligible to receive §5311 funds through the
5 department. Private for-profit operators of public
6 transportation services may participate in the program through
7 contracts with eligible subrecipients. An entity must be a
8 rural transit district to receive §5311 funds except that
9 private for-profit operators of public transportation services
10 and entities that are not rural transit districts are eligible
11 to receive §5311 funds through the department under the
12 intercity bus program, as set forth in subsections (g)(1) and
13 (i) of this section.

14 (e) Eligible assistance categories. The following
15 categories of expenses are eligible for federal reimbursement
16 under the §5311 program.

17 (1) State administrative expenses. The department may
18 use up to 10 percent of the annual federal apportionment to
19 defray its expenses incurred for the administration of the §5311
20 program. These funds may also be used to provide technical
21 assistance to subrecipients. Technical assistance may include
22 project planning, program development, management development,
23 coordination of public transportation projects, and related
24 research. Projects are solicited from subrecipients and other
25 interested parties. State administrative and technical
26 assistance expenses do not require a non-federal match.

27 (2) Capital expenses.

1 (A) Eligible items include:

2 (i) buses;

3 (ii) vans or smaller accessible [other
4 paratransit] vehicles;

5 (iii) radios and communications equipment;

6 (iv) passenger shelters, bus stop signs, and
7 similar passenger amenities;

8 (v) wheelchair lifts and restraints;

9 (vi) vehicle rehabilitation, remanufacture,
10 or overhaul;

11 (vii) preventive maintenance, including all
12 maintenance costs;

13 (viii) extended warranties that do not
14 exceed the industry standard;

15 (ix) the public transportation[~~mass transit~~]
16 portion of ferry boats and terminals;

17 (x) operational support such as computer
18 hardware or software;

19 (xi) installation costs and vehicle
20 procurement, testing, inspection, and acceptance costs;

21 (xii) construction or rehabilitation of
22 transit facilities, including design, engineering, and land
23 acquisition;

24 (xiii) facilities to provide access for
25 bicycles to [mass] transit facilities and equipment for
26 transporting bicycles on [mass] transit vehicles;

1 (xiv) the lease of equipment or facilities,
2 provided that the local subrecipient, with the concurrence of
3 the department, determines that a lease is more cost effective
4 than the purchase of equipment or facilities after considering
5 management efficiency, availability of equipment, staffing
6 capabilities and guidelines on capital leases as contained in 49
7 C.F.R. Part 639;

8 (xv) the capital portions of costs for
9 service under contract;

10 (xvi) joint development projects (FTA
11 Circular 9300.1B, or its latest version, provides guidelines for
12 joint development projects);

13 (xvii) the introduction of new technology,
14 through innovative and improved products, into mass
15 transportation;

16 (xviii) transit-related intelligent
17 transportation systems;

18 (xix) the provision of ADA paratransit
19 service, which shall not exceed 10 percent of the state's annual
20 apportionment of §5311 funds and shall be used only by
21 subrecipients that are in compliance with ADA requirements for
22 both fixed route and demand responsive service;

23 (xx) mobility management consisting of
24 short-range planning, management activities and projects for
25 improving coordination among public transportation, and other
26 transportation service providers carried out through an

1 agreement entered into with a person, including a governmental
2 authority, but excluding operating expenses; and

3 (xxi) crime prevention and security.

4 (B) The capital cost of contracting includes
5 depreciation, interest on facilities and equipment, and those
6 allowable capital costs that would otherwise be incurred
7 directly, including maintenance. No capital assets (vehicle,
8 equipment, or facility) that have any remaining federal interest
9 in them and no items purchased with state or local government
10 funds may be capitalized under the grant agreement.

11 (C) For reimbursement:

12 (i) federal funds may be used to reimburse
13 up to 80 percent of eligible capital expenditures;

14 (ii) the federal share may increase up to 85
15 percent of the net project cost for a project that involves
16 acquiring vehicles for the purpose of complying with the
17 Americans with Disabilities Act or the Clean Air Act;

18 (iii) the federal share may increase to up
19 to 90 percent for bicycle equipment or facilities projects or
20 for incremental costs related to compliance with the Clean Air
21 Act or with the Americans with Disabilities Act of 1990; and

22 (iv) the federal share may also increase in
23 accordance with 23 U.S.C. §120(b)(2) as determined by FTA
24 regarding the area of nontaxable Native American lands,
25 individual and tribal, public domain lands (reserved and
26 unreserved), national forest, and national parks and monuments,

1 with eligibility standards for the higher federal share being
2 defined in FTA Circular 9040.1G[9040.1F], or its latest version.

3 (3) Project administrative expenses. Costs not
4 directly tied, but essential, to the operations of passenger
5 transportation systems may be reimbursed at up to 80 percent
6 with federal funds. The federal share may also increase in
7 accordance with 23 U.S.C. §120(b)(2) as determined by FTA
8 regarding the area of nontaxable Native American lands,
9 individual and tribal, public domain lands (reserved and
10 unreserved), national forest, and national parks and monuments.
11 Eligibility standards for the higher federal share are defined
12 in FTA Circular 9040.1G[9040.1F], or its latest version.

13 (4) Operating expenses. Costs directly tied to
14 systems operations, such as costs for fuel, oil, and replacement
15 parts, and driver, mechanic, and dispatcher salaries, may be
16 reimbursed at 50 percent of net operating costs. The federal
17 share may also increase in accordance with 23 U.S.C. §120(b)(2)
18 as determined by FTA regarding the area of nontaxable Native
19 American lands, individual and tribal, public domain lands
20 (reserved and unreserved), national forest, and national parks
21 and monuments. Eligibility standards for the higher federal
22 share are defined in FTA Circular 9040.1G[9040.1F], or its
23 latest version. The local subrecipient must provide a match,
24 either in cash or with in-kind donations.

25 (5) Planning expenses may be reimbursed at up to 80
26 percent with federal funds. FTA Circular 8100.1C or its latest

1 version has a complete list of eligible activities, which
2 include:

3 (A) studies relating to management, planning,
4 operations, capital requirements, and economic feasibility;

5 (B) evaluation of previous planning projects;

6 (C) work elements and related activities
7 preliminary to and in preparation for constructing, acquiring,
8 or improving the operations of facilities and equipment;

9 (D) safety, security, and emergency
10 transportation and evacuation planning; and

11 (E) coordinated public transit-human service
12 transportation planning.

13 (f) Local share requirements.

14 (1) FTA program funds cannot be used as the local
15 share required for §5311 grants.

16 (2) Cash from local or state programs, donations, or
17 unrestricted federal funds is allowed.

18 (3) In-kind contributions, volunteer services, and
19 donations are eligible as local share if the value is
20 documented.

21 (4) For an intercity bus project that includes both
22 feeder service and an unsubsidized segment of intercity bus
23 service to which the feeder service connects, in-kind match may
24 be derived from the costs of a private operator for the
25 unsubsidized segment of intercity bus services for the operating
26 costs of connecting rural intercity bus feeder services. The
27 private operator must agree in writing to the use of the costs

1 of the unsubsidized segment of intercity bus services as in-kind
2 match.

3 (5) Subrecipients may request transportation
4 development credits be used for all or part of the local match.

5 (g) Allocation of funds. As part of its administration of
6 the §5311 program, the department is charged with ensuring that
7 there is a fair and equitable distribution of funds within the
8 state (FTA Circular 9040.1G~~[9040.1F]~~ or its latest version).
9 After subtracting funds for state administrative expenses in
10 accordance with subsection (e)(1) of this section, the
11 department will allocate §5311 funds to local subrecipients in
12 the following manner and order.

13 (1) Intercity bus allocation. Unless the chief
14 executive officer of the state or the executive officer's
15 authorized designee certifies to the Secretary of the U.S. DOT
16 that the intercity bus service needs of the state are being
17 adequately met, the department will allocate not less than 15
18 percent of the annual §5311 federal apportionment for the
19 development and support of intercity bus transportation
20 facilities and services providing access and connections to
21 rural areas. If it is determined that all or a portion of the
22 set-aside monies is not required for intercity bus service,
23 those funds will be applied to the formula apportionment process
24 described in paragraph (2) of this subsection. Procedures for
25 determining if a certification of adequacy is warranted are as
26 follows.

1 (A) The department will review all data on
2 intercity bus service availability, including outstanding
3 requests from intercity operators and rural transit districts,
4 and levels of service.

5 (B) The department will consult with affected
6 intercity bus service providers and rural transit districts.

7 (C) The department will consult with other state
8 agencies that have jurisdiction with respect to intercity bus
9 regulation and seek their recommendations as to the adequacy of
10 current service.

11 (D) Based on the findings of subparagraphs (A),
12 (B), and (C) of this paragraph, the commission, the chief
13 executive officer of the state or the executive officer's
14 authorized designee may certify to the adequacy of intercity bus
15 service.

16 (2) Need and performance allocation. Excluding the
17 amounts allocated under paragraph (1) of this subsection, the
18 balance of the annual §5311 federal apportionment, plus the
19 remaining balance of previous §5311 federal apportionments, not
20 to exceed \$20,104,352, will be allocated to transit providers as
21 described in subparagraphs (A) and (B) of this paragraph.

22 (A) The need based allocation is 65 percent
23 giving consideration to population weighted at 75 percent and on
24 land area weighted at 25 percent by using the latest census data
25 available from, and as defined by, the U.S. Census Bureau for
26 each rural area relative to the sum of all rural areas.

1 (B) The performance based allocation is 35
2 percent. The subrecipient is eligible for funding under this
3 subparagraph if it is in good standing with the department and
4 has no deficiencies and no findings of noncompliance. The
5 commission will award the funding by giving equal consideration
6 to local funds per operating expense, ridership per vehicle
7 revenue mile, and vehicle revenue miles per operating expense.
8 These criteria may be calculated using the subrecipient's annual
9 audit for the previously completed fiscal year, data from other
10 sources, or from the department's records.

11 (C) Funding stability.

12 (i) Subject to the available apportionment,
13 no award to a transit district under this paragraph will be less
14 than 90 percent of the award to that transit district for the
15 previous fiscal year. All allocations under subparagraphs (A)
16 and (B) of this paragraph are subject to revision to comply with
17 this standard.

18 (ii) If a rural transit district experiences
19 a negative impact in its performance factor calculations due to
20 the acquisition or loss of service area, a natural disaster,
21 such as wind, fire, or flood, or unforeseen anomaly, the
22 department may mitigate that impact with an alternate
23 calculation addressing the specific situation. This calculation
24 may be repeated in subsequent years at the discretion of the
25 department.

26 (3) Discretionary allocation. If the amount of the
27 §5311 federal apportionments exceeds the maximum amount that may

1 be allocated under paragraph (2) of this subsection, a part of
2 that excess, not to exceed 10 percent of the amount computed by
3 subtracting, from the annual §5311 federal apportionment, the
4 funds for state administrative expenses under subsection (e)(1)
5 of this section and funds allocated for intercity bus
6 transportation under paragraph (1) of this subsection, will be
7 available to the commission for award at any time during the
8 fiscal year on a pro rata basis, competitively, ~~[or]~~ a
9 combination of both pro rata and competitive, or as a one-time
10 award to address changes in transit district boundaries.

11 Consideration for the award of these additional funds may
12 include, but is not limited to, coordination and technical
13 support activities, compensation for unforeseen funding
14 anomalies, assistance with eliminating waste and ensuring
15 efficiency, maximum coverage in the provision of public
16 transportation services, adjustment for reductions in purchasing
17 power, furtherance of the department's goals, and reductions in
18 air pollution. An award under this subparagraph will not be
19 considered for the purpose of applying the funding stability
20 allocation process under paragraph (2)(C) of this subsection in
21 succeeding fiscal years.

22 (4) Total v[eh]icle [revenue] mile allocation. Any
23 amount of the annual §5311 federal apportionment that is not
24 otherwise allocated under this subsection will be allocated to
25 rural areas, with the amount allocated to a rural area based on
26 the proportion of total vehicle [revenue] miles for that rural

1 area to the total of total vehicle [revenue] miles for all rural
2 areas.

3 (5) Adjustments to allocation.

4 (A) If part of a transit district's service area
5 is changed due to declaration by the United States Census Bureau
6 or the service area is otherwise altered, the department and
7 that subrecipient shall negotiate an appropriate adjustment in
8 the funding year or any subsequent year, as appropriate. This
9 negotiated adjustment is not subject to the minimum and maximum
10 standards set forth in paragraph (2)(C) of this subsection.

11 (B) If a previously designated urbanized area is
12 declared rural by the United States Census Bureau, a public
13 transportation subrecipient serving that area must apply for
14 funds in accordance with paragraph (6) of this subsection.

15 (6) Application and contract. Prior to receiving
16 funds a subrecipient must complete and comply with all
17 application requirements, rules, and regulations applicable to
18 the §5311 program. A completed application must be submitted,
19 in a form prescribed by the department, and document the need
20 and demand for general public passenger transportation services.
21 A contract shall be for no less than 12 months unless authorized
22 by the department.

23 (h) Program of projects. All projects for a fiscal year
24 will be identified in accordance with the allocation rules
25 included in subsection (g) of this section. After commission
26 approval of the allocation, these projects will be submitted to
27 the FTA as the annual program of projects for the fiscal year.

1 (i) Intercity bus. For funding from allocations made under
2 subsection (g)(1) of this section, an annual request for
3 proposals will be issued for projects complying with FTA
4 definitions of intercity bus transportation. To ensure a
5 balanced investment in access and connectivity to intercity bus
6 travel, the department may establish investment targets among
7 eligible applicant groups or project types prior to solicitation
8 of project proposals.

SUBCHAPTER D. PROGRAM ADMINISTRATION

§31.42 Standard Federal Requirements;
§31.43 Contracting Requirements;
§31.44 Procurement Requirements;
§31.45 Accounting and Financial Recordkeeping
Requirements;
§31.47 Audit and Project Close-Out Standards; and
§31.48 Project Oversight.

To be amended

Fourteen Pages

1 SUBCHAPTER D. PROGRAM ADMINISTRATION

2 §31.42. Standard Federal Requirements.

3 (a) Federal Transit Administration programs are subject to
4 ~~[the]~~ 2 C.F.R. Part 200 and Part 1201 Uniform Administrative
5 Requirements, Cost Principles, and Audit Requirements for
6 Federal Awards [~~Common Rule~~].

7 (b) The programs are also subject to the program
8 regulations promulgated by the Federal Transit Administration
9 and applicable program circulars.

10 (c) Changes to federal rules, regulations, and circulars
11 applicable to the programs will be implemented and incorporated
12 into the rules governing the specific program.

13
14 §31.43. Contracting Requirements.

15 (a) Purpose. This section describes contracting standards
16 and related requirements for recipients of state and federal
17 public transportation grant funds.

18 (b) Standards. The standards contained in ~~[the]~~ 2 C.F.R.
19 Part 200 and Part 1201 Uniform Administrative Requirements, Cost
20 Principles, and Audit Requirements for Federal Awards [~~Common~~
21 ~~Rule~~] apply to public transportation contracting activities.
22 The department will monitor subrecipient compliance with those
23 standards.

24 (c) Subcontracts. Subrecipients shall furnish to the
25 department notice of the intent to award a purchase order or
26 contract to any individuals or organizations not a part of the
27 subrecipient's organization when the amount of the purchase

1 meets or exceeds the threshold level in the Government Code or
2 Local Government Code (or greater than \$25,000 for those
3 entities not covered by the Government Code or Local Government
4 Code) requiring formal competitive procurement. Purchases shall
5 not be split out to stay below the threshold amount. No
6 subcontract will relieve the subrecipient of the subrecipient's
7 legal responsibilities to the department.

8

9 §31.44. Procurement Requirements.

10 (a) Purpose. This section describes procurement standards
11 and related requirements for recipients of state and federal
12 public transportation grant funds.

13 (b) Standards. The standards contained in [the] 2 C.F.R.
14 Part 200 and Part 1201 Uniform Administrative Requirements, Cost
15 Principles, and Audit Requirements for Federal Awards [~~Common~~
16 ~~Rule~~] apply to public transportation procurement activities.
17 All subrecipients shall maintain written procurement policies.
18 Those policies shall, at a minimum, provide the following.

19 (1) Goods, services and equipment purchases.

20 (A) Goods, services, or equipment requiring
21 formal competitive procurement in accordance with the applicable
22 provisions in the Government Code or Local Government Code
23 (greater than \$25,000 for those entities not covered by the
24 Government Code or Local Government Code) shall require sealed
25 bids or proposals. Bids for computer and radio systems shall
26 include all subcomponents necessary for the system to be
27 operated in the unit cost. Exceptions will be allowed for those

1 entities that are eligible to purchase items through the state
2 open contract procedures.

3 (B) Goods, services, or equipment not requiring
4 formal competitive procurement in accordance with the applicable
5 provisions in the Government Code or Local Government Code
6 (\$25,000 or less for those entities not covered by the
7 Government Code or Local Government Code) do require the
8 solicitation of quotes or offers from at least three sources.
9 Purchases of goods, services, or equipment with a total cost of
10 \$3,000 or less do not require quotes or offers from at least
11 three sources but are to be distributed equitably among
12 qualified suppliers. The subrecipient shall retain a written
13 record of these solicitations. Exceptions will be allowed for
14 those entities that are eligible to purchase items through the
15 state open contract procedures.

16 (2) Real property.

17 (A) Acquisition of real property shall be
18 accomplished in accordance with federal and state statutes,
19 regulations, and policies. In particular, projects that receive
20 federal funds shall comply with the uniform relocation and real
21 property acquisition standards established in 49 C.F.R. Part 25.

22 (B) Specific standards for construction and
23 rehabilitation projects will be negotiated as part of the
24 project agreement between the department and the subrecipient.

25 (3) Records retention. All procurement documents are
26 public information and shall be maintained by the subrecipient

1 for at least three years after grant closeout, or, in the case
2 of a capital project, the life of the asset plus three years.

3 (c) Department role.

4 (1) Oversight and approval. The subrecipient shall
5 furnish the department notice of the intent to award a purchase
6 order or contract to any individuals or organizations not a part
7 of the subrecipient's organization when the amount of the
8 purchase meets or exceeds the threshold level in the Government
9 Code or Local Government Code (or greater than \$25,000 for those
10 entities not covered by the Government Code or Local Government
11 Code) requiring formal competitive procurement. Purchases shall
12 not be split out to stay below the threshold amount. The
13 subrecipient shall at a minimum provide the following
14 documentation as requested by the department describing the
15 procurement history:

16 (A) the rationale the subrecipient used for the
17 method of procurement;

18 (B) the rationale the subrecipient used for the
19 selection of contract type;

20 (C) the reasons the bidder or proposer was
21 selected; and

22 (D) the methodology used to determine the
23 contract price, including a cost justification.

24 (2) Technical assistance. The department will provide
25 vehicle specifications, guidance on competitive procurement
26 procedures, and assistance in developing procurement
27 documentation to a subrecipient upon request. If subrecipients

1 choose to develop their own specifications, they assume full
2 responsibility for ensuring that the specifications do not
3 restrict competition.

4

5 §31.45. Accounting and Financial Recordkeeping Requirements.

6 (a) Purpose. This section describes accounting and
7 financial recordkeeping standards and related requirements for
8 recipients of state and federal public transportation grant
9 funds.

10 (b) Standards. The contractor's financial management
11 system shall meet or exceed the requirements of [the] 2 C.F.R.
12 Part 200 and Part 1201 Uniform Administrative Requirements, Cost
13 Principles, and Audit Requirements for Federal Awards [~~Common~~
14 ~~Rule~~]. Those requirements include:

15 (1) accurate, current, and complete disclosure of the
16 financial transactions of each grant program in accordance with
17 state and federal reporting requirements;

18 (2) records that identify adequately the source and
19 application of funds for grant-supported activities (records
20 shall contain information pertaining to grant awards and
21 authorization, obligations, commitments, assets, liabilities,
22 outlays, and income);

23 (3) effective control over and accountability for all
24 funds, property, and other assets (the recipient shall
25 adequately safeguard all assets and shall assure that they are
26 used solely for authorized purposes);

1 (4) comparison of actual with budgeted amounts for
2 each contract, and relation of financial information to
3 performance or productivity data, including the production of
4 unit cost information;

5 (5) procedures for determining the eligibility for
6 reimbursement and proper allocation of cost;

7 (6) accounting records that are supported by source
8 documentation; and

9 (7) a systematic method to assure timely and
10 appropriate resolution of audit findings and recommendations.

11
12 §31.47. Audit and Project Close-Out Standards.

13 (a) Purpose. This section describes audit and close-out
14 requirements for recipients of state and federal public
15 transportation grant funds.

16 (b) Audit standards. Contractor audit procedures shall
17 meet or exceed the single audit report requirement of 2 C.F.R.
18 Part 200 Uniform Administrative Requirements, Cost Principles,
19 and Audit Requirements for Federal Awards [~~outlined in Office of~~
20 ~~Management and Budget (OMB) publications as follows: state or~~
21 ~~local governments follow OMB Circular A-128; and institutions of~~
22 ~~higher education and other nonprofit organizations follow OMB~~
23 ~~Circular A-133]~~.

24 (1) Access. The United States Secretary of
25 Transportation, the Comptroller General of the United States,
26 the executive director of the department, and the State Auditor,
27 and any of their authorized representatives, shall have access

1 to the financial and other project records at all reasonable
2 times during the contract period and for the record retention
3 period for the purpose of making audits, examinations, excerpts
4 and transcripts.

5 (2) Documentation. The contractor shall maintain
6 financial records, supporting documents, statistical records,
7 and all other records of the public transportation grant.

8 (3) Records retention. Financial records, supporting
9 documents, statistical records, and all other records of the
10 public transportation grant shall be retained for a period of
11 three years after grant closeout, with the following
12 qualifications.

13 (A) Litigation. If any litigation, claim, or
14 audit is started before the expiration of the three-year period,
15 the records shall be retained until all litigations, claims, and
16 audit findings involving the records have been resolved.

17 (B) Nonexpendable property. Records for
18 nonexpendable property acquired with federal or state funds
19 shall be retained for three years after its final disposition.

20 (C) Transfer of records. The three-year
21 retention requirement is not applicable to the contractor when
22 the records are transferred to or maintained by the federal or
23 state grantor agency.

24 (D) Procurement records. The three-year
25 retention requirement is not applicable to capital projects
26 covered under §31.44(b)(3) of this chapter.

1 (4) Project close-outs. The contractor shall make
2 every reasonable effort to complete all project activities and
3 request appropriate reimbursements within the time period
4 specified in the project agreement. Project audits shall also
5 be completed within the specified time period and any findings
6 resolved with all practicable speed. Upon completion of these
7 activities, the contractor shall provide the department written
8 notification of project close-out and the release of any unspent
9 project balances.

10

11 §31.48. Project Oversight.

12 (a) Purpose. This section describes reporting requirements
13 for designated recipients and subrecipients of state or federal
14 public transportation grant funds and monitoring activities to
15 be performed by the department.

16 (b) Reporting requirements. The subrecipient shall submit
17 reports to the department in a format prescribed by the
18 department within deadlines established by the department.

19 (1) Incident reports. Subrecipients shall report all
20 incidents that meet criteria established by the department. The
21 subrecipient shall submit the report within five days of the
22 incident or discovery of the incident.

23 (2) Asset inventory. Each subrecipient shall provide
24 information on state and federally funded equipment as described
25 in §31.50 of this chapter (relating to Recordkeeping and
26 Inventory Requirements).

1 (3) Charter service. Section 5311 subrecipients shall
2 provide charter service only under the specific circumstances
3 established by the FTA. Operators shall advise the department
4 of any charter service provided and the exemption under which
5 charter service is provided.

6 (4) Disadvantaged Business Enterprises [~~and~~
7 ~~Historically Underutilized Businesses~~]. Subrecipients shall
8 submit reports in accordance with 49 C.F.R. Part 26
9 Participation by Disadvantaged Business Enterprises in
10 Department of Transportation Financial Assistance Programs
11 ~~[Chapter 9, Subchapter L of this title (relating to Historically~~
12 ~~Underutilized Business (HUB) Program)]~~.

13 (5) Operations reports. All FTA recipients and
14 subrecipients shall submit quarterly and annual operations
15 reports.

16 (A) Pursuant to the requirements of 49 U.S.C.
17 §5311 and §5335, subrecipients of assistance under §5311 shall
18 submit to the department data required by the department for
19 reporting to the National Transit Database.

20 (B) Pursuant to the requirements of 49 U.S.C.
21 §5326, subrecipients of FTA assistance through the department
22 shall provide the data required by the department to report on
23 transit asset management.

24 (C) Pursuant to the requirements of
25 Transportation Code, §456.008(a) and (b), the department will
26 collect monthly data from transit operators in urbanized areas,
27 including transit authorities, and publish annually data on

1 industry utilized standards that best reflect ridership,
2 mileage, revenue by source and service effectiveness. These
3 standards include:

4 (i) Service efficiency--Operating expense
5 per vehicle revenue hour and operating expense per vehicle
6 revenue mile.

7 (ii) Cost effectiveness--Operating expense
8 per unlinked passenger trip.

9 (iii) Service effectiveness--Unlinked
10 passenger trips per vehicle revenue mile and unlinked passenger
11 trips per vehicle revenue hour.

12 (iv) Safety--Total incidents per 100,000
13 miles of service and average number of miles between revenue
14 vehicle mechanical system failures that prevent the vehicle from
15 completing a scheduled revenue trip.

16 (D) Pursuant to the requirements of
17 Transportation Code, §456.008(a) and (b), and 49 U.S.C. §5311,
18 the department will collect monthly from transit operators in
19 rural areas, and publish annually data on industry utilized
20 standards that best reflect ridership, mileage, revenue by
21 source and service effectiveness. These standards include:

22 (i) Service efficiency--Operating expense
23 per vehicle mile.

24 (ii) Cost effectiveness--Operating expense
25 per unlinked passenger trip.

26 (iii) Service effectiveness--Unlinked
27 passenger trips per vehicle mile.

1 (iv) Safety--Total incidents per 100,000
2 miles of service and average number of miles between revenue
3 vehicle mechanical system failures that prevent the vehicle from
4 completing a scheduled revenue trip.

5 (E) Pursuant to the requirements of
6 Transportation Code, §456.008(a) and (b), the department will
7 collect monthly from public transportation providers, as defined
8 in Transportation Code, §461.002, that receive funding under 49
9 U.S.C. §5310, or §5316 and §5317 (with regard to the grant of
10 funds appropriated under federal authorization bills prior to
11 MAP-21), and publish annually data on industry utilized
12 standards that best reflect ridership, mileage, revenue by
13 source and service effectiveness. These standards include:

14 (i) Service efficiency--Operating expense
15 per vehicle mile.

16 (ii) Cost effectiveness--Operating expense
17 per unlinked passenger trip.

18 (iii) Service effectiveness--Unlinked
19 passenger trips per vehicle mile.

20 (iv) Any other measure appropriate to the
21 type of project financed using funds from §5310, or §5316 and
22 §5317 with regard to the grant of funds appropriated under
23 federal authorization bills prior to MAP-21.

24 (6) Significant events. The recipient shall promptly
25 advise the department in writing of events that have a
26 significant effect on the delivery of public transportation
27 services, including:

1 (A) problems, delays, and adverse conditions that
2 will materially affect the ability to attain program objectives,
3 prevent the meeting of time schedules and goals, or preclude the
4 attainment of project work units by established time periods,
5 accompanied by a statement of the action taken or contemplated
6 and any departmental assistance needed to resolve the situation;
7 and

8 (B) favorable developments and events that will
9 enable meeting time schedules and goals sooner than anticipated
10 or producing more work units than originally projected.

11 (7) Miscellaneous reports. Entities receiving funds
12 from either the department or the FTA shall cooperate with the
13 department in providing other information as requested by state
14 and federal funding agencies.

15 (c) Department monitoring. The department will rely on
16 subrecipient reports as described in subsection (b) of this
17 section as the primary means of monitoring subrecipient
18 performance. In addition, department personnel and the
19 subrecipient at least quarterly will discuss problems
20 encountered by the subrecipient, the subrecipient's need for
21 technical assistance, and other topics related to the provision
22 of public transportation services. Routine monitoring activity
23 will occur in the following areas according to a schedule that
24 accommodates federal deadlines and department and operator
25 workloads. Most, but not all, monitoring activities will occur
26 on a quarterly basis.

1 (1) Civil rights. The department will monitor
2 subrecipients for compliance with Title VI Civil Rights
3 requirements.

4 (2) Drugs and alcohol.

5 (A) Each §5311 subrecipient and each of its
6 subcontractors with safety-sensitive employees shall have
7 policies and programs in place that comply with drug and alcohol
8 standards established by the FTA. The department will monitor
9 subrecipients for compliance with these regulations. In
10 addition, the FTA requires each subrecipient to file a calendar
11 year report (January 1 - December 31) with the department on
12 drug and alcohol testing and compliance activities.

13 (B) Each §5310 subrecipient, and each §5316 and
14 §5317 subrecipients with regard to the grant of funds
15 appropriated under federal authorization bills prior to MAP-21,
16 shall comply with Federal Motor Carrier Safety Administration
17 requirements for drug and alcohol compliance if it owns a
18 vehicle that requires a commercial driver's license to operate.
19 If the subrecipient also receives §5307 or §5311 funding, the
20 subrecipient shall include §§5310, 5316, and 5317 employees in
21 their FTA testing program.

22 (3) Fiscal responsibility. A department employee will
23 ~~make on-site quarterly visits to~~, on a quarterly basis, review
24 agency financial records that support requests for payment.

25 (4) Insurance. Subrecipients of state or federal
26 funds through the department shall insure all facilities,
27 equipment, and vehicles from loss. Checks for appropriate

1 insurance levels will occur at the time the local agency renews
2 its policies.

3 (5) Maintenance. Subrecipients are required to have
4 written maintenance plans, schedules, and logs to ensure the
5 proper care and longevity of vehicles and facilities in
6 accordance with §31.53(d) of this chapter (relating to
7 Maintenance Requirements). The plans, schedules, and logs are
8 subject to periodic on-site inspection by the department.

9 (6) Incidental vehicle use. A vehicle purchased with
10 federal or state funds may be used for incidental uses that do
11 not conflict with the primary purposes for which the vehicle was
12 purchased. An example of permissible incidental use is using
13 the vehicle for other public transportation activities when it
14 is not required for project purposes. The vehicle shall not be
15 altered in any way to accommodate an incidental use.

16 (7) Procurement. The department will work with
17 subrecipients to ensure that procurement activities meet
18 applicable state and federal requirements and that all required
19 documents are received and actions completed in a timely manner.
20 Check sheets will be maintained by the department to ensure all
21 benchmark activities are accomplished in the proper sequence.

22 (d) Noncompliance. A subrecipient that fails to comply
23 with federal or state law, standard or special grant or subgrant
24 conditions, or contractual agreements on which the grant or
25 subgrant award is predicated, is subject to actions under
26 Chapter 9, Subchapter H of this title (relating to Grant
27 Sanctions).

SUBCHAPTER E. PROPERTY MANAGEMENT STANDARDS

§31.57 Disposition

To be amended

Five Pages

1 SUBCHAPTER E. PROPERTY MANAGEMENT STANDARDS

2
3 §31.57. Disposition.

4 (a) Purpose. This section describes the standards that
5 apply to the disposition of equipment purchased in whole or in
6 part with state or federal public transportation funds.

7 (b) Like-kind exchanges. In the case of like-kind
8 exchanges, the percentage of the department's original
9 contractual interest shall be applied to the fair market value
10 of the equipment being sold at the time of the exchange. That
11 dollar value shall then be transferred as the department's
12 interest in the equipment being acquired and, as appropriate,
13 added to any additional funding provided by the department
14 towards the purchase of the new equipment.

15 (c) Federal standards. The federal standards contained
16 in 2 CFR Part 200 and Part 1201 Uniform Administrative
17 Requirements, Cost Principles, and Audit Requirements for
18 Federal Awards [~~the Common Rule~~] shall govern the disposition of
19 real property and equipment purchased under contracts in which
20 the department provides all or part of the local share
21 requirement of federally assisted capital improvements. In
22 cases in which 2 CFR Part 200 and Part 1201 Uniform
23 Administrative Requirements, Cost Principles, and Audit
24 Requirements for Federal Awards [~~the Common Rule~~] does not
25 require reimbursement of the federal grantor agency, the
26 department will similarly release the state interest in the
27 capital improvement provided that the state's percentage share

1 of any proceeds derived by the subrecipient in the disposition
2 process shall be used by the subrecipient for public
3 transportation purposes similar to those for which the contract
4 award was originally made. If the subrecipient does not intend
5 to use the state's percentage share of the proceeds for public
6 transportation purposes, those monies shall be refunded as
7 described in subsection (d)(2)(B) of this section. In cases in
8 which 2 CFR Part 200 and Part 1201 Uniform Administrative
9 Requirements, Cost Principles, and Audit Requirements for
10 Federal Awards [~~the Common Rule~~] requires reimbursement of the
11 federal grantor agency, the subrecipient shall provide the
12 department a percentage of the proceeds of the disposition equal
13 to the percentage of the state's original investment in the
14 property or equipment. Once disposition is authorized, the
15 subrecipient shall relinquish title to the property through
16 either sale, auction, or transfer to another recipient of FTA
17 funding. The department shall be notified of the disposition
18 and shall be provided information necessary to delete the
19 property from inventory records described in §31.50 of this
20 subchapter (relating to Recordkeeping and Inventory
21 Requirements).

22 (d) State standards. All real property and equipment
23 obtained through contracts in which the department's contractual
24 interest includes federal funds or state monies shall be
25 governed by the disposition standards contained in paragraphs
26 (1) and (2) of this subsection. The department shall be
27 notified of the subrecipient's intent to proceed with the

1 dispositions and provided information necessary to delete the
2 property from inventory records described in §31.50 of this
3 subchapter. Prior to disposition of property under the terms of
4 this subsection, the subrecipient shall obtain written
5 concurrence from the department and receive disposition
6 instructions. Once disposition is authorized, the subrecipient
7 shall relinquish title to the property through either sale,
8 auction, or transfer to another recipient of FTA or state
9 funding.

10 (1) Disposition criteria.

11 (A) Vehicles. Disposition may occur when the
12 current per-unit market value is less than \$5,000.

13 (B) Other equipment. Disposition may occur when
14 the current per-unit market value is less than \$5,000.

15 (C) Real property. When real property is no
16 longer needed for the originally authorized purpose, the
17 subrecipient shall request disposition instructions from the
18 department pursuant to this subsection.

19 (2) Distribution of disposition proceeds.

20 (A) Refund not required. In cases in which the
21 disposition criteria contained in paragraph (1)(A) and (B) of
22 this subsection have been met, the department will release its
23 contractual interest in the capital improvement. The department
24 will similarly release its contractual interest in cases in
25 which exceptions are granted for early disposition in accordance
26 with the provisions contained in subsection (e) of this section.
27 However, the department's release of its interest in a capital

1 improvement is contingent upon the subrecipient's assurance that
2 the department's contractually specified percentage share of any
3 proceeds derived by the subrecipient in the disposition process
4 will be used by the subrecipient for public transportation
5 purposes similar to those for which the contract award was
6 originally made. In the case of transfers to non-transit uses,
7 as allowed under 49 U.S.C. §5334(h), the department will release
8 only the federal portion of its contractual interest. The
9 department will consult with FTA as necessary to ensure
10 compliance with federal standards. The state's percentage share
11 shall be refunded as described in subparagraph (B) of this
12 paragraph.

13 (B) Refund required. In cases in which the
14 disposition criteria contained in paragraph (1)(A) and (B) of
15 this subsection have not been met, but the subrecipient has
16 received authorization from the department to proceed with the
17 disposition of equipment or property, the subrecipient shall
18 provide the department a percentage of the proceeds of the
19 disposition equal to the percentage of the department's original
20 contractual interest in the property or equipment. In cases of
21 real property, as described in paragraph (1)(C) of this
22 subsection, and when exceptions are not granted for early
23 disposition, as described in subsection (e) of this section, the
24 subrecipient shall similarly provide the department a percentage
25 of the proceeds of the disposition equal to the percentage of
26 the department's original contractual interest in the property
27 or equipment. In the case of transfers to non-transit uses, as

1 allowed under 49 U.S.C. §5334(h), the subrecipient shall provide
2 the department a percentage of the proceeds of the disposition
3 equal to the percentage of the original state percentage
4 interest in the property or equipment, excluding any federal
5 percentage interest that might have been included in the
6 contract of assistance. The department will consult with FTA as
7 necessary to ensure compliance with federal standards.

8 (C) Net proceeds from sale of capital assets. In
9 cases in which 2 CFR Part 200 and Part 1201 Uniform
10 Administrative Requirements, Cost Principles, and Audit
11 Requirements for Federal Awards [~~the Common Rule~~] requires a
12 reimbursement, when the subrecipient receives proceeds from the
13 disposition of the capital property or equipment and those funds
14 will be used for subsequent federal public transportation
15 purposes, the subrecipient shall establish a record of liability
16 demonstrating that these funds are owed. The liability will be
17 removed when the subrecipient uses the proceeds for a subsequent
18 transit project.

19 (e) Exceptions. The department will consider exceptions to
20 this section on a case-by-case basis. The subrecipient must
21 furnish information requested by the department to determine if
22 an exception is warranted due to special circumstances. The
23 department will consult with FTA as necessary to ensure
24 compliance with federal standards.

25

EXHIBITS

Comments submitted at July 12, 2017 Semiannual
Public Transportation Operators Meeting

Austin, Texas

Two Pages

2017 TAC CHANGES DRAFT PROPOSALS

July 12, 2017

Comments / Questions

Can/ Will proposed Rules language be provided to Systems panel to PTA meeting?

§5310

- ① Does the SMP warranty being considered for comments that was 7-28-17 include the proposed emphasis on Transit operator Coordination discussed today as part of TAC changes to the 5310 program? If not, when will it be done? Can any TAC changes be implemented without a change to the SMP

§5339

State Funds

- ① Why is a cap on population being proposed for the over 200K funds? If an unincorporated area has a "larger" population it has more need. All formulation scenarios recognize population "as is".
- ② How will other over 200K population areas not addressed in last legislative initiative be addressed?

§5311

- ③ The ^{70/30}65/35 allocation is moving to exact amounts. What happens in future appropriations in terms of rural/urban splits.

TxDOT-PTN Transit Operators Business Meeting

Agenda Item 4:

2017 TAC CHANGES DRAFT PROPOSALS

July 12, 2017

Comments / Questions

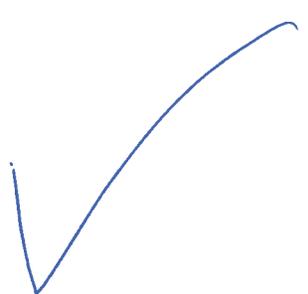
§5310 Transit districts should remain a top priority for funding.

§5339
✱ Would really prefer to keep small urban under TxDOT + not as a direct recipient. It looks like TxDOT is being lazy + just passing the buck. Please keep it the same.

State Funds

Removing the % from Urban/Rural distributions creates a high opportunity for favoritism. I would recommend keeping a % for distribution

§5311



AGENDA ITEM 6

Public Transportation Advisory Committee

Guiding Principles

Updated February 2012

1. Support Public Transportation

- Goal: Implement an efficient, effective, and sustainable public transportation system.
 - Objective: Strategically leverage all available resources to maximize service provided throughout the state.
 - *Task: Develop consistent and transparent methods to award funds (e.g. §5310 Program, §5311 Program, and Transportation Development Credits.)*
 - Objective: Increase financial stability of the state's transit providers
 - *Task: Identify, develop, and implement options to accommodate the lag in federal funding availability.*
 - *Task: Explore the creation of a reserve fund to provide gap funding, loans, and/or lines of credit.*
- Goal: Support financial sustainability of local, state, and federal investments in the maintenance and expansion of critical transportation assets.
 - Objective: Strategic and aggressive pursuit of competitive federal grant funding.
 - *Task: Develop 3-year list of capitol project needs statewide.*
 - *Task: Develop long-term strategic plans for investment.*
 - Objective: Improve individual and collective planning competencies and financial capacity within agencies.
 - *Task: Develop and implement leadership forum (particularly focused on best practices for financial stability).*
 - Objective: Encourage and support the recruitment, retention, and training of personnel.
 - *Task: Develop innovative financing training/knowledge sharing opportunities.*
- Goal: Conduct regular evaluations of funding initiatives and results to guide future direction and decision-making activities.
 - Objective: Achieve continuous service performance improvements.
 - *Task: Review past program funding, develop best practices and performances metrics for investments that maximize services.*
 - *Task: Review past investments and develop best practices for evaluation of new fund development and its impacts on maintenance and capital.*

2. Promote Coordinated Transportation

- Goal: Increase coordination to maximize the availability and use of transportation resources (funding, services, etc.)
 - Objective: Develop and implement an approach to the coordinated call for projects that exhibits a commitment to coordination.
 - *Task: Review previous §5310, §5311, JARC and New Freedom investments under the coordinated call and evaluate coordination best practices for coordination of funding, services, and/or community participation.*
 - *Task: Develop metrics and funding criteria that promote best practices in coordinated calls for projects.*
 - *Task: Develop advance trainings that build coordinated call applicants' understanding of the desired outcomes, requirements, and suggested approaches for a successful application.*
 - Objective: Develop metrics that will allow evaluation of the funding formula's consistency with the strategic values of regional coordination.
 - *Task: Define strategic values for coordination.*
 - *Task: Develop metrics for coordination.*
 - *Task: Test evaluation of the funding formulas based on coordination metrics.*
- Goal: Encourage and reward innovation.
 - Objective: Develop investment practices and grant management policies that support innovation and entrepreneurial approaches to regional coordination.
 - *Task: Research and review best practices at all levels for innovation and entrepreneurial approaches to regional coordination.*
 - *Task: Establish metrics and goals for TxDOT-implemented best practices.*
- Goal: Support initiatives to create sustainable communities.
 - Objective: Understand what local jurisdictions are doing to promote sustainability and the implications for public transportation in Texas.
 - *Task: Research what local jurisdictions are doing to create sustainable communities.*
 - *Task: Evaluate research to determine possible implications for PTN.*
- Goal: Conduct regular evaluations of funding initiatives to guide future direction and decision-making activities.
 - Objective: Achieve continuous service performance improvements.

- *Task: Review past programs and develop best practices for performance-based evaluation of coordination activities, projects, and programs.*
- *Task: Review past investments and develop best practices for evaluation of investments via the coordinated call for projects.*