MEETING AGENDA
Public Transportation Advisory Committee
Tuesday, October 24, 2017 | 1:00 P.M. (local time)
Texas Department of Transportation (TxDOT)
200 E. Riverside Drive, Room 1A.1
Austin, TX 78704

1. Call to Order.

2. Safety Briefing.

3. Approval of minutes from July 25, 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 public comments regarding proposed rule changes to Title 43, Texas Administrative Code, Chapter 31 and recommended final rule package. (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
AGENDA ITEM 1: Call to Order.

Rob Stephens called the meeting to order at 1:20 P.M.

AGENDA ITEM 2: Safety Briefing.

Josh Ribakove gave a safety briefing for attendees at 1:21 P.M.

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

Rob Stephens opened this item at 1:22 P.M.

MOTION J.R. Salazar moved to approve the June 6, 2017 meeting minutes.

SECOND Jim Cline seconded the motion.

The motion passed unanimously at 1:23 P.M.

AGENDA ITEM 4: TxDOT’s Public Transportation Division Director’s report to the committee regarding public transportation matters.

Eric Gleason began his report at 1:24 P.M. The report began with a legislative update and then addressed de-obligation of existing funds.

AGENDA ITEM 5: Discussion of proposed rule changes to Title 43, Texas Administrative Code, Chapter 31 (Action).
Eric Gleason opened this item at 1:28 P.M. Mr. Gleason presented draft language for Title 43, Texas Administrative Code, Chapter 31, based upon discussion with the committee at previous meetings.

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

MOTION  Jim Cline moved to accept PTN’s draft language with no changes

SECOND  J.R. Salazar seconded the motion.

The motion passed unanimously at 2:10 P.M.

**AGENDA ITEM 6: 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 led this discussion beginning at 2:15 P.M.

No action taken.

**AGENDA ITEM 7: Public Comment**

Rob Stephens introduced this item at 2:16 P.M.

There were no public comments.

**AGENDA ITEM 10: Propose and Discuss Agenda Items for Next Meeting; confirm date of next meeting (Action).**

Rob Stephens initiated and led this discussion beginning at 2:17 P.M. No agenda items were proposed.

The next meeting is scheduled for Tuesday, October 24, 2017 at 1 P.M. Location TBD.

No action taken.
AGENDA ITEM 12: Adjourn (Action).

MOTION    John McBeth moved to adjourn.

SECOND    J.R. Salazar seconded the motion.

Meeting adjourned at 2:18 P.M.

Prepared by:     Approved by:

________________________________________  _________________________________
Josh Ribakove    Rob Stephens, Chair

The preamble and the adopted amendments, attached to this minute order as Exhibits A, B, C, D, E, and F, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the commission that the amendments to §§31.3, 31.11, 31.30, 31.31, 31.36, 31.42 - 31.45, 31.47, 31.48, 31.50, and 31.57, and the repeal of §§31.17 and 31.18 are adopted and are authorized for filing with the Office of Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by: 
Director, Public Transportation Division

Recommended by: 
Executive Director
Adoption Preamble


EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS

The proposed revisions address the impact of changes in state statutes and appropriations, revise funding allocation formulas, address the impacts of revised federal program guidance, remove obsolete text, and update references to current authorizing statutes. Certain sections proposed for repeal administered obsolete federal programs.

SUBCHAPTER A, GENERAL

Amendments to §31.3, Definitions, reflect revisions to the Texas Administrative Code in Chapter 31 in accordance with state and federal statutes and federal guidance impacting the department’s role in administering public transportation programs and remove references to repealed federal programs. The definition of “Common Rule,” paragraph (10) is deleted. The United States Department of Transportation Common Rules have been superseded.
The citation to the appropriate federal regulations has been substituted for the term “Common Rule” throughout the amended rules. The amendments delete the definition “job access project” which was used as part of a repealed federal statute and add the definition of “large urban transit district,” in accordance with HB 1140, 85th Legislature, Regular Session. The amendments add the definition of “small urban transit district,” in accordance with HB 1140, 85th Legislature, Regular Session. In the definition of “welfare recipient,” the amendments remove a reference to a repealed federal statute.

SUBCHAPTER B, STATE PROGRAMS

Amendments to §31.11, Formula Program, revise the text to account for statutory changes from HB 1140, 85th Legislature, Regular Session, which revise geographical funding categories, address increases in funding, clarify funding allocation description for urban transit districts in the Dallas-Ft. Worth-Arlington urbanized area, remove an expired section, and require a one-time award in FY 2018 to transition from the old formula to the new formula.

Amendments to §31.11(b)(1) indicate the amount of funds available, allocate a portion of those funds to the new funding category “large urban transit districts,” show funds as dollar amounts rather than as percentages, and indicate that if appropriated amounts are less than shown, the funds will be reduced proportionately in each funding category.
Amendments to §31.11(b)(1)(A)(i) clarify the description of four urban transit districts in the Dallas-Ft. Worth-Arlington urbanized area. Instead of a description as “tier one,” the text explicitly names these four transit districts. The amendments also include the allocated amounts authorized by statute for each of these transit districts.

Amendments to §31.11(b)(1)(A)(ii) describe funding allocation methodology for the small urbanized areas.

Amendments to §31.11(b)(1)(A)(iii) describe funding allocation methodology for the large urbanized areas. The amendments also include a cap on the population figure used in the formula of 299,999 to allocate funds among all eligible large urbanized areas.

Amendments to §31.11(b)(2) remove a reference to an expired provision and add a one-time provision for FY 2018 that requires an allocation to account for the award of additional funds due to the revised rules and available funds.

SUBCHAPTER C, FEDERAL PROGRAMS

Section 31.17, Section 5316 Grant Program, and §31.18, Section 5317 Grant Program, are repealed because the Section 5316 and Section 5317 grant programs were removed from federal statutes by the previous authorizing legislation, known as MAP-21.
Projects under §31.17 and §31.18 have been completed and closed out. No impact of the repeal to existing and potential subrecipients is expected.

Amendments to §31.30, Section 5339 Grant Program, reflect revisions to the department’s role in administering the Federal Transit Administration (FTA) Section 5339 program. The department will continue to act as the designated recipient in this program for small urban transit districts. However, the department will exercise its option to have small urban transit districts apply directly to the FTA for those funds, upon notification by the department. This is similar to how the FTA Section 5307 program is handled. The department will continue to determine allocations and administer the Section 5339 program for the rural transit districts.

Amendments to §31.30(c) change the description from “transit agencies” to “transit districts” to improve clarity.

Amendments to §31.30(d)(1) revise the formula to use total vehicle miles as reported by transit districts instead of a formula based upon the expected remaining useful life of each vehicle. The amendments also include a minimum amount of one percent of the total program allocation to be awarded to each transit district.
Amendments to §31.30(d)(2) specify that the department will notify the FTA of the formula allocations.

Amendments to §31.30(d)(3) specify that the department will notify the small urban transit districts of the formula allocations.

Amendments to §31.30(d)(4) authorize transit districts to apply for those funds directly with the FTA.

Amendments to §31.30(e)(1) revise the formula to use total vehicle miles as reported by transit districts instead of a formula based upon the expected remaining useful life of each vehicle. The amendments also include a minimum amount of one percent of the total program allocation to be awarded to each transit district.

Amendments to §31.30(f) refer to the latest federal guidance document and remove the reference to fleet condition.

Amendments to §31.30(g) add that recipient projects must also be linked to the asset management plan.

Amendments to §31.31, Section 5310 Grant Program, revise the text to reflect the revised Code of Federal Regulations for the Section 5310 grant program as a result of changes that occur in the Fixing America’s Surface Transportation (FAST) Act.
Amendments to §31.31(d) show there is no distinction between primary and alternate recipients of Section 5310 funds for rural and urbanized areas with a population of less than 200,000. Recipients are urban and rural transit districts, private non-profit organizations, state and local government authorities that coordinate services for seniors and individuals with disabilities, or taxis providing shared-ride service. Recipients that are not transit districts shall coordinate service with transit districts to ensure service does not duplicate existing service.

Amendments to §31.31(e)(2)(A)(ii) clarify the description of vehicles by replacing the term paratransit with smaller accessible vehicles to avoid any confusion with vehicles that are used specifically for the ADA required paratransit service in places with fixed route bus service.

Amendments to §31.31(e)(2)(A)(viii) expand the eligible items to lifts, ramps, and other securement devices to include new technology and to reflect the language in the federal circular.

The amendment to §31.31(e)(2)(A)(x) clarifies the use of the word computer to cover the development of new technology beyond the term microcomputer.
Amendments to §31.31(i)(1)-(2) reflect a change in department procedure. Local stakeholders are consulted during the public outreach process before project selection. Local planning and project development occur as part of the coordinated human service transportation planning process, not as part of Section 5310 public outreach. To increase fairness and equity, the department recommends projects that consider program goals and objectives. The reference to the FTA Circular is updated to 9070.1G.

Amendments to §31.31(i) add paragraph (3) to clarify the requirement for at least 55 percent of the funds allocation to be used for capital expenses, expanding on the existing language that not more than 45 percent of the funds can be used for operating expenses.

Amendments to §31.36, Section 5311 Grant Program, revise the text to describe intent to minimize negative impacts from changes in transit district boundaries, revise the factor used to allocate a portion of the funding from revenue miles to total vehicles miles, revise definitions to more closely follow industry usage, and correct references to implementing regulations. Subsection (b)(5) is added to the list of department objectives to show that transportation district boundary changes are an important factor. This includes changes that occur when Texas counties move from one rural transit
district to another or when the counties create a new transit district.

Amendments to §31.36(e)(2)(A)(ii) clarify the description of eligible items for capital expenses.

Amendments to §31.36(e)(2)(A)(ix) and (xiii) revise the language to use the same terminology as used in the federal guidance.

Amendments to §§31.36(e)(2)(C)(iv), (e)(3)and(4), and (g) refer to the latest federal guidance document.

Amendments to §31.36(g)(3) add a one-time award to address changes in transit district boundaries as a discretionary allocation award category. Amendments to §31.36(g)(4) change the data element for calculating this award category from vehicle revenue miles to total vehicle miles.

SUBCHAPTER D, PROGRAM ADMINISTRATION

Amendments to §31.42, Standard Federal Requirements; §31.43, Contracting Requirements; §31.44, Procurement Requirements; §31.45 Accounting and Financial Recordkeeping Requirements; §31.46, Reimbursement Procedures; §31.47, Audit and Project Close-Out Standards; and §31.48 Project Oversight, revise the rules to correct references to federal regulations and update a compliance monitoring practice.
Amendments to §§31.42(a), 31.43(b), 31.44(b), 31.45(b), and 31.47(b) refer to the latest federal regulations. Amendments to §31.48(b)(4) refer to the latest federal regulations and remove a reference to a state program that does not apply. The amendment to §31.48(c)(3) changes a description to indicate a current compliance monitoring practice.

SUBCHAPTER E, PROPERTY MANAGEMENT STANDARDS

Amendments to §31.50, Recordkeeping and Inventory Requirements, and §31.57, Disposition, revise the text to correct references to federal regulations.

Amendments to §31.57(c) and (d)(2)(C) refer to the latest federal regulations.

COMMENTS

No comments on the proposed amendments and repeals were received.

STATUTORY AUTHORITY

The amendments and repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.
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2 CROSS REFERENCE TO STATUTE

3 Transportation Code, Chapters 455, 456, 458, and 461.
SUBCHAPTER A. GENERAL

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

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

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

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

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

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

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

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

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

(9) Commission--The Texas Transportation Commission.

(10) [Common Rule -- 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or 49 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.

(11)[12] Department--The Texas Department of Transportation.

(12)[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.

(13)[14] Director--The director of public transportation for the department.

(14)[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.

(15)[16] District--One of the 25 districts of the department for a designated geographic area.

(16)[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.

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

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

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

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

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

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

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GCD: 10/17/2017  9:15 AM  Exhibit B
(23)[(24)] Good standing--A status indicating that the
department's director of public transportation has not sent a
letter to an entity signifying the entity is in noncompliance
with any aspect of a program.

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

(25)[(26)] Large urban transit district--A local
governmental entity or a political subdivision of the state that
provides and coordinates public transportation within an
urbanized area with a population greater than or equal to
200,000 in accordance with Transportation Code, Chapter 458.
This definition includes urban transportation providers under
Transportation Code, Chapter 456, that received state money
through the department on September 1, 1994. This definition
excludes authorities. [Job access project--A public
transportation project relating to the development and
maintenance of transportation services designed to transport
welfare recipients and eligible low-income individuals to and
from jobs and activities related to their employment, or as
otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job
Access and Reverse Commute program as established under the
Safe, Accountable, Flexible, Efficient Transportation Equity
Act: A Legacy for Users (SAFETEA-LU).]
(26) Like-kind exchange--The trade-in or sale of a transit vehicle before the end of its useful life to acquire a replacement vehicle of like kind.

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

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

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

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

(31) Low-income individual--An individual whose family income is at or below 150 percent of the poverty line, as that term is defined in the Community Services Block Grant Act.

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(42 U.S.C. §9902(2)), including any revision required by that section, for a family of the size involved, or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

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

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

Net operating expenses—Those expenses that remain after fare box revenues are subtracted from eligible operating expenses.

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GCD: 10/17/2017  9:15 AM  Exhibit B
New public transportation services or alternatives--An activity that, with respect to the New Freedom program:

(A) is targeted toward people with disabilities;
(B) is beyond the ADA requirements;
(C) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and
(D) is not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

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

Nonurbanized area--An area outside an urbanized area.

Obligated funds--Monies made available under a valid, unexpired contract or grant agreement between the department and a public transportation subrecipient.

Private--Pertaining to nonpublic entities.

This definition does not include municipalities or other
political subdivisions of the state; public agencies or
instrumentalities of one or more states; Native American tribes
(except private nonprofit corporations formed by Native American
tribes); public corporations, boards, or commissions established
under the law of any state; or entities subject to control by
public authority, whether state or municipal.

Project--The public transportation
activities to be carried out by a subrecipient, as described in
its application for funding.

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

Public transportation safety plan--The
agency safety plan prepared in accordance with 49 U.S.C. §5329
and certified by the department.

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GCD: 10/17/2017  9:15 AM  Exhibit B
Real property--Land, including improvements, structures, and appurtenances, but excluding movable machinery and equipment.

Revenue service--Passenger transportation occurring when a vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual agreement. This does not imply that a cash fare must be paid. Vehicles operated in free fare services are considered in revenue service.

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

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

Ridership--Unlinked passenger trips.

Rural area--A nonurbanized area.

Rural transit district--A political subdivision of the state that provides and coordinates rural

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GCD: 10/17/2017  9:15 AM  Exhibit B
public transportation within its boundaries in accordance with the provisions of Transportation Code, Chapter 458.

(50) Senior--An individual who is 65 years of age or older.

(51) Small urban transit district--A local governmental entity or a political subdivision of the state that provides and coordinates public transportation within an urbanized area with a population less than 200,000 in accordance with Transportation Code, Chapter 458. This definition includes urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994. This definition excludes authorities.

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

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

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

(55) U.S. DOT--United States Department of Transportation.

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

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

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

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

(60) Vehicle revenue hours or miles--The hours or miles a vehicle travels while in revenue service. This

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GCD: 10/17/2017  9:15 AM  Exhibit B
definition includes layover and recovery, but excludes travel to and from storage facilities, the training of operators prior to revenue service, road tests, deadhead travel, and school bus and charter service.

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

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

§31.11. Formula Program.

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

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

(1) If the appropriated amount to which this subsection applies is at least $69,982,134 ($57,482,135 or less), the commission will allocate $7,000,000 to large urban transit districts, $20,118,748 (35 percent of the appropriated amount) to small urban transit districts, and $42,863,386 (65 percent of the appropriated amount) to rural transit districts. If the appropriated amount is less than $69,982,134, the amounts allocated by this paragraph will be reduced proportionately.

(A) Urban funds available under this section will be allocated to urban transit districts as provided by this subparagraph.
(i) If at least $69,982,134 is appropriated as described in paragraph (1) of this subsection, an urban transit district receiving funds under Transportation Code, Section 456.006(b), will be allocated for each year of the biennium an amount equal to the amount received by that district in Fiscal Year 1997. These districts include the cities of Arlington (amount $341,663), Grand Prairie (amount $170,584), Mesquite (amount $142,455), and North Richland Hills (amount $116,134). These allocations will be assigned from the small urban transit district funds. If less than $69,982,134 is appropriated, the amounts allocated by this clause will be reduced proportionately. If more than $69,982,134 is appropriated, an urban transit district to which this clause applies is not eligible for additional funds under paragraph (2) or (3) of this subsection. [Urban funds allocated under this paragraph will be divided into two tiers. Tier one will include urban transit districts that restrict transit eligibility for all public transportation services to seniors and individuals with disabilities. Funding available in tier one is calculated by multiplying the available urban funding by the population of seniors and individuals with disabilities in tier one providers, divided by the service eligible population of urbanized areas receiving funding under this subchapter. Tier two will include urban transit districts that provide any service to the general population. The funds for tier two will be the remaining

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GCD: 10/17/2017  9:17 AM   Exhibit C
balance of the available funds after the funds for tier one have been allocated.

(ii) One-half of the funds allocated to small urban transit districts will be [within each tier provided under clause (i) of this subparagraph will be allocated to urban transit districts as a need-based allocation] based on population by using the latest census data available from, and as defined by, the U.S. Census Bureau for each small urbanized area relative to the sum of all small urbanized areas. Any urban transit district whose urbanized area population is 200,000 or greater will have the population adjusted to reflect a population level of 199,999, except that any urban transit district receiving funds in tier one, as described in clause (i) of this subparagraph, will have the population adjusted to reflect a population level of 199,999, or the urbanized area population of the place as defined by the U.S. Census Bureau, whichever is less.

(iii) One-half of the funds allocated to small urban transit districts [within each tier provided under clause (i) of this subparagraph] will be [allocated to urban transit districts as a] performance-based allocations.

(iii) One-half of the funds allocated to large urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each large urbanized area relative to the sum of all

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GCD: 10/17/2017 9:17 AM
large urbanized areas served by urban transit districts. A large urban transit district with an urbanized area population of 300,000 or more will have the population adjusted to reflect a population level of 299,999. One-half of the funds allocated to large urban transit districts will be performance-based allocations.

(iv) An urban transit district is eligible for a performance-based allocation under clause (ii) or (iii) of this subparagraph, as appropriate, [funding under this clause] if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the performance-based funding based on the following weighted criteria: 30 percent for local funds per operating expense, 20 percent for ridership per capita, 30 percent for ridership per revenue mile, and 20 percent for revenue miles per operating expense. These criteria may be calculated using the urban transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(v) [ ] If an urban transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, including wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that negative impact with an alternate calculation addressing the specific

NOTE: Additions underlined
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GCD: 10/17/2017  9:17 AM   Exhibit C
situation. The alternate calculation may be used in subsequent years at the discretion of the department.

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

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

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

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

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

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

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

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

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

NOTE: Additions underlined
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GCD: 10/17/2017 9:17 AM Exhibit C
(D) Subject to available appropriation, no award to an urban or rural transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subsection (b)(1)(A) and (B) of this section are subject to revision to comply with this standard.

(2) A one-time allocation of state funds appropriated for Fiscal Year 2018 will be made to eligible urban and rural transit districts, consistent with the direction from Transportation Code, Section 456.021(a), as amended by H.B. 1140, 85th Legislature, Regular Session, 2017, to address the impacts of revisions to the state funding formula. This paragraph expires August 31, 2018. [If the appropriated amount to which this subsection applies exceeds $57,482,135, the commission will allocate $57,482,135 in accordance with paragraph (1) of this subsection and will allocate all or a part of the excess amount, as necessary to mitigate changes in formula allocations described by subparagraph (A) or (B) of this paragraph, as appropriate, resulting from the application of the 2010 census data.]

[(A) For an urban transit district, a formula allocation impact may be mitigated if, using 2010 performance data, the total allocation to the district for the need based allocation, as described in subsection (b)(1)(A)(ii) of this section, plus the performance based allocation, as described in subsection (b)(1)(A)(iii) of this section, obtained using 2010 census data.]

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GCD: 10/17/2017  9:17 AM  Exhibit C
census data, is less than the total corresponding allocation to
the district obtained using 2000 census data.]  

[(B) For a rural transit district, a formula
allocation impact may be mitigated if, using 2010 performance
data, the total allocation to the district for the need based
allocation, as described in subsection (b)(1)(B)(i) of this
section, plus the performance based allocation, as described in
subsection (b)(1)(B)(ii) of this section, obtained using 2010
census data, is less than the total corresponding allocation
obtained using 2000 census data.]  

[(C) Allocations under this paragraph are not
subject to subsection (b)(1)(D) of this section.]  

[(D) This paragraph expires August 31, 2017.]  

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

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

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

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

(f) Application. To receive funds allocated under this section, a transit district must first submit a completed application, in the form prescribed by the department. The application must include certification that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning.
implemented in accordance with 49 U.S.C. §5301. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

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

[§31.17. Section 5316 Grant Program.]

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

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

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

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

(2) fully integrate the §5316 program with other federal and state programs supporting public, employment, and human service transportation;]
[(3) foster the development of local, coordinated public transit-human service transportation plans from which JARC projects are derived;]

[(4) support local economic development; and]

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

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

[(e) Project types.]

[(1) Job access projects include:]

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

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

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

[(D) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and]
[(E) otherwise facilitating or providing transportation for employment or employment-related purposes by welfare recipients and low-income persons.]

[(2) Reverse commute projects include:

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

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

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

[(D) otherwise facilitating or providing public transportation services to suburban employment opportunities.]

[(f) Eligible subrecipients.]

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

[(2) Applicants who are subrecipients of public transportation funds through another program administered by the

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GCD: 10/17/2017  9:18 AM  Exhibit D
department must be in good standing with the department as defined in §31.3 of this chapter (relating to Definitions).] [(g) Eligible assistance categories.]

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

2. Capital expenses. [(A) Eligible items are:

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

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

   (iii) radios and communication equipment;

   (iv) equipment installation costs;

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

   (vi) preventive maintenance, including all maintenance costs;

   (vii) vehicle rebuilding or overhaul;

   (viii) capital and operating support including computer hardware or software, with prior department approval.]

NOTE: Additions underlined
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GCD: 10/17/2017 9:18 AM
Exhibit D
[(ix) transit-related intelligent transportation systems;]

[(x) the introduction of new technology, through innovative and improved products, into public transportation;]

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

[(xii) mobility management;]

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

[(xiv) the capital portions of costs for service under contract; and]

[(xv) the provision of Americans with Disabilities Act of 1990 (ADA) paratransit service directly related to fixed route JARC services, which shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service.]
(ii) the federal share may increase up to 90 percent for incremental costs related to compliance with the Clean Air Act or with the ADA; and

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

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

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

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

(B) evaluation of previously funded projects;

and

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

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

(A) market research;

(B) production of route maps and schedules;

(C) information delivery;

(D) website development;

(E) advertising;
([F] promotion of the use of transit vouchers by welfare recipients and eligible low-income individuals; and)

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

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

[(A) fuel;]

[(B) oil;]

[(C) driver, dispatcher, and mechanic salaries;]

[(D) purchase of service; and]

[(E) purchase of vouchers;]

[(h) Ineligible expenses include:

[(1) construction, except for passenger shelters, signage, and similar passenger amenities specifically approved by the department;]

[(2) extended vehicle warranties;]

[(3) purchase and/or maintenance of vehicles intended for private use;]

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

[(5) other FTA-prohibited expenses.]

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GCD: 10/17/2017  9:18 AM       Exhibit D
[(i) Local share requirements.]

[(1) Eligible match sources include local, state, or federal programs, including funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies, and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 U.S.C. §603(a)(5)(C)(vii) ). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.]

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

[(j) Planning requirement.]

[(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.]
(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

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

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

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

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

(4) A JARC project must:

(A) contain goals and objectives;

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

(C) describe how it implements the regional service plan.
(D) describe the role of the local workforce development board or its service provider in developing the project;

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

(F) provide a cost estimate; and

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

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

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

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

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

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

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

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

[(i) the project and the need for the project;]

[(ii) how the award of transportation JARC funds will expand the availability of employment-related transportation services;]

[(iii) how the project will:]

[(I) promote the development of employment transportation services;]

[(II) support local economic development and expand economic opportunity for economically disadvantaged individuals;]

[(III) fully integrate the JARC program with other federal and state programs supporting public, employment, and human service transportation; and]
[(IV) improve the efficiency and
effectiveness of employment related transportation
opportunities.]

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

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

[(1) Grant award.]

[(1) After commission and FTA approval of the program
of projects, the department will enter into grant agreements
with individual subrecipients. A subrecipient must comply with
all rules and regulations applicable to the §5316 program.]

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

[(A) reduce congestion;]
[(B) expand economic opportunity;]
[(C) enhance safety;]
[(D) improve air quality; and]
[(E) increase the value of transportation
assets.]

[(3) Failure to expend funds in a timely manner may
cause the department to terminate the grant and re-award the
unobligated balance to another project.]
[(m) Vehicle leasing. Vehicles acquired under the §5316 program may be leased to other entities, with prior department approval, such as local public entities or agencies, private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the §5316 subrecipient and provide the transportation services as described in the grant application. The §5316 subrecipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.]

[(n) Incidental vehicle use. A vehicle that is purchased with §5316 funds may be used for incidental uses that do not conflict with the primary use of the vehicle to provide transportation services for employment and employment-related transportation. Examples of permissible incidental uses are stopping for retail purchases en route home from the workday, allowing riders not engaged in employment activities to occupy vacant seats, delivering meals, or using the vehicle for other public transportation activities when it is not required for JARC project purposes. The vehicle shall not be altered in any way to accommodate incidental use.]

[(o) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for a JARC project and has purchased a vehicle with JARC funds, the vehicle may be transferred to another subrecipient, in accordance with state laws and procedures governing disposition requirements.]
[§31.18. Section 5317 Grant Program.]

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

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

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

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

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GCD: 10/17/2017   9:18 AM   Exhibit D
throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;]

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

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

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

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

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

[(e) Project types.]

[(1) New public transportation service projects, "beyond ADA", include:]

[(A) providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route) for a transit provider operating fixed route service;]
[(B) making accessibility improvements to existing transit and intermodal stations not designated as key stations; for example, adding an elevator or ramps, detectable warnings, improving signage;]

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

[(D) implementing technology improvements that enhance accessibility for individuals with disabilities;]

[(E) implementing "same day" paratransit services; and]

[(F) otherwise facilitating or providing transportation services beyond ADA requirements, including transportation to and from employment and employment-related destinations.]

[(2) New public transportation alternatives, "beyond ADA", include:]

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

[(B) supporting voucher programs for transportation services offered by human service providers;]

[(C) supporting volunteer driver and aide programs;]

[(D) acquiring transportation services by a contract, lease, or other arrangement;]
[(E) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation;]

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

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

[(H) otherwise facilitating or providing new transportation services for individuals with disabilities, including transportation to and from employment and employment-related destinations;]

[(f) Eligible subrecipients.]

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

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

[(g) Eligible assistance categories include:]

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GCD: 10/17/2017  9:18 AM   Exhibit D
(1) State administrative expenses. The department may use up to 10 percent of the annual federal apportionment for urbanized areas with less than 200,000 population and nonurbanized areas to defray its expenses incurred for the planning and administration of the §5317 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include:

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

(ii) radios and communications equipment;

(iii) accessibility aids;

(iv) equipment installation costs;

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

(vi) vehicle rebuilding or overhaul;

(vii) capital and operational support including computer hardware or software, with prior department approval;

(viii) preventive maintenance, including all maintenance costs, with prior department approval;

(ix) transit-related intelligent transportation systems;
[ (x) the introduction of new technology, through innovative and improved products, into public transportation; ]

[ (xi) curb cuts, sidewalks, pedestrian signals or other accessible features; ]

[ (xii) mobility management; ]

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

[ (xiv) the capital portions of costs for service under contract. ]

[ (B) For reimbursement ]

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

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

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

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

NOTE: Additions underlined
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GCD: 10/17/2017  9:18 AM   Exhibit D
(4) Operating expenses. Operating expenses are reimbursed at 50 percent of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C, or its latest published version, shall be the guide for determining eligible operating expenses not specifically listed in this paragraph. Examples are:

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

(h) Ineligible expenses include:

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

(i) Local share requirements.

- (1) Eligible match sources include local, state, or federal program funds disbursed from the Texas Workforce
Commission, local workforce development boards, human service agencies and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 U.S.C. §603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.\[
\]
\{(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for §5317 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.\]

\{(j) Planning requirement.\]

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

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

\{(A) overlaps and gaps in the provision of public transportation services including services that could be more

NOTE: Additions underlined
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GCD: 10/17/2017  9:18 AM   Exhibit D
effectively provided by existing, privately funded transportation resources;]

[(B) underused equipment owned by public transportation providers; and]

[(C) inefficiencies in the provision of public transportation services by any public transportation provider;]

[(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local coordinated planning process defined in paragraph (1) of this subsection. Regions interested in participating in the NF program shall develop and prioritize §5317 projects in response to the opportunities to improve transportation for individuals with disabilities uncovered in the regional planning process and documented in the plan;]

[(4) An NF project must:

[(A) contain goals and objectives;]

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

[(C) describe how it implements the regional service plan;]

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

[(E) provide a cost estimate; and]

[(F) identify match sources.]}
(G) Where transportation to employment or employment-related destinations is part of the project, any employer-provided or employer-assisted transportation service strategies incorporated in the project must also be identified.

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

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

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

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

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

(5) The origin of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.
(6) At a minimum, the department will publish a notice in the Texas Register soliciting proposals for the award for §5317 NF grants.

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

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

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

(iii) how the project will:

(I) promote the development and maintenance of a network of transportation services for individuals with disabilities;

(II) expand economic opportunity for individuals with disabilities;

(III) fully integrate the NF program with other federal, state, and local resources and programs that are designed to serve similar populations; and

(IV) improve the efficiency, effectiveness, and safety of transportation services for individuals with disabilities.
(B) The proposal must describe the project’s relationship to the locally developed, coordinated public transit-human service transportation plan.

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

(l) Grant Award.

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

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

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

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

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

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

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

§31.30. Section 5339 Grant Program.

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

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

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

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

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

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

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

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

(e) Rural transit districts. The department will:

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

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[allocate the available program funds so that each eligible subrecipient will receive a proportional share of available funding based on the remaining useful life of its public transportation fleet and the cost of replacing that fleet using the department's information system containing transit fleet data];

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

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

(4) negotiate and execute contracts with subrecipients;

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

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

(7) provide technical assistance to subrecipients as necessary.

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

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

(h) Reimbursement rates. For reimbursement:

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

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

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

(i) Local share requirements. The non-federal share may be provided by:

(1) cash from state or local governments;

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

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

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

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

(6) transportation development credits.
§31.31. Section 5310 Grant Program.  
(a) Purpose. Title 49 U.S.C. §5310 authorizes the Secretary of the U.S. DOT to make grants for the provision of transportation services meeting the special needs of seniors and individuals with disabilities. The governor has designated the department to administer the §5310 program.  
(b) Goal and objectives. The department's goal in administering the §5310 program is to promote the availability of cost-effective, efficient, and coordinated passenger transportation services planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, using the most efficient combination of financial and other resources. To achieve this goal, the department's objectives are to:  
(1) promote the development and maintenance of a network of transportation services for seniors and individuals with disabilities throughout the state, in partnership with local stakeholders;  
(2) fully integrate the §5310 program with other federal, state, and local resources and programs that are designed to serve similar populations;  
(3) promote public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA);
(4) promote public transportation projects that decrease the reliance of individuals with disabilities on ADA complementary paratransit services;

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

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

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

(c) Department role.

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

(A) a rural area;

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

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

(2) The department recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:
(A) develop application materials and disseminate information to prospective applicants and other interested parties;

(B) develop evaluation criteria and select projects for funding, with input from local entities and local individuals, in accordance with the standards set forth in subsection (i) of this section;

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

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

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

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

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

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

(d) Eligible recipients.

(1) Existing rural transit districts and urban transit districts serving a population of less than 200,000, local
public entities, private non-profit organizations, state and local government authorities that coordinate services for seniors and individuals with disabilities, or private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) are eligible recipients of funds for their respective service areas.

(2) For an area included in a rural or urban transit district’s service area for which the existing transit district is not willing or able to provide the transportation, the director may choose a local public entity or a private organization as an alternate recipient to receive §5310 funds. Private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) on a regular basis are also eligible alternate recipients. Any recipient that is not a transit district shall coordinate §5310 service with the existing transit district to ensure service is complementary to and not competitive with existing services.

(3) If the department is the designated recipient for an urbanized area with 200,000 population or more, a recipient for that area will be selected from local transportation providers who are transit authorities or eligible alternate recipients under this program.
(e) Eligible assistance categories. The following categories of expenses are eligible for federal reimbursement under the §5310 program.

(1) State administrative expenses. The department may use up to 10 percent of the annual federal program apportionment to defray its expenses incurred for the administration of the §5310 program. State administrative expenses do not require a non-federal match.

(2) Capital expenses.

   (A) With department concurrence, eligible items include:

   (i) buses;

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

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

   (iv) mobility management;

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

   (vi) radios and communication equipment;

   (vii) vehicle shelters;

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

   (ix) vehicle rehabilitation, remanufacture, or overhaul;

   (x) [micro]computer hardware and software;
(xi) initial component installation costs;
(xii) vehicle procurement, testing, inspection, and acceptance costs;
(xiii) vehicle extended warranties that do not exceed industry standards;
(xiv) the lease of equipment, provided that the local recipient determines a lease is more cost effective than the purchase of equipment after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 C.F.R. Part 639;
(xv) transit-related intelligent transportation systems;
(xvi) the introduction of new technology, through innovative and improved products, into mass transportation; and
(xvii) the acquisition of preventive maintenance services and vehicle parts associated with preventive maintenance services.

(B) For reimbursement:
(i) federal funds may be used to defray up to 80 percent of the cost of eligible capital expenditures;
(ii) the federal share may increase to up to 85 percent of the net project cost for a project that involves acquiring vehicles for the purpose of complying with the Americans with Disabilities Act or the Clean Air Act; and
(iii) the federal share may increase to up to 90 percent for incremental costs related to compliance with the Clean Air Act in areas of air quality non-attainment or with the Americans with Disabilities Act.

(3) Operating expenses.
   (A) Operating expenses are costs that are directly tied to systems operations, such as costs for fuel, oil, and replacement parts, and driver, mechanic, and dispatcher salaries.
   (B) Operating expenses may be reimbursed at 50 percent of net operating expense.

(f) Local share requirements.
   (1) Eligible sources to satisfy local share requirements may be derived from the following:
      (A) an undistributed cash surplus, or a replacement or depreciation cash fund or reserve;
      (B) a service agreement with a state or local social service or workforce agency, or a private social service organization;
      (C) amounts appropriated or otherwise made available to a U.S. department or agency that are eligible to be expended for transportation;
      (D) funds to carry out the federal lands highways program established by 23 U.S.C. §204;
      (E) funds available under §403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. §603(a)(5)(C)(vii));
(F) in-kind contributions, volunteer services, and donations attributable to the project if the value is documented and previously approved by the department; or

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

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

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

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

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

(B) divide each urbanized area's population of seniors and individuals with disabilities, as determined under subparagraph (A) of this paragraph, by the state's total population for urbanized areas with less than 200,000 population to determine that urbanized area's formula allocation.
(2) For rural areas, 25 percent of the available funds will be allocated equally, using department district boundaries of the districts that include such an area. To allocate the remaining 75 percent, the department will:

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

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

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

(4) Residual funds.

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

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

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

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

(1) The department will establish public outreach processes involving, after consultation with, local stakeholders, processes for local planning and project development, and public outreach. In an effort to streamline decision-making processes and maximize coordination opportunities, the department may choose to combine contiguous department district boundaries for stakeholder

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GCD: 10/17/2017  9:18 AM   Exhibit D
engagement, project selection, and public outreach. The stakeholder groups should include representatives of the following groups, further defined in FTA Circular 9070.1G, or its latest version:

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

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

(A) leverage existing resources and promote innovation;
(B) are the only public transportation option for the proposed service area;
(C) are sustainable over time;
(D) demonstrate efficient use of resources;
(E) involve partnerships that include organizations [and for-profit transportation providers]; or
(F) provide service continuity.

(3) At least 55 percent of the funds allocated by district boundaries or combination of district boundaries shall be used for capital expenses.
(4) Not more than 45 percent of the funds allocated by district boundaries or combination of district boundaries may be used for operating expenses. This cap applies to both urbanized areas and rural areas, respectively.

(5) The requirements of this subparagraph apply to all projects recommended for funding.

(A) There must be a demonstrated need for any capital purchases. Examples of items that may be used to demonstrate need include a needs assessment that documents the demand for new services, a vehicle inventory that establishes the need for replacement of older equipment, dispatcher logs that document requests for service that cannot be met with existing equipment, and purchase of service contracts that substantiate the need for additional vehicles.

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

(C) Consideration should be given to the applicant's past efforts to coordinate services and related activities with other local entities. Examples showing those efforts include contracts that outline purchase of service agreements, shared maintenance or dispatching functions, and joint training initiatives.
(D) There should be evidence of local support for the proposal. Examples of that evidence include resolutions by local governing bodies and endorsement letters from other organizations or individuals.

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

(6) Based on stakeholder input, department personnel assigned to cover district areas will rank projects in priority order.

(7) On receipt of the applications recommended for funding, the director, or the director's designee, will review all funding requests for completeness and compliance with all statutory and program administrative requirements. Following commission approval, the department will negotiate a contract with the selected local entities and organizations to implement the projects selected for funding.

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

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

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

§31.36. Section 5311 Grant Program.

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

(b) Goal and objectives. The department's goal in administering the §5311 program is to promote the availability of cost-effective, efficient, and coordinated passenger transportation services to the general public in rural areas using the most efficient combination of financial and other

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GCD: 10/17/2017  9:18 AM   Exhibit D
resources. To achieve this goal, the objectives of the department are to:

1. promote the development and maintenance of a network of general public transportation services, including intercity services, in rural areas throughout the state, in partnership with local officials;
2. fully integrate the §5311 program with other federal, state, and local resources that are designed to serve rural populations;
3. improve the efficiency, effectiveness, and safety of §5311 systems through the provision of technical assistance;
4. include private sector operators in the overall plan to provide public transportation services; and
5. minimize negative impacts from changes in public transportation district boundaries.

(c) Department role. The department acts as the designated recipient for all §5311 funds apportioned to the state and has an oversight responsibility for all rural transit services within the state. The department, however, recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:
1. develop application materials and disseminate information to prospective applicants and other interested parties;
(2) allocate the available program funds in a fair and equitable manner as described in subsection (g) of this section (the department will not provide §5311 funds to more than one transit system in a geographical area);

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

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

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

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

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

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

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

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

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

(2) Capital expenses.

(A) Eligible items include:

(i) buses;

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

(iii) radios and communications equipment;

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

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GCD: 10/17/2017  9:18 AM   Exhibit D
(v) wheelchair lifts and restraints;
(vi) vehicle rehabilitation, remanufacture, or overhaul;
(vii) preventive maintenance, including all maintenance costs;
(viii) extended warranties that do not exceed the industry standard;
(ix) the public transportation portion of ferry boats and terminals;
(x) operational support such as computer hardware or software;
(xi) installation costs and vehicle procurement, testing, inspection, and acceptance costs;
(xii) construction or rehabilitation of transit facilities, including design, engineering, and land acquisition;
(xiii) facilities to provide access for bicycles to transit facilities and equipment for transporting bicycles on transit vehicles;
(xiv) the lease of equipment or facilities, provided that the local subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase of equipment or facilities after considering management efficiency, availability of equipment, staffing capabilities and guidelines on capital leases as contained in 49 C.F.R. Part 639;
(xv) the capital portions of costs for service under contract;
(xvi) joint development projects (FTA Circular 9300.1B, or its latest version, provides guidelines for joint development projects);
(xvii) the introduction of new technology, through innovative and improved products, into mass transportation;
(xviii) transit-related intelligent transportation systems;
(xix) the provision of ADA paratransit service, which shall not exceed 10 percent of the state's annual apportionment of §5311 funds and shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service;
(xx) mobility management consisting of short-range planning, management activities and projects for improving coordination among public transportation, and other transportation service providers carried out through an agreement entered into with a person, including a governmental authority, but excluding operating expenses; and
(xxi) crime prevention and security.

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

(C) For reimbursement:

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

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

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

(iv) the federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands, individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments, with eligibility standards for the higher federal share being defined in FTA Circular 9040.1G [9040.1F], or its latest version.

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

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

(5) Planning expenses may be reimbursed at up to 80 percent with federal funds. FTA Circular 8100.1C or its latest version has a complete list of eligible activities, which include:

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

(B) evaluation of previous planning projects;
(C) work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operations of facilities and equipment;

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

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

(f) Local share requirements.

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

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

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

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

(5) Subrecipients may request transportation development credits be used for all or part of the local match.
(g) Allocation of funds. As part of its administration of the §5311 program, the department is charged with ensuring that there is a fair and equitable distribution of funds within the state (FTA Circular \textit{9040.1G} [\textit{9040.1F}] or its latest version).

After subtracting funds for state administrative expenses in accordance with subsection (e)(1) of this section, the department will allocate §5311 funds to local subrecipients in the following manner and order.

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

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

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

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

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

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

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

(B) The performance based allocation is 35 percent. The subrecipient is eligible for funding under this subparagraph if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The

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commission will award the funding by giving equal consideration to local funds per operating expense, ridership per vehicle revenue mile, and vehicle revenue miles per operating expense. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(C) Funding stability.

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

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

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

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

(4) **Total vehicle** [Vehicle revenue] mile allocation.

Any amount of the annual §5311 federal apportionment that is not otherwise allocated under this subsection will be allocated to rural areas, with the amount allocated to a rural area based on the proportion of **total vehicle** [revenue] miles for that rural area to the total of **total vehicle** [revenue] miles for all rural areas.

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

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

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

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

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

§31.42. Standard Federal Requirements.

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

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

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

§31.43. Contracting Requirements.

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

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

(c) Subcontracts. Subrecipients shall furnish to the department notice of the intent to award a purchase order or contract to any individuals or organizations not a part of the

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

§31.44. Procurement Requirements.

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

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

(1) Goods, services and equipment purchases.

(A) Goods, services, or equipment requiring formal competitive procurement in accordance with the applicable provisions in the Government Code or Local Government Code (greater than $25,000 for those entities not covered by the Government Code or Local Government Code) shall require sealed

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bids or proposals. Bids for computer and radio systems shall include all subcomponents necessary for the system to be operated in the unit cost. Exceptions will be allowed for those entities that are eligible to purchase items through the state open contract procedures.

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

(2) Real property.

(A) Acquisition of real property shall be accomplished in accordance with federal and state statutes, regulations, and policies. In particular, projects that receive federal funds shall comply with the uniform relocation and real property acquisition standards established in 49 C.F.R. Part 25.
(B) Specific standards for construction and rehabilitation projects will be negotiated as part of the project agreement between the department and the subrecipient.

(3) Records retention. All procurement documents are public information and shall be maintained by the subrecipient for at least three years after grant closeout, or, in the case of a capital project, the life of the asset plus three years.

(c) Department role.

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

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

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

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

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

(2) Technical assistance. The department will provide vehicle specifications, guidance on competitive procurement procedures, and assistance in developing procurement documentation to a subrecipient upon request. If subrecipients choose to develop their own specifications, they assume full responsibility for ensuring that the specifications do not restrict competition.


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

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

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

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

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

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

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

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

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

§31.47. Audit and Project Close-Out Standards.

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

(b) Audit standards. Contractor audit procedures shall meet or exceed the single audit report requirement of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [outlined in Office of Management and Budget (OMB) publications as follows: state or

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local governments follow OMB Circular A-128; and institutions of higher education and other nonprofit organizations follow OMB Circular A-133].

(1) Access. The United States Secretary of Transportation, the Comptroller General of the United States, the executive director of the department, and the State Auditor, and any of their authorized representatives, shall have access to the financial and other project records at all reasonable times during the contract period and for the record retention period for the purpose of making audits, examinations, excerpts and transcripts.

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

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

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

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

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

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

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

§31.48. Project Oversight.

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

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

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

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

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

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

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

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

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

(C) Pursuant to the requirements of Transportation Code, §456.008(a) and (b), the department will collect monthly data from transit operators in urbanized areas, including transit authorities, and publish annually data on industry utilized standards that best reflect ridership, mileage, revenue by source and service effectiveness. These standards include:

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

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

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

(iv) Safety--Total incidents per 100,000 miles of service and average number of miles between revenue vehicle mechanical system failures that prevent the vehicle from completing a scheduled revenue trip.
(D) Pursuant to the requirements of Transportation Code, §456.008(a) and (b), and 49 U.S.C. §5311, the department will collect monthly from transit operators in rural areas, and publish annually data on industry utilized standards that best reflect ridership, mileage, revenue by source and service effectiveness. These standards include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Drugs and alcohol.

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

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

(3) Fiscal responsibility. A department employee **quarterly** will [make on-site quarterly visits to] review agency financial records that support requests for payment.

(4) Insurance. Subrecipients of state or federal funds through the department shall insure all facilities, equipment, and vehicles from loss. Checks for appropriate insurance levels will occur at the time the local agency renews its policies.

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

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

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

(d) Noncompliance. A subrecipient that fails to comply with federal or state law, standard or special grant or subgrant conditions, or contractual agreements on which the grant or subgrant award is predicated, is subject to actions under Chapter 9, Subchapter H of this title (relating to Grant Sanctions).
SUBCHAPTER E. PROPERTY MANAGEMENT STANDARDS

§31.50. Recordkeeping and Inventory Requirements.

(a) Purpose. To protect the public investment in real property and equipment purchased in whole or in part with state or federal public transportation funds administered by the department, subrecipients shall comply with the standards described in this section.

(b) Property records. The subrecipient shall maintain records that include:

(1) a description of the property;
(2) a serial number or other identification number;
(3) the source of the property;
(4) who holds title;
(5) the acquisition date and cost of the property;
(6) the percentage of state and the percentage of federal participation in the cost of the property;
(7) the location, use, and condition of the property;
and
(8) any ultimate disposition data, including the date of disposal and sale price of the property.

(c) Inventory. The subrecipient shall cooperate with department representatives in performing at least once every two years a physical inventory of all real property and equipment, as defined in §31.3 of this chapter, purchased in whole or in part with state or federal capital funds administered by the department. However, during the time period between these...
physical inventories, the subrecipient shall promptly notify the
department in writing of all changes in the status of that real
property and equipment in order that department records may be
kept current. On or before November 1 of each year, the
subrecipient shall provide the department with an accurate
inventory, including the mileage, of all vehicles used in public
transportation service. Property shall remain on the
department’s and subrecipient's inventories until such time as
the property is formally disposed of in accordance with the
requirements outlined in §31.57 of this subchapter.

Notwithstanding the foregoing, the subrecipient shall, where
applicable, be bound by, and shall comply with, the inventory
requirements specified in 2 C.F.R Part 200 and Part 1201,
Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards [the common rule].

(d) Control system. The subrecipient must develop a
control system to ensure adequate safeguards to prevent loss,
damage, or theft of the property. The subrecipient shall
investigate any loss, damage, or theft.

§31.57. Disposition.

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

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

(c) Federal standards. The federal standards contained
in 2 C.F.R Part 200 and Part 1201, Uniform Administrative
Requirements, Cost Principles, and Audit Requirements for
Federal Awards [the Common Rule] shall govern the disposition of
real property and equipment purchased under contracts in which
the department provides all or part of the local share
requirement of federally assisted capital improvements. In
cases in which 2 C.F.R. Part 200 and Part 1201, Uniform
Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards [the Common Rule] does not
require reimbursement of the federal grantor agency, the
department will similarly release the state interest in the
capital improvement provided that the state's percentage share
of any proceeds derived by the subrecipient in the disposition
process shall be used by the subrecipient for public
transportation purposes similar to those for which the contract
award was originally made. If the subrecipient does not intend
to use the state's percentage share of the proceeds for public
transportation purposes, those monies shall be refunded as
described in subsection (d)(2)(B) of this section. In cases in

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which 2 C.F.R. Part 200 and Part 1201, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [the Common Rule] requires reimbursement of the federal grantor agency, the subrecipient shall provide the department a percentage of the proceeds of the disposition equal to the percentage of the state's original investment in the property or equipment. Once disposition is authorized, the subrecipient shall relinquish title to the property through either sale, auction, or transfer to another recipient of FTA funding. The department shall be notified of the disposition and shall be provided information necessary to delete the property from inventory records described in §31.50 of this subchapter (relating to Recordkeeping and Inventory Requirements).

(d) State standards. All real property and equipment obtained through contracts in which the department's contractual interest includes federal funds or state monies shall be governed by the disposition standards contained in paragraphs (1) and (2) of this subsection. The department shall be notified of the subrecipient's intent to proceed with the dispositions and provided information necessary to delete the property from inventory records described in §31.50 of this subchapter. Prior to disposition of property under the terms of this subsection, the subrecipient shall obtain written concurrence from the department and receive disposition instructions. Once disposition is authorized, the subrecipient
shall relinquish title to the property through either sale, auction, or transfer to another recipient of FTA or state funding.

(1) Disposition criteria.

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

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

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

(2) Distribution of disposition proceeds.

(A) Refund not required. In cases in which the disposition criteria contained in paragraph (1)(A) and (B) of this subsection have been met, the department will release its contractual interest in the capital improvement. The department will similarly release its contractual interest in cases in which exceptions are granted for early disposition in accordance with the provisions contained in subsection (e) of this section. However, the department's release of its interest in a capital improvement is contingent upon the subrecipient's assurance that the department's contractually specified percentage share of any proceeds derived by the subrecipient in the disposition process will be used by the subrecipient for public transportation purposes similar to those for which the contract award was

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originally made. In the case of transfers to non-transit uses, as allowed under 49 U.S.C. §5334(h), the department will release only the federal portion of its contractual interest. The department will consult with FTA as necessary to ensure compliance with federal standards. The state's percentage share shall be refunded as described in subparagraph (B) of this paragraph.

(B) Refund required. In cases in which the disposition criteria contained in paragraph (1)(A) and (B) of this subsection have not been met, but the subrecipient has received authorization from the department to proceed with the disposition of equipment or property, the subrecipient shall provide the department a percentage of the proceeds of the disposition equal to the percentage of the department's original contractual interest in the property or equipment. In cases of real property, as described in paragraph (1)(C) of this subsection, and when exceptions are not granted for early disposition, as described in subsection (e) of this section, the subrecipient shall similarly provide the department a percentage of the proceeds of the disposition equal to the percentage of the department's original contractual interest in the property or equipment. In the case of transfers to non-transit uses, as allowed under 49 U.S.C. §5334(h), the subrecipient shall provide the department a percentage of the proceeds of the disposition equal to the percentage of the original state percentage interest in the property or equipment, excluding any federal

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percentage interest that might have been included in the contract of assistance. The department will consult with FTA as necessary to ensure compliance with federal standards.

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

(e) Exceptions. The department will consider exceptions to this section on a case-by-case basis. The subrecipient must furnish information requested by the department to determine if an exception is warranted due to special circumstances. The department will consult with FTA as necessary to ensure compliance with federal standards.
AGENDA ITEM 6
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.