

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

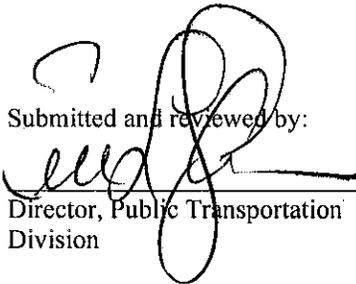
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §31.3, relating to definitions, and new §31.17, relating to job access and reverse commute program and new §31.18, relating to new freedom program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new sections, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §31.3 and new §31.17 and §31.18 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

**110614 JUL 27 06**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §31.3, definitions, new §31.17, concerning the job  
4 access and reverse commute program, and new §31.18 concerning  
5 the new freedom program.

6  
7 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

8 Title 49, USC §5316, as added by the Safe, Accountable,  
9 Flexible, Efficient Transportation Equity Act: A Legacy for  
10 Users, (Pub. L. No. 109-59) (2005) (SAFETEA-LU), authorizes the  
11 U.S. Secretary of Transportation to make available grants to  
12 support employment and employment-related public transportation  
13 activities under a program called "Job Access and Reverse  
14 Commute" (JARC).

15  
16 Title 49, USC §5317, as added by SAFETEA-LU, authorizes the U.S.  
17 Secretary of Transportation to make available grants for public  
18 transportation projects that provide new public transportation  
19 services and public transportation alternatives beyond those  
20 currently required by the Americans with Disabilities Act of  
21 1990 (ADA) that assist individuals with disabilities with  
22 transportation including transportation to and from jobs and  
23 employment support services. The program is called New Freedom  
24 (NF).

25

1 For urbanized areas less than 200,000 population and for rural  
2 areas, the governor of Texas (governor) has delegated project  
3 selection and grant administration for these programs to the  
4 Texas Transportation Commission (commission). The commission  
5 proposes the adoption of rules concerning project selection and  
6 the administration of the JARC and NF programs to implement  
7 federal laws and regulations and permit the commission to award  
8 grants.

9  
10 Existing §31.3, Definitions, is amended to include new terms  
11 used in §31.17 and §31.18. Definitions are taken from federal  
12 statute or other guidance published by the Federal Transit  
13 Administration. The definitions are renumbered to accommodate  
14 the alphabetical inclusion of the terms.

15  
16 New §31.3(16), Employment-related transportation, describes  
17 assistance to individuals in job search (interviews, trips to  
18 employment offices), job preparation (college or vocational  
19 training classes) and support activities such as taking children  
20 to daycare.

21  
22 New §31.3(30), Job access project, defines public transportation  
23 related to the development and maintenance of transportation  
24 services designed to transport welfare recipients and eligible  
25 low-income individuals to and from jobs and employment-related

1 destinations.

2

3 New §31.3(36), Low-income individual, is a person whose family  
4 income is at or below 150 percent of the poverty line (as that  
5 term is defined in §673(2) of the Community Services Block Grant  
6 Act (42 USC §9902(2)) for a family of the size involved, or as  
7 otherwise defined by 49 USC §5316, the Job Access and Reverse  
8 Commute program.

9

10 New §31.3(37), Mobility management, means short-range planning  
11 and management activities and projects for improving  
12 coordination among public transportation and other  
13 transportation services providers. Typically these activities  
14 are carried out by transit agencies or their subcontractors  
15 through an agreement with a person, including a governmental  
16 entity. Mobility management excludes operating public  
17 transportation services.

18

19 New §31.3(40), New public transportation service, with respect  
20 to the NF program, defines new services that: (1) are targeted  
21 toward people with disabilities; (2) meet the intent of the NF  
22 program by removing barriers to transportation and assisting  
23 persons with disabilities with transportation, including  
24 transportation to and from jobs and employment services; and (3)  
25 were not included in a Transportation Improvement Program or

1 Statewide Transportation Improvement Program prior to August 10,  
2 2005.

3

4 New §31.3(63), Reverse commute project, defines transportation  
5 of residents of urbanized areas and other than urbanized areas  
6 to suburban employment opportunities, or as otherwise defined by  
7 49 USC §5316, the Job Access and Reverse Commute program.

8

9 New §31.3(82), Welfare recipient, defines an individual who has  
10 received assistance under a state or tribal program funded under  
11 part A of Title IV of the Social Security Act at any time during  
12 the previous three-year period, or as otherwise defined by 49  
13 USC §5316, the Job Access and Reverse Commute program.

14

15 In developing new §31.17 and new §31.18, the department draws  
16 from the federal statute, the Federal Transit Administration's  
17 Interim Guidance on Implementation, published in the *Federal*  
18 *Register*, 71 Fed. Reg. 13,456 (March 15, 2006), and the  
19 department's existing rules for federal program administration  
20 contained in Title 43, Chapter 31, Subchapter C.

21

22 Section 31.17(a), Purpose, identifies the JARC federal law,  
23 states its purpose, and also states that the commission has been  
24 designated by the governor to administer the program in areas  
25 less than 200,000 population.

1

2 Section 31.17(b), Goal and objectives, states the department's  
3 goals and objectives for promoting public transportation  
4 services targeted to employment transportation in accordance  
5 with the Federal Transit Administration's guidance on  
6 implementing the program.

7

8 Section 31.17(c), Department role, states that the department  
9 will act as the designated recipient for funds for areas less  
10 than 200,000 population, while allowing subrecipients to retain  
11 control over daily operations.

12

13 Section 31.17(d), Project types, provides an illustrative list  
14 of projects that JARC grants may fund. The JARC project types  
15 detail elements included in these programs so that project  
16 sponsors will have an understanding of eligible project types.

17

18 Section 31.17(e), Eligible subrecipients, mirrors the language  
19 in 49 USC §5316 which lists eligible subrecipients as state  
20 agencies, local governmental authorities, private nonprofit  
21 organizations, and operators of public transportation services.  
22 Private for-profit businesses may participate as a contractor to  
23 a subrecipient. Applicants who are subrecipients of public  
24 transportation funds through another department program must be  
25 in good standing with the department as defined in §31.3.

1

2 Section 31.17(f), Eligible assistance categories, lists state  
3 administrative expenses, capital expenses, project  
4 administration expenses, planning expenses, marketing expenses  
5 and operating expenses as eligible for reimbursement and gives  
6 the percentage of federal and non-federal match required for  
7 each category.

8

9 Section 31.17(g), Ineligible expenses, lists those costs that  
10 are not reimbursable, which includes construction expenses,  
11 except for minor passenger amenities, extended vehicle  
12 warranties, purchase and/or maintenance of vehicles for private  
13 use, and other expenses prohibited by the Federal Transit  
14 Administration.

15

16 Section 31.17(h), Local share requirements, states that other  
17 U.S. Department of Transportation funds cannot be used for the  
18 local (non-federal) match requirement. Eligible match sources  
19 include local, state and federal programs, including funds  
20 disbursed from the Texas Workforce Commission, local workforce  
21 development boards, human services agencies and the Medicaid  
22 Medical Transportation Program. Documented in-kind services  
23 related to a proposed JARC project are eligible with prior  
24 department approval. The subsection clarifies that fares cannot  
25 be used for local match but must, instead, reduce the net

1 operating expense.

2

3 Section 31.17(i), Planning requirement, reflects the federal  
4 requirement for prioritized JARC projects to be derived from a  
5 locally developed, coordinated public transit-human services  
6 transportation plan. It is anticipated that the regional  
7 service planning process will be used to meet the requirements  
8 of the local coordinated planning process.

9

10 Section 31.17(j), Allocation of funds, allows the department to  
11 use up to 10% of the federal apportionment to urbanized areas  
12 less than 200,000 population and to nonurbanized areas for  
13 administrative, planning and technical assistance activities  
14 associated with JARC. The commission will competitively award  
15 the remaining funds. The department will issue a call for  
16 projects in the *Texas Register*. The subsection lists the  
17 content of the *Texas Register* notice. Funds from one category  
18 (urbanized area less than 200,000 population or nonurbanized  
19 area) shall not be moved to the other, without a certification  
20 from the governor. The origination location of the riders shall  
21 be the basis for determining which apportionment is used to fund  
22 a particular project.

23

24 Section 31.17(k), Grant award, states that the department will  
25 enter into a grant agreement with individual subrecipients. The

1 commission has expressed its commitment to a plan to improve  
2 transportation in Texas. The plan has five goals: 1) reduce  
3 congestion; 2) enhance safety; 3) expand economic opportunity;  
4 4) improve air quality; and, 5) increase the value of  
5 transportation assets. The subsection enumerates the criteria  
6 that the commission will use in awarding grant funds in a manner  
7 that facilitates the goals of the plan. Failure to expend funds  
8 in a timely manner may cause the department to terminate the  
9 grant and re-award the balance of funds to another project.

10

11 Section 31.17(1), Vehicle leasing, permits subrecipients to  
12 lease vehicles to other entities, with prior department  
13 approval, such as local public bodies or agencies, private non-  
14 profit organizations and private for-profit businesses, as long  
15 as the purpose of the JARC project is carried out by this  
16 entity. The subrecipient is responsible for ensuring the lessee  
17 follows all applicable laws and regulations.

18

19 Section 31.17(m), Incidental vehicle use, allows vehicles to be  
20 used for other purposes, and to accommodate riders not engaged  
21 in employment activities, when such activities/riders do not  
22 interfere with employment transportation purposes.

23

24 Section 31.17(n), Disposition of vehicles at end of the grant,  
25 states that vehicles purchased with JARC funds may be

1 transferred to another subrecipient in accordance with state and  
2 federal disposition requirements.

3

4 Section 31.18(a), Purpose, identifies the New Freedom federal  
5 law, states its purpose, and also states that the commission has  
6 been designated by the governor to administer the program in  
7 areas with less than 200,000 population.

8

9 Section 31.18(b), Goal and objectives, states the department's  
10 goal and objectives for the NF program. These projects shall  
11 provide new public transportation services and public  
12 transportation alternatives beyond those currently required by  
13 the Americans with Disabilities Act of 1990 (ADA) that assist  
14 individuals with disabilities with transportation including  
15 transportation to and from jobs and employment support services.

16

17 Section 31.18(c), Department role, stipulates that the  
18 department will act as the designated recipient for funds for  
19 areas with less than 200,000 population, while allowing  
20 subrecipients to retain control over daily operations.

21

22 Section 31.18(d), Project types, provides an illustrative list  
23 of projects that NF grants may fund. The projects listed are  
24 examples of new public transportation services and public  
25 transportation alternatives beyond those currently required by

1 the Americans with Disabilities Act of 1990 (ADA) that assist  
2 individuals with disabilities with transportation, including  
3 transportation to and from jobs and employment support services.  
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5 Section 31.18(e), Eligible subrecipients, mirrors the language  
6 in 49 USC §5317 which lists eligible subrecipients as state  
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12 in good standing with the department as defined in §31.3.  
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14 Section 31.18(f), Eligible assistance categories, lists state  
15 administrative expenses, capital expenses, project  
16 administration expenses, and operating expenses as eligible for  
17 reimbursement and gives the percentage of federal and non-  
18 federal match required for each category.  
19

20 Section 31.18(g), Ineligible expenses, lists those costs that  
21 are not reimbursable, including extended vehicle warranties,  
22 purchase and/or maintenance of private use vehicles, and other  
23 FTA prohibited expenses.  
24

25 Section 31.18(h), Local share requirements, states that other

1 U.S. Department of Transportation funds cannot be used for the  
2 local (non-federal) match requirement. Eligible match sources  
3 include local, state, and federal programs, including funds  
4 disbursed from the Texas Workforce Commission, local workforce  
5 development boards, human services agencies and the Medicaid  
6 Medical Transportation Program. Documented in-kind services  
7 related to the NF project are eligible with prior department  
8 approval. The subsection clarifies that fares cannot be used  
9 for local match but must, instead, reduce the net operating  
10 expense.

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12 Section 31.18(i), Planning requirement, reflects the federal  
13 requirement for prioritized NF projects to come from a locally  
14 developed, coordinated public transit-human services  
15 transportation plan. It is anticipated that the regional  
16 service planning process will be used to meet the requirements  
17 of the local coordinated planning process.

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19 Section 31.18(j), Allocation of funds, allows the department to  
20 use up to 10% of the federal apportionment to urbanized areas  
21 with less than 200,000 population and to nonurbanized areas for  
22 administrative, planning, and technical assistance activities  
23 associated with NF. The commission will competitively award the  
24 remaining funds. The department will issue a call for projects  
25 in the *Texas Register*. The subsection lists the content of the

1 Texas Register notice. Funds from one category (urbanized area  
2 less than 200,000 population or nonurbanized area) shall not be  
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12 4) improve air quality; and, 5) increase the value of  
13 transportation assets. The subsection enumerates the criteria  
14 that the commission will use in awarding grant funds in a manner  
15 that facilitates the goals of the plan. Failure to expend funds  
16 in a timely manner may cause the department to terminate the  
17 grant and re-award the balance of funds to another project.

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19 Section 31.18(l), Vehicle leasing, permits subrecipients to  
20 lease vehicles to other entities, with prior department  
21 approval, such as local public bodies or agencies, private non-  
22 profit organizations, and private for-profit businesses, as long  
23 as the purpose of the NF project is carried out by this entity.  
24 The subrecipient is responsible for ensuring the lessee follows  
25 all applicable laws and regulations.

1

2 Section 31.18(m), Incidental vehicle use, allows vehicles to be  
3 used for other purposes, and to accommodate able-bodied persons,  
4 when such activities/riders do not interfere with transportation  
5 opportunities specifically designed for persons with  
6 disabilities.

7

8 Section 31.18(n), Disposition of vehicles at end of the grant,  
9 states that vehicles purchased with NF funds may be transferred  
10 to another subrecipient in accordance with state and federal  
11 disposition requirements.

12

13 The Public Transportation Advisory Committee (PTAC) met on June  
14 28, 2006 to review the draft rules. PTAC met on July 13, 2006  
15 and by motion recommended to the commission that the proposed  
16 amended and new rules be published in the *Texas Register*.

17

18 FISCAL NOTE

19 James Bass, Chief Financial Officer, has determined that for  
20 each of the first five years the amendments and new sections as  
21 proposed are in effect, there will be fiscal implications for  
22 state or local governments as a result of enforcing or  
23 administering the amendments and new sections. SAFETEA-LU  
24 provides authorized funding for its formula programs, including  
25 JARC and NF programs, for federal fiscal years 2006 through

1 2009. These authorized levels will provide new federal funds of  
2 approximately \$7.9 million to \$9.2 million annually. With the  
3 exception of 10% of authorized funds used for department  
4 administration of the program, the funds will be made available  
5 to subrecipients in the form of competitive grants. Funds  
6 apportionment for FY 2006 will be combined and distributed along  
7 with funds for FY 2007. There are no anticipated economic costs  
8 for persons required to comply with the sections as proposed.

9  
10 Eric Gleason, Director, Public Transportation Division, has  
11 certified that there will be no significant impact on local  
12 economies or overall employment as a result of enforcing or  
13 administering the amendments and new sections.

14  
15 PUBLIC BENEFIT

16 Mr. Gleason has also determined that for each year of the first  
17 five years the sections are in effect, the public benefit  
18 anticipated as a result of enforcing or administering the  
19 amendments and new sections will be improved transportation  
20 services for welfare recipients and low income individuals for  
21 employment opportunities, including to suburban areas, and  
22 improved transportation services and facilities for persons with  
23 disabilities. There will be no adverse economic effect on small  
24 businesses.

25

1 PUBLIC HEARING

2 Pursuant to the Administrative Procedure Act, Government Code,  
3 Chapter 2001, the Texas Department of Transportation will  
4 conduct a public hearing to receive comments concerning the  
5 proposed rules. The public hearing will be held at 1:30 p.m. on  
6 August 30, 2006, in the first floor hearing room of the Dewitt  
7 C. Greer State Highway Building, 125 East 11th Street, Austin,  
8 Texas and will be conducted in accordance with the procedures  
9 specified in 43 TAC §1.5. Those desiring to make comments or  
10 presentations may register starting at 1:00 p.m. Any interested  
11 persons may appear and offer comments, either orally or in  
12 writing; however, questioning of those making presentations will  
13 be reserved exclusively to the presiding officer as may be  
14 necessary to ensure a complete record. While any person with  
15 pertinent comments will be granted an opportunity to present  
16 them during the course of the hearing, the presiding officer  
17 reserves the right to restrict testimony in terms of time and  
18 repetitive content. Organizations, associations, or groups are  
19 encouraged to present their commonly held views and identical or  
20 similar comments through a representative member when possible.  
21 Comments on the proposed text should include appropriate  
22 citations to sections, subsections, paragraphs, etc. for proper  
23 reference. Any suggestions or requests for alternative language  
24 or other revisions to the proposed text should be submitted in  
25 written form. Presentations must remain pertinent to the issues

1 being discussed. A person may not assign a portion of his or  
2 her time to another speaker. Persons with disabilities who plan  
3 to attend this meeting and who may need auxiliary aids or  
4 services such as interpreters for persons who are deaf or  
5 hearing impaired, readers, large print or Braille, are requested  
6 to contact Randall Dillard, Director, Public Information Office,  
7 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at  
8 least two working days prior to the hearing so that appropriate  
9 services can be provided.

10

11 SUBMITTAL OF COMMENTS

12 Written comments on the amendments and new sections may be  
13 submitted to Eric Gleason, Director, Public Transportation  
14 Division, Texas Department of Transportation, 125 East 11th  
15 Street, Austin, Texas 78701-2483. The deadline for receipt of  
16 comments is 5:00 p.m. on September 11, 2006.

17

18 STATUTORY AUTHORITY

19 The amendments and new sections are proposed under  
20 Transportation Code, §201.101, which provides the commission  
21 with the authority to establish rules for the conduct of the  
22 work of the department.

23

24 CROSS REFERENCE TO STATUTE

25 Transportation Code, §201.101 and Chapter 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 a subrecipient during the fiscal year, subject to the subrecipient's completion of and compliance with all application requirements, rules, and regulations applicable to the specific funding program.

(3) Authority--A metropolitan or regional authority created under Transportation Code, Chapter 451 or 452, or a city transit department created under Transportation Code, Chapter 453, by a municipality having a population of not less than 200,000 according to the most recent federal census.

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

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

5 (6) Commission--The Texas Transportation Commission.

6 (7) Common rule--49 CFR[7] Part 18, Uniform  
7 Administrative Requirements for Grants and Cooperative  
8 Agreements to State and Local Governments.

9 (8) Contractor--A recipient of public transportation  
10 funds through a contract with the department.

11 (9) Corrective action plan--A plan developed by the rail  
12 transit agency that describes the actions the rail transit  
13 agency will take to minimize, control, correct, or eliminate  
14 hazards, and the schedule for implementing those actions.

15 (10) Department--The Texas Department of Transportation.

16 (11) Deputy executive director--The deputy executive  
17 director of the department.

18 (12) Designated recipient--The state, an authority, a  
19 municipality that is not included in an authority, a local  
20 governmental body, or a nonprofit entity providing rural public  
21 transportation services, that receives federal or state public  
22 transportation money through the department or the Federal  
23 Transit Administration, or its successor.

1 (13) Director--The director of public transportation for  
2 the department.

3 (14) District--One of the 25 districts of the department  
4 having responsibility for administration of public  
5 transportation programs in a designated geographic area.

6 (15) District engineer--The chief executive officer in  
7 charge of a district.

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

12 (17) [~~+16~~] Equipment--Tangible, nonexpendable, personal  
13 property having a useful life of more than one year and an  
14 acquisition cost of \$5,000 or more per unit.

15 (18) [~~+17~~] Executive director--The chief executive  
16 officer of the department.

17 (19) [~~+18~~] Fatality--A death that results from an  
18 incident and that occurs within 30 days following the incident.

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

1 transportation.

2           (21) [~~20~~] Fiscal year--The state accounting period of  
3 12 months that begins on September 1 of each calendar year and  
4 ends on August 31 of the following calendar year.

5           (22) [~~21~~] FRA--The Federal Railroad Administration, an  
6 agency of the United States Department of Transportation.

7           (23) [~~22~~] FTA--The Federal Transit Administration, an  
8 agency of the United States Department of Transportation.

9           (24) [~~23~~] Good standing--A status indicating that the  
10 department's director of public transportation has not sent a  
11 letter to an entity signifying the entity is in noncompliance  
12 with any aspect of a program.

13           (25) [~~24~~] Hazard--Any real or potential condition (as  
14 defined in the rail transit agency's hazard management process)  
15 that can cause injury, illness, or death; damage to or loss of a  
16 system, equipment or property; or damage to the environment.

17           (26) [~~25~~] Incident--An intentional or unintentional act  
18 that occurs on or in association with transit-controlled  
19 property and that threatens or affects the safety or security of  
20 an individual or property.

21           (27) [~~26~~] Individual--A passenger; employee;  
22 contractor; other rail transit facility worker; pedestrian;  
23 trespasser; or any person on rail transit controlled property.

1           (28) [~~27~~] Injury--Any physical damage or harm that  
2 occurs to an individual as a result of an incident and that  
3 requires immediate medical attention away from the scene.

4           (29) [~~28~~] Investigation--The process used to determine  
5 the causal and contributing factors of an accident or hazard, so  
6 that actions can be identified to prevent recurrence.

7           (30) Job access project--A public transportation project  
8 relating to the development and maintenance of transportation  
9 services designed to transport welfare recipients and eligible  
10 low-income individuals to and from jobs and activities related  
11 to their employment, or as otherwise defined by 49 USC §5316,  
12 the Job Access and Reverse Commute program.

13           (31) [~~29~~] Like-kind exchange--The trade-in or sale of a  
14 transit vehicle before the end of its useful life to acquire a  
15 replacement vehicle of like kind.

16           (32) [~~30~~] Local funds--Directly generated funds, as  
17 defined in the latest edition of the Federal Transit  
18 Administration National Transit Database Reporting Manual.  
19 Examples include, but are not limited to, passenger fares,  
20 special transit fares, purchased transportation fares, park and  
21 ride revenue, other transportation revenue, charter service  
22 revenue, freight tariffs, station and vehicle concessions,  
23 advertising revenue, funds dedicated to transit at their source,

1 taxes, cash contributions, contract revenue, general revenue,  
2 and in-kind contributions.

3 (33) [~~31~~] Local governmental entity--Any local unit of  
4 government including a city, town, village, municipality,  
5 county, city transit department, metropolitan transit authority,  
6 or regional transit authority.

7 (34) [~~32~~] Local public body--Includes cities, counties,  
8 and other political subdivisions of states; public agencies; and  
9 instrumentalities of one or more states, municipalities, or  
10 political subdivisions of states.

11 (35) [~~33~~] Local share requirement--The amount of funds  
12 required and eligible to match federally funded projects for the  
13 improvement of public transportation.

14 (36) Low income individual--An individual whose family  
15 income is at or below 150 percent of the poverty line (as that  
16 term is defined in section 673(2) of the Community Services  
17 Block Grant Act (42 USC §9902(2)), including any revision  
18 required by that section, for a family of the size involved, or  
19 as otherwise defined by 49 USC §5316, the Job Access and Reverse  
20 Commute program.

21 (37) Mobility management--Consists of short-range  
22 planning and management activities and projects for improving  
23 coordination among public transportation and other

1 transportation services providers carried out by transit  
2 agencies or their subcontractors through an agreement with a  
3 person, including a government entity. Mobility management  
4 excludes operating public transportation services.

5 (38) [~~34~~] MPO--Metropolitan Planning Organization, the  
6 organization designated by the governor as the responsible  
7 entity for transportation planning in urbanized areas over  
8 50,000 in population.

9 (39) [~~35~~] Net operating expenses--Those expenses that  
10 remain after operating revenues are subtracted from eligible  
11 operating expenses.

12 (40) New public transportation service--Service, with  
13 respect to the New Freedom program, that:

14 (A) is targeted toward people with disabilities;

15 (B) meets the intent of the program by removing  
16 barriers to transportation and assisting persons with  
17 disabilities with transportation, including transportation to  
18 and from jobs and employment services; and

19 (C) is not included in a Transportation Improvement  
20 Program or Statewide Transportation Improvement Program prior to  
21 August 10, 2005.

22 (41) [~~36~~] New starts project--Any rail fixed guideway  
23 system funded under FTA's 49 USC §5309 [~~U.S.C. 5309~~]

1 discretionary construction program.

2 (42) [~~37~~] Nonprofit organization--A corporation or  
3 association determined by the Secretary of the Treasury of the  
4 United States to be an organization described by 26 USC §501(c),  
5 one that is exempt from taxation under 26 USC §504(a) or §101,  
6 or one that has been determined under state law to be nonprofit  
7 and for which the state has received documentation certifying  
8 the status of the nonprofit organization.

9 (43) [~~38~~] Nonurbanized area--An area outside an  
10 urbanized area.

11 (44) [~~39~~] Obligated funds--Monies made available under  
12 a valid, unexpired contract between the department and a public  
13 transportation subrecipient.

14 (45) [~~40~~] Operating expenses--Costs directly related to  
15 system operations of a transit agency regardless of the category  
16 of funding. At a minimum, this definition includes:

17 (A) fuel, oil, replacement tires, replacement parts  
18 that do not meet the criteria for capital items, drivers' and  
19 mechanics' salaries and fringe benefits, dispatchers' salaries,  
20 and licenses;

21 (B) maintenance, repair, servicing, and inspection of  
22 transit agency property, including both vehicles and other  
23 property, whether routine or to remedy the effects of collision

1 damage or vandalism; and

2 (C) expenses funded with capital or administrative  
3 funds, including preventative maintenance, provision of  
4 paratransit service under the Americans with Disability Act  
5 (ADA), capital cost of contracting, and insurance.

6 (46) [~~41~~] Passenger operations--The period of time when  
7 any aspects of rail transit agency operations are initiated with  
8 the intent to carry passengers.

9 (47) [~~42~~] Private--Pertaining to nonpublic entities.  
10 This definition does not include municipalities or other  
11 political subdivisions of the state; public agencies or  
12 instrumentalities of one or more states; Indian tribes (except  
13 private nonprofit corporations formed by Indian tribes); public  
14 corporations, boards, or commissions established under the law  
15 of any state; or entities subject to control by public  
16 authority, whether state or municipal.

17 (48) [~~43~~] Program standard--A written document  
18 developed and distributed by the oversight agency, that  
19 describes the policies, objectives, responsibilities, and  
20 procedures used to provide rail transit agency safety and  
21 security oversight.

22 (49) [~~44~~] Project--The public transportation activities  
23 to be carried out by a subrecipient, as described in its

1 application for funding.

2       (50) [~~45~~] Property damage--The dollar amount required  
3 to replace any vehicle, whether transit or non-transit, and any  
4 property or facility damaged during an incident, or to repair it  
5 to the condition of the property or facility [~~a state equivalent~~  
6 ~~to the state~~] that existed before the incident.

7       (51) [~~46~~] Public transportation--Transportation of  
8 passengers and their hand-carried packages or baggage on a  
9 regular or continuing basis by means of surface or water  
10 conveyance. This definition includes fixed guideway  
11 transportation and underground transportation, but excludes  
12 services provided by aircraft, taxicabs, ambulances, and  
13 emergency vehicles.

14       (52) [~~47~~] Rail transit accident--An incident involving  
15 a rail fixed guideway transit vehicle or taking place on rail  
16 fixed guideway transit controlled property where one or more of  
17 the following occurs:

18           (A) a [A] fatality at the scene; or where an individual  
19 is confirmed dead within thirty (30) days of a rail fixed  
20 guideway transit-related incident;

21           (B) injuries [~~Injuries~~] requiring immediate medical  
22 attention away from the scene for two or more individuals;

23           (C) property [~~Property~~] damage to rail fixed guideway

1 transit vehicles, non-rail transit vehicles, other rail transit  
2 property or facilities and non-transit property that equals or  
3 exceeds \$25,000;

4 (D) an [~~A~~] evacuation due to life safety reasons;

5 (E) a [A] collision at a grade crossing;

6 (F) a [A] main-line derailment;

7 (G) a [A] collision with an individual on a rail fixed  
8 guideway right of way; or

9 (H) a [A] collision between a rail fixed guideway  
10 transit vehicle and a second rail fixed guideway transit  
11 vehicle, or a rail fixed guideway transit non-revenue vehicle.

12 (53) [~~48~~] Rail transit agency--An entity operating a  
13 rail fixed guideway system.

14 (54) [~~49~~] Rail transit contractor--An entity that  
15 performs tasks required on behalf of the oversight or rail  
16 transit agency. The fixed guideway system may not be a  
17 contractor for the oversight agency.

18 (55) [~~50~~] Rail transit controlled property--Property  
19 that is used by the rail transit agency and may be owned,  
20 leased, or maintained by the rail transit agency.

21 (56) [~~51~~] Rail transit fixed guideway system--Any  
22 light, heavy, or rapid rail system, monorail, inclined plane,  
23 funicular, trolley, or automated guideway, as determined by the

1 FTA, that:

2 (A) is not regulated by the Federal Railroad  
3 Administration; and

4 (B) is included in FTA's calculation of fixed guideway  
5 route miles or receives funding under FTA's formula program for  
6 urbanized areas (49 USC §5336 [~~U.S.C. 5336~~]); or

7 (C) has submitted documentation to FTA indicating its  
8 intent to be included in FTA's calculation of fixed guideway  
9 route miles to receive funding under FTA's formula program for  
10 urbanized areas (49 USC §5336 [~~U.S.C. 5336~~]).

11 (57) [~~(52)~~] Rail transit passenger--A person who is on  
12 board, boarding, or alighting from a rail transit vehicle for  
13 the purpose of travel.

14 (58) [~~(53)~~] Rail transit vehicle--The rail transit  
15 agency's rolling stock, including, but not limited to passenger  
16 and maintenance vehicles.

17 (59) [~~(54)~~] Real property--Land, including improvements,  
18 structures, and appurtenances, but excluding movable machinery  
19 and equipment.

20 (60) [~~(55)~~] Revenue service--Passenger transportation  
21 occurring when a vehicle is available to the general public and  
22 there is a reasonable expectation of carrying passengers that  
23 directly pay fares, are subsidized by public policy, or provide

1 payment through some contractual agreement. This does not imply  
2 that a cash fare must be paid. Vehicles operated in free fare  
3 services are considered in revenue service.

4 (61) [~~(56)~~] Revenue vehicle--The rolling stock used in  
5 providing transit service for passengers. This definition does  
6 not include a vehicle used in connection with keeping revenue  
7 vehicles in operation, such as a tow truck or a staff car.

8 (62) [~~(57)~~] Revenues--Fares paid by riders, including  
9 those who are later reimbursed by a human service agency or  
10 other user-side subsidy arrangement. This definition includes  
11 subscription service fees, whether or not collected on-board a  
12 transit vehicle. Payments made directly to the transportation  
13 system by a human service agency are not considered to be  
14 revenues.

15 (63) Reverse commute project--A public transportation  
16 project designed to transport residents of urbanized areas and  
17 other than urbanized areas to suburban employment opportunities,  
18 or as otherwise defined by 49 USC §5316, the Job Access and  
19 Reverse Commute program.

20 (64) [~~(58)~~] Ridership--Unlinked passenger trips.

21 (65) [~~(59)~~] Ridesharing activities--Transportation  
22 provided by rubber-tired vehicles that carry no fewer than 10  
23 nor more than 15 passengers and that are operated on a nonprofit

1 basis.

2 (66) [~~(60)~~] Rural public transportation (RPT)--A generic  
3 term used to identify subrecipients who provide service in  
4 nonurbanized areas.

5 (67) [~~(61)~~] Rural transit district--A political  
6 subdivision of the state that provides and coordinates rural  
7 public transportation within its boundaries in accordance with  
8 the provisions of Transportation Code, Chapter 458.

9 (68) [~~(62)~~] Safety--Freedom from harm resulting from  
10 unintentional acts or circumstances.

11 (69) [~~(63)~~] Security--Freedom from harm resulting from  
12 intentional acts or circumstances. Intentional danger includes  
13 crimes and must be reported to the department if the intentional  
14 act meets the thresholds for notification.

15 (70) [~~(64)~~] Stakeholders--All individuals or groups that  
16 are potentially affected by transportation decisions. Examples  
17 include public agencies, representatives of transportation  
18 agency employees or other affected employees, private providers  
19 of transportation, non-governmental agencies, local businesses,  
20 persons in diverse and traditionally underserved communities,  
21 and other interested parties.

22 (71) [~~(65)~~] Strategic priorities--Projects that the  
23 commission has determined will:

1 (A) stabilize funding levels;

2 (B) increase transit operating efficiency or  
3 effectiveness as demonstrated by significant cost savings or  
4 substantial enhancements to service delivery; or

5 (C) advance the level of coordination among  
6 transportation service providers, and among transportation  
7 service providers and health and human services agencies.

8 (72) [~~66~~] Subrecipient--An entity that receives state  
9 or federal transportation funding [~~FTA assistance~~] from the  
10 department, rather than directly from FTA or other state or  
11 federal funding source.

12 (73) [~~67~~] System safety program plan--A document  
13 developed by the rail transit agency, describing its safety  
14 policies, objectives, responsibilities, and procedures.

15 (74) [~~68~~] System security plan--A document developed by  
16 the rail transit agency describing its security policies,  
17 objectives, responsibilities, and procedures.

18 (75) [~~69~~] Uniform grant and contract management  
19 standards--The standards contained in the Texas Administrative  
20 Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant  
21 and contract management standards for state agencies.

22 (76) [~~70~~] Unlinked passenger trips--The number of  
23 passengers who board public transportation vehicles. A

1 passenger is counted each time the passenger boards a vehicle  
2 even though the passenger might be on the same journey from  
3 origin to destination.

4 (77) [~~(71)~~] Urban transit district--In accordance with  
5 Transportation Code, Chapter 458, a local governmental body or a  
6 political subdivision of the state that operates a public  
7 transportation system in an urbanized area with a population  
8 between 50,000 and 200,000, according to the most recent federal  
9 census. This definition includes small urban transportation  
10 providers under Transportation Code, Chapter 456, that received  
11 state money through the department on September 1, 1994.

12 (78) [~~(72)~~] Urbanized area--A core area and the  
13 surrounding densely populated area with a population of 50,000  
14 or more, with boundaries fixed by the United States Census  
15 Bureau.

16 (79) [~~(73)~~] Vehicle miles--The miles a vehicle travels  
17 while in revenue service, plus deadhead miles. This definition  
18 excludes miles a vehicle travels for charter service, school bus  
19 service, operator training, or maintenance testing.

20 (80) [~~(74)~~] Vehicle revenue hours or miles--The hours or  
21 miles a vehicle travels while in revenue service. This  
22 definition includes layover and recovery, but excludes travel to  
23 and from storage facilities, the training of operators prior to

1 revenue service, road tests, deadhead travel, and school bus and  
2 charter service.

3 (81) [~~75~~] Vehicle utilization--Average daily passenger  
4 trips per revenue vehicle, divided by average revenue vehicle  
5 capacity. This definition provides a measure of an individual  
6 system's ability to use existing seating capacity.

7 (82) Welfare recipient--An individual who has received  
8 assistance under a state or tribal program funded under the  
9 Social Security Act, Title IV, Part A, at any time during the  
10 previous three year period, or as otherwise defined by 49 USC  
11 §5316, the Job Access and Reverse Commute program.

1                   SUBCHAPTER C.   FEDERAL PROGRAMS

2   §31.17.   Section 5316 Grant Program.

3           (a) Purpose.   The Federal Transit Act, codified at 49 USC  
4   §5316, authorizes the Secretary of the United States Department  
5   of Transportation to make grants for public transportation  
6   projects for access to jobs and reverse commute purposes.  The  
7   commission has been designated by the governor to administer the  
8   Section 5316 program, known as the Job Access and Reverse  
9   Commute program, or JARC, in areas less than 200,000 population.

10          (b) Goal and objectives.  The department's goal in  
11   administering the Section 5316 program is to promote the  
12   availability of public transportation services targeted to  
13   employment and employment-related transportation needs.  To  
14   achieve this goal, the department's objectives are to:

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

19           (2) fully integrate the Section 5316 program with other  
20   federal and state programs supporting public, employment, and  
21   human service transportation;

22           (3) foster the development of local, coordinated public  
23   and human service transportation service plans from which JARC

1 projects are derived;

2 (4) support local economic development; and

3 (5) improve the efficiency and effectiveness of the  
4 Section 5316 program through the provision of technical  
5 assistance.

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

11 (d) Project types.

12 (1) Job access projects include:

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

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

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

22 (D) supporting mobility management and coordination  
23 programs among public transportation providers and other human

1 service agencies providing employment or employment-related  
2 transportation services; and

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

6 (2) Reverse commute projects include:

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

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

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

19 (D) otherwise facilitating or providing public  
20 transportation services to suburban employment opportunities.

21 (e) Eligible subrecipients.

22 (1) State agencies, local governmental authorities,  
23 private nonprofit organizations, and operators of public

1 transportation services are eligible to receive Section 5316  
2 funds through the department. Private for-profit operators of  
3 public transportation services may participate in the program  
4 through contracts with eligible subrecipients.

5 (2) Applicants who are subrecipients of public  
6 transportation funds through another program administered by the  
7 department must be in good standing with the department as  
8 defined in §31.3 of this chapter.

9 (f) Eligible assistance categories.

10 (1) State administrative expenses. The department may  
11 use up to 10% of the annual federal apportionment for urbanized  
12 areas less than 200,000 population and nonurbanized areas to  
13 defray the expenses incurred for the planning and administration  
14 of the Section 5316 program. State administrative and technical  
15 assistance expenses do not require a non-federal match.

16 (2) Capital expenses.

17 (A) Eligible items are:

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

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

22 (iii) radios and communication equipment;

23 (iv) equipment installation costs;

1 (v) vehicle procurement, testing, inspection, and

2 acceptance costs;

3 (vi) preventive maintenance, including all

4 maintenance costs;

5 (vii) vehicle rebuilding or overhaul;

6 (viii) capital and operating support including

7 computer hardware or software, with prior department approval;

8 (ix) transit-related intelligent transportation

9 systems;

10 (x) the introduction of new technology, through

11 innovative and improved products, into public transportation;

12 (xi) passenger shelters, bus stop signs, and similar

13 passenger amenities, with prior department approval;

14 (xii) mobility management;

15 (xiii) the lease of vehicles or equipment, provided

16 that the subrecipient, with the concurrence of the department,

17 determines that a lease is more cost effective than purchase

18 after considering management efficiency, availability of

19 equipment, staffing capabilities, and guidelines on capital

20 leases as contained in 49 CFR Part 639;

21 (xiv) the capital portions of costs for service under

22 contract as described in FTA Circular 9030.1C or its latest

23 published version; and

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

6           (B) Reimbursement rates.

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

9           (ii) the federal share may increase to up to 90% for  
10 incremental costs related to compliance with the Clean Air Act  
11 or with the ADA; and

12           (iii) eligibility standards for the higher federal  
13 share are defined in FTA Circular 9030.1C, or its latest  
14 version.

15           (3) Project administration. Administrative costs  
16 associated with the JARC project are eligible for a federal  
17 reimbursement rate of 50%.

18           (4) Planning activities. The federal reimbursement rate  
19 is 80%. Planning activities may include:

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

22           (B) evaluation of previously funded projects; and

23           (C) other similar or related activities prior to and in

1 preparation for the undertaking or improvement of JARC-eligible  
2 services.

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

5 (A) market research;

6 (B) production of route maps and schedules;

7 (C) information delivery;

8 (D) website development;

9 (E) advertising;

10 (F) promotion of the use of transit vouchers by welfare  
11 recipients and eligible low income individuals; and

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

14 (6) Operating expenses. Operating expenses are  
15 reimbursed at 50% of net operating expenses. Operating expenses  
16 are those costs directly tied to systems operations. FTA  
17 Circular 9030.1C or its latest published version shall be the  
18 guide for determining eligible operating expenses. Examples  
19 are:

20 (A) fuel;

21 (B) oil;

22 (C) driver, dispatcher, and mechanic salaries; and

23 (D) purchase of service.

1 (g) Ineligible expenses include:

2 (1) construction, except for passenger shelters, signage,  
3 and similar passenger amenities specifically approved by the  
4 department;

5 (2) extended vehicle warranties;

6 (3) purchase and/or maintenance of vehicles intended for  
7 private use; and

8 (4) other FTA-prohibited expenses.

9 (h) Local share requirements.

10 (1) Eligible match sources include local, state, or  
11 federal programs, including funds disbursed from the Texas  
12 Workforce Commission, local workforce development boards, human  
13 service agencies, and the Medicaid Medical Transportation  
14 Program. Unrestricted federal funds are also eligible as match,  
15 such as Temporary Assistance for Needy Families (42 USC  
16 603(a)(5)(C)(vii)). With prior department approval, in-kind  
17 contributions, volunteer services, and donations directly  
18 attributable to the project are eligible as local share if the  
19 value is documented.

20 (2) Other U.S. Department of Transportation program funds  
21 cannot be used as the local share required for Section 5316  
22 grants. Fares cannot be used as match for any expense but must,  
23 instead, be used to determine the net operating expense to

1 reduce the amount of requested reimbursement.

2 (i) Planning requirement.

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

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

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

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

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

20 (3) The commission anticipates that the regional service  
21 planning process will be used to meet the requirements of the  
22 local coordinated planning process described in paragraph (1) of  
23 this subsection. Regions interested in participating in the

1 JARC program shall develop and prioritize Section 5316 projects  
2 in response to the employment transportation deficiencies  
3 identified in the regional planning process and documented in  
4 the plan.

5 (4) A JARC project must:

6 (A) contain goals and objectives;

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

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

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

14 (E) provide a cost estimate; and

15 (F) identify match sources including employer-provided  
16 or employer-assisted transportation service strategies  
17 incorporated in the project.

18 (j) Allocation of funds. As part of its administration of  
19 the Section 5316 program, the department is charged with  
20 ensuring that there is a fair and equitable distribution of  
21 program funds within the state (49 USC §5316(f)(2)).

22 (1) The department will act as the designated recipient  
23 for projects in urbanized areas of less than 200,000 population

1 and in nonurbanized areas. Of the amount apportioned to these  
2 areas by FTA's annual publication in the *Federal Register*, the  
3 department may use up to 10% of the total for its  
4 administrative, planning, and technical assistance activities to  
5 support the JARC program statewide.

6 (2) The department will allocate the remaining Section  
7 5316 funds to subrecipients through a statewide competitive  
8 selection process.

9 (3) Unless the governor certifies that all program  
10 objectives are being met, funds apportioned to urbanized areas  
11 with less than 200,000 population will be available only to fund  
12 projects in these geographic areas.

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

15 (5) The origination location of the riders, not their  
16 destination, shall be the basis for determining which  
17 apportionment the department uses to fund an approved project.

18 (6) At a minimum, the department will publish a notice in  
19 the *Texas Register* soliciting proposals for the award of Section  
20 5316 JARC grants. An eligible entity may submit a proposal for  
21 an eligible project in response to the published notice.

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

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

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

5 (iii) how the project will:

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

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

10 (III) fully integrate the JARC program with other  
11 federal and state programs supporting public, employment, and  
12 human service transportation; and

13 (IV) improve the efficiency and effectiveness of  
14 employment related transportation opportunities.

15 (B) must describe its relationship to the locally  
16 developed, coordinated public transit-human service  
17 transportation plan; and

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

21 (k) Grant award.

22 (1) After commission and FTA approval of the program of  
23 projects, the department will enter into grant agreements with

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

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

6 (A) reduce congestion;

7 (B) expand economic opportunity;

8 (C) enhance safety;

9 (D) improve air quality; and

10 (E) increase the value of transportation assets.

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

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

23 (m) Incidental vehicle use. Vehicles purchased with

1 Section 5316 funds may be used for incidental uses that do not  
2 conflict with their primary mission - employment and employment-  
3 related transportation. Examples are stopping for retail  
4 purchases enroute home from the workday, allowing riders not  
5 engaged in employment activities to occupy vacant seats,  
6 delivering meals, or using the vehicle for other public  
7 transportation activities when not required for its JARC project  
8 purposes. Vehicles shall not be altered in any way to  
9 accommodate incidental use.

10 (n) Disposition of vehicles at end of the grant. If a  
11 subrecipient is no longer receiving funds for a JARC project and  
12 has purchased a vehicle with JARC funds, the vehicle may be  
13 transferred to another subrecipient, in accordance with state  
14 and federal disposition requirements.

15

16 §31.18. Section 5317 Grant Program.

17 (a) Purpose. The Federal Transit Act, codified at 49 USC  
18 §5317, authorizes the Secretary of the United States Department  
19 of Transportation to make grants for public transportation  
20 projects that provide new public transportation services and  
21 public transportation alternatives beyond those currently  
22 required by the Americans with Disabilities Act of 1990 (ADA)  
23 that assist individuals with disabilities with transportation,

1 including transportation to and from jobs and employment support  
2 services. The commission has been designated by the governor to  
3 administer the Section 5317 program, known as the New Freedom  
4 Program, or NF, in areas less than 200,000 population.

5 (b) Goal and objectives. The department's goal in  
6 administering the Section 5317 program is to provide new or  
7 improved public transportation services to assist individuals  
8 with disabilities. To achieve this goal, the department's  
9 objectives are to:

10 (1) promote the development and maintenance of a network  
11 of transportation services for persons with disabilities  
12 throughout the state, in partnership with local officials,  
13 public and private non-profit agencies, and operators of public  
14 transportation services;

15 (2) fully integrate the Section 5317 program with other  
16 federal, state, and local resources and programs that are  
17 designed to serve similar populations;

18 (3) foster the development of local, coordinated public  
19 and human service transportation service plans from which NF  
20 projects are derived;

21 (4) improve the efficiency, effectiveness, and safety of  
22 Section 5317 project providers through the provision of  
23 technical assistance; and

1 (5) include private sector operators in the overall plan  
2 to provide NF program transportation services for persons with  
3 disabilities.

4 (c) Department role. The department acts as the designated  
5 recipient for Section 5317 funds apportioned to the state for  
6 all urbanized areas less than 200,000 population and all  
7 nonurbanized areas. The subrecipient shall retain control of  
8 daily operations.

9 (d) Project types.

10 (1) New public transportation service projects include:

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

13 (B) supporting voucher programs for transportation  
14 services offered by human service providers;

15 (C) supporting volunteer driver and aide programs;

16 (D) acquiring transportation services by a contract,  
17 lease, or other arrangement;

18 (E) supporting mobility management and coordination  
19 programs among public transportation providers and other human  
20 service agencies providing transportation; and

21 (F) otherwise facilitating or providing new  
22 transportation services for persons with disabilities, including  
23 transportation to and from employment and employment-related

1 destinations.

2 (2) Public transportation alternatives "beyond ADA"  
3 projects include:

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

7 (B) making accessibility improvements to existing  
8 transit and intermodal stations not designated as key stations;  
9 for example, adding an elevator or ramps, detectable warnings,  
10 improving signage;

11 (C) building an accessible path to a bus stop that is  
12 currently inaccessible, including curbcuts, sidewalks,  
13 pedestrian signals or other accessible features;

14 (D) implementing technology improvements that enhance  
15 accessibility for persons with disabilities;

16 (E) implementing of "same day" paratransit services;  
17 and

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

21 (e) Eligible subrecipients.

22 (1) State agencies, local governmental authorities,  
23 private nonprofit organizations, and operators of public

1 transportation services are eligible to receive Section 5317  
2 funds through the department. Private for-profit operators of  
3 public transportation services may participate in the program  
4 through contracts with eligible subrecipients.

5 (2) Applicants who are subrecipients of public  
6 transportation funds through another program administered by the  
7 department must be in good standing with the department as  
8 defined §31.3 of this chapter.

9 (f) Eligible assistance categories include:

10 (1) State administrative expenses. The department may  
11 use up to 10% of the annual federal apportionment for urbanized  
12 areas less than 200,000 population and nonurbanized areas to  
13 defray its expenses incurred for the planning and administration  
14 of the Section 5317 program. State administrative and technical  
15 assistance expenses do not require a non-federal match.

16 (2) Capital expenses.

17 (A) Eligible items include:

18 (i) buses, vans, or other paratransit vehicles,  
19 fareboxes, wheelchair lifts and restraints;

20 (ii) radios and communications equipment;

21 (iii) accessibility aids;

22 (iv) equipment installation costs;

23 (v) vehicle procurement, testing, inspection, and

1 acceptance costs;

2 (vi) vehicle rebuilding or overhaul;

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

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

7 (ix) transit-related intelligent transportation  
8 systems;

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

11 (xi) curbcuts, sidewalks, pedestrian signals or other  
12 accessible features;

13 (xii) mobility management;

14 (xiii) the lease of vehicles or equipment, provided  
15 that the subrecipient, with the concurrence of the department,  
16 determines that a lease is more cost effective than the purchase  
17 after considering management efficiency, availability of  
18 equipment, staffing capabilities, and guidelines on capital  
19 leases as contained in 49 CFR Part 639; and

20 (xiv) the capital portions of costs for service under  
21 contract as described in FTA Circular 9070.1E or its latest  
22 published version.

23 (B) Reimbursement rates.

1 (i) Federal funds may be used to reimburse up to 80%  
2 of eligible capital expenditures; and

3 (ii) the federal share may increase to up to 90% for  
4 incremental costs related to compliance with the Clean Air Act  
5 or with the ADA. Eligibility standards for the higher federal  
6 share are defined in FTA Circular 9070.1E, or its latest  
7 version.

8 (3) Project administration. Administrative costs  
9 associated with the NF project are eligible for a federal  
10 reimbursement rate of 50%.

11 (4) Operating expenses. Operating expenses are  
12 reimbursed at 50% of net operating expenses. Operating expenses  
13 are those costs directly tied to systems operations. FTA  
14 Circular 9030.1C, or its latest published version, shall be the  
15 guide for determining eligible operating expenses not  
16 specifically listed in this paragraph. Examples are:

17 (A) fuel and oil;

18 (B) engine parts and tires;

19 (C) driver, dispatcher, and mechanic salaries;

20 (D) purchase of service; and

21 (E) reimbursement of costs associated with a volunteer  
22 driver program.

23 (g) Ineligible expenses include:

1 (1) extended vehicle warranties;

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

4 (3) other FTA-prohibited expenses.

5 (h) Local share requirements.

6 (1) Eligible match sources include local, state, or  
7 federal program funds disbursed from the Texas Workforce  
8 Commission, local workforce development boards, human service  
9 agencies and the Medicaid Medical Transportation Program.  
10 Unrestricted federal funds are also eligible as match, such as  
11 Temporary Assistance for Needy Families (42 USC  
12 603(a)(5)(C)(vii)). With prior department approval, in-kind  
13 contributions, volunteer services, and donations directly  
14 attributable to the project are eligible as local share if the  
15 value is documented.

16 (2) Other U.S. Department of Transportation program funds  
17 cannot be used as the local share required for Section 5317  
18 grants. Fares cannot be used as match for any expense but must,  
19 instead, be used to determine the net operating expense to  
20 reduce the amount of requested reimbursement.

21 (i) Planning requirement.

22 (1) Projects submitted in response to the department's  
23 call for projects must be derived from a locally developed,

1 coordinated public transit-human service transportation plan.  
2 The plan must be developed through a process that includes  
3 representatives of public, private, and nonprofit transportation  
4 and human service providers and participation by the public.

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

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

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

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

16 (3) The commission anticipates that the regional service  
17 planning process will be used to meet the requirements of the  
18 local coordinated planning process defined in paragraph (1) of  
19 this subsection. Regions interested in participating in the NF  
20 program shall develop and prioritize Section 5317 projects in  
21 response to the opportunities to improve transportation for  
22 persons with disabilities uncovered in the regional planning  
23 process and documented in the plan.

1 (4) An NF project must:

2 (A) contain goals and objectives;

3 (B) discuss rider origination location and destinations  
4 and how the project fills the transportation gap by providing  
5 new transportation services or service beyond ADA requirements;

6 (C) describe how it implements the regional service  
7 plan;

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

10 (E) provide a cost estimate; and

11 (F) identify match sources.

12 (G) Where transportation to employment or employment-  
13 related destinations is part of the project, any employer-  
14 provided or employer-assisted transportation service strategies  
15 incorporated in the project must also be identified.

16 (j) Allocation of funds. As part of its administration of  
17 the Section 5317 program, the department is charged with  
18 ensuring that there is a fair and equitable distribution of  
19 program funds within the state (49 USC §5317(e)(2)).

20 (1) The department will act as the designated recipient  
21 for projects in urbanized areas of less than 200,000 population  
22 and in nonurbanized areas. Of the amount apportioned to these  
23 areas by FTA's annual publication in the *Federal Register*, the

1 department may use up to 10% of the total for its  
2 administrative, planning, and technical assistance activities to  
3 support the NF program statewide.

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

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

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

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

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

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

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

22 (ii) how the award of transportation NF funds will  
23 expand the availability of transportation services, or provide

1 new transportation services, for persons with disabilities;

2 (iii) how the project will:

3 (I) promote the development and maintenance of a  
4 network of transportation services for persons with  
5 disabilities;

6 (II) expand economic opportunity for individuals  
7 with disabilities;

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

11 (IV) improve the efficiency, effectiveness, and  
12 safety of transportation services for persons with disabilities.

13 (B) must describe its relationship to the locally  
14 developed, coordinated public transit-human service  
15 transportation plan.

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

19 (k) Grant Award.

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

1 5317 program.

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

5 (A) reduce congestion;

6 (B) expand economic opportunity;

7 (C) enhance safety;

8 (D) improve air quality; and

9 (E) increase the value of transportation assets.

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

13 (1) Vehicle leasing. Vehicles acquired under the Section  
14 5317 program may be leased to other entities, with prior  
15 department approval, such as local public bodies or agencies,  
16 private non-profit agencies, or private for-profit operators.  
17 The lessee shall operate the vehicles on behalf of the Section  
18 5317 recipient and provide the transportation services as  
19 described in the grant application. The Section 5317 recipient  
20 is responsible for seeing that all federal and state rules and  
21 regulations are observed by the lessee.

22 (m) Incidental vehicle use. Vehicles purchased with  
23 Section 5317 funds may be used for incidental use that does not

1 conflict with their primary mission - providing new or beyond  
2 ADA service. Examples of incidental use are meal delivery,  
3 allowing able-bodied persons to occupy vacant seats or using the  
4 vehicle for other public transportation activities not required  
5 for its NF project purposes. Vehicles shall not be altered in  
6 any way to accommodate incidental uses.

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

12