

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

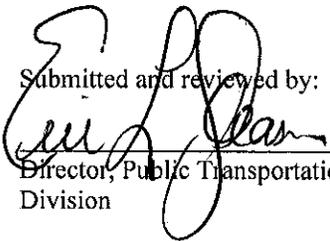
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §31.3, relating to definitions, and new §31.17, relating to Section 5316 Grant Program and new §31.18, relating to Section 5317 Grant Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted 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 adopted and are authorized for filing with the Office of the Secretary of State.

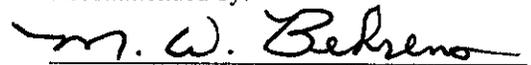
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Public Transportation
Division

Recommended by:



Executive Director
110721 OCT 26 06

Minute
Number

Date
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts
3 amendments to §31.3, definitions, new §31.17, Section 5316 Grant
4 Program, and new §31.18, Section 5317 Grant Program. The
5 amendments to §31.3, §31.17 and §31.18 are adopted with changes
6 to the proposed text as published in the August 11, 2006 issue
7 of the *Texas Register* (31 TexReg 6311).

8

9 EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

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

17

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

1 (NF).

2

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

10

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

16

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

22

23 New §31.3(30), Job access project, defines public transportation
24 related to the development and maintenance of transportation
25 services designed to transport welfare recipients and eligible

1 low-income individuals to and from jobs and employment-related
2 destinations.

3

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

10

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

19

20 New §31.3(40), New public transportation services, with respect
21 to the NF program, are defined as activities that (1) are
22 targeted toward people with disabilities; (2) meet the intent of
23 the NF program by removing barriers to transportation and
24 assisting persons with disabilities with transportation,
25 including transportation to and from jobs and employment

1 services; and (3) were not included in a Transportation
2 Improvement Program or Statewide Transportation Improvement
3 Program prior to August 10, 2005.

4

5 New §31.3(63), Reverse commute project, defines transportation
6 of residents of urbanized areas and other than urbanized areas
7 to suburban employment opportunities, or as otherwise defined by
8 49 USC §5316, the Job Access and Reverse Commute program.

9

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

15

16 In developing new §31.17 and new §31.18, the department draws
17 from the federal statute; the Federal Transit Administration's
18 Interim Guidance on Implementation, published in the *Federal*
19 *Register*, 71 Fed. Reg. 13,456 (March 15, 2006); the Federal
20 Transit Administration's "Guidance for Fiscal Year 2007
21 Implementation; Notice of Availability of Circulars" calling for
22 comments on draft circulars for the JARC and NF programs,
23 *Federal Register*, 71 Fed. Reg. 52,610, (September 6, 2006); the
24 joint guidance documentation issued by the U.S. Department of
25 Labor, U.S. Department of Transportation, and the U.S.

1 Department of Health and Human Services provide sufficient
2 detailed guidance for the local decision makers to decide how
3 best to use their match (See "Use Of TANF, WtW, and Job Access
4 Funds for Transportation",
5 http://www.fta.dot.gov/funding/grants/grants_financing_3715);
6 and the department's existing rules for federal program
7 administration contained in Title 43, Chapter 31, Subchapter C.

8
9 Section 31.17(a), Purpose, identifies the JARC federal law,
10 states its purpose, and also states that the commission has been
11 designated by the governor to administer the program in areas
12 less than 200,000 population.

13
14 Section 31.17(b), Goal and objectives, states the department's
15 goal and objectives for promoting public transportation services
16 targeted to employment transportation in accordance with the
17 Federal Transit Administration's guidance on implementing the
18 program.

19
20 Section 31.17(c), Department role, states that the department
21 will act as the designated recipient for funds for areas less
22 than 200,000 population, while allowing subrecipients to retain
23 control over daily operations.

24
25 Section 31.17(d), Project types, provides an illustrative list

1 of projects that JARC grants may fund. The JARC project types
2 detail elements included in these programs so that project
3 sponsors will have an understanding of eligible project types.

4

5 Section 31.17(e), Eligible subrecipients, mirrors the language
6 in 49 USC §5316, which lists eligible subrecipients as state
7 agencies, local governmental authorities, private non-profit
8 organizations and operators of public transportation services.

9 Private for-profit businesses may participate as a contractor to
10 a subrecipient. Applicants who are subrecipients of public
11 transportation funds through another department program must be
12 in good standing with the department as defined in §31.3.

13

14 Section 31.17(f), Eligible assistance categories, lists state
15 administrative expenses, capital expenses, project
16 administration expenses, planning expenses, marketing expenses
17 and operating expenses as eligible for reimbursement and gives
18 the percentage of federal and non-federal match required for
19 each category.

20

21 Section 31.17(g), Ineligible expenses, lists those costs that
22 are not reimbursable, which includes construction expenses,
23 except for minor passenger amenities, extended vehicle
24 warranties, purchase and/or maintenance of vehicles for private
25 use, and other expenses prohibited by the Federal Transit

1 Administration.

2

3 Section 31.17(h), Local share requirements, states that other
4 U.S. Department of Transportation funds cannot be used for the
5 local (non-federal) match requirement. Eligible match sources
6 include local, state, and federal programs, including funds
7 disbursed from the Texas Workforce Commission; local workforce
8 development boards; and human services agencies, including funds
9 awarded to the state for the Medicaid Medical Transportation
10 Program. Documented in-kind services related to a proposed JARC
11 project are eligible with prior department approval. The
12 subsection clarifies that fares cannot be used for local match
13 but must, instead, reduce the net operating expense.

14

15 Section 31.17(i), Planning requirement, reflects the federal
16 requirement for prioritized JARC projects to be derived from a
17 locally developed, coordinated public transit-human services
18 transportation plan. It is anticipated that the regional
19 service planning process will be used to meet the requirements
20 of the local coordinated planning process.

21

22 Section 31.17(j), Allocation of funds, allows the department to
23 use up to 10% of the federal apportionment to urbanized areas
24 less than 200,000 population and to nonurbanized areas for
25 administrative, planning and technical assistance activities

1 associated with JARC. The commission will competitively award
2 the remaining funds. The department will issue a call for
3 projects in the *Texas Register*. The subsection lists the
4 content of the *Texas Register* notice. Funds from one category
5 (urbanized area less than 200,000 population or nonurbanized
6 area) shall not be moved to the other, without a certification
7 from the governor. The origination location of the riders shall
8 be the basis for determining which apportionment is used to fund
9 a particular project.

10

11 Section 31.17(k), Grant award, states that the department will
12 enter into a grant agreement with individual subrecipients. The
13 commission has expressed its commitment to a plan to improve
14 transportation in Texas. The plan has five goals: 1) reduce
15 congestion; 2) enhance safety; 3) expand economic opportunity;
16 4) improve air quality; and, 5) increase the value of
17 transportation assets. The subsection enumerates the criteria
18 that the commission will use in awarding grant funds in a manner
19 that facilitates the goals of the plan. Failure to expend funds
20 in a timely manner may cause the department to terminate the
21 grant and re-award the balance of funds to another project.

22

23 Section 31.17(l), Vehicle leasing, permits subrecipients to
24 lease vehicles to other entities, with prior department
25 approval, such as local public bodies or agencies, private non-

1 profit organizations and private for-profit businesses, as long
2 as the purpose of the JARC project is carried out by the lessee.
3 The subrecipient is responsible for ensuring the lessee follows
4 all applicable laws and regulations.

5
6 Section 31.17(m), Incidental vehicle use, allows vehicles to be
7 used for other purposes, and to accommodate riders not engaged
8 in employment activities, when such activities/riders do not
9 interfere with employment transportation purposes.

10
11 Section 31.17(n), Disposition of vehicles at end of the grant,
12 states that vehicles purchased with JARC funds may be
13 transferred to another subrecipient in accordance with state
14 disposition requirements.

15
16 Section 31.18(a), Purpose, identifies the New Freedom federal
17 law, states its purpose, and also states that the commission has
18 been designated by the governor to administer the program in
19 areas with less than 200,000 population.

20
21 Section 31.18(b), Goal and objectives, states the department's
22 goal and objectives for the NF program. These projects shall
23 provide new public transportation services and public
24 transportation alternatives, beyond those currently required by
25 the Americans with Disabilities Act of 1990 (ADA), that assist

1 individuals with disabilities with transportation including
2 transportation to and from jobs and employment support services.

3
4 Section 31.18(c), Department role, stipulates that the
5 department will act as the designated recipient for funds for
6 areas with less than 200,000 population, while allowing
7 subrecipients to retain control over daily operations.

8
9 Section 31.18(d), Project types, provides an illustrative list
10 of projects that NF grants may fund. The list is not intended
11 to be an exhaustive list of the project types. The projects
12 listed are examples of new public transportation services and
13 public transportation alternatives, beyond those currently
14 required by the Americans with Disabilities Act of 1990 (ADA),
15 that assist individuals with disabilities with transportation,
16 including transportation to and from jobs and employment support
17 services.

18
19 Section 31.18(e), Eligible subrecipients, mirrors the language
20 in 49 USC §5317, which lists eligible subrecipients as state
21 agencies, local governmental authorities, private non-profit
22 organizations, and operators of public transportation services.
23 Private for-profit businesses may participate as a contractor to
24 a subrecipient. Applicants who are subrecipients of public
25 transportation funds through another department program must be

1 in good standing with the department as defined in §31.3.

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3 Section 31.18(f), Eligible assistance categories, lists state
4 administrative expenses, capital expenses, project
5 administration expenses, and operating expenses as eligible for
6 reimbursement and gives the percentage of federal and non-
7 federal match required for each category.

8

9 Section 31.18(g), Ineligible expenses, lists those costs that
10 are not reimbursable, including extended vehicle warranties,
11 purchase and/or maintenance of private use vehicles, and other
12 FTA prohibited expenses.

13

14 Section 31.18(h), Local share requirements, states that other
15 U.S. Department of Transportation funds cannot be used for the
16 local (non-federal) match requirement. Eligible match sources
17 include local, state, and federal programs, including funds
18 disbursed from the Texas Workforce Commission; local workforce
19 development boards; and human services agencies, including funds
20 awarded to the state for the Medicaid Medical Transportation
21 Program. Documented in-kind services related to the NF project
22 are eligible with prior department approval. The subsection
23 clarifies that fares cannot be used for local match but must,
24 instead, reduce the net operating expense.

25

1 Section 31.18(i), Planning requirement, reflects the federal
2 requirement for prioritized NF projects to come from a locally
3 developed, coordinated public transit-human services
4 transportation plan. It is anticipated that the regional
5 service planning process will be used to meet the requirements
6 of the local coordinated planning process.

7
8 Section 31.18(j), Allocation of funds, allows the department to
9 use up to 10% of the federal apportionment to urbanized areas
10 with less than 200,000 population and to nonurbanized areas for
11 administrative, planning, and technical assistance activities
12 associated with NF. The commission will competitively award the
13 remaining funds. The department will issue a call for projects
14 in the *Texas Register*. The subsection lists the content of the
15 *Texas Register* notice. Funds from one category (urbanized area
16 less than 200,000 population or nonurbanized area) shall not be
17 moved to the other. The origination location of the riders
18 shall be the basis for determining which apportionment is used
19 to fund a particular project.

20
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22 enter into a grant agreement with individual subrecipients. The
23 commission has expressed its commitment to a plan to improve
24 transportation in Texas. The plan has five goals: 1) reduce
25 congestion; 2) enhance safety; 3) expand economic opportunity;

1 4) improve air quality; and, 5) increase the value of
2 transportation assets. The subsection enumerates the criteria
3 that the commission will use in awarding grant funds in a manner
4 that facilitates the goals of the plan. Failure to expend funds
5 in a timely manner may cause the department to terminate the
6 grant and re-award the balance of funds to another project.

7
8 Section 31.18(l), Vehicle leasing, permits subrecipients to
9 lease vehicles to other entities, with prior department
10 approval, such as local public bodies or agencies, private non-
11 profit organizations, and private for-profit businesses, as long
12 as the purpose of the NF project is carried out by the lessee.
13 The subrecipient is responsible for ensuring the lessee follows
14 all applicable laws and regulations.

15
16 Section 31.18(m), Incidental vehicle use, allows vehicles to be
17 used for other purposes, and to accommodate able-bodied persons,
18 when such activities/riders do not interfere with transportation
19 opportunities specifically designed for persons with
20 disabilities.

21
22 Section 31.18(n), Disposition of vehicles at end of the grant,
23 states that vehicles purchased with NF funds may be transferred
24 to another subrecipient in accordance with state disposition
25 requirements.

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The Public Transportation Advisory Committee (PTAC) met on October 20, 2006 to review the rules and by motion recommended to the commission that the rules be adopted.

COMMENTS

In the period between the publication of the proposed rules and these final rules, the U.S. Department of Transportation Federal Transit Administration (FTA) provided additional information for the implementation of the JARC and NF programs. The department has made changes that consider this guidance.

The definition of mobility management, new §31.3 (37), has been reworded to consider the additional guidance provided by FTA. The department added to the definition of §31.3(40) by including the words "or alternatives" and included the requirement that NF projects be beyond ADA requirements.

The additional guidance provided by the FTA proposed circular concerning implementation of the JARC program indicates that private for-profit businesses may be subrecipients. This is a change from their role in other formula programs, which limits private for profit businesses to being contractors to subrecipients. New §31.17(e) and §31.18(e) are changed to reflect the guidance for the JARC and NF program issued by the

1 FTA in its proposed circular.

2

3 Due to federal guidance, new §31.17(f) is changed to add
4 purchase of vouchers as an eligible operating expense; new
5 §31.17(g) is changed to include the federal prohibition against
6 purchasing transit passes for use on fixed route or ADA
7 complementary paratransit services; new §31.17(i) is changed to
8 include a requirement that the JARC project documentation
9 describe the role of the local workforce development board or
10 its service providers in developing the project; and new
11 §31.17(n) is changed to delete a reference to federal
12 disposition requirements because state laws and procedures
13 govern the disposition of property when the state is the
14 designated recipient.

15

16 Due to federal guidance, new §31.18(b) is changed to require
17 that transportation services and alternatives must be "beyond
18 ADA" requirements, in accordance with federal law. New
19 §31.18(f) is changed to add the purchase of vouchers as an
20 eligible operating expense, to comply with the new guidance
21 received from FTA. The list of eligible items is changed to
22 specifically state that maintenance is an eligible operating
23 expense, with prior department approval. New §31.18(g) is
24 changed to include marketing, planning, and the federal
25 prohibition against purchasing transit passes for use on fixed

1 route or ADA complementary paratransit services. New §31.18(n)
2 is changed to delete a reference to federal disposition
3 requirements because state laws and procedures govern the
4 disposition of property when the state is the designated
5 recipient.

6
7 Other minor changes were added to correct grammar and improve
8 clarity and readability.

9
10 In addition, comments on the proposed amendments and new
11 sections were received.

12
13 Comment

14 One commenter stated that specific language should be added to
15 ensure that the grant recipients will not create new services if
16 existing providers and services are currently available, and
17 that the language should demonstrate and ensure coordination.
18 The use of universal travel vouchers that are acceptable by all
19 service providers in the area is one example of such
20 coordination.

21
22 Response

23 The federal law authorizing both the JARC and NF programs
24 requires that JARC and NF projects must be derived from a
25 locally developed, coordinated public transportation - human

1 services transportation plan. The department has established
2 that the ongoing regional coordinated plans will fulfill the
3 role of the locally developed, coordinated public
4 transportation-human services transportation plan. The
5 elimination of duplicative services is a focal point of these
6 regional plans. No changes in the proposed rules were made as a
7 result of this comment.

8

9 Comment

10 The Texas Workforce Commission (TWC) supports allowing regional
11 service plans to be used to meet the requirements of the local
12 coordinated planning process required for a JARC project. TWC
13 has encouraged the Local Workforce Development Boards (Boards)
14 to become an integral part of these regional service plans by
15 providing input on the needs of the workforce and on economic
16 development within their respective areas. In addition, TWC
17 staff serves on the TxDOT regional planning study group.
18 However, TWC states concern that the proposed rules, which
19 detail the local planning requirements, refer to a "public
20 transit-human service transportation plan." TWC states that the
21 needs of the Texas workforce system should be explicitly stated.
22 In addition, TWC states that representatives from the Texas
23 workforce system should be listed as required representatives
24 involved in the development of the plan. TWC also state that
25 any TWC funds used as match for JARC must also meet federal and

1 state requirements or restrictions regarding eligible
2 populations to be served. TWC currently issues guidance to the
3 Boards on the allowable uses of designated transportation funds
4 and will continue to provide guidance or assistance regarding
5 the use of funds for transportation services.

6

7 Response

8 In response to the comment, the department has incorporated
9 language in §31.17(i)(4)(D) that requires participation by local
10 workforce development boards or their service providers in JARC
11 proposals. In addition, the applicable FTA proposed circular
12 specifies workforce interests as a participant in the JARC
13 planning process.

14

15 STATUTORY AUTHORITY

16 The amendments and new sections are adopted under Transportation
17 Code, §201.101, which provides the commission with the authority
18 to establish rules for the conduct of the work of the
19 department.

20

21 CROSS REFERENCE TO STATUTE

22 Transportation Code, Chapter 461.

1 SUBCHAPTER A. GENERAL

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

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

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

16 (3) Authority--A metropolitan or regional authority
17 created under Transportation Code, Chapter 451 or 452, or a city
18 transit department created under Transportation Code, Chapter
19 453, by a municipality having a population of not less than
20 200,000 according to the most recent federal census.

21 (4) Average revenue vehicle capacity--The number of seats
22 in all revenue vehicles divided by the number of revenue
23 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 the Community Services Block Grant Act (42
17 USC §9902(2)), including any revision required by that section,
18 for a family of the size involved, or as otherwise defined by 49
19 USC §5316, the Job Access and Reverse Commute program.

20 (37) Mobility management-- Eligible capital expenses
21 consisting of short-range planning and management activities and
22 projects for improving coordination among public transportation
23 and other transportation-service providers carried out by a

1 recipient or subrecipient through an agreement entered into with
2 a person, including a government entity under, 49 USC Chapter
3 5300 et.seq (other than Section 5309). 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 services or alternatives--
13 An activity that, with respect to the New Freedom program:

14 (A) is targeted toward people with disabilities;

15 (B) is beyond the ADA requirements;

16 (C) meets the intent of the program by removing

17 barriers to transportation and assisting persons with

18 disabilities with transportation, including transportation to

19 and from jobs and employment services; and

20 (D) is not included in a Transportation Improvement

21 Program or Statewide Transportation Improvement Program prior to

22 August 10, 2005.

23 (41) [~~36~~] New starts project--Any rail fixed guideway

1 system funded under FTA's 49 USC §5309 [~~U.S.C. 5309~~]

2 discretionary construction program.

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

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

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

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

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

22 (B) maintenance, repair, servicing, and inspection of
23 transit agency property, including both vehicles and other

1 property, whether routine or to remedy the effects of collision
2 damage or vandalism; and

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

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

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

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

23 (49) [~~44~~] Project--The public transportation activities

1 to be carried out by a subrecipient, as described in its
2 application for funding.

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

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

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

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

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

1 (C) property [~~Property~~] damage to rail fixed guideway
2 transit vehicles, non-rail transit vehicles, other rail transit
3 property or facilities and non-transit property that equals or
4 exceeds \$25,000;

5 (D) an [~~An~~] evacuation due to life safety reasons;

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

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

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

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

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

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

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

22 (56) [~~(51)~~] Rail transit fixed guideway system--Any
23 light, heavy, or rapid rail system, monorail, inclined plane,

1 funicular, trolley, or automated guideway, as determined by the
2 FTA, that:

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

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

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

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

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

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

21 (60) [~~(55)~~] Revenue service--Passenger transportation
22 occurring when a vehicle is available to the general public and
23 there is a reasonable expectation of carrying passengers that

1 directly pay fares, are subsidized by public policy, or provide
2 payment through some contractual agreement. This does not imply
3 that a cash fare must be paid. Vehicles operated in free fare
4 services are considered in revenue service.

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

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

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

21 (64) [~~(58)~~] Ridership--Unlinked passenger trips.

22 (65) [~~(59)~~] Ridesharing activities--Transportation
23 provided by rubber-tired vehicles that carry no fewer than 10

1 nor more than 15 passengers and that are operated on a nonprofit
2 basis.

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

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

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

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

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

23 (71) [~~65~~] Strategic priorities--Projects that the

1 commission has determined will:

2 (A) stabilize funding levels;

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

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

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

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

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

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

23 (76) [~~+70~~] Unlinked passenger trips--The number of

1 passengers who board public transportation vehicles. A
2 passenger is counted each time the passenger boards a vehicle
3 even though the passenger might be on the same journey from
4 origin to destination.

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

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

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

21 (80) [~~74~~] Vehicle revenue hours or miles--The hours or
22 miles a vehicle travels while in revenue service. This
23 definition includes layover and recovery, but excludes travel to

1 and from storage facilities, the training of operators prior to
2 revenue service, road tests, deadhead travel, and school bus and
3 charter service.

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

8 (82) Welfare recipient--An individual who has received
9 assistance under a state or tribal program funded under the
10 Social Security Act, Title IV, Part A, at any time during the
11 previous three year period, or as otherwise defined by 49 USC
12 §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.

3 (2) Private for-profit operators of public transportation
4 services may participate in the program through contracts with
5 eligible subrecipients. If allowed by federal regulation,
6 private for-profit operators are eligible to receive funds as a
7 subrecipient.

8 (3) Applicants who are subrecipients of public
9 transportation funds through another program administered by the
10 department must be in good standing with the department as
11 defined in §31.3 of this chapter.

12 (f) Eligible assistance categories.

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

19 (2) Capital expenses.

20 (A) Eligible items are:

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

23 (ii) equipment for transporting bicycles on public

1 transit vehicles;

2 (iii) radios and communication equipment;

3 (iv) equipment installation costs;

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

5 acceptance costs;

6 (vi) preventive maintenance, including all

7 maintenance costs;

8 (vii) vehicle rebuilding or overhaul;

9 (viii) capital and operating support including

10 computer hardware or software, with prior department approval;

11 (ix) transit-related intelligent transportation

12 systems;

13 (x) the introduction of new technology, through

14 innovative and improved products, into public transportation;

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

16 passenger amenities, with prior department approval;

17 (xii) mobility management;

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

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

20 determines that a lease is more cost effective than purchase

21 after considering management efficiency, availability of

22 equipment, staffing capabilities, and guidelines on capital

23 leases as contained in 49 CFR Part 639;

1 (xiv) the capital portions of costs for service under
2 contract as described in FTA Circular 9030.1C or its latest
3 published version; and

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

9 (B) Reimbursement rates.

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

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

15 (iii) eligibility standards for the higher federal
16 share are defined in FTA Circular 9030.1C, or its latest
17 version.

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

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

23 (A) studies relating to management, operations, and

1 capital requirements;

2 (B) evaluation of previously funded projects; and

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

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

8 (A) market research;

9 (B) production of route maps and schedules;

10 (C) information delivery;

11 (D) website development;

12 (E) advertising;

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

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

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

23 (A) fuel;

1 (B) oil;

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

3 (D) purchase of service; and

4 (E) purchase of vouchers.

5 (g) Ineligible expenses include:

6 (1) construction, except for passenger shelters, signage,
7 and similar passenger amenities specifically approved by the
8 department;

9 (2) extended vehicle warranties;

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

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

14 (5) other FTA-prohibited expenses.

15 (h) Local share requirements.

16 (1) Eligible match sources include local, state, or
17 federal programs, including funds disbursed from the Texas
18 Workforce Commission, local workforce development boards, human
19 service agencies, and the Medicaid Medical Transportation
20 Program. Unrestricted federal funds are also eligible as match,
21 such as Temporary Assistance for Needy Families (42 USC
22 603(a)(5)(C)(vii)). With prior department approval, in-kind
23 contributions, volunteer services, and donations directly

1 attributable to the project are eligible as local share if the
2 value is documented.

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

8 (i) Planning requirement.

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

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

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

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

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

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

11 (4) A JARC project must:

12 (A) contain goals and objectives;

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

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

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

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

23 (F) provide a cost estimate; and

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

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

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

15 (2) The department will allocate the remaining Section
16 5316 funds to subrecipients through a statewide competitive
17 selection process.

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

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

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

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

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

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

11 (ii) how the award of transportation JARC funds will
12 expand the availability of employment related transportation
13 services;

14 (iii) how the project will:

15 (I) promote the development of employment
16 transportation services;

17 (II) support local economic development and expand
18 economic opportunity for economically disadvantaged individuals;

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

22 (IV) improve the efficiency and effectiveness of
23 employment related transportation opportunities.

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

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

7 (k) Grant award.

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

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

15 (A) reduce congestion;

16 (B) expand economic opportunity;

17 (C) enhance safety;

18 (D) improve air quality; and

19 (E) increase the value of transportation assets.

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

23 (1) Vehicle leasing. Vehicles acquired under the Section

1 5316 program may be leased to other entities, with prior
2 department approval, such as local public bodies or agencies,
3 private non-profit agencies, or private for-profit operators.
4 The lessee shall operate the vehicles on behalf of the Section
5 5316 subrecipient and provide the transportation services as
6 described in the grant application. The Section 5316
7 subrecipient is responsible for seeing that all federal and
8 state rules and regulations are observed by the lessee.

9 (m) Incidental vehicle use. Vehicles purchased with
10 Section 5316 funds may be used for incidental uses that do not
11 conflict with their primary mission - employment and employment-
12 related transportation. Examples are stopping for retail
13 purchases enroute home from the workday, allowing riders not
14 engaged in employment activities to occupy vacant seats,
15 delivering meals, or using the vehicle for other public
16 transportation activities when not required for its JARC project
17 purposes. Vehicles shall not be altered in any way to
18 accommodate incidental use.

19 (n) Disposition of vehicles at end of the grant. If a
20 subrecipient is no longer receiving funds for a JARC project and
21 has purchased a vehicle with JARC funds, the vehicle may be
22 transferred to another subrecipient, in accordance with state
23 laws and procedures governing disposition requirements.

1

2 §31.18. Section 5317 Grant Program.

3 (a) Purpose. The Federal Transit Act, codified at 49 USC
4 §5317, authorizes the Secretary of the United States Department
5 of Transportation to make grants for public transportation
6 projects that provide new public transportation services and
7 public transportation alternatives beyond those currently
8 required by the Americans with Disabilities Act of 1990 (ADA)
9 that assist individuals with disabilities with transportation,
10 including transportation to and from jobs and employment support
11 services. The commission has been designated by the governor to
12 administer the Section 5317 program, known as the New Freedom
13 Program, or NF, in areas less than 200,000 population.

14 (b) Goal and objectives. The department's goal in
15 administering the Section 5317 program is to provide new or
16 improved public transportation services and alternatives, beyond
17 the requirements of the ADA, to assist individuals with
18 disabilities. To achieve this goal, the department's objectives
19 are to:

20 (1) promote the development and maintenance of a network
21 of transportation services and alternatives, beyond the
22 requirements of the ADA, for persons with disabilities
23 throughout the state, in partnership with local officials,

1 public and private non-profit agencies, and operators of public
2 transportation services;

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

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

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

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

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

20 (d) Project types.

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

23 (A) providing paratransit services beyond minimum

1 requirements (3/4 mile to either side of a fixed route) for a
2 transit provider operating fixed route service;

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

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

10 (D) implementing technology improvements that enhance
11 accessibility for persons with disabilities;

12 (E) implementing "same day" paratransit services; and

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

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

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

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

22 (C) supporting volunteer driver and aide programs;

23 (D) acquiring transportation services by a contract,

1 lease, or other arrangement;

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

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

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

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

17 (e) Eligible subrecipients.

18 (1) State agencies, local governmental authorities,
19 private nonprofit organizations, and operators of public
20 transportation services are eligible to receive Section 5317
21 funds through the department.

22 (2) Private for-profit operators of public transportation
23 services may participate in the program through contracts with

1 eligible subrecipients. If allowed by federal regulation,
2 private for-profit operators are eligible to receive funds as a
3 subrecipient.

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

8 (f) Eligible assistance categories include:

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

15 (2) Capital expenses.

16 (A) Eligible items include:

17 (i) buses, vans, or other paratransit vehicles,

18 fareboxes, wheelchair lifts and restraints;

19 (ii) radios and communications equipment;

20 (iii) accessibility aids;

21 (iv) equipment installation costs;

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

23 acceptance costs;

- 1 (vi) vehicle rebuilding or overhaul;
- 2 (vii) capital and operational support including
- 3 computer hardware or software, with prior department approval;
- 4 (viii) preventive maintenance, including all
- 5 maintenance costs, with prior department approval;
- 6 (ix) transit-related intelligent transportation
- 7 systems;
- 8 (x) the introduction of new technology, through
- 9 innovative and improved products, into public transportation;
- 10 (xi) curbcuts, sidewalks, pedestrian signals or other
- 11 accessible features;
- 12 (xii) mobility management;
- 13 (xiii) the lease of vehicles or equipment, provided
- 14 that the subrecipient, with the concurrence of the department,
- 15 determines that a lease is more cost effective than the purchase
- 16 after considering management efficiency, availability of
- 17 equipment, staffing capabilities, and guidelines on capital
- 18 leases as contained in 49 CFR Part 639; and
- 19 (xiv) the capital portions of costs for service under
- 20 contract as described in FTA Circular 9070.1E or its latest
- 21 published version.
- 22 (B) Reimbursement rates.
- 23 (i) Federal funds may be used to reimburse up to 80%

1 of eligible capital expenditures; and

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

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

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

16 (A) fuel and oil;

17 (B) maintenance, with prior department approval;

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

19 (D) purchase of service;

20 (E) reimbursement of costs associated with a volunteer
21 driver program; and

22 (F) purchase of vouchers.

23 (g) Ineligible expenses include:

1 (1) extended vehicle warranties;

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

4 (3) marketing

5 (4) planning

6 (5) purchase of transit passes for use on fixed route or
7 ADA complementary paratransit services; and

8 (6) other FTA-prohibited expenses.

9 (h) Local share requirements.

10 (1) Eligible match sources include local, state, or
11 federal program funds disbursed from the Texas Workforce
12 Commission, local workforce development boards, human service
13 agencies and the Medicaid Medical Transportation Program.
14 Unrestricted federal funds are also eligible as match, such as
15 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 5317
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 defined in paragraph (1) of

23 this subsection. Regions interested in participating in the NF

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

5 (4) An NF project must:

6 (A) contain goals and objectives;

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

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

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

15 (E) provide a cost estimate; and

16 (F) identify match sources.

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

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

1 program funds within the state (49 USC §5317(e)(2)).

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

9 (2) The department will allocate the remaining Section
10 5317 funds to subrecipients through a competitive selection
11 process.

12 (3) Funds apportioned to urbanized areas less than
13 200,000 population will be available only to fund projects in
14 these geographic areas.

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

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

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

23 (A) An eligible entity may submit a proposal for an

1 eligible project in response to the published notice. The
2 proposal must include a detailed description of:

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

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

8 (iii) how the project will:

9 (I) promote the development and maintenance of a
10 network of transportation services for persons with
11 disabilities;

12 (II) expand economic opportunity for individuals
13 with disabilities;

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

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

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

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

1 this subsection.

2 (k) Grant Award.

3 (1) After commission and FTA approval of the program of
4 projects, the department will enter into grant agreements with
5 individual subrecipients. A subrecipient must comply with all
6 requirements, rules, and regulations applicable to the Section
7 5317 program.

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

11 (A) reduce congestion;

12 (B) expand economic opportunity;

13 (C) enhance safety;

14 (D) improve air quality; and

15 (E) increase the value of transportation assets.

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

19 (1) Vehicle leasing. Vehicles acquired under the Section
20 5317 program may be leased to other entities, with prior
21 department approval, such as local public bodies or agencies,
22 private non-profit agencies, or private for-profit operators.
23 The lessee shall operate the vehicles on behalf of the Section

1 5317 recipient and provide the transportation services as
2 described in the grant application. The Section 5317 recipient
3 is responsible for seeing that all federal and state rules and
4 regulations are observed by the lessee.

5 (m) Incidental vehicle use. Vehicles purchased with
6 Section 5317 funds may be used for incidental use that does not
7 conflict with their primary mission - providing new or
8 alternative transportation services beyond ADA requirements.
9 Examples of incidental use are meal delivery, allowing able-
10 bodied persons to occupy vacant seats or using the vehicle for
11 other public transportation activities not required for its NF
12 project purposes. Vehicles shall not be altered in any way to
13 accommodate incidental uses.

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