

# **Missouri Department of Transportation**



## **Section 5311**

### **Nonurban Transportation Assistance Grant Program**

### **State Management Plan**

**October 2010**



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## **I. GENERAL PROGRAM DESCRIPTION**

### **I-1 PROGRAM RESPONSIBILITY**

The Missouri Department of Transportation (MoDOT) is the agency designated by the Governor to administer funds available through Chapter 53, Section 5311 of Title 49 United States Code herein referred to as Section 5311. Basic responsibility rests with the Transit section in the Multimodal Operations Division.

The department also administers all other state level Federal Transit Administration (FTA, also referred to as DOT – Department of Transportation) programs, state transit operating assistance, and the state funded Missouri Elderly and Handicapped Transportation Assistance Program.

Support is provided by the department's legal and purchasing staff. Departmental designation is on file with the Federal Transit Administration.

### **I-2 GOALS AND OBJECTIVES**

The goals of the Missouri Department of Transportation for the Section 5311 program are to:

1. Support local governments that desire to provide open, general public transportation services to their constituents.
2. Develop and/or maintain basic levels of general public transportation in all nonurbanized parts of the state.
3. Promote, where economical, coordination of specialized transportation programs and funds by providing opportunities and technical assistance for social service agencies wishing to purchase service on general public systems. A part of this goal is to create the opportunity to experiment with new and innovative organizational structures and funding packages.
4. Draw on the resources of the private sector for providing public transportation to the maximum extent feasible.
5. Complement other FTA programs for special purpose and general public transportation.
6. Administer the program in accordance with all FTA regulations.

To accomplish these goals, the department has developed an extensive handbook for program

applicants (see Appendix A). This document, along with the standard agreement, outlines the department's basic approach to program administration. Both are referred to extensively in subsequent sections of this state management plan (SMP) and are incorporated into this document by reference.

### **I-3 ELIGIBLE SERVICE AREAS**

Services will be accessed by residents of nonurbanized areas and may include transportation into urbanized areas. Services that begin and end in an urbanized area are not eligible. Services for residents of urbanized areas traveling to non-urbanized areas may be provided if coordinated with rural-to-urban service. Intercity bus service may originate and end in urban areas but it must serve nonurbanized areas in between. Joint projects may be developed with Section 5311 operating participation based on the portion of vehicle net operating costs attributable to the non-urbanized service. Capital costs of joint projects will be divided according to capital consumed in urbanized and non-urbanized service.

### **I-4 ELIGIBLE RECIPIENTS**

Eligible recipients are local public bodies and agencies thereof, private nonprofit organizations, federally recognized Indian tribal governments, and organized Indian Tribal organizations. Currently, no federally recognized Indian Tribes exist within the State of Missouri. Private for-profit operators may participate under contract with an eligible recipient with the concurrence of the department. However, this restriction does not apply to intercity bus providers funded under the Section 5311(f) program; they may contract directly with MoDOT.

Local public bodies providing local unrestricted matching funds are recognized as primary recipients with the first right to apply for Section 5311 funds to serve their local area. Nonprofits are also allowed to participate in the program on behalf of a rural community when no public applicant exists. Nonprofits must establish eligibility in terms of matching funds available and general public services offered.

When multiple nonprofits seek Section 5311 funds for a particular local area, the applicant that, in the department's judgment, can responsibly operate and offer the best service

package will be awarded funds. In general the applicant that generates the greatest amount of local transportation funding, with first priority given to city or county revenue, will be given preference. Service criteria such as hours and days of service and vehicle availability (including handicapped accessibility) will also be considered in the award.

When multiple public entities apply for funds for the same service area, the public entity with the highest level of jurisdiction will be given preference, i.e. county over city, city over ambulance district. The public entity's capacity to provide service and the availability of local funds will also be considered.

Unless exceptional circumstances exist, only one Section 5311 assisted operator will be allowed to provide service in any given area. The department will not authorize a not-for-profit to provide Section 5311 assisted general public services in an area covered by a public body grantee.

Recipients must be able to provide acceptable matching funds for carrying out the project.

Applicants must demonstrate they have the technical capacity to carry out the project.

Technical capacity means an organization has:

1. a structure of policies and procedures that allows them to function in an efficient and effective manner;
2. a staff of trained employees who are capable of following the policies and procedures;
3. an accounting system and other tracking methods that ensure financial responsibility and asset control; and
4. the knowledge and ability to comply with federal, state, and local laws, regulations, and/or requirements.

#### **I-5 ELIGIBLE ACTIVITIES**

The Section 5311 program was established to provide financial support for general public transit services in nonurbanized areas. General public services are those that are open to the public at large. These direct transportation activities and associated administrative (limited to 15% of the 5311 Annual Apportionment) and capital costs are eligible for Section 5311 assistance. The maximum federal matching funds ratio for operating assistance is 50%

federal (DOT): 50% local, state, or non-DOT federal funds. Beginning in State Fiscal Year 2008, selected administrative funds became eligible for 80% reimbursement. For most capital purchases the ratio is 80% federal (DOT): 20% local, state, or non-DOT federal.

The department will make an annual reservation of 15% apportioned funds for intercity bus service in nonurbanized areas. The set aside will be determined through a consultation process described in Section I-10. The set aside for intercity bus service will be committed to other uses if no eligible applicants come forward within 30 days of the date interested organizations are notified.

#### **I-6 COORDINATION**

MoDOT highly encourages applicants to participate in their area local coordinated planning process.

The department recognizes the importance of coordination with social service programs and the potential for improved services that may result from combined efforts. Program recipients are permitted to establish routes and schedules that recognize special needs or concentrations of subgroups of the general population. These routes and schedules must not be so restrictive that they have the effect of limiting the services to a particular subgroup only.

All offers made by Section 5311 assisted organizations to provide third party contract transit services costing over \$1,000 are subject to prior MoDOT approval during the application process.

#### **I-7 INCIDENTAL SERVICES**

Program recipients are encouraged to make the benefits of their existing administrative structure and transportation expertise available to programs with special or exclusive transportation needs. Section 5311 operators may provide incidental services, such as meal or package delivery, under their existing administrative structure as long as the service does not conflict with providing public transportation service or reduce service to public transportation services and the program recipient covers the operating and vehicle costs. No additional administrative costs will be

allowed, but existing administrative costs need not be charged to the restricted service. Incidental services must not result in a reduction of passenger service. Trip denials (if any) and response time must be continuously monitored to ensure that the quality and quantity of passenger service is not diminished by the provision of incidental services. MoDOT will review the impact of incidental service on the passenger service and restrict operations if necessary.

### **I-8 PRIVATE OPERATORS**

A public entity or not-for-profit recipient may use a for-profit company as their provider if they do not wish to operate their own transit system. The recipient must adhere to a bidding process that includes: 1) public notification of the bid solicitation, 2) bid packets being made available to all potential bidders, and 3) the bid packets including all FTA assurances and certifications required of the recipient. The department will review the bid packet prior to solicitation of bids or proposals and concur in the award of bid as well as reviewing the third party contract before execution. All contracting parties must sign a written contract that includes relevant FTA assurances and certifications, and any additional requirements contained in the agreement between MoDOT and the grantee. A copy of the executed contract must be submitted to MoDOT. Further information is included in Section V – Private Sector Involvement.

### **I-9 DISTRIBUTION OF FUNDS AND PROJECT EVALUATION**

The state may use up to fifteen percent of its Section 5311 apportionment for program administration, planning and technical assistance, with no local match required. The Rural Technical Assistance Program (RTAP) funds are a separate allocation used exclusively by the state for training and technical assistance. Normally, Missouri does not use the full allocation of administrative funding.

To accomplish the department's goals for the Section 5311 program the following distribution of funds has been settled on as a method for allocating federal funds (minus any reserved for administration) beginning with the 1994 federal apportionment.

- 15% of the Section 5311 funds will be

reserved to support intercity bus service. In the event that eligible applicants do not express an interest in supporting intercity bus service or, if the requests received are less than the reserved amount, after the completion of the State consultation process (see Section I-10), within 30 days of notification of availability, the Governor will be requested to execute a certification that all intercity bus needs are being met. Funding reserved for intercity bus service will then be transferred to the discretionary set aside.

- 10% will be held in reserve to be allocated at the discretion of the department. Rural transportation is still an emerging service and flexibility to recognize different approaches and the availability of complementary programs and funds is necessary.

Forty percent of the remaining funds will be allocated to nonurban city systems, with 60 percent going to county and regional operations. Increases in federal funds will be allocated proportionately to the 60%/40% categories, then by population base served by applicant organizations within each category. As a general rule, the department's discretionary funds will be divided according to the 40% city/60% county ratio and divided within each group on the population basis. The department reserves the right to vary the distribution of discretionary funding by 10 per cent. If the federal government formally recognizes an Indian tribe within the state, that tribe will be considered an eligible applicant and its service area will determine whether it is considered a municipal, county, or regional recipient.

Increased funds will be divided within each of the first two groups on the basis of population. The funds are not, however, entitlements and must be fully justified in terms of all program requirements. If a grantee in a group does not require or want all available funds they will be redistributed within the primary group. If all funds cannot be used within the group they will be allocated to the other group and divided according to population.

State transit funding will be allocated based on the population of the area served by each grantee.

MoDOT makes every effort to ensure the evaluation and prioritization process used in the Section 5311 allocation process is non-discriminatory. Should any applicant question the fairness of the selection process they are encouraged to contact the Section 5311 Program Manager. If the program manager is unable to resolve the organization's concerns that organization is encouraged to contact MoDOT's Administrator of Transit.

## **I-10 INTERCITY BUS**

Private for-profit companies, not-for-profits, and public entities providing intercity bus service are eligible to apply for Section 5311(f) funding.

Each spring, MoDOT will consult with intercity bus companies through the following process:

1. MoDOT will develop a list of intercity bus providers operating within the State of Missouri.
2. All identified intercity bus providers will be contacted in writing to establish their need for subsidy on existing routes and any plans for expansion.
3. MoDOT will allocate up to 15% of the annual Section 5311 apportionment to providers, who apply for funding.
4. MoDOT will notify all providers in writing of the funding allocations.
5. MoDOT will assess whether the State's intercity services needs are adequately met, recognizing that the main roadblock to providing service is the lack of local match. MoDOT will fund providers who are willing to either provide the local match or have other resources. Development of new routes and/or services will be explored on an annual basis in consultation with the existing providers.

If applications are received for more than the funds available, operating grants will be awarded on a competitive basis using the following criteria:

- percentage of fare recovery;
- cost per revenue mile; and
- ridership per revenue mile
- ratio of rural bus stops to miles per route.

The 15% allocation for intercity bus service will be subject to the 15% takedown for state

administrative expenses. MoDOT will not allocate more than the 15% reserve to intercity bus service regardless of how many applications are received (also see Section I-9).

Capital grants will be funded only if requests for operating subsidies are less than the 15% allocation available and will be evaluated on a competitive basis using the criteria above for the route on which a vehicle would be used and prior capital funding for the intercity bus provider.

Intercity Bus providers must abide by the same rules and regulations as other Section 5311 providers including procurement and auditing requirements.

To simplify the auditing process and to ensure that for-profit companies' proprietary information is not disclosed, eligible operating expenses are limited to the following:

- marketing/advertising for new and/or expanded service;
- operating expenses including fuel, tires, supplies, and drivers' wages and benefits;
- licensing;
- insurance; and
- repairs.

No administrative expenses are allowable in order to protect proprietary information. Depreciation and maintenance/upkeep of offices and facilities are also not allowable expenses.

The amount of subsidy will be limited to no more than one half of the net operating expense (total eligible expense reduced by total fares). The intercity bus provider may provide the match through other company revenues or may solicit matching funds from cities and entities that may be interested in maintaining intercity bus service in their area.

The Section 5311 program manager, or a designated representative, will inventory all equipment purchased with federal funds biennially. Intercity Bus operators must make the equipment readily available for inspection at MoDOT's request. In addition, the program manager will perform field audits to review maintenance records for federal funded vehicles, ensure compliance with ADA, and oversee drug and alcohol testing requirements. All intercity bus drivers must hold CDL licenses and comply with the Federal Motor Carriers

Drug & Alcohol Testing. When driving federal funded vehicles, however, the driver becomes subject to the Federal Transit Administration's testing requirements which differ slightly from Federal Motor Carriers.

### **I-11 PROJECT SELECTION AND COORDINATION WITH MPO PLANS**

The department recognizes the importance of coordinating Section 5311 funding with the Metropolitan Planning Organizations' (MPOs) short and long-range planning process. All proposed Section 5311 projects requesting federal participation located in these planning areas must be listed within the respective MPO Transportation Improvement Program prior to funding by MoDOT.

### **I-12 TRANSFER OF FUNDS**

In monitoring both the Urbanized Area Formula Program funds and the Nonurbanized Area Formula Program funds apportionments, it may be necessary to transfer Section 5307 funds into the Section 5311 program or vice versa.

### **I-13 PROJECT MONITORING AND TECHNICAL ASSISTANCE**

The department provides local assistance and monitoring for all projects.

Field Audit: The on-site Section 5311 biennial project review assesses program compliance in the following areas:

- general system operating and maintenance procedures;
- compliance with drug and alcohol program requirements, such as testing rates, randomness of testing, privacy requirements, annual training for all safety-sensitive employees, etc.;
- Civil Rights, including non-discrimination, Environmental Justice, and Limited English Proficiency
- Americans with Disabilities Act (ADA)/Section 504,
- charter and school bus restrictions;
- procurement, including Buy America requirements;
- DBE and EEO requirements;
- insurance;
- impact of incidental services on passenger service;

- inventory of federally funded equipment,
- and vehicle fleet inspection.

The audit will also include assurance the system is open to, and serves, all public segments and that the project seeks to coordinate with social service agencies.

MoDOT Internal Control: The department staff also includes a finance and budget accountant who oversees the financial management of Federal Transit Administration grants. An objective of the department is to provide sound technical assistance on a continuing basis to all grantees.

Rural Transit Assistance Program (RTAP): A full-time multimodal operations specialist is assigned to provide driver training to recipients of Section 5311 projects. Specialized assistance in accounting, auditing, appraising, vehicle procurement and maintenance, and legal matters may also be provided, either by the Section 5311 Program Manager, other MoDOT staff, or attendance at classes and/or conferences

The RTAP program (Section 5311(b)) has been incorporated into the department's technical assistance effort. The goal of this program is to provide instruction designed to fulfill the training needs of recipients of Section 5311 funded projects. The Directors of the Section 5311 funded systems act as an advisory committee for the RTAP program. RTAP activities are discussed annually at the MPTA conference as well as at any administrative training held throughout the year.

Based upon the committee's recommendations, MoDOT has employed a full-time staff person who specializes in driver training and passenger assistance techniques. The RTAP trainer will visit any Section 5311 project and provide on-site training. The department's transit training program is updated as needed.

Funding is provided for off-site training in CPR, First-Aid and computer courses at no cost to Section 5311 projects. Funding is available for the costs of in-state training sessions (such as the MPTA annual meeting). If sufficient RTAP funds are available, out-of-state travel and training may be approved on a case-by-case basis upon submission of an application to the Section 5311 program manager.

Funds for continuing education, such as attendance at a four-year college to obtain a degree, are eligible. The following criteria must be met:

1. Prior approval must be received from the Section 5311 program manager before enrollment.
2. The student must be a full-time employee of a Section 5311 program recipient.
3. Expenses are reimbursable only after the student has completed the course and received an least a "C" grade or above.
4. Tuition only is reimbursable for up to and including 20 hours per calendar year. Expenses such as student activity fees, textbook costs, lab fees, etc. are not eligible.

#### **I-14 REPORTING BY SECTION 5311 RECIPIENTS**

The department does not set specific criteria in the areas of productivity, cost effectiveness or service standards. The number of trips, miles traveled, trips per vehicle and subsidy per trip, are used in evaluating new projects or renewing existing projects. Grantees must submit requests for reimbursement either monthly or quarterly. The request includes information on the number of trips, miles traveled, hours of service (see Appendix C), and detailed system costs. Annual reporting is required for the following: Rural Transit Database, Vehicle Inventory and Usage report (See Section III-1), and Substance Abuse Testing Program (see Section VII-7). Disadvantaged Business Enterprise activity (see Section VII-8), must be reported semiannually.

Rural Transit Database: Each grantee is required to submit a report based on the State's fiscal year (July 1 to June 30). Information must be submitted on or before September 15. The following data is required:

- Name of Grantee
- Address
- Telephone Number
- County
- Contact Person
- Type of Service Provided
- Service Area
- Volunteer Resources
- Number of Active Vehicles
- Number of ADA Accessible Vehicles
- Operating and Administrative

#### **Expenses**

- Operating Revenue
  - Fares
  - Contract Revenue
  - Federal Assistance
  - State Assistance
  - Local Funds
- Capital Costs
- Sources of Capital Funds
  - Federal Assistance
  - State Assistance
  - Local Funds
- Annual Vehicle Miles
- Annual Vehicle Hours
- Annual Passenger Trips
- Fatalities
- Major Incidents
- Major Injuries

#### Program Income:

As of October 1, 2010, grantees are required to report program income on the monthly/quarterly requests for reimbursement. Program income includes revenues from advertising, room rental of any federally funded facility, and voluntary rider donations. This information must be reported annually to FTA as an accumulative total for each operating grant.

## II. PROGRAM ADMINISTRATION

### II-1 ELIGIBLE ASSISTANCE CATEGORIES

Capital Expenses – Eligible expenses include the acquisition, construction and improvement of public transportation facilities and equipment. The federal share of eligible facilities and equipment shall not exceed 80 percent of the net capital cost. The federal share may be less than 80 percent depending on available funds, demand and the share of a capital project that is general public in nature.

Funding for ADA related improvements or bicycle access improvements is available on a 90%/10% basis. See FTA Circular 9040.1F, Chapter III, Section 2.

The local match for capital items must be local cash from sources other than transportation fares and DOT federal funds. Eligibility of an item does not imply approval. The need for all capital equipment must be documented specifically in the application process.

Public entities and not-for-profits are allowed to apply for Section 5311 and Section 5309 grant funds for fixed facilities such as buildings. Generally, only grantees that receive congressional earmarks will receive funds to acquire facilities as vehicles and equipment are given priority and funds are usually not sufficient to meet those needs.

The Missouri Department of Transportation will procure all rolling stock on behalf of Section 5311 grantees on a competitive bid basis in compliance with FTA Circular 4220.1, as amended. Other capital purchases will be made by the department or by the local recipient depending on particular circumstances. Local procurements must have prior department authorization for solicitation and for award and be must carried out in accordance with FTA grant requirements, FTA Circular 4220.1, as amended, and state procurement laws.

MoDOT conducts all FTA funded rolling stock audits as required by 49 CFR Part 663.37. Whenever twenty or more modified vehicles are purchased from a single vendor for one subrecipient, MoDOT will send its vehicle inspector to the point of assembly. A written report of the inspection will be kept on file for verification purposes.

Before vehicles are delivered to sub-recipients, MoDOT inspects each vehicle to ensure specification compliance. If a vehicle is determined non-compliant, the vendor is required to make necessary adjustments to ensure compliance with specifications.

Section 5311 assisted vehicles cannot be used for nonincidental client specific, exclusive services. Vehicles approved under Sections 5311 must be used for general public services only (see Section V-2 - Charter Bus and School Bus sections for exceptions).

Any equipment costing over \$5,000 must be capitalized, not expensed. Items costing under \$5,000 may be capitalized according to the recipient's own requirements. Records must be maintained for capital equipment as specified in Section III – Equipment Procurement, Management, and Disposition. Items costing less than \$500 are not eligible for capital funding at an 80/20 ratio but may be expensed as operating expenses.

Operating Expenses Eligible expenses include general administration (expenses that are necessary for the operation of the service but cannot be directly tied to a particular vehicle or route) and overhead, insurance, professional services, vehicle maintenance, facility maintenance, and direct transportation expenses.

Section 5311 funds may be used to support up to 50% of a project's net operating loss. Net operating loss is the total expense incurred minus any fares collected. Refer to the sections on local matching funds and use of project revenues for further information. MoDOT's funds some administrative expenses at 80% federal/20% local. Those expenses include all insurance premiums except for health insurance, background checks, physical exams for CDL license holders, and substance abuse testing. These expenses as well as other administrative expenses cannot exceed Thirty percent of the total operating cost.

#### Funds Reserved for State Administration

MoDOT may reserve up to 15% of the funds available for state administrative purposes. The amount reserved is generally between 8 – 10%. State administrative funds are used for:

- Program manager salary and expenses,
- Other transit staff salaries and expenses as appropriate,
- Planning studies (Intercity bus, transit needs assessments, etc.),
- Feasibility studies for rural facilities,
- Marketing for rural providers, and
- Other expenses as may be allowable as technical, planning or administrative costs.

### **II-2 APPLICATION CYCLE**

Applications and grants under Section 5311 are based on the fiscal year of the local recipient. Grants are made for one year. This procedure of structuring around local fiscal periods minimizes problems in auditing for the recipient and MoDOT. Local applications are prepared in accordance with the department's handbook on Section 5311 applications. The handbooks are distributed directly to existing recipients. Applications are available on the department's website or potential applicants may request copies from the Section 5311 program manager. Potential applicants are urged to contact the program manager for technical assistance early in their planning process.

In March and April of each year, MoDOT will allocate funds for the next round of funding based on prior funding for current recipients. New applicants will receive funding based on the same funding level (cities generally receive 50% of their net expenses while regional and county systems currently receive funds that cover 30 – 45% of their total expenses).

Intercity bus providers are required to submit a preliminary application at this time as the funding for these recipients may vary widely dependent upon whether they are asking for capital funding. This requirement enables MoDOT to shift unused 5311(f) funds to the general public providers if it is available. Historically, MoDOT has not received 5311(f) funding requests that approach the 15% limitation on these funds.

After the allocations are determined, MoDOT will

apply to FTA for the funds. This is generally completed by April 30.

As every county in the state has public transportation, however limited, the department does not solicit applications but does make every effort to make the public aware of the program and assist in assessing local needs for the program. The Section 5311 program manager makes presentations to community groups and works with transportation "task forces" that are working to improve transportation in their community.

### **II-3 USE OF CAPITAL EQUIPMENT**

Capital items are funded to provide general public transportation service in a specific area. Should a recipient be unable or unwilling to continue the service the equipment reverts to the department.

Recipients are permitted to reserve vehicles for administrative use under the following guidelines:

1. Federally funded nonrevenue vehicles may be used for routine or necessary travel of administrative staff for trips where mileage would normally have been paid for the use of a personal vehicle. Travel to and from work and/or weekend use for other than strictly business purposes is prohibited.
2. Federally funded vehicles are not to be used solely by board members for their travel.
3. All administrative vehicles should be parked at the office after working hours and on weekends.
4. Use of these vehicles must be documented in a log that includes:
  - Name of the user;
  - Date;
  - Destination;
  - Initial odometer reading;
  - Ending odometer reading; and
  - Trip purpose.
5. Inspection of administrative/service vehicles logs will be a part of MoDOT's routine field inspections.
6. Vehicles designated for administrative use must be reported to the department at the time of purchase. Change in use (moving a vehicle from wholly administrative to wholly revenue use, and vice versa) must be reported to MoDOT within 30 days.

## **II-4 LOCAL SHARE AND LOCAL FUNDING REQUIREMENTS**

Capital Capital items are funded at a maximum Section 5311 share of 80% with ADA related improvements and bicycle access improvements eligible for 90% funding. Each applicant affirms the availability of the necessary local share as part of the application package. For capital purchases the local share must be in cash derived from non-operating sources, or a maximum of 15% of non-federal, operating revenues may be deposited into an escrow account each month to provide the local match for capital purchases. Fares cannot be escrowed. The amount escrowed must be held in a separate federally insured money market or savings account and deposits and withdrawals must be documented.

Operating Each recipient must demonstrate the availability of sufficient resources to defray a minimum of 50% of a project's net operating costs after the expenses for 80% reimbursement have been deducted. Net operating costs in excess of the amount in an operating grant must be met entirely by the recipient. Up to 10 percent of local and state funds (other than fares) may be escrowed to provide for an operating reserve. The balance held in escrow cannot exceed one fourth of the total expense shown in the latest independent audit. The amount escrowed must be held in a separate federally insured money market or savings account and deposits and withdrawals must be documented. Withdrawals must be counted as revenue in the month the withdrawal is made.

State transit assistance is allocated based on the service area population of each grantee. State assistance is paid out in equal installments of the time period of the grant. No match is required but expenses must equal or exceed the amount of the state assistance requested for the time period (monthly or quarterly) for which a reimbursement request is submitted.

Individual fares may not be used as match and eligible project expenses must be reduced by the fares collected before determining the amount of Section 5311 funds to be paid to the grantee.

Volunteer and contributed services may be included in an approved project budget as an expense and a part of the local share revenue in

the calculation of net project costs. Volunteer and contributed services may not, however, replace any contract revenue, passenger revenue, payment for services or unrestricted donations earned by the recipient during the project period. The department must approve all volunteer services and the value assigned to them in advance. Time sheets and other documentation must be kept to substantiate the value of any volunteer services.

Unrestricted federal funds used as match must not be from charter revenues (see Section V-2 - Charter Bus and School Bus). The same requirement applies to local funds. Section 5311 is designed to support local transportation services. In part, the character of the service is determined by the local matching funds available. Applicants must demonstrate that matching funds are not, in fact, revenues generated from charter bus or school bus activities. This is a state requirement, not a federal requirement.

Each applicant's package of local and unrestricted matching funds will be evaluated for compliance. Contributed services will be assumed to have only the character of cash items in the package of local matching funds.

## **II-5 ACCOUNTING AND RECORDS**

All grantees will use the chart of accounts developed by the department for reporting project financial data to MoDOT. This will assist in making accurate comparisons by providing a uniform accounting structure. See Appendix B for the chart of accounts.

## **II-6 FEDERAL GAS TAX REFUNDS**

All nonprofits receiving Section 5311 assistance are required to apply for refunds of federal gasoline taxes. Refunds received are to be treated as Section 5311 payments attributable to the project period in which the refund is actually received. If total expense for the project period equals or exceeds twice the sum of 1) federal funds paid, and 2) the amount of the refund, no repayment of Section 5311 funds to MoDOT is required.

Gas taxes attributable to urbanized operations are not subject to this requirement. Ideally this portion would be identified through actual urbanized fuel consumption. Since this may be

difficult, tax refunds can be divided on the basis of fuel purchased for transit vehicles primarily serving an urbanized area.

## II-7 REIMBURSEMENT

Section 5311 is a reimbursement program. Recipients may request reimbursement for eligible expenses monthly or quarterly. Costs and revenues will be submitted according to the department's uniform chart of accounts using standard forms developed by the department. Each time recipients request Section 5311 assistance, they must submit a statement of revenue and expenses that details expenses by line item and project income by source. This determines the proper Section 5311 share.

## II-8 AUDIT AND CLOSEOUT

At the end of the project period, recipients are required to submit a consolidated statement of revenues and expenses for the entire project period. The recipient must also submit a report prepared by an independent auditor in accordance with the department's audit guidelines. For grant recipients who expend more than \$500,000 in federal funds during any fiscal year, FTA requires audits to comply with OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations". These audit reports must be received within nine months after the end of the recipient's fiscal year. The Section 5311 Program Manager tracks receipt of all audits .

All recipients whose total transportation budget exceeds \$50,000 must have an independent audit annually. Not-for-profit recipients whose total expense for the year is less than \$50,000 may request a field audit by MoDOT personnel in lieu of an independent audit.

The department will review the recipient's statement of revenues and expenses and independent audit and determine allowable Section 5311 funding. The project is then closed upon final financial adjustments.

The department is required to submit annual updates to FTA through their electronic grant management system (known as TEAM). The following is Multimodal Operations Procedure for Reporting Unliquidated Obligations for Federal Financial Reports (FFR):

1. When a grant is awarded by FTA and executed by MoDOT's Multimodal Operations Director, a Program of Projects is given to the Financial Services Specialist by the Program Manager that provides scope-level detail of the budget for the grant.
2. With the grant's Program of Projects summary detail, the Financial Services Specialist will enter the total grant budget with scope detail into SAM-II (Financial Advantage, the State of Missouri Accounting System).
3. As agreements and contracts are commenced with sub-grantees and vendors, the value of those agreements and contracts will be entered into SAM-II as encumbered amounts which will be the amounts reported as the Federal or Recipient's Share of Unliquidated Obligations in the FFR .
4. As the agreements and contracts are disbursed, these amounts will be reported as expenditures and reported in the FFR category of Total Expenditures.
5. Taking the total amount of the grant, then deducting the expenditures and Unliquidated Obligations, will give the amount of the Unobligated Balance of Federal Funds, which will include the grant scope amount for State Administration.
6. When preparing the FFR's and before submitting them to FTA, the Financial Services Specialist will have the Program Managers review for accuracy the amounts that are reported in the FFR.

Within 90 days of final expenditure of all funds in a federal grant, MoDOT will submit a Federal Financial Report, final budget, and final program of projects through the TEAM system to FTA.

### III. EQUIPMENT AND FACILITIES PROCUREMENT, MANAGEMENT AND DISPOSITION

All recipients must develop a written procurement policy that is in compliance with FTA Circular 4220.1, as amended.

At a minimum, each policy must contain the following requirements of Circular 4220.1, as amended::

1. five year limitations on rolling stock contract periods;
2. full and open competition;
3. prohibition again geographic preferences;
4. use of the Brooks Act for procurement of architectural and engineering services,; and
5. inclusion in all contracts of all required federal clauses.

In addition, the requirements of the "Common Grant Rules" should be addressed in the policy.

#### III-1 VEHICLES AND EQUIPMENT

MoDOT purchases all vehicles according to written procurement procedures and standards that comply with FTA Circular 4220.1, as amended. When other equipment is purchased locally, recipients are required to follow OMB Circular A-110 and FTA grant agreements, FTA Circular 4220.1, as amended, and local law. Transit staff will review recipients' procurement policies for compliance during the field trip inspection. All recipients must obtain titles on vehicles even if exempted from that requirement under state law.

All recipients are required to maintain an equipment file on all items whose original cost was \$5,000 or more. This file will contain inventory records that include, at a minimum, the following information:

- description;
- acquisition date;
- federal participation percentage
- condition
- serial number
- title
- source of property
- location;
- FTA grant number;
- cost,
- and disposition
  - method

- selling price
- date of sale

The file should also include the Section 5311 Capital Agreement and a copy of the original purchase order. MoDOT will retain possession of all titles, with MoDOT listed as first lien holder. No second liens may be placed on any federally funded vehicle except for vehicles purchased for intercity bus operators. The annual inventory process also accounts for vehicles sold requiring the grantee to include all disposition data relative to vehicle disposal.

An Annual Inventory and Certification Report must be submitted for the calendar year and are due February 28. The report should identify each vehicle, the grant number under which it was funded, the VIN and the odometer reading as of December 31. A member of the department will verify this inventory and inventory other equipment and inspect federally funded facilities biannually.

Maintenance: Grantees are responsible for ensuring each vehicle is maintained in accordance with vehicle manufacturers' standards and any neglect or misuse of equipment will be the responsibility of the local organization. Thus, grantees will be financially responsible if the vehicle or other equipment cannot be resold at its fair market value.

A maintenance program is required for all vehicles, facilities, and/or equipment purchased using federal funds. Maintenance records must be kept for individual items and/or major components (such for each vehicle or the heating/air conditioning system in a building). The records should include both routine (preventive) and demand maintenance.

All grantees must maintain the ADA accessibility of all vehicles and facilities. If accessible vehicles are not available (due to breakdown or accident), the grantee must either acquire accessible vehicles from other grantees or the service must be shutdown. While grantees are allowed to have a mix of vehicle types in their fleets, the number of accessible vehicles available for service during any time period must be adequate to meet demand.

#### III-2 USEFUL LIFE OF VEHICLES

Minimum standards for vehicle useful life are:

Vans, straight or modified - 100,000 miles  
Mini-buses (body on chassis) - 100,000 miles  
Medium Duty - 200,000 miles  
Transit buses - 7 to 12 years, as determined by Altoona testing report

### III-3 FACILITIES

All facilities purchased or constructed with federal assistance must follow the federal guidelines for procurement in Circular 4220.1 (as amended). A feasibility study must be completed for all facility projects, whether they are funded through the Section 5311 program or the Section 5309 Capital Program. (Also see Section VII-2.)

The feasibility study will evaluate the project's cost effectiveness and its effect on the environment, including noise, water quality, air quality, impacts on wetlands, flooding, navigable waters, endangered species, and ecologically sensitive areas. Feasibility studies may be funded from the Section 5311 state administration allocation, generally on an 80% federal/20% local basis.

All new construction or rehabilitation of an existing structure will meet requirements for local land use planning and zoning, relocation, traffic and parking, energy conservation, consideration of historic properties, and will place an emphasis on safety and security. A portion of Missouri lies in the New Madrid fault zone and all facilities must be constructed and/or rehabilitated to meet current seismic and ADA accessibility requirements.

### III-4 INSURANCE

To protect the Federal interest of FTA funded property in the event of loss or damage, MoDOT requires the recipients to obtain replacement insurance coverage equal to the federal share of the fair market value of the project equipment and/or facility. Grantees must also carry liability insurance that meets state requirements. Self-insurance is permissible with prior approval by MoDOT. Proof of insurance is verified during the biennial project review.

### III-5 DISPOSITION AND TRANSFER OF EQUIPMENT

Recipients will be required to dispose of all FTA

funded items under the conditions of the FTA grant contracts. MoDOT will permit the transfer of used FTA funded Section 5311 vehicles and equipment from one recipient to another. Transfer of vehicles will be in accordance with FTA policy on transferring capital equipment.

Grantees are required to submit a written request for disposal of a vehicle(s) or equipment they wish to dispose. The recipient must receive written authorization before disposing of the vehicle. If a recipient wishes to dispose of a vehicle before the end of its useful life (as set out in Section III-2), MoDOT must inspect the vehicle to determine if the useful life of the vehicle(s) or equipment has been reached prematurely, and seek concurrence from the FTA for the disposal.

A recipient may dispose of a vehicle at the end of its useful life in either of two ways:

1. A vehicle may be sold to a third party through a variety of approved processes, including advertised sealed bids, auto auction or the average of three competent appraisals.
2. A recipient may buy out the federal interest and keep the vehicle for other purposes. In this case the price to be paid by the recipient will be the average wholesale value of the vehicle as specified in the most recent National Automobile Dealers Association (NADA) Official Used Car Guide or The Official Bus Book Market Report. (See Section III-7 Division of Disposition Proceeds)

### III-6 DISPOSITION OF FACILITIES

When a grantee no longer has use for a facility, the facility may be transferred to a local governmental entity or it may be sold. Sale proceeds may either be used to acquire another facility or the proceeds may be divided as outlined in the following section. Any disposition of FTA-funded property requires prior approval from MoDOT and FTA

### III-7 DIVISION OF DISPOSITION PROCEEDS

If federally funded vehicles, equipment, or facilities are sold to a third party, the recipient may retain the local share percentage contained in the agreement with MoDOT (generally 20%). An additional \$225 may be retained on a vehicle to cover the cost of preparing the vehicle of

disposition (removing logos, signage, etc.) The balance must be paid to the department within 10 working days (see Appendix D).

If a recipient buys out the federal interest in a vehicle, the recipient must pay 80% of the NADA wholesale value to the department within 10 working days.

### **III-8 USE OF DISPOSITION PROCEEDS**

MoDOT will use the disposition proceeds received to supplement the Section 5311 Program by assisting recipients with major repairs on federally funded vehicles. Grantees must apply for assistance before ordering the repairs to be made. Assistance is dependent upon funds being available and is not guaranteed to any recipient.

### **III-9 REPLACEMENT OF DISPOSED EQUIPMENT**

Federally funded vehicle(s) or equipment disposed of before requesting replacement by application for federal funding will not automatically be considered eligible for replacement at a future time. Vehicles disposed of prematurely (See Section III-5) may also not be replaced at the discretion of the department. Vehicles purchased by the applicant and kept in active service will not be considered eligible for federal assistance as a replacement vehicle at a future date. In any given year that vehicle requests exceed the amount of funding available, replacement vehicles will be funded before expansion vehicles.

## **IV. CIVIL RIGHTS**

### **IV-1 TITLE VI**

Title VI of the Civil Rights Act of 1964 is a Federal law that protects individuals and groups from discrimination on the basis of their race, color, and national origin in programs and activities that receive Federal financial assistance. Reference to Title VI includes other civil right provisions of Federal statutes and related authorities to the extent they prohibit discrimination in programs and activities receiving Federal financial assistance.

Title VI compliance is defined as when the recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort has been made toward achieving this end. MoDOT and all Section 5311 program recipients must meet these requirements.

All programs conducted by MoDOT and the Section 5311 program recipients must meet the requirements. Education, training, work opportunities, benefits, and provision of services are examples of programs that must meet the Title VI requirements, whether provided directly by the recipient or its agents, contractors, or other vendors.

Discrimination is defined as: an act (action or inaction) whether intentional or unintentional, through which a person or group, solely because of race, color, national origin, disability, sex, age or income status, has been otherwise subjected to unequal treatment or impact, under any program or activity receiving Federal financial assistance.

A complaint may be filed by any individual or group that believes they have been subjected to discrimination or retaliation based on their race, color, national origin, sex, age, disability or income status. The complaint may be filed by the affected party or a representative and must be in writing.

Section 5311 program recipients who feel they have been discriminated against by any MoDOT employee or its agent/contractor may contact MoDOT's External Civil Rights Office. A review will be made to determine if MoDOT has jurisdiction to investigate the issues raised. If MoDOT does not have jurisdiction, the complaint

will be forwarded to the appropriate agency. If MoDOT does have jurisdiction, the allegations will be investigated and an attempt will be made to resolve the matter. If violations are found and negotiations to correct the violation are unsuccessful, enforcement proceedings may be initiated to attain compliance.

In addition, any individual or group who believes they have been discriminated against by an employee of a Section 5311 program recipient or it's agent/contractor should first contact the Section 5311 recipient in writing. MoDOT should also be notified of the complaint within 5 working days.

MoDOT and the Section 5311 program recipients are prohibited from retaliating against any person because they reported an unlawful policy or practice, or made charges, testified, or participated in any complaint action under Title VI. If an individual or group believes they have been retaliated against, they should immediately contact MoDOT's External Civil Rights Office to report their allegation. Filing a complaint with MoDOT does not prevent an individual or group from seeking remedy through other resources.

Complaints should be addressed to:  
External Civil Rights/Title VI Coordinator  
P. O. Box 270  
Jefferson City, MO 65102  
573-526-2978

All applicants are required to execute the standard Civil Rights Assurances that are referenced in the Section 5311 Agreement and Handbook. The required Local Civil Rights Assurances are submitted to the department and kept on file. Recipients of Section 5311 assistance are monitored for civil rights compliance during the on-site review. . MoDOT , with FTA's concurrence, may withhold Section 5311 funds from any grantee whose policies and actions are deemed to be noncompliant. Any legal action filed against the grantee must be reported to MoDOT within 30 days.

#### **IV-2 EQUAL EMPLOYMENT OPPORTUNITY**

All applicants must agree to Federal Transit Administration equal employment requirements that are made a part of the Section 5311 Agreement. MoDOT requires an Equal Employment Opportunity program plan prepared in accordance with FTA Circular 4704.1 to be

submitted by Section 5311 recipients with 50 or more employees and who have received capital or operating assistance grants, or a combination thereof, in excess of \$1,000,000 in annual FTA funding, or in excess of \$250,000 of FTA planning funds, in the previous federal fiscal year. Recipients are monitored for compliance during field inspections.

#### **IV-3 DBE PROGRAM**

The Disadvantaged Business Enterprise Program is designed to provide equal opportunity for minority- and women-owned companies to compete and perform on contracts. See Section VII-8 for a full description of this program.

#### **IV-4 SECTION 504 AND ADA**

All grantees will be required to comply with all regulations concerning equivalent service and access to individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1991.

Public entities are required to annually certify they have sufficient accessible vehicles to meet the ADA requirements for equivalent service. The certificate is included in the Section 5311 funding application.

Entities Operating Fixed Route Systems Entities, whether public or not-for-profit, operating a fixed route system, must purchase vehicles that are readily accessible and usable by individuals with disabilities. Entities operating fixed route systems are also required to provide complementary paratransit services that meet the requirements of "Public Entities Operating Demand Response Systems". Providers must develop Complementary Paratransit plans that provide for service to anyone within a ¼ mile radius of the fixed-route who is not able to access the fixed-route service. Providers may require a rider to qualify for the service. The plan must be developed with public input and reviewed annually to assess its effectiveness. .

Public Entities Operating Demand Response Systems Both accessible and non-accessible vehicles may be utilized in providing this service depending upon the clients served. Public entities operating demand response systems with non-accessible vehicles must meet the requirements of 49 CFR 37.77. The service

must provide equivalent service to individuals with disabilities based on the following criteria: 1) response time, 2) fares, 3) geographic area of service, 4) hours and days of service, 5) restrictions or priorities based on trip purpose, 6) availability of information and reservations capability, and 7) any constraints on capacity or service availability.

#### Not-for-profits and other Private Providers Operating Demand Response Systems

Providers may acquire both accessible and non-accessible vehicles if they meet the requirements of 49 CFR Section 37.105 in providing equivalent service to individuals with disabilities. Evaluation of equivalent service will be based on the following criteria: 1) response time, 2) fares, 3) geographic area of service, 4) hours and days of service, 5) availability of information, 6) reservations capability, 7) constraints on capacity or service availability, and 8) restrictions priorities based on trip purpose.

The status of the lead agency in a transit project determines what service must be provided and what vehicles may be purchased, i.e. a public entity that contracts with a private not-for-profit to provide service must comply with the requirements for public entities.

#### **IV-5 ENVIRONMENTAL JUSTICE**

Facilities: All new construction or rehabilitation of an existing structure will take into consideration the needs of the community's minorities and low-income populations. While Section 5311 facility projects will generally not have a significant impact on a community, adverse effects will be considered to community cohesiveness, destruction or disruption of public or private service, change in employment opportunities, traffic and parking issues, environmental quality, and historic structures.

All grantees must also consider the needs of minorities and low-income populations when establishing routes, service areas, and hours of operation.

#### **IV-6 LIMITED ENGLISH PROFICIENCY (LEP)**

MoDOT's External Rights Office is responsible for monitoring the existence of populations within the state who may have limited English proficiency. The department completes a four-

factor assessment that includes: 1) the number and/or proportion of LEP populations within the service population, 2) frequency that these populations need service, 3) service provided by the department, and 4) resource available to MoDOT to meet their needs.

Recipients are responsible for monitoring this issue on a local level within their service area. Recipients whose service areas include populations with limited English proficiency must develop and implement strategies to make the service accessible to those populations. Translator services, language instruction for dispatchers and drivers, and bilingual advertising and signage are examples of those strategies.

#### **V. PRIVATE SECTOR INVOLVEMENT**

##### **V-1 PARTICIPATION BY PRIVATE PROVIDERS**

Private providers are made aware of proposed projects through the required notices of public hearings. The charter bus and school bus provisions of local project agreements protect charter bus and school bus operators.

Local organizations are encouraged to use private providers in their Section 5311 projects to the greatest extent possible. The department has developed standard procedures for soliciting private bids and executing subcontracts (see Section I-7). Local projects that make use of taxi services are also encouraged.

##### **V-2 CHARTER BUS AND SCHOOL BUS REGULATIONS**

Recipients are required to adhere to FTA's Charter Bus and School Bus Regulations. The Section 5311 Agreement and Handbook contain references to these regulations and appropriate assurances are included. The department monitors compliance.

Charter services are generally identified as those where: a) a third party contracts with the operator for exclusive use of a vehicle for transporting the third party's clients or any specified group of individuals; b) a group of individuals secure exclusive use of a vehicle for their use; or c) unreserved services that are limited to members of a particular group and are not open to the public at large on a first-come

first-served basis.

Charter Exceptions Any charter service provided which uses federally funded equipment or facilities must not result in a reduction of regular Section 5311 operations. Expenses incurred by the charter operation must be fully recovered by charter revenues and any excess must be counted as revenue toward the Section 5311 operations.

49 CFR Part 604 contains the requirements and exceptions for providing charter service and is attached to this plan as Appendix P.

School Bus Section 5311 recipients are prohibited from providing exclusive school bus service unless the service qualifies, and is approved by the FTA Administrator, under an allowable exception. Federally funded equipment or facilities cannot be used to provide exclusive school bus service. Head Start transportation is considered a human service program and is not defined as school bus service.

Recipients may provide transit tripper service. Tripper service is regularly scheduled mass transportation service open to the general public, which is designed or modified to accommodate the needs of school students and personnel. Such service must be open to the public, must serve regular transit stops, and must be delineated on route maps and schedules, and does not display school bus signs.

## **VI. PUBLIC INVOLVEMENT**

### **VI-1 HOLDING PUBLIC HEARINGS AS PART OF APPLICATION PROCESS**

All applicants are required to schedule and publish notice of a public hearing before the application can be submitted. For capital purchases including vehicles and equipment and for operating subsidies, the public hearing notice may contain the requirement that interested persons must contact the applicant at least three working days before the meeting if they wish to provide input or request information. If no requests are made, the public hearing may be cancelled.

For facility projects that have a substantial effect on the community, the public hearing must be held. Minutes must be taken and those minutes must be submitted to MoDOT. Detailed plans and specifications should also be made available for review at the applicant's place of business.

Each notice of public hearing concerning capital budgets must be advertised twice, once at least 30 days before the hearing, and once at least 7 days before the hearing. Public hearings concerning operating budgets only must be advertised at least 30 days before the hearing.

### **VI-2 SPECIAL PURPOSE PUBLIC HEARINGS**

During the grant year, additional public hearings may be required. A public hearing must be held if:

1. The capital or operating budget is being revised by more than 25% of the original budget.
2. The grantee proposes to increase fares or decrease service more than 1) 25% on fixed-route service or 2) 50% on demand-response service

Public hearings advertised for the above purpose must be held at the appointed time whether or not anyone has requested to provide input before the meeting.

Each notice of public hearing must be advertised twice, once at least 30 days before the hearing, and once at least 7 days before the hearing.

## **VII. OTHER SPECIAL REQUIREMENTS**

### **VII-1 BUY AMERICA REGULATIONS**

The Buy America requirements apply to all FTA funded purchases of more than \$100,000, not just vehicles. Bidders are required to execute the Buy America certification at the time of bid submission. (For an RFP, the certification must be executed no later than the best and final offer submission.)

MoDOT conducts pre-award and post delivery vehicle audits as outlined in Conducting Pre-Award and Post-Delivery Audits for Bus Procurements. All bidders must submit a statement of domestic content with their bids. The statements are evaluated before bids are awarded. Domestic content is also reviewed when 1) more than 20 vehicles are purchased from one manufacturer, MoDOT conducts an inspection at the factory, and 2) every vehicle is inspected just prior to delivery. In addition, vendors must submit a post-delivery statement of domestic content for all vehicles. Steel, iron and manufactured products must be manufactured in the United States from domestic components. For rolling stock, final assembly must occur in the United States and the cost of components made in the United States must be greater than 60% of the cost of all components.

### **VII-2 CONSTRUCTION AND PURCHASE OF REAL PROPERTY/RELOCATION**

Uniform Relocation Assistance  
Real Property Acquisition  
Historical Preservation  
Environmental Protection

Applications for Section 5311 Assistance involving purchase of real property and relocation of persons will comply with all laws and regulations involving property acquisition, relocation of persons and/or businesses, environmental and historical preservation. The department provides specific assistance to guide the applicant through the land acquisition process (see Section III-3).

### **VII-3 SECTION 5333 (B) LABOR PROTECTION (formerly Section 13(c))**

All applicants for Section 5311 Assistance are required to agree to the provisions of Section

5333(b) Labor Protection Special Warranty annually. Both the Section 5311 Agreement and Handbook contain assurances referencing Section 5333(b). All Section 5333(b) assurances are forwarded to the U. S. Department of Labor as required.

### **VII-4 CONFLICT OF INTEREST**

All applicants are required to develop and implement policies that ensure proper use of project funds, facilities and equipment including policies on personal gain by staff or board members, employment of relatives, or preferential operation of project services.

### **VII-5 ROLLING STOCK AUDIT AND INSPECTION**

MoDOT staff will conduct all rolling stock audits required by FTA. Recipients are required to maintain a log on each vehicle detailing repairs and preventive maintenance. Department staff will inspect vehicles for condition, cleanliness, presence of safety equipment including, but not limited to, first aid kits, blood borne pathogens kits, seat belt cutters, and fire extinguishers. Lift equipment and wheelchair restraints will also be inspected.

### **VII-6 ANTI-LOBBYING AND DEBARMENT AND SUSPENSION**

Lobbying MoDOT and all applicants will be required to abide by FTA's requirements regarding anti-lobbying restrictions. Recipients may not use federal funds for lobbying purposes. Grant recipients whose federal funds exceed \$100,000 in any one year are subject to reporting requirements if any non-federal funds are used for lobbying.

Debarment and Suspension Recipients of federal funds may not transact business with anyone who has been debarred and/or suspended from doing business with the federal government. Recipients are responsible for researching that potential contractors and/or subgrantees are not debarred and/or suspended; a list of entities that have been debarred and/or suspended is available at <http://epls.arnet.gov>.

### **VII-7 DRUG AND ALCOHOL TESTING**

All recipients are required to comply with FTA's

requirements for drug and alcohol testing (49 CFR Parts 655 and Part 40). Recipients and their contractors who employ safety sensitive personnel (excluding safety sensitive contract maintenance personnel) will have written drug and alcohol policies as required by FTA. Recipients and their contractors will allow MoDOT designated personnel review the drug and alcohol program records for compliance. Recipients are required to complete FTA's Management Information System (MIS) forms online annually. Reports are based on the calendar year.

### **VII-8 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE)**

MoDOT has developed and implemented a plan to provide opportunities for disadvantaged businesses to participate in federally funded projects.

DBE Program Threshold Requirements: The U.S. DOT DBE regulations at 49 CFR 26.21(a)(2), and as subsequently amended and published in the Federal Register on June 16, 2003, require FTA recipients and sub-recipients who project awarding more than \$250,000 in federally-assisted prime contracts in a Federal fiscal year to have a DBE program. This change affects new recipients and sub-recipients or recipients and sub-recipients who do not have a DBE program. As MoDOT is considered the recipient for the Section 5311 program, all Section 5311 subgrantees must report their DBE activity. Prime contracts include contracts for goods as well as contracts for services. As defined by the Federal Acquisition Regulation, a "contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. Contracts would include bilateral instruments, awards and notices of awards; job order or task assignment letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements (FAR 1.101).

3. Accordingly, all documents issued by FTA recipients and sub recipients that include any of the instruments as described above for FTA-

funded capital, operating or planning assistance would constitute a prime contract, and thus would need to be calculated in the grantee's determination for meeting the basic \$250,000 threshold.

DBE information posted on MoDOT's website ([www.modot.org](http://www.modot.org)) includes a handbook, Missouri Department of Transportation Disadvantaged Business Enterprise Program, and a directory of certified businesses that is published annually and updated on the web every two weeks. The website also lists contact information to obtain current DBE goals and other information.

Reporting Requirements: Semiannual reports will be submitted to the Section 5311 Program Manager using the Chart of Accounts listing the number of contracting opportunities, dollar amount of purchases, dollar amount of contracting opportunities, and number of contracting opportunities and the dollar amount of those opportunities that involved certified DBE contractors.

Reports will be submitted based on the Federal Fiscal Year; April through September's report is due December 1 and October through March's report is due June 1.

### **VII-9 ADDITIONAL REGULATIONS**

Each recipient is required to complete an application that will be updated annually to ensure compliance with all federal regulations. MoDOT staff will be responsible for distributing up-to-date applications to each potential recipient and will make revisions to the agreements as necessary to comply with federal regulations, including, but not limited, to the following:

- Program Fraud
- Breaches & Disputes
- Clean Water
- Federal Changes
- Energy Conservation
- Incorporation of Federal Terms
- Termination Provisions
- Clean Air
- Privacy Act
- 3<sup>rd</sup> Party Obligations
- State & Local Law Disclaimer
- Acquisition of Private Mass Transportation Companies
- ITS Architectural Compatibility.

## **VII-10 REVISIONS TO THE PLAN**

References to FTA and other federal and/or state regulations are current as of the date of the latest revision to this plan. MoDOT will administer the Section 5311 program according to the latest regulations. References to specific regulations will be considered revised accordingly without formal re-submission of the state management plan to FTA for approval. Any revisions will be listed in an appendix and sent to all Section 5311 providers.

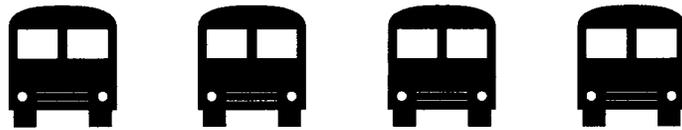


**Appendix A**

**Section 5311**

**Operator's**

**Manual**





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## INTRODUCTION

This manual is intended for organizations that receive funds under the Section 5311 program to assist in the day-to-day operations of their transit program. All new administrative employees should be furnished a copy for training and to use as a reference. In addition, the Section 5311 State Management Plan should be used to gain an overview of the program.

The Section 5311 Nonurban Transportation Assistance Program (Section 5311) provides financial assistance to improve transportation opportunities for the general public in nonurban areas of the state of Missouri.

The program is managed by the Missouri Department of Transportation, Multimodal Operations. The Transit section administers several other federal and state grant programs, including the following:

### FEDERAL:

- Section 5303 provides funding planning to Metropolitan Planning Organizations in urbanized areas over 50,000 in population
- Section 5307 Urbanized Area Formula Assistance Program for urbanized areas with populations under 200,000
- Section 5309 Capital Program for the acquisition of bus and bus facilities in all areas of the state
- Section 5310 Elderly and Persons with Disabilities Program for the acquisition of vehicles for organizations that specialize in providing transportation for the elderly and/or disabled
- Section 5313(b) for planning activities in all areas of the state
- Section 5316 Job Access and Reverse Commute Program for work-related transportation for persons transitioning from welfare-to-work and other low-income persons
- Section 5317 New Freedoms Program for transportation services beyond ADA

### STATE:

- Missouri Elderly and Handicapped Transportation Assistance Program (MEHTAP) for operating assistance for public entities and not-for-profits who provide transportation specifically for the elderly and/or disabled
- State Transit Assistance provides operating assistance for public entities and not-for-profits providing transportation in small urban and rural areas

Any questions about the manual's contents should be addressed to the Section 5311 program manager at the Missouri Department of Transportation. Revisions are provided yearly or more often, if needed. Section 5311 recipients are expected to keep this manual on file, with all copies updated, if it is to be of value to them.



## **PROVIDING SERVICE**

### **PASSENGER TRANSPORTATION**

There are several methods by which a Section 5311 recipient can provide service. Ownership of transit vehicles and system operation is the most common method. The Section 5311 program is intended to be flexible to meet the needs and resources of all recipients. MoDOT oversees the general administration of the programs only. Program particulars such as route selection or hours and/or days of service are left to the recipient.

The source of funding to provide the local match may determine the services to be provided. Transportation which serves primarily the elderly and/or disabled is considered general public transportation if it is marketed as such, i.e. a bus taking senior citizens to a nutrition center would also have to transport a member of the general public if space was available in the vehicle.

### **TRANSIT SYSTEM OWNERSHIP**

Transit system ownership involves the purchase and operation of vehicles, hiring and training of drivers, and employing administrative staff to operate what is basically a small business. For public entities, the transit system may be a separate department or be part of another department such as Public Works, Transportation, Planning, or Community Development.

While ownership of a transit system is more complicated, it allows the Section 5311 recipient more flexibility in providing service and more control over the quality of the service provided.

### **PURCHASE OF SERVICE**

For recipients who do not wish to take on operation of a transit system, there are two options: taxi coupons or contracting service with another Section 5311 recipient or private provider.

In a taxi coupon program, the Section 5311 recipient prints coupons that are then sold to the general public. The rider contacts the taxi company for a ride and presents the coupon to the driver. At the end of the accounting period, the taxi company presents the redeemed coupons to the Section 5311 recipient who pays the agreed upon cost for the rides provided. The Section 5311 recipient may advertise and solicit sealed bids for the service. Bids may be solicited for multiyear service but all contracts should be written for only one year with an option to renew, dependent upon available funding. Bids may contain "cost of operations" clauses that permit the cost of each ride to be adjusted if fuel or other costs rise sharply. Contracts must be executed between the Section 5311 recipient and the taxi company that include all state and federal regulations required of the Section 5311 recipient. Contracts should always have an expiration date and a clause that permits the Section 5311 recipient to cancel the contract (within 30 or 60 days) if funding is withdrawn.

The Section 5311 recipient also has the option of contracting with another transportation provider (either not-for-profit or for-profit) to provide services that may be based on an hourly rate, per mile rate, or per ride. The contract requirements mentioned above also apply. If another Section 5311 recipient is not used as the provider, the service must be awarded through the bid process.

### **OTHER SERVICES**

Section 5311 recipients are also permitted to provide services such as package delivery and meal delivery on an incidental basis (less than 10%). The services must not result in a disruption or reduction of passenger transportation and the total cost must be borne by the nutrition center or other funding sources. Specialized vehicles and/or equipment may not be purchased with federal funds to provide the meal or package delivery.

## **INTERCITY BUS SERVICE**

Section 5311 funds may also be used to subsidize intercity bus services provided by for-profit companies. The companies are required to provide the local match from cargo revenue, applied commissions, profits from non-subsidized routes, and contributions from municipalities who want to ensure that intercity bus service is available in their community.

## **PROHIBITED SERVICES**

### **SCHOOL BUS SERVICE**

Section 5311 recipients are prohibited from providing exclusive school bus service. However, transporting Headstart students is considered social service transportation and is permitted.

### **CHARTER BUS SERVICE**

Charter and/or sightseeing service is transportation provided to a distinct group with no general public access on the vehicle to a specified destination(s). If a route is published in the schedule and the general public have access to the route, the service is not charter service.

Providing charter and/or sightseeing service is also prohibited except under certain conditions. As charter restrictions may be revised from time-to-time, if a request for charter service is received, contact the Section 5311 program manager before proceeding. Public notices may be required as well as obtaining waivers from the FTA.

## **CHANGE IN SERVICE**

Changes in funding or service requirements may result in an operator having to revise schedules, service hours, or the cost of fares. A public hearing must be held if the changes will result in:

- a decrease greater than 25% in fixed-route service (whether in hours, days of the week, or routes);
- a decrease greater than 50% in demand/response service (whether in hours, days of the week, or routes): OR
- an increase in fares.

The hearing notice must be published twice, 30 days before the hearing and again 7 days before. The hearing must actually be held. Also see Public Hearing Requirements in the Grant Cycle Section. Public entities may schedule hearings in conjunction with city council/board of alderman regular meetings. Not-for-profit corporations may schedule them in conjunction with their regular board meetings. Every effort should be made to provide transportation to these meetings, i.e. if they are held in the evening, after regular service hours, special service should be provided for riders wishing to attend the meeting.

Changes in service that result in less than 25% reduction of fixed-route service or less than 50% reduction in demand/response must be posted in the vehicles and information distributed to regular riders at least 10 days before the change takes place.

The hearings must be held in an ADA accessible facility. If the hearing is scheduled during non-service hours, transportation must be provided; reservations may be required. No more than the standard fare may be charged.

## **FUNDING**

There are a variety of funding sources available to Section 5311 recipients. Appendix E contains a list of most commonly received funds and their designation as federal, state, or local. If a funding source becomes available, and is not listed in Appendix E, the recipient should contact the state's Section 5311 program manager to determine the origin of the funds.

### **FEDERAL TRANSIT ADMINISTRATION**

The Section 5311 Nonurban Transportation Assistance Program is a formula based program. Yearly appropriations are based on the state's population as determined by the latest census information available. This funding may meet up to 50% of the eligible operating costs. The funding must be matched with a combination of federal (non-DOT), state (non Mo-DOT), and local funds. Federal funds cannot make up more than one half of the match. Funds received through the JARC grant program (Section 3037) are FTA funds and cannot be used as match.

### **STATE TRANSPORTATION ASSISTANCE**

The Missouri Legislature appropriates state transit funding which MoDOT allocates between urban systems and Section 5311 recipients. This funding can be used as match for FTA funds.

### **FARES**

Fares may not be used as match and the amount of fares received must be deducted from the total operating expense to determine the net eligible operating expense deficit. Fares may be either 1) cash paid at the time of boarding the vehicle (rider fee) or 2) the price paid for a coupon that had to be purchased before riding. Revenue received for service purchased by human service agencies for their clients, whether in the form of a service agreement or ride coupons, is not considered fares. However, a rider fee or coupon paid for by an individual who is later reimbursed by a human service agency is still considered a fare.

### **OTHER FEDERAL FUNDS**

A Section 5311 recipient may receive funding through other federal funding such as Medicaid, funds for the elderly (through the Missouri Department of Health and Senior Services), or Project Action.

### **OTHER STATE FUNDS**

Funds received through Department of Social Services (DSS or DFS) such as TANF funds may be used to match FTA funds. Other state funding sources may include Department of Economic Development (CDBG funds), school districts, or the Departments of Corrections, Health, or Mental Health.

### **LOCAL FUNDS**

Local funds are those that originate from a variety of sources. They may include private charities, civic organizations, cities, counties, property taxes approved by county residents, or direct fundraising. Donations (voluntary contributions) received from riders are considered local match. Local contributions must be included as operating revenue unless they are designated by the contributor as being reserved to be used as match for capital acquisitions.



## THE GRANT CYCLE

The process for applying for Section 5311 assistance begins four to six months before the beginning of the period covered by the grant. The funding cycle is based on the Section 5311 recipient's fiscal year. The following sections refer to a grant year that begins on July 1 and ends June 30 of the next year. Recipients with a different fiscal year would simply move the dates up, or forward, as needed.

### THE BUDGET

The application must contain a detailed operating budget that identifies administrative, maintenance, and operating expenses. A capital budget would also be included in the application if there are any capital needs. Expenses eligible for 80% reimbursement (drug & alcohol testing, back ground checks, driver physicals, and insurance other than health) should be shown separately.

#### OPERATING BUDGET

In February or March, budget preparation begins. By that time, a current recipient would have data pertaining to the first half of the year (July-December) and would use that data to project expenses for the upcoming year. Allowances would be made for expansion and/or contraction of service, expected funding, etc. Budgets submitted to MoDOT should be prepared using the Chart of Accounts shown in Appendix B.

#### CAPITAL BUDGET

The capital budget should list each item of equipment with an estimate of cost. The Section 5311 recipient may contact the program administrator for assistance with vehicle costs. If new vehicles are requested, they must be identified as being either replacement or expansion. An inventory of vehicles must also be submitted, identifying the vehicles to be replaced.

During the grant year, capital budgets may be revised, but major revisions or additions may require additional public hearings.

### PUBLIC HEARING

All applicants are required to schedule a public hearing to solicit public input into the proposed project. A sample public hearing notice is included in the application mailed to the applicant and is also contained in Appendix F. To reduce publication costs, the notice should be kept as generic as possible, i.e. publish that "purchase of two vehicles at a estimated cost of \$50,000" is planned rather than "one station wagon at a cost of \$18,000 and one modified van, floor plan C, at a cost \$32,000" will be purchased.

The public hearing notice should contain the requirement that persons wishing to provide input must contact the applicant at least three working days before the meeting. For most ongoing projects, the public hearing never takes place as no public input is received. However, for those applicants who hold public hearings, that portion of the minutes of the meeting pertaining to the transportation program must be submitted to MoDOT.

The hearings must be held in an ADA accessible facility. If the hearing is scheduled during non-service hours, transportation must be provided; reservations may be required. No more than the standard fare may be charged.

**Public hearings should be advertised based on the following schedule:**

Funding request for operational assistance only	Publish once at least 30 days previous
Funding request for capital assistance (may also include operational assistance)	Publish once at least 30 days previous Publish second time at least 7 days previous
Increase in fares or decrease in service (See Change in Service in Providing Service section)	Publish once at least 30 days previous Publish second time at least 7 days previous Public Hearing <u>must</u> be held

**SUBMITTAL OF THE APPLICATION**

The Section 5311 program manager will provide a paper application for all current grantees approximately 120 days before the beginning of their fiscal year with the application due 30 days later.

**ELEMENTS OF THE APPLICATION****THE TITLE PAGE**

The title page contains information about the applicant as well as summarizing the scope of the project and proposed funding. The title page is inserted as Appendix A to all agreements; the recipient should review this preprinted information each year to ensure accuracy.

**THE CAPITAL BUDGET**

See Page A-7.

**VEHICLE ROSTER**

If the proposed budget includes the acquisition of vehicles, a vehicle roster must be included that identifies what vehicles, if any, will be replaced.

**COMMITMENT OF THE LOCAL SHARE**

This document verifies that the recipient has the local funds available to pay the local share of any capital acquisitions. Funds do not have to be "in hand" but the recipient must verify that a source for the match has been identified and that commitments have been made to furnish that match. See section on Recordkeeping, Escrowed Funds.

**VEHICLE REQUEST FORM**

This form details the number and type of vehicles the recipient wishes to obtain. This information may also be included as part of the capital budget page.

**OPERATING BUDGET**

See Page A-7.

**AUTHORIZING RESOLUTION/ORDINANCE**

The governing board must review and approve the submittal of an application. Not-for-profits may submit resolutions but municipalities but submit ordinances. Quasi-public entities such as transit authorities are permitted to submit resolutions. The resolutions/ordinance may include a

clause that authorize the signature of any agreement issued by MoDOT in association with the application.

The resolution/ordinance must give the title of the person authorized to sign agreements.

## **LEGAL OPINION**

Legal counsel for the applicant must verify the applicant is an entity eligible to receive the funds and that no impediments are present that would keep the applicant from successfully completing the proposed project. Legal counsel also verifies that the applicant is not involved in any litigation that might affect the project.

## **CIVIL RIGHTS**

The applicant must certify that all applicable civil right laws will be followed.

## **EXHIBITS**

The certifications and assurances are self-explanatory. Additional information may be obtained by referring to the section of the Code of Federal Regulations or FTA circular listed in each certification. Most of the exhibits require only a signature and date; a signature page is provided for some of the certifications to reduce paperwork. However, the exhibits pertaining to Labor and Public Hearing require additional documentation. The public hearing requirements are discussed above.

For Exhibits E – Drug/Alcohol and H – ADA, public entities and not-for-profit organizations complete different forms of the certification. Also, Exhibit T is required of public entities only.

### **Exhibits B, B-1, B-2 – Certifications for Department of Labor Section 5333(b) Warranty**

Each applicant must research what effect the proposed project will have on other area transportation providers and their employees. This should be stated in a narrative as outline in Exhibit B. Exhibit B-1 is a certification that is passed on to the Department of Labor for approval along with Exhibit B-2. This exhibit should list all the transportation providers in the area (whether for-profit, not-for-profit, or public) and their union representation, if any. This page should also include the project for which the application is being made. The “project name” is the name under which the program operates if that is not the legal entity, i.e. CTA is the project name for a transportation system operated by the Cape Girardeau County Transit Authority.

## **APPLICATION REVIEW**

The Section 5311 program manager reviews the application for compliance and notifies the applicant that either the application is complete or what revisions or additions must be made to the application. The program manager may also choose to issue agreements at that time, depending on the completeness of the application and if state and federal funding levels have been established. No funds may be disbursed until all the requirements for the application have been met.

## **THE AGREEMENTS**

Three copies of the agreement between the applicant and the Missouri Highways and Transportation Commission are sent to the applicant for signatures. All three copies, with original signatures (no photocopies), are then returned to the program manager who obtains the other required signatures. The applicant then receives one copy of the fully executed contract for his/her files.

The governing boards of public entities must pass a resolution authorizing the highest official to execute the agreements and a copy of that resolution must be submitted to MoDOT with the agreements.

No funds may be disbursed until the agreements are fully executed.

## **THE GRANT YEAR BEGINS**

The Section 5311 program administrator will furnish forms to be used by the recipient when requesting reimbursement. The forms are grant specific, with the project numbers changing each grant cycle. Old forms should be discarded each year. The Section 5311 program manager has developed electronic forms; they be updated as needed.

## **REQUESTS FOR REIMBURSEMENT**

Requisitions for reimbursement may be submitted monthly, quarterly, or with special permission, semiannually. A detailed statement of expenses and revenue must accompany the requisition and not-for-profit recipients must also submit a cash calculation sheet. MoDOT may require operators to submit requisitions by a certain date to meet state fiscal year or other reporting deadlines. The Calculation Worksheet should also be submitted (part of the electronic reimbursement form provided by MoDOT).

## **OTHER ACTIVITIES**

During the grant year, MoDOT may conduct field audits, provide both driver and administrative training, and inspect the equipment and facilities.

## **THE GRANT YEAR ENDS**

At the end of each grant cycle, the Section 5311 recipient is required to submit 1) an itemized recap of all expenses and revenue for the year and 2) a copy of the independent audit. For recipients with annual budgets of less than \$50,000, MoDOT may choose to conduct a field audit in lieu of an independent audit.

The Section 5311 program manager will conduct an audit review based on the independent audit or the field audit. If additional funds are justified and grant funds remain, the additional funds will be paid to the recipient. Also, if the audit review reveals that audited expenses do not justify the grant funds paid previously, the recipient will be required to pay back those funds. Failure to do so will result in future funding being reduced or denied.

## RECORDKEEPING

Recipients are required to track and report the number of trips, mileage, hours of service, and expenses and revenues.

### TRIPS

Recipients must track the number of one-way trips provided. A one-way trip is counted each time a passenger leaves the vehicle at a destination. For example, a passenger boards the vehicle, then exits at a doctor's office. Then, the same passenger reboards the same or another vehicle, then exits at a shopping center. Later, the passenger is picked up at the shopping center and taken home. Three one-way trips have been provided. Conversely, if a passenger is taken on a long-distance medical trip and exits the vehicle momentarily at a convenience store to get a soda, only one one-way trip is counted - from the original destination to the medical facility.

### MILEAGE

The total number of miles accumulated during an accounting period must be reported. For recipients who operate their own vehicles, the odometer reading should be recorded at the end of each month. It is not necessary to track the mileage for each trip made. For taxi coupon programs, the provider must keep track of the miles for each trip and report that to the recipient.

### HOURS OF SERVICE

Hours of service are the total hours that each vehicle was available to transport passengers. For recipients who operate their own vehicles, service hours may be calculated either by tracking payroll hours for drivers or by tracking the hours each vehicle is available for service. See Appendix C for methodology.

### EXPENSES

For reporting to MoDOT, expenses must be tracked using the Chart of Accounts (Appendix B) furnished by MoDOT. Administrative and operating expenses must be tracked separately.

### ELIGIBLE EXPENSES

Eligible expenses include the day-to-day cost of providing transportation service. OMB Circular A-87 "Cost Principles for State and Local Governments" and OMB Circular A-122 "Cost Principles for Non-Profit Organizations" provide a detail list of eligible and ineligible expenses. Each recipient should consult the applicable circular or contact the Section 5311 program manager before incurring new types of expense.

Expenses incurred through a direct grant under any FTA program or the state' MEHTAP program are ineligible expenses for Section 5311.

### INELIGIBLE EXPENSES

If a recipient provides charter or sightseeing service, the total cost of providing that service is not eligible as reimbursable expense. The total cost must include wear-and-tear on the vehicle, not just fuel and driver payroll. All expenses incurred must be deducted from the reimbursement request as "ineligible expenses".

Depreciation is an eligible expense only to the extent a grantee has paid for the capital asset with local funds or the 20% local match contributed to federally funded projects.

## **IN-KIND MATCH**

In-kind donations allow the recipient to access a great amount in federal funds by using the donation as local match. If a recipient uses in-kind donation of goods, facilities, or services as local match, the value must be added to the total expense for the month. In-kind donations are permitted if the recipient would have to purchase the goods, facilities, or service in order to conduct business if the in-kind donation was not available. Volunteer hours may be shown as match only to the extent the amount is needed to provide local match equal to one-half of the total match provided.

See instructions for completing the Cash Calculation Worksheet to understand how volunteer hours may be used as match.

## **REVENUES**

For not-for-profit grantees, all funds received in excess of the amount needed as match for the Section 5311 funds received are considered revenue. Each source of revenue (Appendix E) should be classified as one of the following:

### **FEDERAL FUNDS**

These are funds received from federal sources other than Federal Transit Administration funding. Federal funds flowing through a human service agency and then to the recipient through a service agreement lose their federal classification and may be categorized as state or local, depending upon the status of the human service agency. Examples of federal funding are ACTION, USDA, and RSVP. Revenues from Area Agencies on Aging are considered federal funds as they may be a blend for federal and state (MEHTAP) funds. Federal funds received from another FTA grant (such as JARC) are not shown as revenue as 100% of the expense incurred under JARC is ineligible expense.

### **STATE FUNDS**

These are funds received through state agencies and the state transit funding provided through MoDOT. Service agreements with the Department of Social Services, and the Department of Mental Health are examples of state funding that may have been federal in nature, but as they are service contracts, the funding is considered to be state funding. Other state funding may include direct grants from other state agencies or community partnerships.

### **LOCAL FUNDS**

Local funds have their origin in local tax initiatives such as Senate Bill 40 property taxes for the disabled or House Bill 351 property taxes for the elderly. Funds from private charities (United Way, Salvation Army), fundraising efforts (walkathons, bake sales), or service agreements with hospitals or nursing homes may all be considered local funds.

### **FARES**

Direct passenger fares are always shown as revenue and may not be used as match.

### **STATE AND FEDERAL GAS TAX REFUNDS**

These amounts are not considered as revenue when received if the amount of Section 5311/state transit funding received plus the refund does not exceed 50% of the total eligible expenses for the period covered by the refund. If it does, the Section 5311 program manager should be contacted to determine the amount to include as revenue.

**IN-KIND DONATIONS AND SERVICES**

The value of in-kind donations of facilities and/or services may be used as revenue if the expense would have to be incurred if the donation was not received, i.e. necessary office space is provided by a building owner at no cost. The value of the donation must be added to expenses. In-kind donations/services are a valuable tool if local funds to be used as match are insufficient as no more than one/half of the match can be in federal funds. In-kind donations/services will not pay for the cash cost of the service; they only allow greater federal and state funding to be drawn down.

Volunteer time may be used as revenue only to the extent it is needed as local match. Volunteer hours must be documented and their value based on local wage rates.

**ESCROW OF FUNDS**

Recipients are permitted to escrow local and state revenues, including state transit funds received from MoDOT, to be used as match for capital acquisitions or as a cash reserve. Fares received may not be escrowed. All escrowed funds must be deposited into federally insured savings or money market accounts, with the two types of escrow held in separate accounts. The account balances should be reconciled each month. All funds must be held in federally insured accounts.

<b>Escrowed Funds Worksheet</b>			
<b>Federal</b>	<b>\$</b>	<b>Local/State</b>	<b>\$</b>
List each source and amount received	_____	List each source and amount received	_____
_____	_____	_____	_____
_____	_____	_____	_____
<b>Total Federal Received</b>	<b>=</b>	<b>Total Local Received</b>	<b>=</b>
		Less Capital Escrow (maximum 15%)	-
		Less Operating Escrow (maximum 10%)	-
			_____
		<b>Net Local Received</b>	<b>=</b>
		<b>Plus Federal</b>	<b>+</b>
		<b>Total Revenue for period</b>	<b>=</b>
			_____

The electronic worksheet contains a portion of the worksheet.



<b>Escrow Reconciliation Worksheet</b>	
Balance beginning of period	\$
Deposits (from worksheet above)	+
Withdrawals (list each item purchased separately)	-
Balance at end of period (should equal bank statement less any interest paid)	=
	_____

While all Section 5311 operators are eligible to escrow funds, public entities may not need to do so as they have access to general revenue funds. Operators are permitted to withdraw operating funds from the escrow account if necessary to cover unexpected expenses. Any amount withdrawn must be shown as revenue for that period in the calculation above.

## ESCROW LIMITS

The escrow account used for an operating funds reserve cannot exceed twenty-five (25) percent of the total operating and administrative expense shown in the previous year's independent audit. Up to ten (10) percent of local/state (non-MoDOT) revenue may be deducted from the revenue received during the accounting period.

Up to fifteen (15) percent of the local/state (non-MoDOT) revenue received during an accounting period may be deducted from revenue and held in escrow for capital acquisitions. While there is no set limit to the amount that can be escrowed, the amount should be based on a needs assessment that estimates capital needs for the next two-three years.

The following is a sample needs assessment as of December 31, 2009:

Vehicles	Mileage 12/31/09	Purchase Date	Average Miles Per Year	Replacement Date	Estimated Cost	Amount to escrow each month**
Mod Van #1	35,000	1/2008	17,500	1/2015	\$35,000	\$117
Mod Van #2	79,000	1/2006	19,750	1/2012	\$32,000	\$267
Minibus #1	85,000	1/2005	17,000	1/2011	\$43,000	\$717
Total to be escrowed						\$1,101

\*Replacement year is calculated by dividing the expected life of the vehicle (125,000 miles) by the average number of miles per year = number of years the vehicle will be in service.

\*\*Multiply replacement cost times 20% (local match required) divided by the number of months that amount will be escrowed. This sample assumes that the escrow account is zero as of January 1, 2010.

**The amount an operator can escrow is limited to no more than 15% of the local/state (non-MoDOT) revenue AND may be limited by the requirement that at least one-half of the match for Section 5311 funds must be from local/state funding sources.** In the above example, if the local/state revenue were less than \$7,340, the entire amount could not be deposited into escrow ( $\$7,340.00 \times 15\% = \$1,101$ ). In addition, by reducing the amount of local/state revenue to \$6,239 ( $\$7,340 - \$1,101$ ), the maximum amount of Section 5311/state transit subsidy requested could be no more than \$12,478 ( $\$6,239 \times 2$ ) as 1/2 of the match for these funds must be from local/state revenues. Grantees who are planning to construct a facility may request the 15% limit be waived in order to accumulate more local match.

## **REQUEST FOR REIMBURSEMENT**

At the beginning of each grant cycle, all Section 5311 recipients will receive "Requests for Section 5311 Operating Assistance" (the requisition). The requisitions may be submitted monthly or quarterly, or with special permission, semiannually. Faxed copies will not be accepted except at the end of the state's fiscal year or if the requisition submitted must be corrected before payment can be made. .

MoDOT has created electronic forms for reimbursement, part of which are created on the next pages. Refer to line numbers on the left side of each page for specific instructions. The method of determining revenue differs between public entities and not-for-profit corporations.

## **PUBLIC ENTITIES – COMPLETING THE REQUISITION**

### **Calculation Worksheet**

This worksheet calculates the 80% reimbursement for certain expenses and calculates the 50% reimbursement minus any fares that have been collected.

- (1) The total operating expense is entered for the period (month or quarter)
- (3-6) Expenses eligible for 80% reimbursement on entered on these lines.
- (7) Formula – do not change
- (9) Formula – do not change
- (10) Enter any expenses that are not eligible for Section 5311 reimbursement (MEHTAP activities, travel that has been reimbursed, etc.)
- (11) Formula - do not change
- (12) Enter rider fares collected during the period.
- (13) Formula – do not change
- (15) Enter the amount of the state transit grant divided by 12 (for monthly requests)
- (18-20) Enter any advertising income, individual rider donations, and rental fees

The entries and calculations on this form are linked to the Request for Reimbursement Form.

**Section 5311 Public Grantees  
Calculation Worksheet**

1	<b>Total Operating Expense for period</b>			\$0.00
2	Expenses to be reimbursed at 80%			
3	Insurance (except health)	\$0.00		
4	Background Checks	\$0.00		
5	Substance Abuse Testing	\$0.00		
6	Physicals	\$0.00		
7	Total 80% Expenses			<u>\$0.00</u>
8				
9	Net Operating Expense			\$0.00
10	Ineligible Expense			<u>\$0.00</u>
11	Eligible Operating Expense			\$0.00
12	Fares			<u>\$0.00</u>
13	Net Eligible Expense			\$0.00
14				
15	<b>State Transit Funding (per month)</b>	\$0.00		
16				
17	<b>Program Income</b>			
18	Advertising Income	\$0.00		
19	Voluntary Rider Donations	\$0.00		
20	Rental Fees	\$0.00		
21	Other _____	\$0.00		
22			\$0.00	

\_\_\_\_\_  
(Name & Title Of Person Signing the Req)

enter as xx/xx/xxxx

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Telephone Number)

### Request for Section 5311 Operating Assistance

- (1) Vendor Number – A number issued by the Office of Administration, generally based on the recipient's Federal Employer ID Number.
- (2) State Grant Amount – Amount of State Transit Operating Assistance allocated to the recipient. This amount is dependent upon appropriations made by the Missouri Legislature and is awarded based on the state's fiscal year which ends on June 30.

State Project Number – This number is assigned by MoDOT and changes each year, will change in mid-year for those recipients whose fiscal year does not coincide with the state's. The 7<sup>th</sup> and 8<sup>th</sup> characters are the state's fiscal year (SFY2011 would be "11") and the 9<sup>th</sup> and 10<sup>th</sup> characters are the two-letter codes that have been assigned by MoDOT for each grantee. These codes help identify each granted in the SAM II accounting system.

- (3) Federal Grant Amount – The amount of Section 5311 federal funds allocated to the recipient based on the recipient's fiscal year.

Federal Project Number – This number is assigned by MoDOT and changes each year. The 7<sup>th</sup> and 8<sup>th</sup> characters are the federal grant number (MO-18-X031 would be "31" – this number will change with the recipient's grant year, not the state's fiscal year) and the 9<sup>th</sup> and 10<sup>th</sup> characters are also the two-letter codes as discussed for Line 2.

- (4) Payment Request Number – If the recipient submits monthly, the numbers 1 – 12 should be assigned to consecutive requisitions. If the requisitions are submitted quarterly, they should be numbered 1-4. This number is important to help MoDOT determine if a requisition has misplaced or lost in the mail.

- (5) Number of one-way trips provided this period for reimbursement - This number is accumulated from trip sheets used for each vehicle or by the number of taxi coupons submitted for reimbursement.

Total Mileage – enter the total number of miles accumulated during the accounting period.

- (6) Number of one-way trips to date - This is accumulative total for the 12 month grant period.

Cost Per Mile – formula – do not change

- (7) Hours of service provided – Appendix C provides the methodology for calculating the hours of service. Service hours may be calculated by payroll records or from tracking the actual hours vehicles are available for service. For taxi coupon programs, the hours of service are calculated by determining the average time for trips and multiplying by the number of trips provided.

- (11) Enter the time period - beginning date/ending date

(12-14) Name and Address – The name and mailing address of the grantee. This information should match what is submitted on the application title page.

- (16) Formula linked to Calculation Worksheet – do not change

- (17) Formula –do not change

- (19-32) Formulas linked to Calculation Worksheet – do no change

The certification must have an original signature by an authorized official. This may be the Mayor, City Manager, City Administrator, or Project Manager. The signer is responsible for the accuracy of all the information contained in the requisition.

### Request for Section 5311 Operating Assistance

1 Vendor No.	0		
2 State Grant Amount	\$0.00	State Project No.	TSTOAG(SFY)(2ltrcode)1
3 Federal Grant Amount	\$0.00	Federal Project No.	TM1840(gr#)(2ltrcode)1
4		Payment Request No.	0
5 One-way trips provided this period		0 Total Mileage	0
6 One-way trip year-to-date		0 Cost Per Mile	\$1.08
7 Hours of Service Provided		0	
8	Period in Which Expenses Were Incurred		
9			
10 From (month/day/year)	January 0, 1900	To (month, day, year)	January 0, 1900
11			
12 Name:	0		
13 Address	0		
14	0		
15			
16 Income from Advertising, Voluntary Rider Donations, and Rental Fees			\$0.00
17 Total Local Match Provided			\$0.00
18			
19 State Assistance Requested			\$0.00
20			
21 Administrative Expense to be reimbursed at 80%	\$0.00		
22 80% of Administrative Expense			\$0.00
23			
24 A. Other Operating Expenses	\$0.00		
25 B. Less Ineligible Operating Expense	\$0.00		
26 C. Less Fares	\$0.00		
27 D. Net Eligible Operating Expense	\$0.00		
28 E. Applicant's Share (50% net loss)	\$0.00		
29 F. Operating Assistance requested			\$0.00
30 State Assistance Requested	\$0.00		
31 Section 5311 Assistance Requested	\$0.00		
32 Total Funding Requested			\$0.00

I certify that to the best of my knowledge and belief the data above is correct and that all outlays were made in accordance with the grant conditions or other agreements and that payment is due and has not been previously requested.

\_\_\_\_\_  
Signature of Authorized Official

January 0, 1900

\_\_\_\_\_  
Date Requested Submitted

0

\_\_\_\_\_  
Typed or Printed Name and Title

0

\_\_\_\_\_  
Telephone (including area code & extension)

Assistance may be obtained by calling 573-751-7481. Mail request for reimbursement with original signature to Missouri Department of Transportation, ATTN: Transit, P. O. Box 270, Jefferson City, MO 65102

## NOT-FOR-PROFIT CORPORATIONS - COMPLETING THE REQUISITION

### Calculation Worksheet

This worksheet calculates the 80% reimbursement for certain expenses and calculates the 50% reimbursement minus any fares that have been collected.

- (1) The total operating expense is entered for the period (month or quarter)
- (3-6) Expenses eligible for 80% reimbursement on entered on these lines.
- (7) Formula – do not change
- (9) Formula – do not change
- (10) Enter any expenses that are not eligible for Section 5311 reimbursement (MEHTAP activities, travel that has been reimbursed, etc.)
- (11) Formula - do not change
- (12) Enter rider fares collected during the period.
- (13) Formula – do not change
- (16-20) Enter revenues from federal sources or MEHTAP that are not eligible for escrowing.
- (21) Formula – do not change
- (24) Enter amount of state transit grant divided by 12
- (25) Formula – do not change
- (26-31) List revenue sources and amount received
- (32) Formula – do not change
- (34-37) Enter any advertising income, individual rider donations, and rental fees
- (38) Formula – do not change
- (39) Enter amount escrowed for future capital purchases (see Appendix K)
- (40) Enter amount escrowed for operating reserve (see Appendix K)
- (41-51) Formulas – do not change

**If Line 47 exceeds Line 51, local match is insufficient.**

The entries and calculations on this form are linked to the Request for Reimbursement Form.

**Section 5311 Non-Profits  
Calculation Worksheet**

1	<b>Total Operating Expense for period</b>			\$0.00
2	Expenses to be reimbursed at 80%			
3	Insurance (except health)	\$0.00		
4	Background Checks	\$0.00		
5	Substance Abuse Testing	\$0.00		
6	Physicals	\$0.00		
7	<b>Total 80% Expenses</b>			<u>\$0.00</u>
8				
9	<b>Net Operating Expense</b>			\$0.00
10	Ineligible Expense			<u>\$0.00</u>
11	<b>Eligible Operating Expense</b>			\$0.00
12	Fares			<u>\$0.00</u>
13	<b>Net Eligible Expense</b>			\$0.00
14				
15	<b>Revenue not eligible to be escrowed</b>			
16		\$0.00		
17		\$0.00		
18		\$0.00		
19		\$0.00		
20		<u>\$0.00</u>		
21	<b>Total</b>		\$0.00	
22				
23	<b>Local &amp; State Revenue</b>			
24	State Transit Assistance	\$0.00		
25	Less Match for 80% Expenses	\$0.00		
26		\$0.00		
27		\$0.00		
28		\$0.00		
29		\$0.00		
30		\$0.00		
31		<u>\$0.00</u>		
32			\$0.00	
33				
34	Advertising Income	\$0.00		
35	Voluntary Rider Donations	\$0.00		
36	Rental Fees	\$0.00		
37	Other _____	<u>\$0.00</u>		
38	<b>Total Local Revenue</b>		\$0.00	
39	Capital Escrow (max. 15%)	\$0.00		
40	Operating Escrow (max. 10%)	<u>\$0.00</u>		
41			<u>\$0.00</u>	
42	<b>Net Local Revenue</b>		\$0.00	
43	<b>Total Revenue</b>			<u>\$0.00</u>
44				
45	50% Section 5311 Assistance Requested			\$0.00
46	80% Section 5311 Assistance Requested			\$0.00
47	<b>Total Section 5311 Request</b>			\$0.00
48				
49	Is Line 47 less than or equal to 1/2 of Line 15?	Line 10	\$0.00	
50		multiplied by	50%	
51			\$0.00	

If no, you may have escrowed more than you're eligible to OR you do not have enough match.  
If yes, requisition is correct

\_\_\_\_\_  
(Name & Title Of Person Signing the Req)

enter as xx/xx/xxxx

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Telephone Number)

### Request for Section 5311 Operating Assistance

(1) Vendor Number – A number issued by the Office of Administration, generally based on the recipient's Federal Employer ID Number

(2) State Grant Amount – Amount of State Transit Operating Assistance allocated to the recipient. This amount is dependent upon appropriations made by the Missouri Legislature and is awarded based on the state's fiscal year which ends on June 30.

State Project Number – This number is assigned by MoDOT and changes each year, will change in mid-year for those recipients whose fiscal year does not coincide with the state's. The 7<sup>th</sup> and 8<sup>th</sup> characters are the state's fiscal year (SFY2011 would be "11") and the 9<sup>th</sup> and 10<sup>th</sup> characters are the two-letter codes that have been assigned by MoDOT for each grantee. These codes help identify each granted in the SAM II accounting system.

(3) Federal Grant Amount – The amount of Section 5311 federal funds allocated to the recipient based on the recipient's fiscal year.

Federal Project Number – This number is assigned by MoDOT and changes each year. The 7<sup>th</sup> and 8<sup>th</sup> characters are the federal grant number (MO-18-X031 would be "31" – this number will change with the recipient's grant year, not the state's fiscal year) and the 9<sup>th</sup> and 10<sup>th</sup> characters are also the two-letter codes as discussed for Line 2.

(4) Payment Request Number – If the recipient submits monthly, the numbers 1 – 12 should be assigned to consecutive requisitions. If the requisitions are submitted quarterly, they should be numbered 1-4. This number is important to help MoDOT determine if a requisition has misplaced or lost in the mail.

(5) Number of one-way trips provided this period for reimbursement - This number is accumulated from trip sheets used for each vehicle or by the number of taxi coupons submitted for reimbursement.

Total Mileage – enter the total number of miles accumulated during the accounting period.

(6) Number of one-way trips to date - This is accumulative total for the 12 month grant period.

Cost Per Mile – formula – do not change

(7) Hours of service provided – Appendix C provides the methodology for calculating the hours of service. Service hours may be calculated by payroll records or from tracking the actual hours vehicles are available for service. For taxi coupon programs, the hours of service are calculated by determining the average time for trips and multiplying by the number of trips provided.

(11) Enter the time period - beginning date/ending date

(12-14) Name and Address – The name and mailing address of the grantee. This information should match what is submitted on the application title page.

(16) Formula linked to Calculation Worksheet – do not change

(17) Formula –do not change

(19-34) Formulas linked to Calculation Worksheet – do no change

The certification must have an original signature by an authorized official. This may be the Mayor, City Manager, City Administrator, or Project Manager. The signer is responsible for the accuracy of all the information contained in the requisition.

## Request for Section 5311 Operating Assistance

1	Vendor No.	0		
2	State Grant Amount	\$0.00	State Project No.	TSTOAG(SFY)(2ltrcode)1
3	Federal Grant Amount	\$0.00	Federal Project No.	TM1840(gr#)(2ltrcode)1
4			Payment Request No.	0
5	One-way trips provided this period		0 Total Mileage	0
6	One-way trip year-to-date		0 Cost Per Mile	#DIV/0!
7	Hours of Service Provided		0	
8				
9	Period in Which Expenses Were Incurred			
10	From (month/day/year)		To (month, day, year)	
11		January 0, 1900		January 0, 1900
12	Name:	0		
13	Address	0		
14		0		
15				
16	Income from Advertising, Voluntary Rider Donations, and Rental Fees			\$0.00
17	Total Local Match Provided			\$0.00
18				
19	State Assistance Requested			\$0.00
20				
21	Administrative Expense to be reimbursed at 80%		\$0.00	
22	80% of Administrative Expense			\$0.00
23				
24	A. Other Operating Expenses		\$0.00	
25	B. Less Ineligible Operating Expenses		\$0.00	
26	C. Less Fares		\$0.00	
27	D. Total Eligible Operating Expenses (Line A minus Line B)		\$0.00	
28	E. Total Revenue		\$0.00	
29	F. Net Loss		\$0.00	
30	G. Applicant's Share (50% net loss)		\$0.00	
31	H. Operating Assistance requested			\$0.00
32	State Assistance Requested		\$0.00	
33	Section 5311 Assistance Requested		\$0.00	
34	Total Funding Requested			\$0.00

I certify that to the best of my knowledge and belief the data above is correct and that all outlays were made in accordance with the grant conditions or other agreements and that payment is due and has not been previously requested.

	January 0, 1900
_____ Signature of Authorized Official	_____ Date Request Submitted
0	0
_____ Typed or Printed Name and Title	_____ Telephone (including area code & extension)

Assistance may be obtained by calling 573-751-7481. Mail request for reimbursement with original signature to Missouri Department of Transportation, ATTN: Transit, P. O. Box 270, Jefferson City, MO 65102



## PROCUREMENT

### CAPITAL ASSETS PROCUREMENT

Each year, MoDOT reserves a percentage of the Section 5311 federal funds to purchase capital equipment and/or real estate. Section 5309 funds may also be used to purchase equipment for Section 5311 recipients. MoDOT purchases all vehicles directly but the recipients themselves handle the other acquisitions with MoDOT's assistance. Occasionally, a recipient may find it necessary to purchase a single vehicle; all federal requirements, such as Buy America, must be met. The recipient issues the Purchase Order and is responsible for paying the vendor 100% of the cost. MoDOT will reimburse the recipient for the federal interest (usually 80%).

Procurement guidelines are published in FTA Circular 4220.1 – Third Party Contracting Requirements.

### PLANNING FOR CAPITAL ACQUISITIONS

Each year, the recipient should review their inventory of capital assets. This review should include an assessment of the each asset's condition and expected useful life. The Recordkeeping – Escrow of Funds Section shows a sample worksheet that could be prepared showing when each vehicle or other item of equipment needs to be replaced. Acquiring additional equipment for expansion of services should also be considered. Planning for capital acquisition and reporting those needs to MoDOT will assist MoDOT in securing funding.

Capital needs for each grant cycle are included as part of the application. The request must include the number and type of vehicles or equipment desired and a cost estimate for each item. The capital items must be included in the public hearing notice.

### SPARE RATIO

Operators are permitted to keep older vehicles as spares for the active fleet. Operators who own more than 50 vehicles may have no more than 20% of the total revenue producing vehicles in the spare fleet. Spare ratio is calculated as a percentage of the number of vehicles required to provide service during peak hours, i.e. if 80 vehicles are needed, up to 16 vehicles could be retained as spares ( $80 \times 20\% = 16$ ) and the operator could own up to 96 vehicles.

### LOCAL MATCH

All capital acquisitions require the operator to contribute some portion of the cost. While the ratio is generally 80% federal and 20% local, the federal ratio may be reduced due to lack of funding. The local match must come from operating funds escrowed as described in Part 5 – Recordkeeping or from non-operating revenue such as donations specifically designated at the source as being for capital acquisition use only.

**Operators are not permitted to use equipment as collateral for a lien to provide local match or to obtain operating funds.**

### VEHICLE PURCHASING

MoDOT purchases vehicles for recipients, generally on the following schedule:

- Summer – specifications are written and/or revised
- Fall – specifications are sent out for bid
- Late Fall – bids are opened and contracts awarded
- Winter – direct-from-the-factory vehicles are delivered, first modified vehicles start to be delivered

- Winter/Spring – vehicles continue to be delivered until contract is complete

Recipients may use a mix of accessible and non-accessible vehicles but a fleet must be maintained that will meet ADA requirements for equivalent service. Bids for the following vehicle types are let each year:

- minivan
- 12 or 15 passenger vans
- center aisle van
- modified van
- van on chassis (minibus)
- lowered floor minivan
- larger urban transit type buses (specifications are written and bids are let only when there is a specific request)

Capital acquisitions require a separate agreement be executed between the recipient and the Missouri Highways and Transportation Commission. All recipients must submit their portion of the cost (local match) to MoDOT before the vehicles can be delivered. MoDOT employees will inspect each vehicle before it is delivered to the recipient but the recipient should still inspect the vehicle before accepting delivery.

#### **OTHER CAPITAL EQUIPMENT**

Each recipient should have written purchasing guidelines (approved by its board or council) including the above requirement and specifying at what purchasing levels are written quotes or telephone quotes permitted. If a purchase order is used, a list of FTA certifications and assurances should be attached. Purchasing guidelines may be more restrictive than those of FTA or MoDOT but cannot be more lenient.

##### **FTA Purchasing Guidelines**

Purchases exceeding \$100,000 in aggregate	Sealed Bid
Purchases between \$2,500-\$100,000	Competitive Quotes
Micro Purchases under \$2,500	Obtain at Reasonable Cost

##### **MoDOT Purchasing Guidelines**

Purchases exceeding \$25,000 in aggregate	Sealed Bid
Purchases under \$25,000	Competitive Quotes

As the following sample shows, more restrictive guidelines provide more control of cost.

##### **Sample – Purchasing Guidelines**

Purchases exceeding \$5,000 in aggregate	Sealed Bid
Purchases between \$1,000-\$4,000	Written Quotes
Purchases under \$1,000	Telephone Quotes
Micro Purchases (small quantities of office supplies, etc.)	Catalog or other comparison shopping

When acquiring equipment such as computers, copiers, etc., the recipient handles the transaction. All related equipment costing more than \$25,000 in aggregate must be purchased through the sealed bid process. Examples of “related equipment” are 1) 4 computer systems costing \$1,500 each that are purchased at the same time, or 2) office furniture when the cost of the individual pieces totals more than \$5,000. All potential vendors must be furnished the applicable FTA certifications and assurances and must meet those requirements. The Section 5311 program manager should be contacted for a current list of these certifications and assurances.

Each recipient is required to have a written procurement policy that complies with the requirements of FTA Circular 4220.1, as amended.

### **Procedure for Procuring Capital Equipment other than Vehicles**

1. The applicant includes the capital equipment request in the annual Section 5311 application or amends the application at a later date. Amendment requires republication of the public hearing notice.
2. The Section 5311 Program Manager or the Section 5309 Program Manager contacts the recipient and approves or disapproves the request.
3. The recipient follows the purchasing guidelines to ascertain the cost of the equipment.
4. MoDOT issues a capital agreement for signature.
5. The recipient purchases the equipment and pays the vendor.
6. The recipient requests reimbursement of the federal share from MoDOT.

### **OPERATING PROCUREMENTS**

Recipients are required to follow federal guidelines when procuring all supplies, not just capital assets. All supplies should be purchased at the lowest possible price and show evidence of competition in securing that lowest price. The Purchasing Guidelines discussed in the section above apply to these purchases also. When determining lowest cost, the cost of delivery or mileage to purchase items should be considered. Recipients in very rural areas may find ordering by catalog to be more cost-efficient than traveling to a larger retail center even though the price of the individual items may be higher in the catalog.

### **CONFLICT OF INTEREST**

Grantees should have a written code of conduct on procurement to avoid any conflicts of interest. A conflict of interest is created when any financial transaction takes place between the grantee and an employee, officer, agent, or Board member; any of their immediate family, a partner in another company, or any organization that employs, or is considering employing, any employee, officer, agent, or Board member.



## VEHICLES, FACILITIES & EQUIPMENT

### FTA CAPITAL FUNDING PROGRAMS

Section 5311 operators are eligible to purchase vehicles and other equipment and construct facilities through MoDOT. Operators may receive funding under three different programs: Section 5309, Section 5310, or Section 5311.

- **Section 5309** – This program is used for capital acquisitions statewide. Generally, buses and bus facilities are funded through this program.
- **Section 5310** – Funds from this program are used to purchase vehicles to provide transportation for the elderly and/or disabled. Section 5311 operators may receive vehicles through this program, but as Section 5309 and Section 5311 funding has increased, fewer vehicles have been purchased for Section 5311 providers and will eventually be phased out through vehicle replacement.
- **Section 5311** – While funds from this program may be used for operating, capital, or planning, operating grants are funded first, then capital needs, if Section 5309 funds are insufficient to fulfill vehicle and other equipment needs.

The preceding section on Procurement discusses the process and schedule for purchasing vehicles.

### MAINTENANCE REQUIREMENTS

Grantees must maintain their vehicles and facilities to ensure safety and economical operation. At a minimum, scheduled maintenance must meet the manufacturer's warranty recommendations.

### PREVENTIVE MAINTENANCE PROGRAM

The FTA requires a preventive maintenance program for all equipment purchased with federal funds. MoDOT has extended these guidelines to apply to all vehicles, owned or leased by a Section 5311 operator, regardless of whether there is a federal interest in the vehicle.

The Preventive Maintenance Program must be a written document detailing standards for maintenance procedures such as changing oil every 3,000 miles or inspecting a building's fire sprinkler system quarterly.

### Vehicle Maintenance Program

The program must establish maintenance standards that, at a minimum, meet the manufacturer's warranty recommendations. Standards for all added equipment, such as lifts, must be included. The operator has the option of developing a maintenance program that exceeds the minimum requirements. However, if a program requiring a higher level of maintenance does not meet those requirements, the program will be considered noncompliant even if the actual maintenance completed met the manufacturer's recommendations.

A maintenance log should be kept for each vehicle, detailing all repairs and maintenance performed and the preventive maintenance schedule for that vehicle. All accidents involving the vehicle (including minor "fender/benders") should be logged. Pre-trip inspection forms must be made a part of the log and a process for reporting potential problems be established.

## Facilities Maintenance Program

A maintenance program must also be developed for all federally funded facilities. A schedule for inspections, i.e. monthly, annually, etc., must be established and record kept of the inspections, the findings, and what remedial action was taken.

## Other Equipment

Maintenance requirements apply to all mechanical equipment whether it is a copier in the office or a bus lift in the shop. Operators are responsible for tracking maintenance for each piece of equipment and are encouraged to use maintenance agreements on office equipment such as copiers.

## INSPECTION

Vehicles must be made available for inspection at MoDOT's request. The Section 5311 program manager (or the Section 5309 program manager) conducts field audits and will inspect vehicles in association with that audit. Also, the program manager may inspect vehicles at other times. The Section 5311 operator will be contacted in advance of any inspection and will not be expected to shut down operation so the vehicles can be inspected.

Each vehicle will be evaluated on the following:

- Cleanliness
- Condition of interior
- Body – dents, rust, etc.
- Tire quality
- Operation of lift (if applicable)
- Condition of wheelchair restraints
- All equipment shipped with vehicles must be maintained and replaced as necessary including:
  - Fire extinguisher
  - First aid kit
  - Blood borne pathogen/body fluids kit
  - Seat belt cutter
  - Emergency flares
- State law require a current insurance card be carried in each vehicle.
- FTA/MoDOT decals (2) must remain on the vehicle.
- Maintenance logs will also be reviewed for compliance.

Time permitting, all vehicles will be inspected at least every two years.

## DISPOSITION

### VEHICLE DISPOSITION

Operators are expected to keep vehicles for a minimum number of miles. (See Section III-2 of state management plan). With prior approval from MoDOT, operators may dispose of vehicles before that time if 1) MoDOT inspects the vehicle and/or maintenance records, agrees that the vehicle is a "lemon" and that it would be more cost-effective to replace the vehicle than continue to repair it, or 2) if a Section 5311 operator does not need the vehicle because of changing needs or service, the vehicle may be transferred to another operator. Vehicles funded through Section 5311 may only be transferred to another Section 5311 operator. Vehicles funded through Section 5309 may be transferred to another Section 5309 or Section 5311 operator.

## Disposition Procedure

If a Section 5311 operator wishes to dispose of a federally funded vehicle, the operator must first request authority to do so. That request should be contained in a letter to the program manager through which the vehicle was purchased (if it is a Section 5309 vehicle, request disposition from the Section 5309 program manager, etc.). The following information must be included:

- Year, Make, Model
- Vehicle Identification Number
- Odometer Reading
- Grant Number
  - Section 5309 vehicles have a grant number of MO-03-xxx or MO-04-xxx
  - Section 5310 vehicles have a grant number of MO-16-xxx
  - Section 5311 vehicles have a grant number of MO-18-xxx
  - Section 5311 ARRA vehicles have a grant number of MO-86-xxx

Since 1997, MoDOT has retained the titles for safekeeping. If the Section 5311 operator has the title, it should be forwarded with the request letter for release of the lien. If MoDOT has the title, the lien will be released and the title sent to the Section 5311 operator along with the letter authorizing disposition.

Section 5311 operators who dispose of vehicles without prior authorization may be denied new vehicles.

After receiving the disposal authorization, the Section 5311 operator may dispose of the vehicle in one of three ways:

- Selling the vehicle through an auto auction;
- Selling the vehicle to itself (three independent appraisals must be obtained and the highest appraisal is considered the selling price; or
- Advertising the vehicle for sale through the sealed bid process.

A portion of the proceeds must be paid to MoDOT based on the original federal percentage of funding, generally 80%, less \$225 allowed for the expense incurred in selling the vehicle. See Appendix D for full instructions.

## OTHER EQUIPMENT

Operators are permitted to dispose of equipment other than vehicles at the end of their useful life without prior permission from MoDOT. However, all equipment disposed of must be designated as such on the year-end inventory submitted. Operators who appear to be disposing of equipment prematurely may not receive funding for equipment in the future. Conflict of Interest rules apply to disposition as well as procurement. Operators are permitted to keep 100% of the proceeds.

## DISPOSITION OF FACILITIES

If an operator wishes to dispose of any building or real estate that has been purchased, constructed, or remodeled with federal funds, the operator must contact the appropriate program manager (Section 5309 or 5311) to coordinate the disposition. The value of the federalized portion of the property may be transferred to a new facility with MoDOT's permission.

## VEHICLE REPAIR FUND

MoDOT uses the funds from disposed vehicles to assist in major repairs on federally funded vehicles. Prior approval is required before any repairs are completed and assistance is dependent upon the availability of funds. See Appendix G for application and instructions.

## **RESTRICTION ON USAGE OF ADMINISTRATIVE VEHICLES**

Section 5311 operators are permitted to reserve federally funded vehicles for use by administrators and office staff. Section II-3 of the State Management Plan lists the restrictions on use of these vehicles. Personal and unauthorized use will result in the vehicle being returned to the active passenger service fleet. Employees use of the vehicles for commuting will not be permitted. If any such use occurs, the operator must report the value of that use on the employees' W-2 forms. This does not apply to a regular driver who starts the route from his/her residence without physically reporting in to the office.

## **RESTRICTION ON USE OF VEHICLES AS COLLATERAL**

The titles of all federally funded vehicles will show MoDOT as first lien holder and MoDOT will hold the titles for the operators. Any operator wishing to use a federally funded vehicle as collateral for a loan (to provide the 20% local match) must have prior approval from the Section 5309 or Section 5311 program manager. This practice is strongly discouraged and operators must provide justification for the action before MoDOT will approve the lien.

## **MOTOR CARRIER SAFETY REQUIREMENTS**

The State of Missouri has adopted as state law Parts 390 – 397 of the Federal Motor Carrier Safety Regulations. All operators must register their vehicles with Motor Carriers and comply with all safety regulations (see regulations for applicable exemptions). A flow chart is provided in Appendix I to assist operators in determining what regulations they must follow.

## **INSURANCE**

Operators must insure all federally funded vehicles, facilities, and equipment for both replacement and liability. Self-insurance is permissible with prior approval by MoDOT. State law requires that current insurance cards be carried in all vehicles.

## **LICENSING REQUIREMENTS**

### **TITLE**

All vehicles must be titled with the Missouri Department of Revenue within 30 days of delivery. The title must show MoDOT as the first lien holder. MoDOT will hold the titles until the vehicle is disposed.

### **DRIVERS' LICENSING**

All drivers must have a current Class E Missouri drivers' license or, if they are legal residents of an adjoining state, a current license considered to be equal to a Class E license. Commercial drivers' licenses (Class A, B, or C) are required of all drivers who operate vehicles designed to transport more than 15 persons (including the driver).

## FIELD AUDIT

Field audits will be conducted on all Section 5311 operators at least every two years. If time permits, audits may be conducted each year. The field audit is comprised of three parts:

- A series of questions (the “checklist”) sent to the operator when the audit is scheduled,
- An interview to discuss the questions and answers and review any documentation pertinent to the audit, and
- Inspection of vehicles, facilities, and equipment.

The Section 5309 program manager may also conduct a field audit on any Section 5311 operator who has vehicles, facilities, or equipment funded through that program. This audit may replace a Section 5311 field audit in any given year. Field audits may take place any time during the year and will vary from year to year for each grantee.

### AUDIT CHECKLIST AND INTERVIEW

The audit checklist is a series of questions designed to give an overview of operations for the period covered by the audit. See Appendix H for a condensed checklist; this checklist may be revised from time to time to ensure the operator is complying with federal and state regulations. Depending upon the complexity of the operator’s system, the interview should take one to two hours.

During the interview, the operator may be asked to produce documents verifying the information submitted on monthly requisitions, the annual application, or the audit checklist. Documents that may be requested include insurance policies, trip sheets, maintenance logs, drug and alcohol testing reports, etc.

### VEHICLE INSPECTION

All federally funded vehicles are subject to inspection by MoDOT. Operators are asked to make as many vehicles available as possible for inspection during a field audit but are not expected to cancel rides. Due to the large number of vehicles, program managers may attend driver training sessions or other meetings to inspect vehicles.

Failure to maintain vehicles properly may result in MoDOT removing the vehicles and/or not funding replacements.

All safety equipment in the vehicles at the time of delivery, such as fire extinguishers, first aid kits, etc., must remain in the vehicles in a usable condition. If items are lost or stolen, the operator is expected to replace the equipment within 30 days.

A maintenance log (see Section 8 – Vehicles, Facilities, and Equipment) must be kept for each vehicle.

#### Section 5309/5311 Vehicle Inspection Checklist

- Grantee: \_\_\_\_\_
- Vehicle Year, Make, Model: \_\_\_\_\_
- VIN: \_\_\_\_\_ Grantee’s No.: \_\_\_\_\_
- Grant Number: \_\_\_\_\_ (MO-18-xxx or MO-03-xxx)
- Odometer Reading beginning of year: \_\_\_\_\_
- Present Odometer Reading: \_\_\_\_\_
- Maintenance Log: \_\_\_\_\_
- Insurance Card in Vehicle: \_\_\_\_\_

- Condition of Vehicle:
  - Lift: \_\_\_\_\_
  - Interior – cleanliness, condition: \_\_\_\_\_
  - Wheelchair Restraints: \_\_\_\_\_
  - First Aid Kit: \_\_\_\_\_      Blood Bourne Pathogen Kit: \_\_\_\_\_
  - Fire Extinguisher: \_\_\_\_\_      Seat Belt Cutter: \_\_\_\_\_
  - Body – dents, rust, etc.: \_\_\_\_\_
  - Tires: \_\_\_\_\_
  - Decals: \_\_\_\_\_ (one on right front fender, one on rear)

Comments: \_\_\_\_\_  
 \_\_\_\_\_

Inspected By: \_\_\_\_\_ Date: \_\_\_\_\_

### **FACILITIES AND EQUIPMENT INSPECTION**

The general condition of a building and/or other real estate will be evaluated. The maintenance program and log will be evaluated for compliance and completion of programmed inspections, maintenance, and repairs.

The program manager will also inventory other equipment such as copiers, computers, etc. Maintenance programs and logs will be evaluated. If an operator disposes of obsolete equipment without reporting the disposal to MoDOT on the year-end inventory, the operator will be considered to be non-compliant.

Failure to develop maintenance program on all federally funded facilities and/or equipment may result in an operator's funding being reduced or withdrawn. FTA policy is that the federal interest must be protected and procedures put in place to do so.

## **DRUG AND ALCOHOL TESTING PROGRAM**

All operators are subject to FTA requirements concerning testing certain employees for drug and alcohol use. The Code of Federal Regulations, Chapter 49, Parts 40 and 655, contains the current regulations. While MoDOT provides technical assistance to all operators concerning drug and alcohol regulations, operators are responsible for developing policies and following procedures.

Section 5311 operators who use a third party provider for service are still responsible for establishing a policy and ensuring the provider meets the requirements.

Each operator must develop a policy that contains the following elements:

- A policy statement on prohibited drug use and alcohol misuse in the workplace including consequences,
- An employee and supervisor education and training program;
- A drug and alcohol testing program for prohibited substances for employees and applicants for safety-sensitive positions;
- Referral of the employee who has violated the drug and alcohol regulations to a Substance Abuse Professional; and
- Administrative procedures for record keeping, reporting, releasing information, and certifying compliance.

### **APPLICABILITY**

#### **SAFETY-SENSITIVE EMPLOYEES**

All employees and/or job applicants are subject to the testing program if the job description includes any or all of the following duties:

- Operating a revenue producing vehicle, regardless of whether it is in service or not;
- Operating a nonrevenue producing vehicle that requires the driver to hold a Commercial Driver's License;
- Controlling dispatch or movement of a revenue producing vehicle; and
- Maintaining and/or repairing a revenue producing vehicle if the person performing the work is an employee of the operator.

#### **DETERMINING WHO IS SAFETY-SENSITIVE**

The operator should not rely on job titles to determine who is subject to the drug/alcohol program. Actual job functions should be used. For example, a secretary who fills in for a dispatcher during lunch breaks, a bus washer who drives a revenue producing vehicle to the wash bay, or a general manager who occasionally moves vehicles or drives a substitute vehicle to a location to replace one that has broken down, are all considered to be performing safety-sensitive jobs.

### **TRAINING**

#### **FTA REQUIRED SUPERVISOR TRAINING**

All new supervisors must have two hours training before beginning actual supervision of employees. Training must be comprised of one hour on drug abuse and one hour on alcohol abuse. Training is available through the RTAP coordinator or the supervisor may use self-study tools such as books and videos.

#### **MODOT REQUIRED SUPERVISOR TRAINING**

All supervisors are to receive at least two hours training annually. Generally, MoDOT sponsors a

training session during the Missouri Public Transit Association's annual meeting that meets this requirement. If the operator does not attend this session, the operator is responsible for receiving this training from another source approved by MoDOT. This training varies from year-to-year and may deal with administrative issues rather drug/alcohol testing procedures.

#### **DRIVERS AND OTHER SAFETY-SENSITIVE EMPLOYEES**

All new safety-sensitive employees must receive at least one hour training on alcohol and drug abuse and the consequences of a positive test. The drug and alcohol policy and testing procedure should be reviewed during this session.

It is recommended that all employees receive a refresher course annually.

## TRAINING OPPORTUNITIES

### DRIVER TRAINING

MoDOT employs a full-time trainer who provides driver education and safety classes. Currently, the following classes are offered:

	Approximate Length of Class (hr.)
Defensive Driving (general course)	3.0
Defensive Driving (intermediate)	1.5
Transporting Special Passengers	1.0
Passenger Assistance/Mobility Aid Securement (PAT)	2.0
Emergency Procedures	1.0
Trading Places – Driver Sensitivity and Awareness	1.0
Drug Abuse Awareness in Rural Transit	1.0
Defensive Driving for Experienced Drivers	1.0
Your Ticket to Safety – Bloodborne Pathogens	1.0
Operation Lifesaver – Highway/Rail Crossing Safety	1.0
Basic First Aid	1.0
Backing Safety	0.5
Reversing the Trend – Backing Safety	0.5
Winter Driving Safety	1.0
Fatigue Awareness	1.0
Drug/Alcohol Training for Supervisors	2.0

Training may be booked up to one year in advance. Small operators are urged to coordinate training with others or “piggy-back” on to training arranged by a larger operator.

### ADMINISTRATIVE STAFF TRAINING

Training opportunities for directors and other administrative staff are provided through the following programs:

1. Attendance at the MPTA annual conference. Expenses including registration, lodging, mileage, and some meals are reimbursed. No limit has been set as to how many directors/employees can attend from each system but board members' expenses are not eligible for reimbursement
2. Informal technical assistance provided by the Section 5311 program manager during field audits or other visits or by telephone.
3. Directors and other administrative staff may apply for training funds to attend conferences or seminars in- or out-of-state. An application must be received and approved before the training takes place. Eligible expenses include registration/tuition, travel including air fare, ground transportation, and mileage, meals, and lodging.
4. Registration at an educational facility. Funds for continuing education, such as attendance at a four-year college to obtain a degree, are eligible. The following criteria must be met:
  - A. Prior approval must be received from the Section 5311 program manager before enrollment.
  - B. The student must be a full-time employee of a Section 5311 program recipient.
  - C. Expenses are reimbursable only after the student has completed the course and received an least a “C” grade or above.
  - D. Tuition only is reimbursable for up to and including 20 hours per calendar year. Expenses such as student activity fees, textbook costs, lab fees, etc. are not eligible.

The training discussed in (3) and (4) above is dependent upon funding being available after operating and capital acquisitions needs are met. See Appendix J for an application and instructions.

## **TRANSIT ASSOCIATIONS**

MoDOT pays the membership fees for Section 5311 operators in two transit associations, Missouri Public Transit Association and Community Transportation Association of America (associate membership only).

Training through any of the organizations listed below is eligible for the training program for directors and administrative staff discussed in the preceding section, Training Opportunities.

### **MISSOURI PUBLIC TRANSIT ASSOCIATION**

This transit association is comprised of both urban and rural transit operators, vendors, and other interested parties. The association retains lobbyists to present their needs and concerns to both the state legislature and United States Congress. The association coordinates two main activities during the year.

#### **TRANSPORTATION DAY**

Each February, transit providers and riders gather in the State Capitol Rotunda in an effort to raise awareness of transportation needs throughout the state. Riders are encouraged to contact their representative and senators during their visit to the capitol.

#### **CONFERENCE**

Generally held in August, the MPTA hosts a two-day conference in the Lake of the Ozarks region. The conference includes training sessions as well as a vendor's expo. Expenses incurred by Section 5311 operators in attending this conference are eligible for reimbursement if the attendee(s) are present at the Drug/Alcohol Training Session held each year.

The MPTA has a website "mptaonline.com" that features a calendar of events, legislative news, and membership information.

### **COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA**

This association is made up mainly of rural and small urban transit providers, manufacturers, and vendors. Based in Washington, DC, the association works to raise awareness of transit needs nationwide. CTAA hosts an annual EXPO that includes a driver rodeo, vendor displays, and training sessions. CTAA also offers training; information is available through its website "ctaa.org".

### **OTHER TRANSIT-RELATED GROUPS**

#### **APTA**

MoDOT is a member of the American Public Transit Association. Its membership is nationwide and includes large urban systems

#### **TRANSPORTATION RESEARCH BOARD**

This group conducts research on transit related issues. It hosts a biannual conference on rural and intercity bus transportation. Its website is "nas.edu/trb".

**NATIONAL TRANSIT INSTITUTE**

Created under ISTEA in 1992, NTI's function is to provide training and information on transit related issues. Their website is "[ntionline.com](http://ntionline.com)."

**TRANSPORTATION SAFETY INSTITUTE – TRANSIT SAFETY & SECURITY DIVISION**

Established in 1971, the Transportation Safety Institute is a federal cost recovery agency that develops and conducts worldwide safety, security, and environmental training and services to both the public and private sectors. TSI's website is "[tsi.dot.gov/divisions/transit/transit.htm](http://tsi.dot.gov/divisions/transit/transit.htm)".

**Appendix B  
Missouri Department of Transportation  
Chart of Accounts**

**LABOR**

501.00	Salaries
502.01	Fringe Benefits - FICA/Railroad Retirement
502.02 - DBE	Fringe Benefits - Hospital, Medical & Surgical Plans
502.03	Fringe Benefits - Unemployment Insurance
502.04 - DBE	Worker's Compensation
502.05	Sick Leave
502.06	Holiday
502.07	Vacation
502.08 - DBE	Pension/Retirement (employees' contribution is not cont. opp.)
502.09 - DBE	Disability Insurance
502.10 - DBE	Life Insurance

**SERVICES**

503.01 - DBE	Legal Services
503.02 - DBE	Audit/Accounting Services
503.03 - DBE	Medical Services (including Drug/Alcohol Testing)
503.04 - DBE	Temporary Help Services
503.05 - DBE	Contract Maintenance (including Janitorial Services)
503.06	Municipal/University Overhead Fees
503.07 - DBE	Computer Services
503.08 - DBE	Professional, Scientific, & Technical Services
503.09 - DBE	Commissions Paid (Intercity Bus Only)
503.99	Volunteer Time

**VEHICLE EXPENSE**

504.01 - DBE	Fuels & Lubricants
504.02 - DBE	Tires & Tubes
504.03 - DBE	Parts/Inventory Purchases
505.04 - DBE	Vehicle Repairs
505.99 - DBE	Other Materials & Supplies

**UTILITIES**

505.01	Electricity/Natural Gas
504.011 - DBE	Propane Service
505.02 - DBE	Telephone - Land Line (cont opp if there is comp in service area)
502.021 - DBE	Telephone - Cell Phone
505.03	Water
505.04	Sewer
505.05 - DBE	Cable and/or Internet Service (cont opp if there is comp in service area)
505.06 - DBE	Refuse Service (cont opp if there is comp in service area)

**CASUALTY & LIABILITY INSURANCE**

506.01 - DBE	Premiums - Vehicle (Collision & Liability)
506.02 - DBE	Premiums - Directors' Liability
506.03 - DBE	Premiums - Facilities (Replacement & Liability)
506.99 - DBE	Other Insurance Premiums

**VEHICLE REGISTRATION**

507.01	Vehicle Licensing & Registration Fees
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**PURCHASED TRANSPORTATION SERVICE**

508.00 - DBE	Purchased Transportation Service
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**MISCELLANEOUS EXPENSES**

509.01	Dues & Subscriptions
509.02 - DBE	Travel & Meetings (cont opp if travel services are used)
509.03 - DBE	Office Supplies

509.04	Postage/Post Office Box Rental
509.041 - DBE	Mailing Services
509.05 - DBE	Small Equipment Purchases
509.06 -DBE	Employees' Meals
509.07 - DBE	Interest Paid
509.08 - DBE	Background/Drivers' License Checks (cont opp if other than public agency)

**REPAIRS**

510.01 - DBE	Maintenance performed by others
510.02	In House Maintenance
510.03 - DBE	Building Repair
510.04 - DBE	Office Equipment Repair
510.05 - DBE	Shop Equipment Repair
510.06 - DBE	Radio Repair

**LEASES & RENTALS**

512.01 - DBE	Operating Facilities (Bus Barns)
512.02 - DBE	General Administrative Facilities
512.03 - DBE	Vehicle Lease
512.04 - DBE	Equipment Lease
512.05	Rental provided by other as In-Kind Donation

**ADVERTISING**

514.01	Public Hearing Notices (use newspaper with largest circulation)
514.02 - DBE	Marketing/Advertising/Classified Ads

**CAPITAL PROCUREMENTS**

Account Number	Description
601.00 - DBE	Commercial and Institutional Building Construction
	Prefab Metal Building and Component Manufacture
602.00 - DBE	
603.00 - DBE	Architect and Engineering Services
604.00 - DBE	Electrical Contractors
605.00 - DBE	Plumbing and Heating Contractors
606.00 - DBE	Roofing
607.00 - DBE	Landscaping and Earthwork
608.00 - DBE	Office Furnishings and Equipment
609.00 - DBE	Computer Equipment
610.00 -DBE	Radio and Wireless Equipment
611.00 - DBE	Shop Equipment

## Appendix C

### Sampling Method for Computing Service Hours

1. Section 5311 providers who own vehicles

A. Track actual hours of driver pay for the quarter (excluding annual leave and sick pay).

Example: Provider with 4 drivers	
	Payroll Hours
Driver #1	384
Driver #2	192
Driver #3	480
Driver #4	360
Total hours	1416
Minus - Training was held for all drivers for 2 hours	-8
Minus - One driver took vehicle for routine maintenance	-2
Net Service Hours for Quarter	1406

B. Track the actual hours of scheduled service for the quarter.

Example: Provider with 3 Routes	
	Scheduled Service Hours
Route #1	480
Route #2	480
Route #3	480
Total Scheduled Hours:	1440
Minus – Time for mechanical delays	-6
Minus – Time for accident delays	-4
Minus – Time for late start of route	-2
Add – Time for late returns from end of route	+4
Net Service Hours for Quarter	1432

2. Providers who use public taxi coupon system

For the first full week of the first month of each quarter, ask your provider to track the time for each ride from pickup to destination. Sampling may also be used, such as each cabdriver tracking the travel time for every 5<sup>th</sup> rider who presents a taxi coupon.

*Formula: Average time per trip X Quarterly Trips = Quarterly Service Hours*

3. Grantees who pay another Section 5311 provider for service should use Method 1 A or B, above.



## Appendix D

### Missouri Department of Transportation

### Computation of Federal Interest for Vehicle Disposition

Grantee is permitted to retain 20% of the selling price plus \$225.00 for the cost incurred in selling the vehicle. The remainder, the "Federal Interest," must be remitted to MoDOT within 10 working days of the disposition of the vehicle.

#### Computation of Federal Interest

1. For vehicles sold at auction, the Selling Price is the amount paid by the buyer exclusive of any "buyer fee" charged by auction company.

#### Bill of Sale from Auction:

Selling Price	\$2,500
Buyer Fee	+\$70
Price paid by Buyer	<b>\$2,570</b>
Selling Price	\$2,500
Selling Commission	-\$180
Amount paid to Seller	\$2,320

#### Computation of Amount to be remitted to MoDOT

Selling Price	\$2,500
Multiplied by	80%
Federal Interest	\$2,000
Minus Selling Expense	-\$225
Amount to be paid to MoDOT	\$1,775

2. For vehicles sold by sealed bid, the selling price is the highest bid submitted.

#### Computation of Amount to be remitted to MoDOT

Highest Bid	\$2,500
Multiplied by	80%
Federal Interest	\$2,000
Minus Selling Expense	-\$225
Amount to be paid to MoDOT	\$1,775

#### General Guidelines

If a vehicle must be towed to a location to be sold, the cost of towing is considered an ordinary cost of operations and cannot be subtracted from the selling price or amount of the federal interest.

If sealed bids are solicited, and no bids are received, the grantee may then sell the vehicle at auction, OR, ask MoDOT to establish a fair market value at which the vehicle may be sold to a willing buyer.



### Appendix E Sources of funding

Funding Source	Federal	State	Local	Eligible for Escrow
ACTION (FTA program)	X			no
Adult Day Care Centers			X	yes
Advertising on Vehicles			X	yes
American Legion			X	yes
American Red Cross			X	yes
Area Agencies on Aging	X	X		no
Assisted Living Facilities			X	yes
Caring Communities			X	yes
Chamber of Commerce			X	yes
Churches and other faith-based organizations			X	yes
Cities (donations or service agreements)			X	yes
Civic Organizations (Kiwanis, Rotary, Lions)			X	yes
Community Partnerships		X		yes
Counties (donations or service agreements)			X	yes
County Health Department			X	yes
Department of Agriculture – service agreement			X	yes
Department of Agriculture – direct grant		X		no
Department of Corrections – service agreement			X	yes
Department of Corrections – direct grant		X		no
Department of Mental Health – service agreement			X	yes
Department of Mental Health – direct grant		X		no
Developmentally Disabled Center			X	yes
Dialysis Clinics			X	yes
Disability Determinations		X		yes
Division of Family Services (TANF)		X		no
Donations			X	yes
Drug/Alcohol Rehabilitation Centers			X	yes
Fares	cannot count as match			no
Federal Transit Administration (5311, JARC)	X			no
Foster Grandparents			X	yes
Fuel Tax Refund	X			no
Fundraisers			X	yes
Group Homes			X	yes
Headstart		X		no
Hospitals			X	yes
House Bill 351 Board (Sr. Cit.)			X	yes
Independent Living Center		X		yes
Interest			X	yes
JARC (direct or indirect)	X			no
Medicaid (MTM)			X	yes
MEHTAP	cannot count as match			no
Missouri Kidney Foundation			X	yes
Nursing Homes			X	yes
Private Charities			X	yes
Rehabilitation for the Blind		X		yes
RSVP			X	yes
Salvation Army			X	yes
School District		X		no

Appendix E

<b>Funding Source</b>	<b>Federal</b>	<b>State</b>	<b>Local</b>	<b>Eligible for Escrow</b>
Senate Bill 40 Board (HC)			X	yes
Senior Nutrition			X	yes
Sheltered Workshop			X	yes
State Transit Operating Assistance		X		yes
United Way			X	yes
VFW			X	yes

## PUBLIC HEARING NOTICE

Notice is hereby given that a public hearing will be held by APPLICANT, on April 15, 20--, at 7:00 p.m. to consider a project partially funded by the Missouri Department of Transportation, pursuant to Section 5311 of Title 49, United States Code.

1. Purchase of four (2) buses. The vehicles will all be lift equipped and will have two-way radios. Estimated cost is \$75,000.
2. Request financial assistance in an amount necessary to complete funding and operate the city's public transit system. Estimated cost is \$300,000
3. The location of the project will be OFFICE ADDRESS/LOCATION to serve SERVICE AREA (city limits, county, region), Missouri.
4. The total estimated cost of the project is                   \$375,000  
Federal Funds   210,000  
Local Funds   165,000
5. The source of the local match will be from SPECIFY MAJOR SOURCES OF FUNDING (City's general revenue fund, SB 40 Board, local donations, etc.).
6. At the hearing, the APPLICANT will afford an opportunity for interested persons or agencies to be heard regarding the project. Interested persons may submit orally, or in writing, evidence and recommendations with respect to said project. If no person(s) request to give either oral or written evidence and recommendations three days prior to the public hearing, the applicant is not required to hold the public hearing.
7. Organizations interested in the proposed service may request information concerning the project from the applicant.
8. The APPLICANT does not discriminate on the basis or race, color, creed, national origin, sex, or age in employment or provision of services.
9. Any person requesting information or requiring special accommodations to attend the hearing may contact: (name, address, and telephone number of contact person).



# Missouri Department of Transportation (MoDOT) Repair Program Application Form

## SECTION A

DATE: \_\_\_\_\_

### Check appropriate box identifying funding source of vehicle

Section 5309 (MO-03-\_\_\_\_)     Section 5311 (MO-18-\_\_\_\_) **fill in grant #**

**Vehicle Type:** \_\_\_\_\_ (van, minibus, etc.)

**Vehicle VIN:** \_\_\_\_\_    **Mileage:** \_\_\_\_\_

### Please check below item to be replaced:

_____ Transmission	_____ Differential	_____ Engine
_____ Wheelchair Lift	_____ Air Conditioning	_____ Restraints

Other, Please detail \_\_\_\_\_

Contact Person: \_\_\_\_\_

Name of Organization \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
Signature of Contact Person

## SECTION B

1. MoDOT Inspector's Comments and recommendation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Recommended                      \_\_\_\_\_ Not Recommended

**(Please append two or more quotes with this application form for MoDOT's evaluation).**

**GENERAL INSTRUCTIONS:****Funding from this program is limited to vehicles funded by Missouri Department of Transportation (MoDOT)**

1. Section A of the application form must be completed and submitted to the MoDOT. Prior written authorization is required before funding can be committed.
2. Vehicles funded by MoDOT under Sections 5309, 5310 and 5311 are eligible for assistance under this program.
3. Eligible items will be limited to the purchase of new or rebuilt engines, transmissions and differentials on a 75/25 split. If the original engine has core value, it will be deducted from our 75% state share. If MoDOT can't provide the 75% the applicant will be notified in writing. The applicant has the option of accepting the amount available or wait for reimbursement until sufficient funding is available.
4. Wheelchair lifts, restraints, repairs and replacements will be funded at a 100% ratio, not covered under warranty. Repair costs must be a minimum of \$200.00 to be considered eligible for this program (this minimum does not apply to replacement of restraints).
5. Any major engine repairs costing \$750 or more will be funded at a 75/25% split (Examples of major repairs are: valve jobs or blown head gaskets). Items not included are repairs for electrical systems, tires or fuel systems.
6. Major air conditioning repairs will be funded at a 75/25% split of cost with MoDOT limiting its participation to a maximum of \$1,000. The following criteria will need to be met prior to repair authorization:
  - A. At the time of repair the vehicle must have two useful cooling seasons left.
  - B. Repairs are only authorized between the dates of April 15 - September 15 except for vehicles whose defrost mechanism is part of the air condition system
  - C. One or more of the following major components will need to be replaced, according to the estimate:
    - (1) Compressor
    - (2) Receiver dryer
    - (3) Expansion valve
    - (4) Evaporator
    - (5) Condenser coil
    - (6) The cost of refrigerant incurred during the replacement of items (1) through (5)
7. If funding is available you will be notified to proceed, if not, you will be notified of its position on the waiting list in writing. All work authorized must be completed within 30 days of the date of authorization.
8. The following criteria apply to rebuilt items.
  - A. A rebuilt engine should provide 60,000 miles.
  - B. A rebuilt transmission should provide 50,000 miles.
  - C. A rebuilt differential should provide 75,000 miles. The vehicle will not be eligible for replacement until it has more than 125,000 miles.
9. Applicants are required to submit two estimates with the application so that MoDOT can determine its maximum state share.

## ANNUAL REVIEW OF SECTION 5311 RECIPIENTS BY THE MISSOURI DEPARTMENT OF TRANSPORTATION

Recipient's Name: \_\_\_\_\_  
 Type of Organization: \_\_\_\_\_  
 Address of Organization: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Director of Organization: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Reviewer: \_\_\_\_\_ Date of Review: \_\_\_\_\_

### Section One, Organization Overview:

1. Type(s) of transportation service provided  
 fixed route with complementary paratransit  
 deviated fixed route  
 demand/response  
 taxi coupon  
 other \_\_\_\_\_
2. Days and hours of operations for transportation services  
 Mon-Fri \_\_\_\_\_ Sat \_\_\_\_\_ Sun \_\_\_\_\_  
 Hrs \_\_\_\_\_ Hrs \_\_\_\_\_ Hrs \_\_\_\_\_
3. Annual operating budget \_\_\_\_\_  
 \_\_\_\_\_% administration \_\_\_\_\_% operating
4. List main sources of revenue  
 \_\_\_\_\_ federal \_\_\_ state \_\_\_ local \_\_\_
5. Insurance for federally funded equipment and/or facilities  
 \_\_\_\_\_ insurance company  
 \_\_\_\_\_ expiration date of policy  
 Type(s) of insurance carried  
 collision on vehicles \_\_\_\_\_ liability on vehicles \_\_\_\_\_  
 building/equipment replacement \_\_\_\_\_ directors' liability \_\_\_\_\_  
 building/equipment liability \_\_\_\_\_  
 other \_\_\_\_\_
6. Specialty services provided (charter, tripper, package/meal delivery, etc.)

### Section Two, Operations

1. Transportation operating deficit for the most recent ended fiscal year
2. Number of one-way trips provided in the previous fiscal year
3. Average daily fare collection  
 Fare per ride \_\_\_\_\_  
 Are fares discounted for the elderly/disabled ?  
 If yes, list fare \_\_\_\_\_  
 What procedures are followed to ensure donations and fares are properly  
 accounted for? \_\_\_\_\_

4. How long are trip sheets and other Section 5311 records retained?
5. When scheduling trips, do you require a 24-hour advance reservation?
6. What maintenance procedures do you follow for lift-equipped vehicles?
7. List organizations with whom you coordinate transportation  
Do you ever coordinate transportation (such as long distance medical) with other Section 5311 providers?
8. Which company(s) does your organization use for alcohol and drug testing? Did you procure the contract competitively and does the contract contain all the require FTA certifications and assurances?
9. Describe the Substance Abuse training you have conducted in the last year for current employees, new employees, and supervisors.
10. What does your organization do with employees who test positive for drugs or alcohol?
11. You are required to randomly test employees for drugs and alcohol, what percentage do you test for drugs? \_\_\_\_\_ and alcohol \_\_\_\_\_?
12. Review last 12 months tests for days of the week, days of the month, and time of day.
13. How does your organization ensure that charters are incidental and do not shorten the vehicles useful life? Please provide documentation supporting this.
14. What vehicles and facilities does your organization use to provide charter service?
15. What findings, if any, did your organization have in the last independent audit? Have these findings been resolved?
16. Describe procedures for assembling drivers and vehicles in case of emergency.

### **Section Three, Capital**

1. Ask to see copy of inventory of capital items
2. What federally funded procurements did your organization perform in the past fiscal year?
3. How does your organization provide full and open competition in procurement?
4. What real property did your organization acquire this year via FTA funds that flowed through MoDOT?
5. Has your organization performed any vehicle procurement on its own? Provide supporting documentation that demonstrates all applicable federal laws were followed. How were Buy America provisions handled?
7. Review DBE spreadsheet with grantee.
8. Did your organization receive more than \$1 Million in federal funds (or \$250,000 in federal planning funds) and employ 50 or more employees? If so, what did your organization do to comply with EEO program requirements?
9. Does your organization lease any equipment, vehicles, or facilities? Has your organization established written cost effectiveness criteria for leasing?
10. Where does your organization derive local match for capital projects? How does your organization secure those dollars each year?

11. Does your organization know where to locate the list of federally suspended and debarred contractors?
12. What are the major capital needs for your organization in the next fiscal year? Five years?
13. What is your organization's largest barrier to capital?
14. Did your organization perform any lobbying activities in the last fiscal year? If so, what amount was paid to the lobbyist? What funds did your organization do to pay of the expense of the lobbyist?
15. What can MoDOT do to help your organization?
16. Does your organization escrow 15% of your non-federal, non-MoDOT funds to provide match for capital acquisitions? \_\_\_\_\_ Review savings/checking account for these records.

### **Section Four, Civil Rights and ADA Compliance**

1. Has anyone has been refused service in the last 12 months? If yes, explain.
2. Does your organization have EEO and Title VI employment policies in place?
3. Has your organization received any Title VI or EEO complaints in the past year? If so, were they resolved?
4. Do you have written set of rider rules?  
Do you have a written complaint procedure?  
Are service animals and medical equipment (oxygen tanks) permitted on all vehicles?  
Do rider brochures/schedules/other documents include this information?
5. How are ADA service issues handled by your organization? How many vehicles are wheelchair equipped?
6. If you have only one accessible vehicle, what policies or contracts do you have in place to insure an accessible vehicle is available during all service hours?  
service is shut down  
contract with another provider to furnish vehicle  
other

#### **For Fixed route Service Only**

7. If multiple routes serve the same stops, is each vehicle clearly marked as to what route it serves?
8. Are all stops accessible? If not, how are inaccessible stops identified?
9. Do drivers announce all major stops verbally  
Do drivers announce all stops if a passenger requests it?
10. Do new drivers receive ADA training before beginning work?  
Do new drivers receive formal training in lift deployment and wheelchair securement before beginning work?
11. Does ADA training for drivers include the following:
  - a. service animals are permitted
  - b. standees allowed to use lift

- c. allowing adequate time for boarding/alighting
12. Is the following information included in route schedules/other documents?
  - a. respirators and oxygen tanks are permitted
  - b. route maps with non-accessible stops labeled
  - c. qualifications for paratransit eligibility
13. Is recovery/slack time allowed for when scheduling routes to make up for additional time taken for wheelchair or other disabled riders boarding/alighting?

### **Section Five, Documentation to be provided**

1. Insurance policy(s)
2. EEO and Title VI employment policies (if applicable)
3. Trip sheets
4. Log for administrative vehicle(s)
5. Drug & Alcohol Training procedure and policy
6. Completed Drug & Alcohol MIS reports for the previous two years
7. Copy of Capital/Fixed Asset Register
8. Purchasing Guidelines and documents showing procurements comply with all federal regulations
9. Rider Policy(s)
10. Bank statement for escrow account for local match

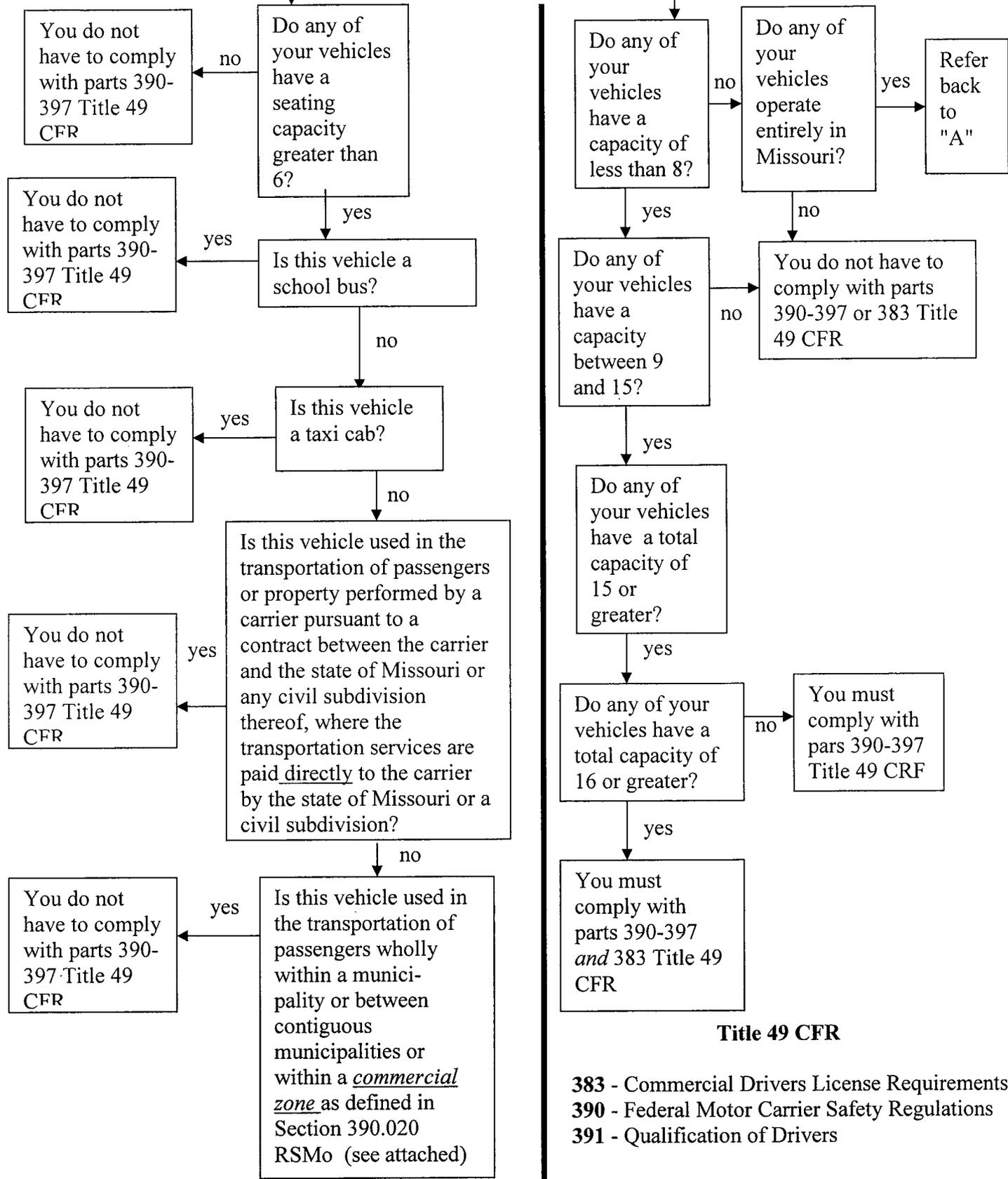
### **Section Six, Physical Site Inspection**

1. Inspect vehicles.
  - Check for insurance card in all vehicles
  - Review maintenance log for each vehicle
  - Check for safety equipment, vehicle condition, etc
2. Inspect facilities.
  - Are facilities ADA accessible?
  - Check for all federally funded capital assets

**FMCSA SAFETY**  
Do you operate entirely within the state of Missouri?

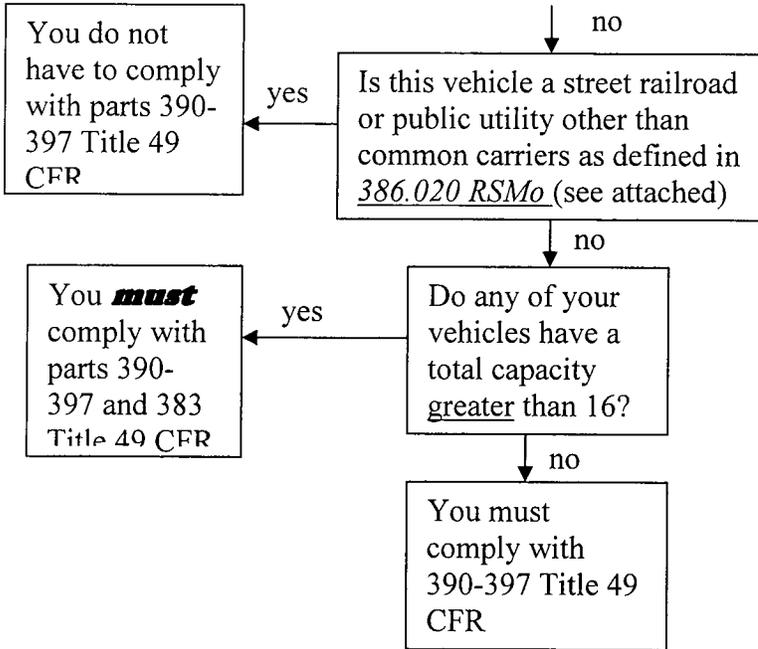
**A**

**B**



**Title 49 CFR**

- 383** - Commercial Drivers License Requirements\*
- 390** - Federal Motor Carrier Safety Regulations
- 391** - Qualification of Drivers



- 392 - Driving of Commercial Motor Vehicles
- 393 - Parts and Accessories for Safe Operation
- 395 - Hours of Service
- 396 - Inspection, Repair and Maintenance
- 397 - Transportation of Hazardous Materials; Driving and Parking Rules

## RURAL TRANSPORTATION ASSISTANCE PROGRAM APPLICATION FOR TRAINING ASSISTANCE

Grantee: \_\_\_\_\_

Person for whom  
assistance is requested: \_\_\_\_\_

Location of training: \_\_\_\_\_

Date(s): \_\_\_\_\_

Organization offering the  
training: \_\_\_\_\_

Description of training: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Estimated Expenses**

Mileage @ \_\_\_\_\_ cents per mile \_\_\_\_\_

Airfare (include baggage check costs) \_\_\_\_\_

Ground Transportation (parking fees  
and shuttle expenses) \_\_\_\_\_

Lodging \_\_\_\_\_

Meals \_\_\_\_\_

Registration Fees \_\_\_\_\_

TOTAL \_\_\_\_\_

\_\_\_\_\_  
Signature (applicant's supervisor)                      Date

Approved by:

\_\_\_\_\_  
Shirley Tarwater    Date  
Senior Multimodal Operations  
Specialist

## Application Instructions

The applicant must be a fulltime employee of the grantee and be actively involved in the transportation services offered by the grantee.

The application must be received and approved by MoDOT at least 30 days before the date of the training.

No advance payments will be made. The grantee is responsible for making all reservations, paying the registration fees, etc., then requesting reimbursement from MoDOT. Salary or other compensation is not reimbursable.

All expenses over \$5.00 (except for meals) must be documented with a legible receipt.

Expenses must be reasonable. Please note the following:

1. First class airfares will not be reimbursed.
2. If the participant chooses to drive when flying would be more economical, MoDOT will reimburse the participant for what the lowest available coach airfare would have cost, not the total mileage.
3. Mileage will be based on the most direct route from the participant's home to the training location. Extraneous mileage for recreational purposes accumulated during the training will be not reimbursed.
4. If two or more participants attend and are traveling by car, they will be expected to carpool if at all possible.
5. Expenses for ground transportation will be limited to transportation from the airport to the hotel and back. A hotel shuttle should be used if available; otherwise, cab fares will be reimbursed. Car rental expense is not eligible for reimbursement. Parking fees at the airport are reimburseable.
6. Lodging expenses will be reimbursed for the lodging and applicable taxes only. In-room movies and telephone calls are not eligible expenses.
7. The participant is expected to keep the cost of meals reasonable (depending upon the location of the training, a maximum allowance may be set when the application is approved). If the course fees include the cost of meals, reimbursement will not be made if the participant chooses to eat elsewhere.
8. If the grantee incurs expenses (such as registration fees), and then the applicant does not attend, MoDOT will not reimburse the grantee for those expenses.
9. A copy of any issued course completion certificate(s) will accompany the reimbursement request.
10. Additional expense incurred because the participant was accompanied by a spouse or other family member will not be reimbursed.

## Escrowing Funds – Sample Worksheets

Three examples are shown based on the following:  
Grant amount is \$30,000.

	Expense	Local Revenue	Federal Revenue (other than 5311 funding)
July	18,000	10,000	6,000
August	17,500	9,250	6,500
September	21,000	3,000	12,500

### Computation for July

Escrowing the maximum amount accelerates the amount of the Section 5311 funds drawn down. *This may result in premature draw down of the grant with no funds remaining during the latter months of the grant year.*

**Table # 1 - Requisition with \$0 escrowed**

A. Total expense	18,000
B. Ineligible operating expense	-0
C. Total eligible expense	18,000
D. Total Revenue =10,000 (local) + 6,000 (federal) – 2,000 used for match)	-14,000
E. Net Loss	4,000
F. Applicant Share (50% of Line E)	-2,000
G. State assistance being requested*	0
H. Section 5311 assistance being requested	2,000

\*Assumption is made that there is no state assistance available.

**Table # 2 - Computation of maximum escrow of local revenue**

Local Revenue	10,000
Less 10% operating escrow (10,000 x 10%)	-1,000
Less 15% capital escrow (10,000 x 15%)	- 1,500
Net Local Revenue	7,500

**Table # 3 - Requisition with escrow of 10% operating escrow, 15% capital escrow**

A. Total expense	18,000
B. Ineligible operating expense	-0
C. Total eligible expense	18,000
D. Total Revenue =7,500 (local from Table #2) + 6,000 (federal) – 4,500 used for match	- 9,000
E. Net Loss	9,000
F. Applicant Share (50% of Line E)	-4,500
G. State assistance being requested*	0
H. Section 5311 assistance being requested	4,500

If no funds are escrowed, there is the possibility that the grantee may not be able to draw down all the Section 5311 funds (2,000 x 12 = 24,000, with 6,000 remaining). If the maximum amount is escrowed, Section 5311 funds may be exhausted before the end of the grant year (4,500 x 12 = 54,000 --- with 30,000 in grant funds, funds would be used up the first seven months of the grant year). Therefore, using the escrow amount shown in Table #2 is not recommended unless additional revenues from other sources are expected late in the fiscal year.

**Computation for August**

This example show the computation when a grantee has decided that the escrow amount will be reduced if necessary to ensure that the same amount of Section 5311 funds will be drawn down each month. *This method will stabilize the grantee's cash flow.*

**Table # 4 - Requisition with \$0 escrow**

A. Total expense	17,500
B. Ineligible operating expense	-0
C. Total eligible expense	<u>17,500</u>
D. Total Revenue = 9,250 (local) + 6,500 (federal) – 1,750 used for match	-14,000
E. Net Loss	<u>3,500</u>
F. Applicant Share (50% of Line E)	-1,750
G. State assistance being requested	<u>0</u>
H. Section 5311 assistance being requested	<u>1,750</u>

**Table # 5 - Computation of maximum escrow**

Local Revenue	9,250
Less 10% operating escrow (9,250 x 10%)	-925
Less 15% capital escrow (9,250 x 15%)	-1,388
Net Local Revenue	<u>6,937</u>

**Table # 6 - Requisition with escrow of 10% operating escrow, 15% capital escrow**

A. Total expense	17,500
B. Ineligible operating expense	-0
C. Total eligible expense	<u>17,500</u>
D. Total Revenue = 6,937 (local from Table #5) + 6,500 (federal) – 4,063 used for match	-9,374
E. Net Loss	<u>8,126</u>
F. Applicant Share (50% of Line E)	-4,063
G. State assistance being requested*	<u>0</u>
H. Section 5311 assistance being requested	<u>4,063</u>

**Table # 7 - Computation of reduced escrow**

The maximum amount the grantee requests in Section 5311 funds each month is \$2,500 (grant amount = \$30,000 / 12). Based on Table # 4 above, \$1,750 will be drawn down. If the revenue is reduced by \$750, the amount of Section 5311 funds drawn down will be \$2,500.

Local Revenue	9,250
Less operating escrow	-250
Less capital escrow	-500
Net Local Revenue	<u>8,500</u>

**Table # 8 - Requisition with escrow reduced to provide for steady flow of Section 5311 operating funds.**

A. Total expense	17,500
B. Ineligible operating expense	-0
C. Total eligible expense	<u>17,500</u>
D. Total Revenue = 8,500 (local from Table #7) + 6,500 (federal) – 2,500 used for match	-12,500
E. Net Loss	<u>5,000</u>
F. Applicant Share (50% of Line E)	-2,500
G. State assistance being requested*	<u>0</u>
H. Section 5311 assistance being requested	<u>2,500</u>

**Computation for September**

This example shows the computation when *the amount of local funds received is insufficient to meet the requirement that at least ½ of the match must come from local funds* (see Page 6 of the State Management Plan)

**Table # 9 - Requisition with \$0 escrow**

A. Total expense	21,000
B. Ineligible operating expense	-0
C. Total eligible expense	<u>21,000</u>
D. Total Revenue = 3,000 (local) + 12,500 (federal) – 5,500 used for match	<u>-10,000</u>
E. Net Loss	11,000
F. Applicant Share (50% of Line E)	<u>-5,500</u>
G. State assistance being requested	0
H. Section 5311 assistance being requested	<u>5,500</u>

**Table # 10 - Computation of maximum escrow**

Local Revenue	3,000
Less 10% operating escrow (9,250 x 10%)	-300
Less 15% capital escrow (9,250 x 15%)	<u>-450</u>
Net Local Revenue	<u>2,250</u>

**Table # 11 - Requisition with escrow**

A. Total expense	21,000
B. Ineligible operating expense	-0
C. Total eligible expense	<u>21,000</u>
D. Total Revenue = 2,250 (local from Table #10) + 12,500 (federal) – 6,250 used for match	<u>-8,500</u>
E. Net Loss	12,500
F. Applicant Share (50% of Line E)	<u>-6,250</u>
G. State assistance being requested*	0
H. Section 5311 assistance being requested	<u>6,250</u>

**This requisition could not be submitted, as local funds (2,250) are less than ½ of the amount of Section 5311 funds requested (6,250 / 2 = 3,125).**

**Table # 12 - Computation of reduced escrow**

Local Revenue	3,000
Less operating escrow	-50
Less capital escrow	<u>-100</u>
Net Local Revenue	<u>2,850</u>

**Table # 13 - Requisition with escrow reduced with ½ of match provided through local funds.**

A. Total expense	21,000
B. Ineligible operating expense	-0
C. Total eligible expense	<u>21,000</u>
D. Total Revenue = 2,850 (local from Table #12) + 12,500 (federal) – 5,650 used for match	<u>-9,700</u>
E. Net Loss	11,300
F. Applicant Share (50% of Line E)	<u>-5,650</u>
G. State assistance being requested*	0
H. Section 5311 assistance being requested	<u>5,650</u>

This requisition could be submitted as local funds (2,850) are equal to or exceed ½ of the amount of Section 5311 funds requested (5,650 / 2 = 2,825).



## Appendix L Terms & Definitions

TERM*	DEFINITION
AAA	Area Agency on Aging (state agency) - contracts for services for senior citizens (part of Department of Health & Senior Services)
ADA	Americans with Disabilities Act – requires equal service and facilities for the disabled
Administrative costs	Costs incurred by office staff and administrators not directly involved in dispatching, maintenance, or driving duties
APTA	American Public Transportation Association - association of mainly urban transit systems
Capital grant	A grant used to purchase fixed assets such as vehicles shop and office equipment, or buildings and real estate
Charter/sightseeing Service	Service provided for a distinct group, with no general public access to the service
Complementary paratransit	Paratransit service that must be provided by any entity providing fixed route service, must have same operating hours and level of service
CTAA	Community Transportation Association of America - association that provides information, training, and technical assistance to members. Annual EXPO provides good training and networking for transit directors
DBE	Disadvantaged Business Enterprise
Demand/response	Transportation provided by a passenger requesting a ride with a specific destination, date, and time
DHHS	Department of Health & Human Services
Earmark	A amount set aside by Congress for a specific agency's project
EEO	Equal Employment Opportunity Program – required of all Section 5311 providers who receive more than \$1,000,000 in federal funds annually and who have more than 50 employees who
Eligible recipient	A public entity or not-for-profit agency, for-profit providers may participate as third-party contractors for eligible recipients
Entitlement	Funding for which one does not have to qualify
Fare	A cash amount paid by a passenger upon boarding a vehicle or to purchase a coupon that must be presented upon boarding. Fares may never be used as match for state/federal funding. If a passenger is later reimbursed by a human service agency for the fare, it is still considered a fare.
FCC	Federal Communications Commission – licensing regulator for 2-way radios
Federal Transit Administration	A branch of the United States Department of Transportation that provides transit funding
Federal interest	Percentage of the cost of equipment, vehicles, or facilities covered by FTA or other federal agency funds
Fixed route service	Transit service provided along predetermined routes, stops, and schedule, runs even if no passengers are on board
FTA	Federal Transit Administration
FTA- Region VII	Federal Transit Administration – Kansas City – works directly with urban systems, and through MoDOT, works with rural systems
Fully allocated cost	Entire cost of doing business, including all administrative and operating costs, not reduced by state and federal subsidies received through MoDOT
Grantee	See recipient

TERM*	DEFINITION
General public transportation	Transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school, charter, or sightseeing transportation
Human service agency	A state or local agency that provides assistance to the specific populations such as the elderly, disabled, or low-income persons
Incidental use	Use of a Section 5311 vehicle for non-passenger transportation on an occasional or regular basis, i.e. package or meal delivery, cannot result in a reduction of passenger transportation, costs are not reimbursable under Section 5311
In-kind match	Services and/or facilities provided in lieu of a cash contribution, may be used to increase the local match portion needed under the Section 5311 operating grant. The services and/or facilities must be necessary for the operation of the transportation service and, if not provided as in-kind, a cash outlay would be required to purchase the service and/or use of the facility
Intercity bus	Fixed route transportation that links communities, usually terminating in urban areas, such as Greyhound, Inc.
JARC	FTA Job Access and Reverse Commute grant program for employment related transportation – administered by MoDOT in nonurban areas
Lowered-floor minivan	A minivan that has been modified to provide accessibility by installing a ramp, lowering the floor, etc.
Match	Revenue received that may be used to match state/federal funding, either 50/50 in operating assistance, or 80/20 in capital and planning assistance. Fares may not be used as match. Rides or coupons purchased in advance by human service agencies are considered service contracts, not fares, and may be used as match.
MEHTAP	Missouri Elderly and Handicapped Transportation Assistance Program – state program for operating assistance to providers of elderly and disabled transportation – administered by MoDOT
Metropolitan Planning Organization	An organization of public entities in an urbanized area, charged with planning and coordination of projects, including transit
Minibus	A truck chassis that has had a custom built passenger area added with lift and/or steps, seats, escape hatch, etc.
MIS	Management Information System – Drug & Alcohol Program
Modified van	A full-size van that has been modified by raising the roof, installing a lift and steps, etc.
MPO	See Metropolitan Planning Organization
MoDOT	Missouri Department of Transportation – state agency whose governing board is the Missouri Highways and Transportation Commission
MPTA	Missouri Public Transit Association - state association providing technical assistance for operators and education for legislative issues, both federal and state.
MTM	Medical Transportation Management – Broker for Medicaid transportation
Net operating expense	Operating expense for a given period reduced by all fares collected
Nonurbanized area	All areas of the state not included in an urbanized area as defined by the Bureau of the census. A nonurbanized area may include incorporated towns and villages as well as rural areas.
One-way trip	A one-way trip is counted as when a passenger gets off the vehicle at his/her destination
Operating costs	Costs directly attributable to the vehicle operation, such as drivers' wages, maintenance, fuel, etc.
Operating expense	Cost of operations for a given period, generally includes both administrative and operating costs

<b>TERM*</b>	<b>DEFINITION</b>
Operating grant	A grant to assist a provider with the day-to-day expense of operating a transportation service
Paratransit	Transit service for persons unable to access a fixed route vehicle, see demand/response
PAT	Passenger assistance training
Planning grant	A grant to assist a provider in projecting service trends or the need for equipment and/or facilities
Private sector Recipient	For-profit companies in private ownership A public entity or not-for-profit agency that has entered into an agreement with MoDOT to provide transportation using funds provided by a state or federal grant program
RFP	Request for Proposal
RTAP	FTA – Rural Transportation Assistance Program – transit related training provided through MoDOT for rural operators
Safety-sensitive employee	Employees included in the FTA Drug/Alcohol Testing Program – drivers, dispatchers, and mechanics who are employees of the provider
Section 3037	See JARC
Section 5307	FTA operating grant program for small urban systems (areas with 50,000-200,000 population)
Section 5309	FTA discretionary capital acquisition program – administered by MoDOT except for earmarks to large urban systems
Section 5310	FTA grant program for capital acquisition for providers of elderly and disabled transportation – administered by MoDOT statewide
Section 5311	FTA grant program for general public nonurban systems – operating, capital, and planning – administered by MoDOT
TANF	Temporary Assistance for Needy Families
TRB	Transportation Research Board – conducts research on transportation issues, sponsors seminars on transportation
Urbanized area	An area with more than 50,000 population that exceeds population density requirements established by the Bureau of the Census
Van on chassis	See Minibus
Wheelchair restraints	The equipment used to secure a wheelchair inside a vehicle, including a torso belt and/or shoulder belt used to secure the passenger

\*Not all the terms may be found in the state management plan but are included as a reference guide for operators. Terms are defined only in the context of the Section 5311 program and may have another meaning in a different environment.



## Elements of a Good Transit Service Contract

These guidelines are written from the perspective of the transit provider who contracts to provide transportation to a municipality or other agency.

1. Any contract you execute should refer to the federal/state regulations under which you operate. For example, a contract between a transit provider and a human service agency would have a clause stating that all state and federal regulations shall apply to the service provided including, but not limited to, civil rights and ADA regulations. Contact the MoDOT Transit section for information on FTA model contract clauses.
  
2. A start and end date should be stated in all contracts. A contract for more than a 12-month period may leave you operating in the red unless there are provisions for amending the cost. You may include a provision for extension of the contract if both parties agree in writing. You should not have “automatic extensions” as the other party could say they did not intend to extend the contract and you have already provided service for which you will not be paid.
  
3. Be specific on what services will be offered:
  - A. days of the week,
  - B. hours of service,
  - C. vehicle(s) to be used,
  - D. service on holidays,
  - E. inclement weather policy,
  - F. type of service
    - a. fixed route (requires complementary paratransit)
    - b. deviated fixed route
    - c. subscription service
    - d. demand/response
  - G. reservation requirements (24 hour notice, reservation of rides up to \_\_\_ weeks in advance, advance notice of how many hours/days when new rider is scheduled for pickup on regular routes, etc.)
  - H. who is eligible to ride – this affects whether you may use Section 5311 funds to subsidize this service or whether you must recover 100% of the cost.
  
4. Be specific on cost. You may use cost per hour, cost per mile, cost per ride or a combination thereof. If cost is established on cost per mile, state where the mileage begins to accumulate: the driver’s home, the office, branch office, etc.) If you are incurring deadhead miles on a route (miles for which you are not billing the customer), you should increase the cost per revenue mile when you calculate the cost. The same requirement holds true for cost per hour. If your driver accumulated ½ hour of driving time before the first rider is picked up and you’re being paid for only revenue hours, the cost of your overhead is increased. Pricing service on cost per ride requires you to calculate your overhead also.

**EXAMPLE:**

Breakdown of expense for the past 12 months:

Administrative Cost		\$ 80,000
Operating Cost		\$ 184,000
Total Cost		<u>\$ 264,000</u>
Rides Provided		40,000
Hours of Service	(average ride = 18 minutes)	12,000
Miles	(average ride = 7 miles)	280,000
Number of Active Vehicles		6
Cost per Service Hour		\$ 22.00
Operating Cost per Service Hour		\$ 15.33
Administrative Cost per Service Hour		\$ 6.67
Operating Cost per Mile		\$ .66
Administrative Cost per Mile		\$ .29
Depreciation Cost per Mile (each vehicle will be replaced when it reaches 140,000 miles, 20% of cost is \$6,000)		\$ .043

You should know all of the above information about your service before bidding or negotiating any contract. If you have varying types of vehicles, you also need to track the cost per hour to operate the different types. The cost of operating a minibus is higher than operating a minivan.

Always keep in mind that the figures you are working with may not reflect the current cost of providing service. Factor increased insurance premiums, higher fuel costs, and inflation, into your calculations. It's also helpful to have a fuel cost increase provision in a contract, especially if it's written for 12 months or longer. Assuming the cost of fuel the starting date of the contract is \$1.40 per gallon (based on the prices at 3 local stations), you can have a provision that, if fuel costs rise to \$1.80-\$2.20 per gallon, the cost will increase proportionately. Based on the above scenario, if you're providing rides to a client for \$22.00 per hour, you would calculate the increased cost of fuel (60 cents – avg of \$1.80-\$2.20) by the gallons you purchased last year (280,000 gallons / 11 miles to the gallon = 25,454 gallons x .60 = \$15,272 / 12,000 service hours = \$ 1.27 increased cost per hour)

When negotiating a contract, be sure the other party commits to paying for no-shows and set a deadline for canceling rides. Providing an answering machine that is checked before any driver leaves on a route puts the responsibility on the contracting agency or their clients to cancel rides in a timely fashion.

5. Set up a timeline for billing and payments. You, as the provider, need to protect your cash flow. Commit to have the billing done and submitted to the agency by the 10<sup>th</sup> of the following month. State that the invoice is due and

payable upon receipt and state that the account will become delinquent in so many days. Have a consequence for non-payment: service will be terminated when the account becomes delinquent, service will be terminated with 3 days written notice to the client, etc. You should not provide service to any agency that is more than 20 days in arrears. For example, you provide service in July, bill by the 10<sup>th</sup> of August and the payment is due September 10<sup>th</sup>. On October 10<sup>th</sup>, the account becomes delinquent but you continue to provide service until September 30. At this point in time you have provided 90 days of service and have received payment for none. Your contracts should be specific as to what happens when payment is not made ---- and stick to it!

6. The contract should state what insurance you, as the provider, will carry on the vehicles.

7. Every transit system should have rider rules. They should be in writing and posted in the vehicles. New riders should get a copy. Also, the contract should state that your rider rules will apply to the agency's riders. Again, there should be consequences for violation of these rules and the contract should state the consequences.

8. Every contract should have a termination clause that allows either party to cancel the contract for any reason with 30 or 60 days written notice. The contract should state that if the agency is canceling the contract, they will be responsible for paying for all rides provided before the termination date. The contract should have a procedure for resolving a dispute before termination action is taken (see Exhibit J of your Section 5311 application).

9. Be careful of liquidated damage clauses, if used, that do not state a specific amount or rate of payment for which liquidated damages may be assessed. The rate of liquidated damages must be a reasonable estimate to compensate for possible damages and not be so large as to be construed a penalty.

10. Both parties must sign the contract and always obtain a copy for your files that have both signatures. Be sure the person who signs the contract has the authority to do so. This can be verified by requiring a copy of a board resolution that says the board president or executive director is authorized to sign the document. A board may pass a resolution authorizing an executive director to sign any and all contracts without presenting them to the board but these resolutions are not a good idea. Don't accept them if you don't want to----refer to the requirements for a resolution in the contract.

11. Your legal counsel should be consulted during the contract/negotiation process to ensure contracts protect your interests.



## Sample Rules of Conduct

All riders are required to conduct themselves properly when riding a \_\_\_\_ vehicle. Behavior that distracts the driver or annoys other passengers will not be tolerated. This behavior includes, but is not limited to:

- Talking in such a manner as to disturb other passengers.
- Passengers talking to the driver when the vehicle is in motion; however, it is permissible for a passenger to give the driver directions to an individual's home or destination.
- Passengers leaving their seats when the vehicle is in motion.
- Eating, drinking, smoking, or using chewing tobacco on the vehicle.
- Passengers and the driver not wearing seat belts while the vehicle is in motion.
- Solicitations of any kind.
- Scheduling trips, then failing to notify \_\_\_\_ if the trip is not needed.
- Individuals who ride the bus will maintain themselves in such a manner as not to offend others.
- Physical abuse or abusive language by the rider of others on the vehicle.
- Disrespect shown to any rider, or driver, including cursing and physically abusive contact.

Behavior such as that listed above may result in denial of service. When a rider violates any of these rules, the driver is to show the individual the rules and ask him/her to comply with them. Continued violation of the rules may result in denial of service.

Other safety infractions that will result in denial of service include:

- The parent(s) or guardian of a child weighing less than 50 pounds shall provide an approved child's seat that can be secured with a conventional seat belt. No child under 50 pounds shall be transported without an approved child seat. Children or infants are never to be held in the lap of an adult while the vehicle is in motion.
- Individuals known to have an infectious disease (such as tuberculosis, or childhood diseases such as chicken pox, etc.) or head lice shall be denied service until \_\_\_\_ receives notification the disease has been rendered non-infectious.

Service animals are permitted on all vehicles. Service animals presenting a danger to the driver or other passengers must be confined or constrained.\*

Oxygen tanks and other necessary medical equipment are allowed on all vehicles. The equipment must be secured to prevent injury in case of an accident or sudden stop.\*

**(\*These two policies are required by ADA and should be published on all schedules and brochures.)**

**What Riders May Expect From the Driver:**

- Assistance when getting on and off the bus.
- Courtesy and respect.
- Assistance in fastening seat belt when needed. (Your driver has the right to refuse service to anyone who will not wear a seat belt.)
- Guidelines as to how much time may be spent at each destination.
- Assistance in carrying purchases from the bus to rider's doorstep (riders who can carry their own purchases, should). \_\_\_\_\_ reserves the right to limit the number, and size, of packages allowed on the vehicle. This will be at the discretion of the Driver based on that day's space constraints.
- Guidelines concerning scheduling of the bus.
- Assistance in scheduling appointments for long distance medical trips.
- Cancellation of a planned trip when necessary and with timely notification of the contacts.
- The right to request that other riders follow the Rules of Conduct.
- A safe manner of driving including following the posted speed limits.

Riders who feel their driver has not followed these guidelines should report the infraction to \_\_\_\_\_, including date, time, and place. Any rider who feels their civil rights have been violated or that \_\_\_\_\_ has not complied with the requirements of the Americans with Disabilities Act should request a copy of the grievance procedure as adopted by \_\_\_\_\_ and act accordingly.

**(Your legal counsel should review any rider rules and/or policies and they must be adopted by your governing board.)**

(Thanks to OATS and Ray Country Transportation whose rules were used in developing this example.)

## Sample Rider Grievance Procedure

\_\_\_\_\_ believes every rider is entitled to express any concerns, whether positive or negative, about the service he/she has received. To ensure that all riders receive quality transportation, \_\_\_\_\_ has established the following procedure concerning complaints.

Complaints involving violation of Title VI of the Civil Rights Act of 1964 or the Americans with Disabilities Act are included in this policy.

1. All new riders will be given a copy of this policy.
2. Each vehicle will have an interior sign stating that a copy of this policy may be obtained by calling (telephone number).
3. Complaints must be made in writing and state the following information:
  - a. date;
  - b. time;
  - c. location;
  - d. driver/dispatcher/other employee(s) involved; and
  - e. nature of the complaint.

Complaints received anonymously, or by telephone, will be documented but no action will be taken unless a written complaint is also received. \_\_\_\_\_ will use all complaints as a source for training drivers and other employees in customer service.

4. Complaints will be resolved at the lowest possible level. Initial complaints should be mailed to:

Contact Person's Title (director, transit manager, department head)  
Address  
Telephone Number

5. Upon receipt of a complaint, the (contact person's title) will gather evidence about the complaint and document all findings. Every effort will be made to resolve the complaint within 30 days of receipt.

6. If the rider is not satisfied with the decision, he/she must then ask that the next highest level of authority consider the complaint and issue an opinion. Complaints will be considered by the following authorities in this order:

- a. Board of Directors/City Council  
Address  
Telephone Number
- b. State Agency/Source of Local Funding (if applicable)  
Address  
Telephone Number
- c. Missouri Department of Transportation  
ATTN: Transit  
P. O. Box 270  
Jefferson City, MO 65102  
573-526-5505
- d. Federal Transit Administration – Region VII  
901 Locust Street, Room 404  
Kansas City, MO 64106  
816-329-3920

7. If, after all authorities have issued a decision, the rider is still not satisfied, he/she may contact the State Attorney General, or the United Department of Justice.

**(Your legal counsel should review all complaint policies and the policy must be adopted by your governing board.)**

## Sample Employee/Applicant Complaint Procedure

\_\_\_\_\_ has made a commitment to nondiscrimination and fairness in all their employment practices. Any employee or applicant for employment may file a complaint against \_\_\_\_\_ if he/she believes their civil rights have been violated as defined by Title VI of the Civil Rights Act of 1964 or the Americans with Disabilities Act.

1. All new employees will be given a copy of this policy.
2. All application forms will contain information about \_\_\_\_\_'s nondiscrimination policies and include a telephone number for requesting a copy of this policy.
3. Complaints must be made in writing and include all pertinent information concerning the complaint: date, person(s) against whom the complaint is made, and nature of the complaint.  
Complaints received anonymously, or by telephone, will be documented but no action will be taken unless a written complaint is also received.
4. Complaints will be resolved at the lowest possible level. Initial complaints should be mailed to:  
Contact Person's Title (director, transit manager, department head)  
Address  
Telephone Number  
If the complaint is against this person, the next highest level of authority should be contacted.
5. Upon receipt of a complaint, the (contact person's title) will gather evidence about the complaint and document all findings. Every effort will be made to resolve the complaint within 30 days of receipt.
6. If the employee/applicant is not satisfied with the decision, he/she must then ask that the next highest level of authority consider the complaint and issue an opinion. Complaints will be considered by the following authorities in this order:
  - a. Board of Directors/City Council  
Address  
Telephone Number
  - b. State Agency/Source of Local Funding (if applicable)  
Address  
Telephone Number
  - c. Missouri Department of Transportation  
ATTN: Transit  
P. O. Box 270  
Jefferson City, MO 65102  
573-526-5505
  - d. Federal Transit Administration – Region VII  
901 Locust Street, Room 404  
Kansas City, MO 64106  
816-329-3920
7. If, after all authorities have issued a decision, the employee/applicant is still not satisfied, he/she may contact the State Attorney General or the United State Department of Justice.

**(Your legal counsel should review all complaint policies and the policy must be adopted by your governing board.)**

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#### **PART 604—CHARTER SERVICE**

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**Authority:** 49 U.S.C. 5323(d); 3023(d), Pub. L. 109–59; 49 CFR 1.51.

**Source:** 73 FR 2345, Jan. 14, 2008, unless otherwise noted.

**Subpart A—General provisions.**



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**§ 604.1 Purpose.**



(a) The purpose of this part is to implement 49 U.S.C. 5323(d), which protects private charter operators from unauthorized competition from recipients of Federal financial assistance under the Federal Transit Laws.

(b) This subpart specifies which entities shall comply with the charter service regulations; defines terms used in this part; explains procedures for an exemption from this part; and sets out the contents of a charter service agreement.

### § 604.2 Applicability.



(a) The requirements of this part shall apply to recipients of Federal financial assistance under the Federal Transit Laws, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(d) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

### § 604.3 Definitions.



All terms defined in 49 U.S.C. 5301 *et seq.* are used in their statutory meaning in this part. Other terms used in this part are defined as follows:

(a) “*Federal Transit Laws*” means 49 U.S.C. 5301 *et seq.*, and includes 23 U.S.C. 103(e)(4), 142(a), and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans.

(b) “*Administrator*” means the Administrator of the Federal Transit Administration or his or her designee.

(c) “*Charter service*” means, but does not include demand response service to individuals:

(1) Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristic of charter service:

- (i) A third party pays the transit provider a negotiated price for the group;
- (ii) Any fares charged to individual members of the group are collected by a third party;
- (iii) The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or
- (iv) A third party determines the origin and destination of the trip as well as scheduling; or

(2) Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:

- (i) A premium fare is charged that is greater than the usual or customary fixed route fare; or
- (ii) The service is paid for in whole or in part by a third party.

(d) "*Charter service hours*" means total hours operated by buses or vans while in charter service including:

- (1) Hours operated while carrying passengers for hire, plus
- (2) Associated deadhead hours.

(e) "*Chief Counsel*" means the Chief Counsel of FTA and his or her designated employees.

(f) "*Days*" means calendar days. The last day of a time period is included in the computation of time unless the last day is a Saturday, Sunday, or legal holiday, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(g) "*Demand response*" means any non-fixed route system of transporting individuals that requires advanced scheduling by the customer, including services provided by public entities, nonprofits, and private providers.

(h) "*Exclusive*" means service that a reasonable person would conclude is intended to exclude members of the public.

(i) "*FTA*" means the Federal Transit Administration.

(j) "*Geographic service area*" means the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state, and Federal law.

(k) "*Government official*" means an individual elected or appointed at the local, state, or Federal level.

(l) "*Interested party*" means an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of a recipient providing charter service under the Federal Transit Laws. This term includes states, counties, cities, and their subdivisions, and tribal nations.

(m) "*Pattern of violations*" means more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months.

(n) "*Presiding Official*" means an official or agency representative who conducts a hearing at the request of the Chief Counsel and who has had no previous contact with the parties concerning the issue in the proceeding.

(o) "*Program purposes*" means transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals); this does not

include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations identified herein.

(p) "*Public transportation*" has the meaning set forth in 49 U.S.C. 5302(a)(10).

(q) "*Qualified human service organization*" means an organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age. This term is used consistent with the President's Executive Order on Human Service Transportation Coordination (February 24, 2004).

(r) "*Recipient*" means an agency or entity that receives Federal financial assistance, either directly or indirectly, including subrecipients, under the Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.

(s) "*Registered charter provider*" means a private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA's charter registration Web site.

(t) "*Registration list*" means the current list of registered charter providers and qualified human service organizations maintained on FTA's charter registration Web site.

(u) "*Special transportation*" means demand response or paratransit service that is regular and continuous and is a type of "public transportation."

(v) "*Violation*" means a finding by FTA of a failure to comply with one of the requirements of this Part.

#### **§ 604.4 Charter service agreement.**



(a) A recipient seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a "Charter Service Agreement" as set out in paragraph (b) of this section.

(b) A recipient shall enter into a Charter Service Agreement if it receives Federal funds for equipment or facilities under the Federal Transit Laws. The terms of the Charter Service Agreement are as follows: "The recipient agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR 604, the terms and conditions of which are incorporated herein by reference."

(c) The Charter Service Agreement is contained in the Certifications and Assurances published annually by FTA for applicants for Federal financial assistance. Once a recipient receives Federal funds, the Certifications and Assurances become part of its Grant Agreement or Cooperative Agreement for Federal financial assistance.

#### **Subpart B—Exceptions**



#### **§ 604.5 Purpose.**



The purpose of this subpart is to identify the limited exceptions under which recipients may provide community-based charter services.

#### **§ 604.6 Government officials on official government business.**



(a) A recipient may provide charter service to government officials (Federal, State, and local) for official government business, which can include non-transit related purposes, if the recipient:

- (1) Provides the service in its geographic service area;
- (2) Does not generate revenue from the charter service, except as required by law; and
- (3) After providing such service, records the following:
  - (i) The government organization's name, address, phone number, and e-mail address;
  - (ii) The date and time of service;
  - (iii) The number of passengers (specifically noting the number of government officials on the trip);
  - (iv) The origin, destination, and trip length (miles and hours);
  - (v) The fee collected, if any; and
  - (vi) The vehicle number for the vehicle used to provide the service.

(b) A recipient that provides charter service under this section shall be limited annually to 80 charter service hours for providing trips to government officials for official government business.

(c) A recipient may petition the Administrator for additional charter service hours only if the petition contains the following information:

- (1) Date and description of the official government event and the number of charter service hours requested;
  - (2) Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances); and
  - (3) Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.
- (d) FTA shall post the request for additional charter service hours under this exception in the Government Officials Exception docket, docket number FTA-2007-0020 at <http://www.regulations.gov>. Interested parties may review the contents of this docket and bring questions or concerns to the attention of the Ombudsman for Charter Services. The written decision of the Administrator regarding the request for additional charter service hours shall be posted in the Government Officials Exception docket and sent to the recipient.

#### **§ 604.7 Qualified human service organizations.**



(a) A recipient may provide charter service to a qualified human service organization (QHSO) for the purpose of serving persons:

- (1) With mobility limitations related to advanced age;
- (2) With disabilities; or
- (3) With low income.

(b) If an organization serving persons described in paragraph (a) of this section receives funding, directly or indirectly, from the programs listed in Appendix A of this part, the QHSO shall not be required to register on the FTA charter registration Web site.

(c) If a QHSO serving persons described in paragraph (a) of this section does not receive funding from any of the programs listed in Appendix A of this part, the QHSO shall register on the FTA charter registration Web site in accordance with §604.15.

(d) A recipient providing charter service under this exception, whether or not the QHSO receives funding from Appendix A programs, and after providing such charter service, shall record:

- (1) The QHSO's name, address, phone number, and e-mail address;
- (2) The date and time of service;
- (3) The number of passengers;
- (4) The origin, destination, and trip length (miles and hours);
- (5) The fee collected, if any; and
- (6) The vehicle number for the vehicle used to provide the service.

#### **§ 604.8 Leasing FTA funded equipment and drivers.**



(a) A recipient may lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:

- (1) The private charter operator is registered on the FTA charter registration Web site;
- (2) The registered charter provider owns and operates buses or vans in a charter service business;
- (3) The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider; and
- (4) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this provision shall record:

- (1) The registered charter provider's name, address, telephone number, and e-mail address;
- (2) The number of vehicles leased, types of vehicles leased, and vehicle identification numbers; and
- (3) The documentation presented by the registered charter provider in support of paragraphs (a)(1) through (4) of this section.

(c) In accordance with §604.26, if a registered charter provider seeking to lease vehicles has filed a complaint requesting that another registered charter provider be removed from the FTA charter registration Web site, then the registered charter provider seeking to lease vehicles is not required to exhaust the vehicles from that registered charter provider while the complaint is pending before leasing vehicles from a recipient.

#### **§ 604.9 When no registered charter provider responds to notice from a recipient.**



(a) A recipient may provide charter service, on its own initiative or at the request of a third party, if no registered charter provider responds to the notice issued in §604.14:

- (1) Within 72 hours for charter service requested to be provided in less than 30 days; or
  - (2) Within 14 calendar days for charter service requested to be provided in 30 days or more.
- (b) A recipient shall not provide charter service under this section if a registered charter provider indicates an interest in providing the charter service set out in the notice issued pursuant to §604.14 and the registered charter provider has informed the recipient of its interest in providing the service.
- (c) After providing the service, a recipient shall record:
- (1) The group's name, address, phone number, and e-mail address;
  - (2) The date and time of service;
  - (3) The number of passengers;
  - (4) The origin, destination, and trip length (miles and hours);
  - (5) The fee collected, if any; and
  - (6) The vehicle number for the vehicle used to provide the service.

#### **§ 604.10 Agreement with registered charter providers.**



- (a) A recipient may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the recipient's geographic service area.
- (b) If a new charter provider registers in the geographic service area subsequent to the initial agreement, the recipient may continue to provide charter service under the previous agreement with the other charter providers up to 90 days without an agreement with the newly registered charter provider.
- (c) Any of the parties to an agreement may cancel the agreement at any time after providing the recipient a 90-day notice.

#### **§ 604.11 Petitions to the Administrator.**



- (a) A recipient may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
- (1) Events of regional or national significance;
  - (2) Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population); or
  - (3) Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest.
- (b) The petition to the Administrator shall include the following information:
- (1) The date and description of the event;
  - (2) The type of service requested and the type of equipment;
  - (3) The anticipated number of charter service hours needed for the event;

(4) The anticipated number of vehicles and duration of the event; and

(i) For an event of regional or national significance, the petition shall include a description of how registered charter providers were consulted, how registered charter providers will be utilized in providing the charter service, a certification that the recipient has exhausted all of the registered charter providers in its geographic service area, and submit the petition at least 90 days before the first day of the event described in paragraph (b)(1) of this section;

(ii) For a hardship request, a petition is only available if the registered charter provider has deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service; or

(iii) For unique and time sensitive events, the petition shall describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

(c) Upon receipt of a petition that meets the requirements set forth in paragraph (b) of this section, the Administrator shall review the materials and issue a written decision denying or granting the request in whole or in part. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary. The Administrator's decision shall be filed in the Petitions to the Administrator docket, number FTA-2007-0022 at <http://www.regulations.gov> and sent to the recipient.

(d) Any exception granted by the Administrator under this section shall be effective only for the event identified in paragraph (b)(1) of this section.

(e) A recipient shall send its petition to the Administrator by facsimile to (202) 366-3809 or by e-mail to [ombudsman.charterservice@dot.gov](mailto:ombudsman.charterservice@dot.gov).

(f) A recipient shall retain a copy of the Administrator's approval for a period of at least three years and shall include it in the recipient's quarterly report posted on the charter registration Web site.

#### § 604.12 Reporting requirements for all exceptions.



(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration Web site 30 days after the end of each calendar quarter ( *i.e.* , January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.

(d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

#### Subpart C—Procedures for Registration and Notification



#### § 604.13 Registration of private charter operators.



(a) Private charter operators shall provide the following information at [http://www.fta.dot.gov/laws/leg\\_reg\\_179.html](http://www.fta.dot.gov/laws/leg_reg_179.html) to be considered a registered charter provider:

- (1) Company name, address, phone number, e-mail address, and facsimile number;
  - (2) Federal and, if available, state motor carrier identifying number;
  - (3) The geographic service areas of public transit agencies, as identified by the transit agency's zip code, in which the private charter operator intends to provide charter service;
  - (4) The number of buses or vans the private charter operator owns;
  - (5) A certification that the private charter operator has valid insurance; and
  - (6) Whether willing to provide free or reduced rate charter services to registered qualified human service organizations.
- (b) A private charter operator that provides valid information in this subpart is a "registered charter provider" for purposes of this part and shall have standing to file a complaint consistent with subpart F.
- (c) A recipient, a registered charter provider, or their duly authorized representative, may challenge a registered charter provider's registration and request removal of the private charter operator from FTA's charter registration Web site by filing a complaint consistent with subpart F.
- (d) FTA may refuse to post a private charter operator's information if the private charter operator fails to provide all of the required information as indicated on the FTA charter registration Web site.
- (e) A registered charter provider shall provide current and accurate information on FTA's charter registration Web site, and shall update that information no less frequently than every two years.

#### **§ 604.14 Recipient's notification to registered charter providers.**



- (a) Upon receiving a request for charter service, a recipient may:
- (1) Decline to provide the service, with or without referring the requestor to FTA's charter registration Web site ( [http://www.fta.dot.gov/laws/leg\\_reg\\_179.html](http://www.fta.dot.gov/laws/leg_reg_179.html) );
  - (2) Provide the service under an exception provided in subpart B of this part; or
  - (3) Provide notice to registered charter providers as provided in this section and provide the service pursuant to §604.9.
- (b) If a recipient is interested in providing charter service under the exception contained in §604.9, then upon receipt of a request for charter service, the recipient shall provide e-mail notice to registered charter providers in the recipient's geographic service area in the following manner:
- (1) E-mail notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day;
  - (2) E-mail notice sent to the list of registered charter providers shall include:
    - (i) Customer name, address, phone number, and e-mail address (if available);
    - (ii) Requested date of service;

- (iii) Approximate number of passengers;
  - (iv) Whether the type of equipment requested is (are) bus(es) or van(s); and
  - (v) Trip itinerary and approximate duration; and
- (3) If the recipient intends to provide service that meets the definition of charter service under §604.3(c)(2), the e-mail notice must include the fare the recipient intends to charge for the service.
- (c) A recipient shall retain an electronic copy of the e-mail notice and the list of registered charter providers that were sent e-mail notice of the requested charter service for a period of at least three years from the date the e-mail notice was sent.
- (d) If a recipient receives an "undeliverable" notice in response to its e-mail notice, the recipient shall send the notice via facsimile. The recipient shall maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for a period of three years.

#### **Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients With Respect to Charter Registration Web site**



#### **§ 604.15 Registration of qualified human service organizations.**



- (a) Qualified human service organizations (QHSO) that seek free or reduced rate services from recipients, and do not receive funds from Federal programs listed in Appendix A, but serve individuals described in §604.7 ( *i.e.* , individuals with low income, advanced age, or with disabilities), shall register on FTA's charter registration Web site by submitting the following information:
- (1) Name of organization, address, phone number, e-mail address, and facsimile number;
  - (2) The geographic service area of the recipient in which the qualified human service organization resides;
  - (3) Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from taxation under sections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code, and whether it is a unit of Federal, State or local government;
  - (4) Whether the qualified human service organization receives funds directly or indirectly from a State or local program, and if so, which program(s); and
  - (5) A narrative statement describing the types of charter service trips the qualified human service organization may request from a recipient and how that service is consistent with the mission of the qualified human service organization.
- (b) A qualified human service organization is eligible to receive charter services from a recipient if it:
- (1) Registers on the FTA Web site in accordance with paragraph (a) of this section at least 60 days before the date of the requested charter service; and
  - (2) Verifies FTA's receipt of its registration by viewing its information on the FTA charter registration Web site ( [http://www.fta.dot.gov/laws/leg\\_reg\\_179.html](http://www.fta.dot.gov/laws/leg_reg_179.html) ).
- (c) A registered charter provider may challenge a QHSO's status to receive charter services from a recipient by requesting removal of the QHSO from FTA's charter registration Web site by filing a complaint consistent with subpart F.
- (d) A QHSO shall provide current and accurate information on FTA's charter registration Web site, and

shall update that information no less frequently than every two years.

#### **§ 604.16 Duties for recipients with respect to charter registration Web site.**



Each recipient shall ensure that its affected employees and contractors have the necessary competency to effectively use the FTA charter registration Web site.

#### **Subpart E—Advisory Opinions and Cease and Desist Orders**



#### **§ 604.17 Purpose.**



The purpose of this subpart is to set out the requirements for requesting an advisory opinion from the Chief Counsel's Office. An advisory opinion may also request that the Chief Counsel issue a cease and desist order, which would be an order to refrain from doing an act which, if done, would be a violation of this part.

#### **§ 604.18 Request for an advisory opinion.**



(a) An interested party may request an advisory opinion from the Chief Counsel on a matter regarding specific factual events only.

(b) A request for an advisory opinion shall be submitted in the following form:

[Date]

Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E55-302,  
Washington, DC 20590

Re: Request for Advisory Opinion

The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to [the general nature of the matter involved].

A. A full statement of all facts and legal points relevant to the request

B. An affirmation that the undersigned swears, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

C. The following certification: "I hereby certify that I have this day served the foregoing [name of document] on the following interested party(ies) at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:

[list persons, addresses, and e-mail or facsimile numbers]"

Dated this \_\_\_\_ day of \_\_, 20\_\_.

[Signature]

[Printed name]

[Title of person making request]

[Mailing address]

[Telephone number]

[e-mail address]

(c) The Chief Counsel may request additional information, as necessary, from the party submitting the request for an advisory opinion.

(d) A request for an advisory opinion may be denied if:

(1) The request contains incomplete information on which to base an informed advisory opinion;

(2) The Chief Counsel concludes that an advisory opinion cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior advisory opinion or a regulation;

(4) The Chief Counsel otherwise concludes that an advisory opinion would not be in the public interest.

#### **§ 604.19 Processing of advisory opinions.**



(a) A request for an advisory opinion shall be sent to the Chief Counsel at [ombudsman.charterservice@dot.gov](mailto:ombudsman.charterservice@dot.gov), and filed electronically in the Charter Service Advisory Opinion/Cease and Desist Order docket number FTA–2007–0023 at <http://www.regulations.gov> or sent to the dockets office located at 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, for submission to that docket.

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with §604.18(b). The Chief Counsel shall send his or her decision to the interested party, the docket, and the recipient, if appropriate.

#### **§ 604.20 Effect of an advisory opinion.**



(a) An advisory opinion represents the formal position of FTA on a matter, and except as provided in §604.25 of this subpart, obligates the agency to follow it until it is amended or revoked.

(b) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement and is limited to the factual circumstances described in the request for an advisory opinion. The Chief Counsel's advisory opinion shall not be binding upon a Presiding Official conducting a proceeding under subpart I of this part.

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FTA employee orally, or given in writing, but not under this section, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

#### **§ 604.21 Special considerations for advisory opinions.**



Based on new facts involving significant financial considerations, the Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator.

#### **§ 604.22 Request for a cease and desist order.**



(a) An interested party may also request a cease and desist order as part of its request for an advisory opinion. A request for a cease and desist order shall contain the following information in addition to the information required for an advisory opinion:

(1) A description of the need for the cease and desist order, a detailed description of the lost business opportunity the interested party is likely to suffer if the recipient performs the charter service in question, and how the public interest will be served by avoiding or ameliorating the lost business opportunity. A registered charter provider must distinguish its loss from that of other registered charter providers in the geographic service area.

(2) A detailed description of the efforts made to notify the recipient of the potential violation of the charter service regulations. Include names, titles, phone numbers or e-mail addresses of persons contacted, date and times contact was made, and the response received, if any.

(b) A request for a cease and desist order may be denied if:

(1) The request contains incomplete information on which to base an informed a cease and desist order;

(2) The Chief Counsel concludes that a cease and desist order cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior a cease and desist order; or

(4) The Chief Counsel otherwise concludes that a cease and desist order would not be in the public interest.

(c) A recipient who is the subject of a request for a cease and desist order shall have three business days to respond to the request. The response shall include a point-by-point rebuttal to the information included in the request for a cease and desist order.

(d) The time period for a response by the recipient begins once a registered charter provider files a request in the Advisory Opinion/Cease and Desist Order docket (FTA-2007-0023 at <http://www.regulations.gov>) or with the FTA Chief Counsel's Office, whichever date is sooner.

#### **§ 604.23 Effect of a cease and desist order.**



(a) Issuance of a cease and desist order against a recipient shall be considered as an aggravating factor in determining the remedy to impose against the recipient in future findings of noncompliance with this part, if the recipient provides the service described in the cease and desist order issued by the Chief Counsel.

(b) In determining whether to grant the request for a cease and desist order, the Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes and regulations, and any other information that is relevant to the request.

#### **§ 604.24 Decisions by the Chief Counsel regarding cease and desist orders.**



(a) The Chief Counsel may grant a request for a cease and desist order if the interested party demonstrates, by a preponderance of the evidence, that the planned provision of charter service by a recipient would violate this part.

(b) In determining whether to grant the request for a cease and desist order, the Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes, regulations, agreements, and any other information that is relevant to the request.

#### Subpart F—Complaints



##### § 604.25 Purpose.



This subpart describes the requirements for filing a complaint challenging the registration of a private charter operator or qualified human service organization on the FTA charter registration Web site and filing a complaint regarding the provision of charter service by a recipient. Note: To save time and expense for all concerned, FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process.

##### § 604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list.



(a) A recipient, a registered charter provider, or its duly authorized representative, may challenge the listing of a registered charter provider or qualified human service organization on FTA's charter registration Web site by filing a complaint that meets the following:

- (1) States the name and address of each entity who is the subject of the complaint;
- (2) Provides a concise but complete statement of the facts relied upon to substantiate the reason why the private charter operator or qualified human service organization should not be listed on the FTA charter registration Web site;
- (3) Files electronically by submitting it to the Charter Service Removal Complaint docket number FTA-2007-0024 at <http://www.regulations.gov> ;
- (4) Serves by e-mail or facsimile if no e-mail address is available, or by overnight mail service with receipt confirmation, and attaches documents offered in support of the complaint upon all entities named in the complaint;
- (5) Files within 90 days of discovering facts that merit removal of the registered charter provider or qualified human service organization from the FTA Charter Registration Web site; and
- (6) Contains the following certification:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:

[list persons, addresses, and e-mail or facsimile numbers]

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[signature], for [party].

(b) The registered charter provider or qualified human service organization shall have 15 days to answer the complaint and shall file such answer, and all supporting documentation, in the Charter Service Removal Complaint docket number FTA-2007-0024 at <http://www.regulations.gov> and e-mail such answer to [ombudsman.charterservice@dot.gov](mailto:ombudsman.charterservice@dot.gov).

(c) A recipient, qualified human service organization, or a registered charter provider, or its duly authorized representative, shall not file a reply to the answer.

(d) FTA shall determine whether to remove the registered charter provider or qualified human service organization from the FTA charter registration Web site based on a preponderance of the evidence of one or more of the following:

(1) Bad faith;

(2) Fraud;

(3) Lapse of insurance;

(4) Lapse of other documentation; or

(5) The filing of more than one complaint, which on its face, does not state a claim that warrants an investigation or further action by FTA.

(e) FTA's determination whether or not to remove a registered charter provider or qualified human service organization from the registration list shall be sent to the parties within 30 days of the date of the response required in paragraph (b) of this section and shall state:

(1) Reasons for allowing the continued listing or removal of the registered charter provider or qualified human service organization from the registration list;

(2) If removal is ordered, the length of time (not to exceed three years) the private charter operator or qualified human service organization shall be barred from the registration list; and

(3) The date by which the private charter operator or qualified human service organization may re-apply for registration on the FTA charter registration Web site.

#### **§ 604.27 Complaints, answers, replies, and other documents.**



(a) A registered charter provider, or its duly authorized representative ("complainant"), affected by an alleged noncompliance of this part may file a complaint with the Office of the Chief Counsel.

(b) Complaints filed under this subpart shall:

(1) Be titled "Notice of Charter Service Complaint";

(2) State the name and address of each recipient that is the subject of the complaint and, with respect to each recipient, the specific provisions of this part that the complainant believes were violated;

(2) Be served in accordance with §604.31, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all recipients named in the complaint as being responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(3) Provide a concise but complete statement of the facts relied upon to substantiate each allegation (complainant must show by a preponderance of the evidence that the recipient provided charter service and that such service did not fall within one of the exemptions or exceptions set out in this part);

- (4) Describe how the complainant was directly and substantially affected by the things done or omitted by the recipients;
- (5) Identify each registered charter provider associated with the complaint; and
- (6) Be filed within 90 days after the alleged event giving rise to the complaint occurred.
- (c) Unless the complaint is dismissed pursuant to §604.28 or §604.29, FTA shall notify the complainant, respondent, and state recipient, if applicable, within 30 days after the date FTA receives the complaint that the complaint has been docketed. Respondent shall have 30 days from the date of service of the FTA notification to file an answer.
- (d) The complainant may file a reply within 20 days of the date of service of the respondent's answer.
- (e) The respondent may file a rebuttal within 10 days of the date of service of the reply.
- (f) The answer, reply, and rebuttal shall, like the complaint, be accompanied by the supporting documentation upon which the submitter relies.
- (g) The answer shall deny or admit the allegations made in the complaint or state that the entity filing the document is without sufficient knowledge or information to admit or deny an allegation, and shall assert any affirmative defense.
- (h) The answer, reply, and rebuttal shall each contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.
- (i) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities.
- (j) The complainant may withdraw a complaint at any time after filing by serving a "Notification of Withdrawal" on the Chief Counsel and the respondent.

#### **§ 604.28 Dismissals.**



- (a) Within 20 days after the receipt of a complaint described in §604.27, the Office of the Chief Counsel shall provide reasons for dismissing a complaint, or any claim in the complaint, with prejudice, under this section if:
- (1) It appears on its face to be outside the jurisdiction of FTA under the Federal Transit Laws;
  - (2) On its face it does not state a claim that warrants an investigation or further action by FTA; or
  - (3) The complainant lacks standing to file a complaint under subparts B, C, or D of this part.
- (b) [Reserved]

#### **§ 604.29 Incomplete complaints.**



If a complaint is not dismissed under §604.28, but is deficient as to one or more of the requirements set forth in §604.27, the Office of the Chief Counsel may dismiss the complaint within 20 days after receiving it. Dismissal shall be without prejudice and the complainant may re-file after amendment to correct the deficiency. The Chief Counsel's dismissal shall include the reasons for the dismissal without prejudice.

#### **§ 604.30 Filing complaints.**



(a) *Filing address.* Unless provided otherwise, the complainant shall file the complaint with the Office of the Chief Counsel, 1200 New Jersey Ave., SE., Room E55-302, Washington, DC 20590 and file it electronically in the Charter Service Complaint docket number FTA-2007-0025 at <http://www.regulations.gov> or mail it to the docket by sending the complaint to 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery, U.S. mail, or overnight delivery with receipt confirmation. Unless the date is shown to be inaccurate, documents to be filed with FTA shall be deemed filed, on the earliest of:

- (1) The date of personal delivery;
- (2) The mailing date shown on the certificate of service;
- (3) The date shown on the postmark if there is no certificate of service; or
- (4) The mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *E-mail or fax.* A document sent by facsimile or e-mail shall not constitute service as described in §604.31.

(d) *Number of copies.* Unless otherwise specified, an executed original shall be filed with FTA.

(e) *Form.* Documents filed with FTA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include a title and the docket number, as established by the Chief Counsel or Presiding Official, of the proceeding on the front page.

(f) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person's duly authorized representative. Subject to the enforcement provisions contained in this subpart, the signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry, to the best of the signer's knowledge, information, and belief, the document is:

- (1) Consistent with this part;
- (2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and
- (3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

#### **§ 604.31 Service.**



(a) *Designation of person to receive service.* The initial document filed by the complainant shall state on the first page of the document for all parties to be served:

- (1) The title of the document;
- (2) The name, post office address, telephone number; and
- (3) The facsimile number, if any, and e-mail address(es), if any.

If any of the above items change during the proceeding, the person shall promptly file notice of the change with FTA and the Presiding Official, if appropriate, and shall serve the notice on all other parties to the proceeding.

(b) *Docket numbers.* Each submission identified as a complaint under this part by the submitting party shall be filed in the Charter Service Complaint docket FTA–2007–0025.

(c) *Who must be served.* Copies of all documents filed with FTA shall be served by the entity filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on FTA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:

[list persons, addresses, and e-mail or facsimile numbers]

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[signature], for [party]

(d) *Method of service.* Except as otherwise provided in §604.26, or agreed by the parties and the Presiding Official, as appropriate, the method of service is personal delivery or U.S. mail.

(e) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under this section; or

(2) When a properly addressed envelope, sent to the last known address has been returned as undeliverable, unclaimed, or refused.

## Subpart G—Investigations



### § 604.32 Investigation of complaint.



(a) If, based on the pleadings, there appears to be a reasonable basis for investigation, FTA shall investigate the subject matter of the complaint.

(b) The investigation may include a review of written submissions or pleadings of the parties, as supplemented by any informal investigation FTA considers necessary and by additional information furnished by the parties at FTA request. Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for FTA to determine whether the recipient is in compliance.

(c) The Chief Counsel shall send a notice to complainant(s) and respondent(s) once an investigation is complete, but not later than 90 days after receipt of the last pleading specified in §604.27 was due to FTA.

### § 604.33 Agency initiation of investigation.



(a) Notwithstanding any other provision under these regulations, FTA may initiate its own investigation of any matter within the applicability of this Part without having received a complaint. The investigation may include, without limitation, any of the actions described in §604.32.

(b) Following the initiation of an investigation under this section, FTA sends a notice to the entities subject to investigation. The notice will set forth the areas of FTA's concern and the reasons; request a response to the notice within 30 days of the date of service; and inform the respondent that FTA will, in its discretion, invite good faith efforts to resolve the matter.

(c) If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to a Presiding Official.

#### **Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)**



#### **§ 604.34 Chief Counsel decisions and appointment of a PO.**



(a) After receiving a complaint consistent with §604.27, and conducting an investigation, the Chief Counsel may:

- (1) Issue a decision based on the pleadings filed to date;
- (2) Appoint a PO to review the matter; or
- (3) Dismiss the complaint pursuant to §604.28.

(b) If the Chief Counsel appoints a PO to review the matter, the Chief Counsel shall send out a hearing order that sets forth the following:

- (1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;
- (2) The relevant statutory, judicial, regulatory, and other authorities;
- (3) The issues to be decided;
- (4) Such rules of procedure as may be necessary to supplement the provisions of this Part;
- (5) The name and address of the PO, and the assignment of authority to the PO to conduct the hearing in accordance with the procedures set forth in this Part; and
- (6) The date by which the PO is directed to issue a recommended decision.

#### **§ 604.35 Separation of functions.**



(a) Proceedings under this part shall be handled by an FTA attorney, except that the Chief Counsel may appoint a PO, who may not be an FTA attorney.

(b) After issuance of an initial decision by the Chief Counsel, the FTA employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this part shall not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or his or her designee on written appeal, and shall not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal.

#### **Subpart I—Hearings.**

**§ 604.36 Powers of a PO.**

A PO may:

- (a) Give notice of, and hold, pre-hearing conferences and hearings;
- (b) Administer oaths and affirmations;
- (c) Issue notices of deposition requested by the parties;
- (d) Limit the frequency and extent of discovery;
- (e) Rule on offers of proof;
- (f) Receive relevant and material evidence;
- (g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;
- (h) Hold conferences to settle or to simplify the issues by consent of the parties;
- (i) Dispose of procedural motions and requests;
- (j) Examine witnesses; and
- (k) Make findings of fact and conclusions of law and issue a recommended decision.

**§ 604.37 Appearances, parties, and rights of parties.**

- (a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative. An attorney, or other duly authorized representative, who represents a party shall file according to the filing and service procedures contained in §604.30 and §604.31.
- (b) The parties to the hearing are the respondent(s) named in the hearing order, the complainant(s), and FTA, as represented by the PO.
- (c) The parties to the hearing may agree to extend for a reasonable period of time the time for filing a document under this part. If the parties agree, the PO shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the PO to be signed by the PO and filed with the hearing docket. The PO may grant additional oral requests for an extension of time where the parties agree to the extension.
- (d) An extension of time granted by the PO for any reason extends the due date for the PO's recommended decision and for the final agency decision by the length of time in the PO's extension.

**§ 604.38 Discovery.**

- (a) Permissible forms of discovery shall be within the discretion of the PO.
- (b) The PO shall limit the frequency and extent of discovery permitted by this section if a party shows that:
- (1) The information requested is cumulative or repetitious;
  - (2) The information requested may be obtained from another less burdensome and more convenient source;
  - (3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or
  - (4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

### § 604.39 Depositions.



(a) For good cause shown, the PO may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

- (1) The person whose deposition is to be taken would be unavailable at the hearing;
- (2) The deposition is deemed necessary to perpetuate the testimony of the witness; or
- (3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) Any party to the hearing desiring to take the deposition of a witness according to the terms set out in this subpart, shall file a motion with the PO, with a copy of the motion served on each party. The motion shall include:

- (1) The name and residence of the witness;
- (2) The time and place for the taking of the proposed deposition;
- (3) The reasons why such deposition should be taken; and
- (4) A general description of the matters concerning which the witness will be asked to testify.

(c) If good cause is shown in the motion, the PO in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.

(d) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim. The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

### § 604.40 Public disclosure of evidence.



- (a) Except as provided in this section, the hearing shall be open to the public.
- (b) The PO may order that any information contained in the record be withheld from public disclosure.

Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the PO. The person shall state specific grounds for nondisclosure in the motion.

(c) The PO shall grant the motion to withhold information from public disclosure if the PO determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

#### § 604.41 Standard of proof.



The PO shall issue a recommended decision or shall rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence.

#### § 604.42 Burden of proof.



(a) The burden of proof of noncompliance with this part, determination, or agreement issued under the authority of the Federal Transit Laws is on the registered charter provider.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

#### § 604.43 Offer of proof.



A party whose evidence has been excluded by a ruling of the PO, during a hearing in which the respondent had an opportunity to respond to the offer of proof, may offer the evidence on the record when filing an appeal.

#### § 604.44 Record.



(a) The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) Any interested person may examine the record by entering the docket number at <http://www.regulations.gov> or after payment of reasonable costs for search and reproduction of the record.

#### § 604.45 Waiver of procedures.



(a) The PO shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the PO to enter a recommended decision on the record.

#### § 604.46 Recommended decision by a PO.



(a) The PO shall issue a recommended decision based on the record developed during the proceeding and shall send the recommended decision to the Chief Counsel for ratification or modification not later than 110 days after the referral from the Chief Counsel.

(b) The Chief Counsel shall ratify or modify the PO's recommended decision within 30 days of receiving the recommended decision. The Chief Counsel shall serve his or her decision, which is capable of being appealed to the Administrator, on all parties to the proceeding.

#### **§ 604.47 Remedies.**



(a) If the Chief Counsel determines that a violation of this part occurred, he or she may take one or more of the following actions:

(1) Bar the recipient from receiving future Federal financial assistance from FTA;

(2) Order the withholding of a reasonable percentage of available Federal financial assistance; or

(3) Pursue suspension and debarment of the recipient, its employees, or its contractors.

(b) In determining the type and amount of remedy, the Chief Counsel shall consider the following factors:

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation ("extent of deviation from regulatory requirements");

(3) The revenue earned ("economic benefit") by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

(c) The Chief Counsel office may mitigate the remedy when the recipient can document corrective action of alleged violation. The Chief Counsel's decision to mitigate a remedy shall be determined on the basis of how much corrective action was taken by the recipient and when it was taken. Systemic action to prevent future violations will be given greater consideration than action simply to remedy violations identified during FTA's inspection or identified in a complaint.

(d) In the event the Chief Counsel finds a pattern of violations, the remedy ordered shall bar a recipient from receiving Federal transit assistance in an amount that the Chief Counsel considers appropriate.

(e) The Chief Counsel may make a decision to withhold Federal financial assistance in a lump sum or over a period of time not to exceed five years.

#### **Subpart J—Appeal to Administrator and Final Agency Orders**



#### **§ 604.48 Appeal from Chief Counsel decision.**



(a) Each party adversely affected by the Chief Counsel's office decision may file an appeal with the Administrator within 21 days of the date of the Chief Counsel's issued his or her decision. Each party may file a reply to an appeal within 21 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery consistent with §§604.30 and 604.31.

(b) If an appeal is filed, the Administrator reviews the entire record and issues a final agency decision based on the record that either accepts, rejects, or modifies the Chief Counsel's decision within 30 days of the due date of the reply. If no appeal is filed, the Administrator may take review of the case on his or her own motion. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(c) If no appeal is filed, and the Administrator does not take review of the decision by the office on the Administrator's own motion, the Chief Counsel's decision shall take effect as the final agency decision and order on the twenty-first day after the actual date the Chief Counsel's decision was issued.

(d) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of the Chief Counsel's decision that becomes a final agency decision by operation of paragraph (c) of this section.

#### **§ 604.49 Administrator's discretionary review of the Chief Counsel's decision.**



(a) If the Administrator takes review on the Administrator's own motion, the Administrator shall issue a notice of review by the twenty-first day after the actual date of the Chief Counsel's decision that contains the following information:

(1) The notice sets forth the specific findings of fact and conclusions of law in the decision subject to review by the Administrator.

(2) Parties may file one brief on review to the Administrator or rely on their post-hearing briefs to the Chief Counsel's office. Briefs on review shall be filed not later than 10 days after service of the notice of review. Filing and service of briefs on review shall be by personal delivery consistent with §604.30 and §604.31.

(3) The Administrator issues a final agency decision and order within 30 days of the due date of the briefs on review. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(b) If the Administrator takes review on the Administrator's own motion, the decision of the Chief Counsel is stayed pending a final decision by the Administrator.

#### **Subpart K—Judicial Review**



#### **§ 604.50 Judicial review of a final decision and order.**



(a) A person may seek judicial review in an appropriate United States District Court of a final decision and order of the Administrator as provided in 5 U.S.C. 701–706. A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order is effective.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) FTA's decision to dismiss a complaint as set forth in §604.29;

(2) A recommended decision issued by a PO at the conclusion of a hearing; or

(3) A Chief Counsel decision that becomes the final decision of the Administrator because it was not appealed within the stated timeframes.

#### Appendix A to Part 604—Listing of Human Service Federal Financial Assistance Programs



##### Federal Programs Providing Transportation Assistance

1	Food Stamp, Employment and Training Program	Food and Nutrition Service	Department of Agriculture.
2	Voluntary Public School Choice	Office of Innovation and Improvement	Department of Education.
3	Assistance for Education of All Children with Disabilities—IDEA	Office of Special Education and Rehabilitative Services	Department of Education.
4	Centers for Independent Living	Office of Special Education and Rehabilitative Services	Department of Education.
5	Independent Living for Older Individuals Who Are Blind	Office of Special Education and Rehabilitative Services	Department of Education.
6	Independent Living State Grants	Office of Special Education and Rehabilitative Services	Department of Education.
7	Supported Employment Services for Individuals with Most Significant Disabilities	Office of Special Education and Rehabilitative Services	Department of Education.
8	Vocational Rehabilitative Grants	Office of Special Education and Rehabilitative Services	Department of Education.
9	Social Service Block Grant	Administration for Children and Families	Department of Health and Human Services.
10	Child Care and Development Fund	Administration for Children and Families	Department of Health and Human Services.
11	Head Start	Administration for Children and Families	Department of Health and Human Services.
12	Refugee and Entrant Assistance Discretionary Grants	Administration for Children and Families	Department of Health and Human Services.
13	Refugee and Entrant Assistance State Administered Programs	Administration for Children and Families	Department of Health and Human Services.
14	Refugee and Entrant Targeted Assistance	Administration for Children and Families	Department of Health and Human Services.
15	Refugee and Entrant Assistance Voluntary Agency Programs	Administration for Children and Families	Department of Health and Human Services.

16	State Development Disabilities Council and Protection & Advocacy	Administration for Children and Families	Department of Health and Human Services.
17	Temporary Assistance to Needy Families	Administration for Children and Families	Department of Health and Human Services.
18	Community Services Block Grant	Administration for Children and Families	Department of Health and Human Services.
19	Promoting Safe and Stable Families	Administration for Children and Families	Department of Health and Human Services.
20	Developmental Disabilities Projects of National Significance	Administration for Children and Families	Department of Health and Human Services.
21	Grants for Supportive Services and Senior Centers	Administration on Aging	Department of Health and Human Services.
22	Programs for American Indian, Alaskan Native and Native Hawaii Elders	Administration on Aging	Department of Health and Human Services.
23	Medicaid	Centers for Medicaid and Medicare	Department of Health and Human Services.
24	State Health Insurance Program	Centers for Medicaid and Medicare	Department of Health and Human Services.
25	Home and Community Base Waiver	Centers for Medicaid and Medicare	Department of Health and Human Services.
26	Community Health Centers	Health Resources and Services Administration	Department of Health and Human Services.
27	Healthy Communities	Health Resources and Services Administration	Department of Health and Human Services.
28	HIV Care Formula Program	Health Resources and Services Administration	Department of Health and Human Services.
29	Maternal and Child Health Block Grant	Health Resources and Services Administration	Department of Health and Human Services.
30	Rural Health Care Network	Health Resources and Services Administration	Department of Health and Human Services.
31	Rural Health Care Outreach Program	Health Resources and Services Administration	Department of Health and Human Services.
32	Health Start Initiative	Health Resources and Services Administration	Department of Health and Human Services.
33	Ryan White Care Act Programs	Health Resources and Services Administration	Department of Health and Human Services.

34	Substance Abuse Prevention and Treatment Block Grant	Substance Abuse and Mental Health Services Administration	Department of Health and Human Services.
35	Prevention and Texas Block Grant	Substance Abuse and Mental Health Services Administration	Department of Health and Human Services.
36	Community Development Block Grant	Community Planning and Development	Department of Housing and Urban Development.
37	Housing Opportunities for Persons with AIDS	Community Planning and Development	Department of Housing and Urban Development.
38	Supportive Housing Program	Community Planning and Development	Department of Housing and Urban Development.
39	Revitalization of Severely Distressed Public Housing	Public and Indian Housing	Department of Housing and Urban Development.
40	Indian Employment Assistance	Bureau of Indian Affairs	Department of the Interior.
41	Indian Employment, Training, and Related Services	Bureau of Indian Affairs	Department of the Interior.
42	Black Lung Benefits	Employment Standards Administration	Department of Labor.
43	Senior Community Services Employment Program	Employment Standards Administration	Department of Labor.
44	Job Corps	Employment and Training Administration	Department of Labor.
45	Migrant and Seasonal Farm Worker	Employment and Training Administration	Department of Labor.
46	Native American Employment and Training	Employment and Training Administration	Department of Labor.
47	Welfare to Work Grants for Tribes	Employment and Training Administration	Department of Labor.
48	Welfare to Work for States and Locals	Employment and Training Administration	Department of Labor.
49	Work Incentive Grants	Employment and Training Administration	Department of Labor.
50	Workforce Investment Act Adult Services Program	Employment and Training Administration	Department of Labor.
51	Workforce Investment Act Adult Dislocated Worker Program	Employment and Training Administration	Department of Labor.
52	Workforce Investment Act Youth Activities Program	Employment and Training Administration	Department of Labor.
53	Homeless Veterans	Veterans Employment	Department of Labor.

	Reintegration Program	& Training Service	
54	Veterans Employment Program	Veterans Employment & Training Service	Department of Labor.
55	Elderly and Persons with Disability	Federal Transit Administration	Department of Transportation.
56	New Freedom Program	Federal Transit Administration	Department of Transportation.
57	Job Access and Reverse Commute Program	Federal Transit Administration	Department of Transportation.
58	Non-Urbanized Area Program	Federal Transit Administration	Department of Transportation.
59	Capital Discretionary Program	Federal Transit Administration	Department of Transportation.
60	Urbanized Area Formula Program	Federal Transit Administration	Department of Transportation.
61	Automobiles and Adaptive Equipment	Veterans Benefits Administration	Department of Veterans Affairs.
62	Homeless Provider Grants	Veterans Health Administration	Department of Veterans Affairs.
63	Veterans Medical Care Benefits	Veterans Health Administration	Department of Veterans Affairs.
64	Ticket to Work Program	Social Security Administration	Department of Veterans Affairs.

#### Appendix B to Part 604—Reasons for Removal



[top](#)

The following is guidance on the terms contained in section 604.26(d) concerning reasons for which FTA may remove a registered charter provider or a qualified human service organization from the FTA charter registration Web site.

#### *What is bad faith?*

Bad faith is the actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation. It is not an honest mistake. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

For example, it would be bad faith for a registered charter provider to respond to a recipient's notification to registered charter providers of a charter service opportunity stating that it would provide the service with no actual intent to perform the charter service. It would also be bad faith if the registered charter provider fails to contact the customer or provide a quote for charter service within a reasonable time. Typically, if a registered charter provider fails to contact a customer or fails to provide a price quote to the customer at least 14 business days before an event, then FTA may remove the registered charter provider from the registration Web site, which would allow a transit agency to step back in to provide the service because the registered charter provider's response to the email would no longer be effective because it is not registered.

Further, it would be bad faith for a registered charter provider to submit a quote for charter services knowing that the price is three to four times higher because of the distance the registered charter provider must travel (deadhead time). In those situations, FTA may interpret such quotes as bad faith because they appear to be designed to prevent the local transit agency from providing the service.

On the other hand, FTA would not interpret an honest mistake of fact as bad faith. For example, if a

registered charter provider fails to provide charter service in response to a recipient's notification when it honestly mistook the date, place or time the service was to be provided. It would not be bad faith if the registered charter provider responded affirmatively to the email notification sent by the public transit agency, but then later learned it could not perform the service and provided the transit agency reasonable notice of its changed circumstances.

*What is fraud?*

Fraud is the suggestion or assertion of a fact that is not true, by one who has no reasonable ground for believing it to be true; the suppression of a fact by one who is bound to disclose it; one who gives information of other facts which are likely to mislead; or a promise made without any intention of performing it. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

Examples of fraud include but are not limited to: (1) A registered charter provider indicates that it has a current state or Federal safety certification when it knows that it does not in fact have one; (2) a broker that owns no charter vehicles registers as a registered charter provider; or (3) a qualified human service organization represents that it serves the needs of the elderly, persons with disabilities, or lower-income individuals, but, in fact, only serves those populations tangentially.

*What is a lapse of insurance?*

A lapse of insurance occurs when there is no policy of insurance in place. This may occur when there has been default in payment of premiums on an insurance policy and the policy is no longer in force. In addition, no other policy of insurance has taken its place. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

*What is a lapse of other documentation?*

A lapse of other documentation means for example, but is not limited to, failure to have or loss or revocation of business license, operating authority, failure to notify of current company name, address, phone number, email address and facsimile number, failure to have a current state or Federal safety certification, or failure to provide accurate Federal or state motor carrier identifying number. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

*What is a complaint that does not state a claim that warrants an investigation or further action by FTA?*

A complaint is a document describing a specific instance that allegedly constitutes a violation of the charter service regulations set forth in 49 CFR 604.28. More than one complaint may be contained in the same document. A complaint does not state a claim that warrants investigation when the allegations made in the complaint, without considering any extraneous material or matter, do not raise a genuine issue as to any material question of fact, and based on the undisputed facts stated in the complaint, there is no violation of the charter service statute or regulation as a matter of law. Based on Federal Rules of Civil Procedure, Rule 56(c).

Examples of complaints that would not warrant an investigation or further action by FTA include but are not limited to: (1) A complaint against a public transit agency that does not receive FTA funding; (2) a complaint brought against a public transit agency by a private charter operator that is neither a registered charter provider nor its duly authorized representative; (3) a complaint that gives no information as to when or where the alleged prohibited charter service took place; or (4) a complaint filed solely for the purpose of harassing the public transit agency.

[73 FR 44931, Aug. 1, 2008]

## **Appendix C to Part 604—Frequently Asked Questions**



*(a) Applicability (49 CFR Section 604.2)*

(1) Q: If the requirements of the charter rule are not applicable to me for a particular service I provide, do I have to report that service in my quarterly report?

A: No. If the service you propose to provide meets one of the exemptions contained in this section, you do not have to report the service in your quarterly report.

(2) Q: If I receive funds under 49 U.S.C. Sections 5310, 5311, 5316, or 5317, may I provide charter service for any purpose?

A: No. You may only provide charter service for "program purposes," which is defined in this regulation as "transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals) \* \* \* 49 CFR Section 604.2(e). Thus, your service only qualifies for the exemption contained in this section if the service is designed to serve the needs of targeted populations. Charter service provided to a group, however, that includes individuals who are only incidentally members of those targeted populations, is not "for program purposes" and must meet the requirements of the rule (for example, an individual chartering a vehicle to take his relatives including elderly aunts and a cousin who is a disabled veteran to a family reunion).

(3) Q: If I am providing service for program purposes under one of the FTA programs listed in 604.2.(e), do the human service organizations have to register on the FTA Charter Registration Web site?

A: No. Because the service is exempt from the charter regulations, the organization does not have to register on the FTA Charter Registration Web site.

(4) Q: What if there is an emergency such as an apartment fire or tanker truck spill that requires an immediate evacuation, but the President, Governor, or Mayor never declares it as an emergency? Can a transit agency still assist in the evacuation efforts?

A: Yes. One part of the emergency exemption is designed to allow transit agencies to participate in emergency situations without worrying about complying with the charter regulations. Since transit agencies are often uniquely positioned to respond to such emergencies, the charter regulations do not apply. This is true whether or not the emergency is officially declared.

(5) Q: Do emergency situations involve requests from the Secret Service or the police department to transport its employees?

A: Generally no. Transporting the Secret Service or police officers for non-emergency preparedness or planning exercises does not qualify for the exemption under this section. In addition, if the Secret Service or the police department requests that a transit agency provide service when there is no immediate emergency, then the transit agency must comply with the charter service regulations.

(6) Q: Can a transit agency provide transportation to transit employees for an event such as the funeral of a transit employee or the transit agency's annual picnic?

A: Yes. These events do not fall within the definition of charter, because while the service is exclusive, it is not provided at the request of a third party and it is not at a negotiated price. Furthermore, a transit agency transporting its own employees to events sponsored by the transit agency for employee morale purposes or to events directly related to internal employee relations such as a funeral of an employee, or to the transit agency's picnic, is paying for these services as part of the transit agency's own administrative overhead.

(7) Q: Is sightseeing service considered to be charter?

A: "Sightseeing" is a different type of service than charter service. "Sightseeing" service is regularly scheduled round trip service to see the sights, which is often accompanied by a narrative guide and is open to the public for a set price. Public transit agencies may not provide sightseeing service with federally funded assets or assistance because it falls outside the definition of "public transportation" under 49 U.S.C. Section 5302(a) (10), unless FTA provides written concurrence for that service as an approved incidental use. While, in general, "sightseeing" service does not constitute charter service, "sightseeing" service that also meets the definition of charter service would be prohibited, even as an incidental use.

(8) Q: If a private provider receives Federal funds from one of the listed programs in this section, does that mean the private provider cannot use its privately owned equipment to provide charter service?

A: No. A private provider may still provide charter services even though it receives Federal funds under one of the programs listed in this section. The charter regulations only apply to a private provider during

the time period when it is providing public transportation services under contract with a public transit agency.

(9) Q: What does FTA mean by the phrase "non-FTA funded activities"?

A: Non-FTA funded activities are those activities that are not provided under contract or other arrangement with a public transit agency using FTA funds.

(10) Q: How does a private provider know whether an activity is FTA-funded or not?

A: The private provider should refer to the contract with the public transit agency to understand the services that are funded with Federal dollars.

(11) Q: What if the service is being provided under a capital cost of contracting scenario?

A: When a private operator receives FTA funds through capital cost of contracting, the only expenses attributed to FTA are those related to the transit service provided. The principle of capital cost of contracting is to pay for the capital portion of the privately owned assets used in public transportation (including a share of preventive maintenance costs attributable to the use of the vehicle in the contracted transit service). When a private operator uses that same privately owned vehicle in non-FTA funded service, such as charter service, the preventive maintenance and capital depreciation are not paid by FTA, so the charter rule does not apply.

(12) Q: What if the service is provided under a turn-key scenario?

A: To the extent the private charter provider is standing in the shoes of the public transit agency, the charter rules apply. Under a turn-key contract, where the private operator provides and operates a dedicated transit fleet, then the private provider must abide by the charter regulations for the transit part of its business. The charter rule would not apply, however, to other aspects of that private provider's business. FTA also recognizes that a private operator may use vehicles in its fleet interchangeably. So long as the operator is providing the number, type, and quality of vehicles contractually required to be provided exclusively for transit use and is not using FTA funds to cross-subsidize private charter service, the private operator may manage its fleet according to best business practice.

(13) Q: Does FTA's rule prohibit a private provider from providing charter service when its privately owned vehicles are not engaged in providing public transportation?

A: No. The charter rule is only applicable to the actual public transit service provided by the private operator. As stated in 49 CFR 604.2(c), the rule does not apply to the non-FTA funded activities of private charter operators. The intent of this provision was to isolate the impacts of the charter rule on private operators to those instances where they stood in the shoes of a transit agency.

(14) Q: May a private provider use vehicles whose acquisition was federally funded to provide private charter services?

A: It depends. A private provider, who is a sub-recipient or sub-grantee, when not engaged in providing public transit using federally funded vehicles, may provide charter services using federally funded vehicles only in conformance with the charter regulations. Vehicles, whose only federal funding was for accessibility equipment, are not considered to be federally funded vehicles in this context. In other words, vehicles, whose lifts are only funded under FTA programs, may be used in charter service.

(15) Q: May a public transit agency provide "seasonal service" (e.g., service May through September for the summer beach season)?

A: "Seasonal service" that is regular and continuing, available to the public, and controlled by the public transit agency meets the definition of public transportation and is not charter service. The service should have a regular schedule and be planned in the same manner as all the other routes, except that it is run only during the periods when there is sufficient demand to justify public transit service; for example, the winter ski season or summer beach season. "Seasonal service" is distinguishable from charter service provided for a special event or function that occurs on an irregular basis or for a limited duration, because the seasonal transit service is regular and continuing and the demand for service is not triggered by an event or function. In addition, "seasonal service" is generally more than a month or two, and the schedule is consistent from year to year, based on calendar or climate, rather than being scheduled around a specific event.

*(b) Definitions (49 CFR Section 604.3)*

(16) Q: The definition of charter service does not include demand response services, but what happens if a group of individuals request demand response service?

A: Demand response trips provide service from multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. These types of trips are considered demand response transit service, not charter service, because even though a human service agency pays for the transportation of its clients, trips are scheduled and routed for the individuals in the group. Service to individuals can be identified by vehicle routing that includes multiple origins, multiple destinations, or both, based on the needs of individual members of the group, rather than the group as a whole. For example, demand response service that takes all of the members of a group home on an annual excursion to a baseball game. Some sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops may even be provided on an exclusive basis where clients of a particular agency cannot be mixed with members of the general public or clients of other agencies for safety or other reasons specific to the needs of the human service clients.

(17) Q: Is it charter if a demand response transit service carries a group of individuals with disabilities from a single origin to a single destination on a regular basis?

A: No. Daily subscription trips between a group living facility for persons with developmental disabilities to a sheltered workshop where the individuals work, or weekly trips from the group home to a recreation center is "special transportation" and not considered charter service. These trips are regular and continuous and do not meet the definition of charter.

(18) Q: If a third party requests charter service for the exclusive use of a bus or van, but the transit agency provides the service free of charge, is it charter?

A: No. The definition of charter service under 49 CFR Section 604.3(c) (1), requires a negotiated price, which implies an exchange of money. Thus, free service does not meet the negotiated price requirement. Transit agencies should note, however, that a negotiated price could be the regular fixed route fare or when a third party indirectly pays for the regular fare.

(19) Q: If a transit agency accepts a subsidy for providing shuttle service for an entire baseball season, is that charter?

A: Yes. Even though there are many baseball games over several months, the service is still to an event or function on an irregular basis or for a limited duration for which a third party pays in whole or in part. In order to provide the service, a transit agency must first provide notice to registered charter providers.

(20) Q: If a transit agency contracts with a third party to provide free shuttle service during football games for persons with disabilities, is that charter?

A: Yes. Even though the service is for persons with disabilities, the transit agency receives payment from a third party for an event or function that occurs on an irregular basis or for a limited duration. In order for a transit agency to provide the service, it must provide notice to the list of registered charter providers first.

(21) Q: What if a business park pays the transit agency to add an additional stop on its fixed route to include the business park, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(22) Q: What if a university pays the transit agency to expand its regular fixed route to include stops on the campus, is that charter?

A: No. The service is not to an event or function and it does not occur on an irregular basis or for a limited duration.

(23) Q: What if a university pays the transit agency to provide shuttle service that does not connect to the transit agency's regular routes, is that charter?

A: Yes. The service is provided at the request of a third party, the university, for the exclusive use of a bus or van by the university students and faculty for a negotiated price.

(24) Q: What if the university pays the transit agency to provide shuttle service to football games and graduation, is that charter?

A: Yes. The service is to an event or function that occurs on an irregular basis or for a limited duration. As such, in order to provide the service, a transit agency must provide notice to the list of registered charter providers.

(25) Q: What happens if a transit agency does not have fixed route service to determine whether the fare charged is a premium fare?

A: A transit agency should compare the proposed fare to what it might charge for a similar trip under a demand response scenario.

(26) Q: How can a transit agency tell if the fare is "premium"?

A: The transit agency should analyze its regular fares to determine whether the fare charged is higher than its regular fare for comparable services. For example, if the transit agency proposes to provide an express shuttle service to football games, it should look at the regular fares charged for express shuttles of similar distance elsewhere in the transit system. In addition, the service may be charter if the transit agency charges a lower fare or no fare because of a third party subsidy.

(27) Q: What if a transit agency charges a customer an up front special event fare that includes the outbound and inbound trips, is that a premium fare?

A: It depends. If the transit agency charges the outbound and inbound fares up front, but many customers don't travel both directions, then the fare may be premium. This would not be true generally for park and ride lots, where the customer parks his or her car, and, would most likely use transit to return to the same lot. Under that scenario, the transit agency may collect the regular outbound and inbound fare up front.

(28) Q: What if a transit agency wishes to create a special pass for an event or function on an irregular basis or for a limited duration that allows a customer to ride the transit system several times for the duration of the event, is that charter?

A: It depends. If the special pass costs more than the fare for a reasonable number of expected individual trips during the event, then the special pass represents a premium fare. FTA will also consider whether a third party provides a subsidy for the service.

(29) Q: Is it a third party subsidy if a third party collects the regular fixed route fare for the transit agency?

A: Generally no. If the service provided is not at the request of a third party for the exclusive use of a bus or van, then a third party collecting the fare would not qualify the service as charter. But, a transit agency has to consider carefully whether the service is at the request of an event planner. For example, a group offers to make "passes" for its organization and then later work out the payment to the transit agency. The transit agency can only collect the regular fare for each passenger.

(30) Q: If the transit agency is part of the local government and an agency within the local government pays for service to an event or function of limited duration or that occurs on an irregular basis, is that charter?

A: Yes. Since the agency pays for the charter service, whether by direct payment or transfer of funds through internal local government accounts, it represents a third party payment for charter service. Thus, the service would meet the definition of charter service under 49 CFR Section 604.3(c) (1).

(31) Q: What if an organization requests and pays for service through an in-kind payment such as paying for a new bus shelter or providing advertising, is that charter?

A: Yes. The service is provided at the request of a third party for a negotiated price, which would be the cost of a new bus shelter or advertising. The key here is the direct payment for service to an event or

function. For instance, advertising that appears on buses for regular service does not make it charter.

(32) Q: Under the definition of "Government Officials," does the government official have to currently hold an office in government?

A: Yes. In order to take advantage of the Government Official exception, the individual must hold currently a government position that is elected or appointed through a political process.

(33) Q: Does a university qualify as a QHSO?

A: No. Most universities do not have a mission of serving the needs of the elderly, persons with disabilities, or low income individuals.

(34) Q: Do the Boy Scouts of America qualify as a QHSO?

A: No. The Boy Scouts of America's mission is not to serve the needs of the elderly, persons with disabilities, or low income individuals.

(35) Q: What qualifies as indirect financial assistance?

A: The inclusion of "indirect" financial assistance as part of the definition of "recipient" covers "subrecipients." In other words, "subrecipients" are subject to the charter regulation. FTA modified the definition of recipient in the final rule to clarify this point.

*(c) Exceptions (49 CFR Subpart B)*

(36) Q: In order to take advantage of the Government Officials exception, does a transit agency have to transport only elected or appointed government officials?

A: No, but there has to be at least one elected or appointed government official on the trip.

(37) Q: If a transit agency provides notice regarding a season's worth of service and some of the service will occur in less than 30 days, does a registered charter provider have to respond within 72 hours or 14 days?

A: A transit agency should provide as much notice as possible for service that occurs over several months. Thus, a transit agency should provide notice to registered charter providers more than 30 days in advance of the service, which would give registered charter provider 14 days to respond to the notice. Under pressure to begin the service sooner, the transit agency could provide a separate notice for only that portion of the service occurring in less than 30 days.

(38) Q: Does a transit agency have to contact registered charter providers in order to petition the Administrator for an event of regional or national significance?

A: Yes. A petition for an event of regional or national significance must demonstrate that not only has the public transit agency contacted registered charter providers, but also demonstrate how the transit agency will include registered charter providers in providing the service to the event of regional or national significance.

(39) Q: Where does a transit agency have to file its petition?

A: A transit agency must file the petition with the ombudsman at [ombudsman.charterservice@dot.gov](mailto:ombudsman.charterservice@dot.gov). FTA will file all petitions in the Petitions to the Administrator docket (FTA-2007-0022) at <http://www.regulations.gov>.

(40) Q: What qualifies as a unique and time sensitive event?

A: In order to petition the Administrator for a discretionary exception, a public transit agency must demonstrate that the event is unique or that circumstances are such that there is not enough time to check with registered charter providers. Events that occur on an annual basis are generally not considered unique or time sensitive.

(41) Q: Is there any particular format for quarterly reports for exceptions?

A: No. The report must contain the information required by the regulations and clearly identify the exception under which the transit agency performed the service.

(42) Q: May a transit agency lease its vehicles to one registered charter provider if there is another registered charter provider that can perform all of the requested service with private charter vehicles?

A: No. A transit agency may not lease its vehicles to one registered charter provider when there is another registered charter provider that can perform all of the requested service. In that case, the transit vehicles would enable the first registered charter provider to charge less for the service than the second registered charter provider that uses all private charter vehicles.

(43) Q: Where do I submit my reports?

A: FTA has adapted its electronic grants making system, TEAM, to include charter rule reporting. Grantees should file the required reports through TEAM. These reports will be available to the public through FTA's charter bus service Web page at: <http://ftateamweb.fta.dot.gov/Teamweb/CharterRegistration/QueryCharterReport.aspx>. State Departments of Transportation are responsible for filing charter reports on behalf of its subrecipients that do not have access to TEAM.

*(d) Registration and Notification (49 CFR Subpart C)*

(44) Q: May a private provider register to receive notice of charter service requests from all 50 States?

A: Yes. A private provider may register to receive notice from all 50 States; however, a private provider should only register for those states for which it can realistically originate service.

(45) Q: May a registered charter provider select which portions of the service it would like to provide?

A: No. A registered charter provider may not "cherry pick" the service described in the notice. In other words, if the e-mail notification describes service for an entire football season, then a registered charter provider that responds to the notice indicating it can provide only a couple of weekends of service would be non-responsive to the e-mail notice. Public transit agencies may, however, include several individual charter events in the e-mail notification. Under those circumstances, a registered charter provider may select from those individual events to provide service.

(46) Q: May a transit agency include information on "special requests" from the customer in the notice to registered charter providers?

A: No. A transit agency must strictly follow the requirements of 49 CFR Section 604.14, otherwise the notice is void. A transit agency may, however, provide a generalized statement such as "Please do not respond to this notice if you are not interested or cannot perform the service in its entirety."

(47) Q: What happens if a transit agency sends out a notice regarding charter service, but later decides to perform the service free of charge and without a third party subsidy?

A: If a transit agency believes it may receive the authority to provide the service free of charge, with no third party subsidy, then it should send out a new e-mail notice stating that it intends to provide the service free of charge.

(48) Q: What happens if a registered charter provider initially indicates interest in providing the service described in a notice, but then later is unable to perform the service?

A: If the registered charter provider acts in good faith by providing reasonable notice to the transit agency of its changed circumstances, and that registered charter provider was the only one to respond to the notice, then the transit agency may step back in and provide the service.

(49) Q: What happens if a registered charter provider indicates interest in providing the service, but then does not contact the customer?

A: A transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice.

(50) Q: What happens if a registered charter provider indicates interest in providing the service, contacts the customer, and then fails to provide a price quote to the customer?

A: If the requested service is 14 days or less away, a transit agency may step back in and provide the service if the registered charter provider was the only one to respond affirmatively to the notice upon filing a complaint with FTA to remove the registered charter provider from the FTA Charter Registration Web site. If the complaint of "bad faith" negotiations is not sustained by FTA, the transit agency may face a penalty, as determined by FTA. If the requested service is more than 14 days away, and the transit agency desires to step back in, then upon filing a complaint alleging "bad faith" negotiations that is sustained by FTA, the transit agency may step back in.

(51) Q: What happens if a transit agency entered into a contract to perform charter service before the effective date of the final rule?

A: If the service described in the contract occurs after the effective date of the final rule, the service must be in conformance with the new charter regulation.

(52) Q: What if the service described in the notice requires the use of park and ride lots owned by the transit agency?

A: If the transit agency received Federal funds for those park and ride lots, then the transit agency should allow a registered charter provider to use those lots upon a showing of an acceptable incidental use (the transit agency retains satisfactory continuing control over the park and ride lot and the use does not interfere with the provision of public transportation) and if the registered charter provider signs an appropriate use and indemnification agreement.

(53) Q: What if the registered charter provider does not provide quality charter service to the customer?

A: If a registered charter provider does not provide service to the satisfaction of the customer, the customer may pursue a civil action against the registered charter provider in a court of law. If the registered charter provider also demonstrated bad faith or fraud, it can be removed from the FTA Charter Registration Web site.

*(e) Complaint & Investigation Process*

(54) Q: May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint against the transit agency?

A: Yes. A registered charter operator or its duly authorized representative, which can include a trade association, may file a complaint under section 604.26(a). Under the new rule, a private charter operator that is not registered with FTA's charter registration Web site may not file a complaint.

(55) Q: Is there a time limit for making complaints?

A: Yes. Complaints must be filed within 90 days of the alleged unauthorized charter service.

(56) Q: Are there examples of the likely remedies FTA may impose for a violation of the charter service regulations?

A: Yes. Appendix D contains a matrix of likely remedies that FTA may impose for a violation of the charter service regulations.

(57) Q: When a complaint is filed, who is responsible for arbitration or litigation costs?

A: FTA will pay for the presiding official and the facility for the hearing, if necessary. Each party involved in the litigation is responsible for its own litigation costs.

(58) Q: What affirmative defenses might be available in the complaint process?

A: An affirmative defense to a complaint could state the applicability of one of the exceptions such as 49 CFR Section 604.6, which states that the service that was provided was within the allowable 80 hours of government official service.

(59) Q: What can a transit agency do if it believes that a registered charter provider is not bargaining in good faith with a customer?

A: If a transit agency believes that a registered charter provider is not bargaining in good faith with the customer, the transit agency may file a complaint to remove the registered charter provider from FTA's Charter Registration Web site.

(60) Q: Does a registered charter provider have to charge the same fare or rate as a public transit agency?

A: No. A registered charter provider is not under an obligation to charge the same fare or rate as public transit agency. A registered charter provider, however, must charge commercially reasonable rates.

(61) Q: What actions can a private charter operator take when it becomes aware of a transit agency's plan to engage in charter service just before the date of the charter?

A: As soon as a registered charter provider becomes aware of an upcoming charter event that it was not contacted about, then it should request an advisory opinion and cease and desist order. If the service has already occurred, then the registered charter provider may file a complaint.

(62) Q: When a registered charter provider indicates that there are no privately owned vehicles available for lease, must the public transit agency investigate independently whether the representation by the registered charter provider is accurate?

A: No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate unless there is reason to suspect that the registered charter provider is committing fraud. Rather, the public transit agency need only confirm that the number of vehicles owned by all registered charter providers in the geographic service area is consistent with the registered charter provider's representation.

(63) Q: How will FTA determine the remedy for a violation of the charter regulations?

A: Remedies will be based upon the facts of the situation, including but not limited to, the extent of deviation from the regulations and the economic benefit from providing the charter service. See section 604.47 and Appendix D for more details.

(64) Q: Can multiple violations in a single finding stemming from a single complaint constitute a pattern of violations?

A: Yes. A pattern of violations is defined as more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months. While a single complaint may contain several allegations, the complaint must allege more than a single event that included unauthorized charter service in order to establish a pattern of violations.

*(f) Miscellaneous*

(65) Q: If a grantee operates assets that are locally funded are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

(66) Q: What can a public transit agency do if there is a time sensitive event, such as a presidential inauguration, for which the transit agency does not have time to consult with all the private charter operators in its area?

A: 49 Section 604.11 provides a process to petition the FTA Administrator for permission to provide service for a unique and time sensitive event. A presidential inauguration, however, is not a good example of a unique and time sensitive event. A presidential inauguration is an event with substantial advance planning and a transit agency should have time to contact private operators. If the inauguration also includes ancillary events, the public transit agency should refer the customer to the registration list.

(67) Q: Are body-on-van-chassis vehicles classified as buses or vans under the charter regulation?

A: Body-on-van-chassis vehicles are treated as vans under the charter regulation.

(68) Q: When a new operator registers, may recipients continue under existing contractual agreements for charter service?

A: Yes. If the contract was signed before the new private operator registered, the arrangement can continue for up to 90 days. During that 90 day period, however, the public transit agency must enter into an agreement with the new registrant. If not, the transit agency must terminate the existing agreement for all registered charter providers.

(69) Q: Must a public transit agency continue to serve as the lead for events of regional or national significance, if after consultation with all registered charter providers, registered charter providers have enough vehicles to provide all of the service to the event?

A: No. If after consultation with registered charter providers, there is no need for the public transit vehicles, then the public transit agency may decline to serve as the lead and allow the registered charter providers to work directly with event organizers. Alternatively, the public transit entity may retain the lead and continue to coordinate with event organizers and registered charter providers.

(70) Q: What happens if a customer specifically requests a trolley from a transit agency and there are no registered charter providers that have a trolley?

A: FTA views trolleys as buses. Thus, all the privately owned buses must be engaged in service and unavailable before a transit agency may lease its trolley. Alternatively, the transit agency could enter into an agreement with all registered charter providers in its geographic service area to allow it to provide trolley charter services.

(71) Q: How does a transit agency enter into an agreement with all registered charter providers in its geographic service area?

A: A public transit agency should send an email notice to all registered charter providers of its intent to provide charter service. A registered charter provider must respond to the email notice either affirmatively or negatively. The transit agency should also indicate in the email notification that failure to respond to the email notice results in concurrence with the notification.

(72) Q: Can a registered charter provider rescind its affirmative response to an email notification?

A: Yes. If after further consideration or a change in circumstances for the registered charter provider, a registered charter provider may notify the customer and the transit agency that it is no longer interested in providing the requested charter service. At that point, the transit agency may make the decision to step back in to provide the service.

(73) Q: What happens after a registered charter provider submits a quote for charter services to a customer? Does the transit agency have to review the quote?

A: Once a registered charter provider responds affirmatively to an email notification and provides the customer a commercially reasonable quote, then the transit agency may not step back in to perform the service. A transit agency is not responsible for reviewing the quote submitted by a registered charter provider. FTA recommends that a registered charter provider include in the quote an expiration date for the offer.

[73 FR 44931, Aug. 1, 2008]

#### **Appendix D to Part 604—Table of Potential Remedies**


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## Remedy Assessment Matrix:

## Extent of Deviation from Regulatory Requirements

	Major	Moderate	Minor
Economic Benefit	Major \$25,000/violation to 20,000	\$19,999/violation to 15,000	\$14,999/violation to 11,000
	Moderate \$10,999/violation to 8,000	\$7,999/violation to 5,000	\$4,999/violation to 3,000
	Minor \$2,999/violation to 1,500	1,499/violation to 500	\$499/violation to 100

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## FTA's Remedy Policy

— This remedy policy applies to decisions by the Chief Counsel, Presiding Officials, and final determinations by the Administrator.

— Remedy calculation is based on the following elements:

- (1) The nature and circumstances of the violation;
- (2) The extent and gravity of the violation ("extent of deviation from regulatory requirements");
- (3) The revenue earned ("economic benefit") by providing the charter service;
- (4) The operating budget of the recipient;
- (5) Such other matters as justice may require; and
- (6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

[73 FR 44935, Aug. 1, 2008; 73 FR 46554, Aug. 11, 2008]

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