



# KY STATE MANAGEMENT PLAN

## **Infrastructure Investment and Jobs Act**

### **SECTION 5311**

## **Formula Grants for Rural Areas**

### **SECTION 5310**

## **Enhanced Mobility of Seniors and Individuals with Disabilities**

### **SECTION 5339**

## **Buses and Bus Facilities Grants Program**

Kentucky Transportation Cabinet (KYTC)  
OFFICE OF TRANSPORTATION DELIVERY (OTD)

[FTA Approved: April 9, 2021](#)

[Minor Modification Page 150: Revised](#)  
February 7, 2023

[Minor Modification Page 79:](#)  
Revised/FTA Concurrence  
August 14, 2023

[Minor Modification Page 111-112:](#)  
Revised/FTA Concurrence  
November 1, 2023

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SMP Editor: Gail Maveux

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS.....</b>	<b>2</b>
<b>INTRODUCTION.....</b>	<b>9</b>
<b>Chapter1: General Transit Program Information.....</b>	<b>10</b>
<b>Roles and Responsibilities .....</b>	<b>10</b>
<b>Federal Transit Administration (FTA).....</b>	<b>10</b>
<b>Federal Transit Administration Regional Office .....</b>	<b>10</b>
<b>Kentucky Transportation Cabinet/Office of Transportation Delivery (KYTC/OTD).....</b>	<b>10</b>
<b>Area Development Districts (ADDs) .....</b>	<b>11</b>
<b>Metropolitan Planning Organizations (MPOs).....</b>	<b>12</b>
<b>Planning and Long-Term Goals .....</b>	<b>12</b>
<b>Statewide Transportation Improvement Program (STIP).....</b>	<b>12</b>
<b>Chapter2: Overview of Transit Programs .....</b>	<b>14</b>
<b>Section5307– Urbanized Area Formula Grants .....</b>	<b>14</b>
<b>Section5309 - Capital Investment Program.....</b>	<b>14</b>
<b>Eligible Recipients .....</b>	<b>16</b>
<b>Eligible Activities .....</b>	<b>16</b>
<b>Funding .....</b>	<b>16</b>
<b>Ongoing Provisions.....</b>	<b>16</b>
<b>Section5311– Formula Grants for Rural Areas.....</b>	<b>18</b>
<b>Formula Grants for Rural Areas.....</b>	<b>19</b>
<b>RTAP Section5311(b)(3)- Rural Transportation Assistance Program.....</b>	<b>23</b>
<b>Section5311(f)– Intercity Bus Program .....</b>	<b>25</b>
<b>Section5339- Bus and Bus Facilities Grants Program.....</b>	<b>26</b>
<b>Statutory References .....</b>	<b>26</b>
<b>Eligible Recipients .....</b>	<b>26</b>
<b>Eligible Activities .....</b>	<b>27</b>
<b>Funding Availability, Allocation, and Local Match.....</b>	<b>27</b>
<b>Coordination Planning .....</b>	<b>27</b>
<b>State Role in Programs Administration.....</b>	<b>28</b>

<b>Goals and Objectives .....</b>	<b>29</b>
<b>Office of Transportation Delivery Program Objectives .....</b>	<b>29</b>
<b>Eligibility    Eligible Subrecipients .....</b>	<b>30</b>
<b>Section 5310 – Transportation for Enhanced Mobility for Seniors and Individuals with Disabilities .....</b>	<b>31</b>
<b>Section 5311 – Formula Grants for Rural Areas .....</b>	<b>32</b>
<b>RTAP Section 5311(b) (3) – Rural Transit Assistance Program .....</b>	<b>35</b>
<b>Section 5310 – Transportation for Seniors and Individuals with Disabilities.....</b>	<b>35</b>
<b>Section 5311 Formula Grants for Rural Areas .....</b>	<b>36</b>
<b>Eligible Assistance Categories .....</b>	<b>38</b>
<b>Section 5310.....</b>	<b>38</b>
<b>State Administration .....</b>	<b>38</b>
<b>Capital Assistance.....</b>	<b>38</b>
<b>Section 5311.....</b>	<b>41</b>
<b>Unallowable Costs.....</b>	<b>45</b>
<b>Federal/State/Local Participation Ratio .....</b>	<b>46</b>
<b>Capital .....</b>	<b>46</b>
<b>Operating .....</b>	<b>47</b>
<b>Administration.....</b>	<b>47</b>
<b>Planning.....</b>	<b>47</b>
<b>Local Funding Requirement.....</b>	<b>47</b>
<b>Eligible Local Match .....</b>	<b>47</b>
<b>Section 5310 Eligible Local Share<sup>8</sup>.....</b>	<b>48</b>
<b>Section 5311 Eligible Local Share<sup>9</sup>.....</b>	<b>49</b>
<b>Section 5339 Eligible Local Share<sup>10</sup>.....</b>	<b>50</b>
<b>Section 5310.....</b>	<b>52</b>
<b>Section 5311.....</b>	<b>52</b>
<b>Contra-Expenses.....</b>	<b>53</b>
<b>Use of Other Federal Funds.....</b>	<b>53</b>
<b>Project Duration .....</b>	<b>54</b>
<b>Chapter 3: Project Selection Criteria .....</b>	<b>55</b>
<b>Method of Distributing Funds.....</b>	<b>55</b>
<b>Background.....</b>	<b>55</b>
<b>Funding Criteria for Section 5310 .....</b>	<b>58</b>

<b>Funding Criteria for Section 5311</b> .....	58
<b>Project Description/Justification</b> .....	59
<b>Project Budget</b> .....	60
<b>Certification Requirements</b> .....	60
<b>Project Selection and Evaluation Criteria</b> .....	64
<b>Method of Distributing Funds</b> .....	64
<b>State Administration and Technical Assistance</b> .....	64
<b>Section 5310</b> .....	65
<b>Deobligated Funds</b> .....	65
<b>Transfer of Federal Funds</b> .....	65
<b>Intercity Bus Program</b> .....	66
<b>State Rural Transit Assistance Program (RTAP)</b> .....	66
<b>Chapter 4: Annual Program Development and Project Approval</b> .....	68
<b>Background</b> .....	68
<b>Notice of the Availability of Funds</b> .....	68
<b>Public Hearing Requirements</b> .....	69
<b>Public Notification</b> .....	70
<b>Application Review and Approval Schedule</b> .....	70
<b>FTA Approval</b> .....	70
<b>Certifications and Assurances</b> .....	71
<b>Period of Performance</b> .....	71
<b>Chapter 5: LOCALLY DEVELOPED, COORDINATED PUBLIC TRANSIT and HUMAN SERVICES TRANSPORTATION PLAN</b> .....	72
<b>State Program Coordination</b> .....	72
<b>Human Services Transportation Coordination</b> .....	72
<b>Section 5310 Coordination Plan Development</b> .....	73
<b>Project Evaluation and Selection</b> .....	74
<b>Chapter 6: Project Financial Management</b> .....	75
<b>Background</b> .....	75
<b>Project Identification</b> .....	75
<b>Pre-Award Requirements</b> .....	75
<b>Establishment of Project Accounts</b> Standards for Accounting .....	76
<b>Requests for Payment</b> .....	77

Revisions and Amendments to the Approved Contract.....	77
Budget Revision .....	78
Procedures.....	78
Close-Out and Audit Procedures .....	78
Contract Closeout.....	78
Audit.....	79
<b>Chapter 7: Procurement and Third-Party Contract Management .....</b>	<b>81</b>
Lobbying .....	92
Debarment and Suspension .....	92
Buy America Provisions/Pre-Award& Post-Delivery Audits/New Model Bus Testing.....	93
Pre-Award and Post-Delivery Audits .....	93
New Model Bus Testing.....	95
Purchase of Service Contracts .....	97
Vehicle Purchasing and Leasing .....	97
Bid Protests/Appeals .....	97
FTA Third Party Contracting Standards.....	97
<b>Chapter 8: Satisfactory Continuing Control and Equipment Maintenance.....</b>	<b>102</b>
Background.....	102
Equipment and Real Property Management .....	103
Inventory .....	103
Allowed and Prohibited Uses of Federally Funded Vehicles.....	104
Incidental Use .....	104
Charter Service.....	104
Meal Delivery for Homebound Individuals .....	105
Emergency Leases between Systems .....	105
Vehicle Use Agreements.....	105
Useful Life and Replacement Standards.....	106
Vehicle Title .....	106
Service Life of Rolling Stock.....	106
Fleet Utilization Standards .....	107
Vehicle Rehabilitation/Rebuild .....	107
Utilization Standards for Other Equipment.....	108
Computers and Other Office Equipment .....	108

Use of Facility/Real Property.....	108
<b>Disposition of Federally Funded Equipment</b> .....	109
Vehicle Disposal.....	109
Transfer of Federal/State Share .....	111
Transferring Federally/State Funded Vehicles/Equipment .....	112
<b>Insurance Settlements</b> .....	113
Repayment of Federal/State Share.....	113
<b>Maintenance Standards and Policies</b> .....	113
General Maintenance .....	116
Records.....	116
General.....	116
Preventative Maintenance Schedule .....	117
Equipment Maintenance Standards.....	117
Out of Service.....	118
<b>Chapter 9: Construction or Renovation of Facilities</b> .....	119
<b>Background</b> .....	119
<b>Pre-Award Review</b> .....	120
<b>Planning</b> .....	120
<b>Land Acquisition Overview</b> .....	120
Responsibilities .....	121
Subrecipient .....	121
KYTC/OTD.....	121
Appraisal.....	121
Negotiation .....	122
<b>Architectural and Engineering Services</b> .....	122
<b>Facility Design</b> .....	123
<b>Facility Construction</b> .....	123
<b>Property Management</b> .....	124
Maintenance Requirements .....	124
Restrictive Covenants/Deed of Restrictions.....	124
Disposition of Property .....	124
Labor Protections .....	126
Davis-Bacon Act .....	126

<b>Chapter 10: Other Applicable Provisions .....</b>	<b>128</b>
<b>Background.....</b>	<b>128</b>
<b>Civil Rights.....</b>	<b>128</b>
<b>Equal Employment Opportunity (EEO) .....</b>	<b>129</b>
<b>Disadvantaged Business Enterprises (DBE).....</b>	<b>130</b>
<b>Protection of the Environment/Environmental Justice.....</b>	<b>130</b>
<b>Employee Protection Provisions of Section 5333(b) Special Warranty .....</b>	<b>131</b>
<b>Charter and School Bus Regulations-Oversight .....</b>	<b>131</b>
<b>School Bus .....</b>	<b>132</b>
<b>Section 504 and ADA Program Requirements.....</b>	<b>132</b>
<b>Reasonable Modification of Policy .....</b>	<b>133</b>
<b>Complaint Procedures.....</b>	<b>137</b>
<b>Standard Assurances .....</b>	<b>139</b>
<b>Buy America Provision .....</b>	<b>139</b>
<b>Buy America Requirement .....</b>	<b>139</b>
<b>Clean Air Act.....</b>	<b>140</b>
<b>Safety .....</b>	<b>141</b>
<b>Vehicle Safety Performance Standards .....</b>	<b>142</b>
<b>Public Transportation Safety Certification Training Program for Federal and State .....</b>	<b>142</b>
<b>Transit Agency Safety Plans for all Federal Transit Recipients.....</b>	<b>142</b>
<b>Transit Asset Management .....</b>	<b>144</b>
<b>What is Transit Asset Management? .....</b>	<b>144</b>
<b>What is a Transit Asset Management Plan? .....</b>	<b>144</b>
<b>Additional Authorities.....</b>	<b>146</b>
<b>Drug and Alcohol Program.....</b>	<b>147</b>
<b>DRUG-FREE WORKPLACE ACT.....</b>	<b>149</b>
<b>Private Sector Participation .....</b>	<b>149</b>
<b>Chapter 11: Project Reporting, Monitoring and On- Site Reviews.....</b>	<b>154</b>
<b>Background.....</b>	<b>154</b>
<b>Project Monitoring and Reporting.....</b>	<b>154</b>
<b>Required Reporting.....</b>	<b>155</b>
<b>Compliance Reviews.....</b>	<b>156</b>
<b>Project Invoicing.....</b>	<b>157</b>

**Chapter 12: Technical and Management Assistance ..... 158**  
**Technical and Management Assistance ..... 158**



## INTRODUCTION

The Kentucky State Management Plan (SMP)\* is a document that describes the Kentucky Transportation Cabinet, Office of Transportation Delivery's (OTD) policies and procedures for administering the State-managed portions of the Federal Transit Administration's (FTA) §5309 §5310, §5311, §5311(b)(3), §5311(f), §5305 §5307 and §5339 programs, where applicable. State requirements in the SMP may be more restrictive, but not less restrictive, than Federal requirements. If any portion or requirements of the SMP, inadvertently, appears to be less restrictive than Federal requirements or regulations, Federal Transit Administration rules still apply. Even when not stated, "as amended" in the SMP when referring to Federal Transit Administration Circulars, Federal regulations or law or Federal guidance, the most recent version of the document will apply.

Stakeholders may, in writing, comment on the proposed SMP, as well as any given time on the Final FTA-approved SMP. Once FTA approves the SMP, hard copies of the final document will be distributed to transit agencies and at any other stakeholder's request. The approved SMP shall, also be posted as Final on the Kentucky Public Transit Association ("KPTA") website [www.kypublictransit.org](http://www.kypublictransit.org) as well as the Kentucky Transportation Cabinet, Office of Transportation Delivery website:  
<https://transportation.ky.gov/transportationdelivery/Pages/default.aspx>

The address for Office of Transportation Delivery:  
Kentucky Transportation Cabinet  
200 Mero Street  
Frankfort, KY 40622

\*The SMP is submitted to FTA for approval in an electronic format.

# Chapter 1: General Transit Program Information

## **Roles and Responsibilities**

### Federal Transit Administration (FTA)

The FTA Headquarters Office is responsible for: providing overall policy and program guidance; apportioning funds annually to the states; developing and implementing financial management procedures; initiating and managing program support activities; and conducting national program review and evaluation.

### Federal Transit Administration Regional Office

The FTA Regional offices have the day-to-day responsibility for administration of the program. Regional office activities include: reviewing and approving state grant applications; obligating funds; managing grants; overseeing the state's implementation of the annual program, including revisions to the Program of Projects; receiving state certifications; reviewing and approving State Management Plans; providing technical assistance and advice to the states as needed; and performing state management reviews every three years, or as circumstances warrant. The KYTC/OTD falls under the FTA Region IV office located in Atlanta, Georgia. The northern Kentucky and Henderson urbanized areas fall under the FTA Region V, Chicago, IL office. The Huntington-Ashland-Ironton Urbanized Area falls under the FTA Region III in Philadelphia.

### Kentucky Transportation Cabinet/Office of Transportation Delivery (KYTC/OTD)

The Governor, pursuant to the provisions of 49 USC 5310, 5311, 5307, 5309, and 5339, has designated KYTC/OTD as administrator and recipient of these funds. KYTC/OTD has the legal authority to enter into contractual agreement with private and public entities for capital, administrative, operations, and technical assistance projects on behalf of the State.

In regards to administering federal transit grants, KYTC/OTD has the primary responsibility for the following:

- Developing and implementing public transportation programs throughout the state;
- Ensuring adherence to federal program guidelines by all subrecipients through periodic monitoring and oversight;

- Notifying eligible and/or potential local entities of the availability of programs;
- Developing project selection criteria;
- Soliciting applications;
- Ensuring fair and equitable distribution of program funds;
- Ensuring the maximum feasible coordination of transit resources at both the state and local levels; and
- Ensuring a process whereby private transit and paratransit operators are provided an opportunity to participate to the maximum extent feasible.

The Office of Transportation Delivery (OTD) administers FTA programs in the State. The USDOT/Federal Transit Administration Programs listed below are authorized under Chapter 53 of title 49 U.S.C., as amended, by the Infrastructure Investment and Jobs Act. This document outlines the policies and procedures for management of the §5311 (Rural Area), §5310 (Enhanced Mobility of Seniors and Individuals with Disabilities), §5311(b)(3) (Rural Transit Assistance Program), and §5339 (Bus and Bus Facilities Grants Program). Current ongoing grants will continue until all needed funds are expended. Former §5316 (Job Access and Reverse Commute Program) activities are eligible under the Urbanized Area Formula Program (5307) and the Rural Area Formula Program (5311). Capital and Operating activities eligible under the former §5317 (New Freedom Initiative) program are eligible under the Enhanced Mobility of Seniors and Individuals with Disabilities Program (5310).

### Area Development Districts (ADDs)

Rural communities that are not a part of the urbanized areas of Metropolitan Planning Organizations (MPOs) are included in Area Development Districts (ADDs). ADDs provide a planning process, reviewed periodically by KYTC, to ensure that federal and state regulations and guidelines for transportation planning in rural areas are met. Among their many duties, each ADD is responsible for providing a public forum and serving as an advisory board to review funding applications from local agencies within their region and prioritizing projects for KYTC review and concurrence. Projects approved by KYTC/OTD are included in the State Transportation Improvement Plan (STIP) for submission to the appropriate federal agencies. The contact information for all the ADDs in Kentucky is as follows:

[www.kcadd.org](http://www.kcadd.org)

## Metropolitan Planning Organizations (MPOs)

A Metropolitan Planning Organization (MPO) is a transportation policy-making organization made up of representatives from local government and transportation authorities. MPOs were created in order to ensure that existing and future expenditures for transportation projects and programs were based on a comprehensive, cooperative, and continuing planning process.

The role of the MPO includes: establishing a local forum for transportation decision making; evaluating transportation alternatives; developing and updating a long-range transportation plan; developing a Transportation Improvement Program (TIP); and getting the public involved.

The KYTC works in cooperation with these local groups in developing their TIPs. In accordance with federal regulations, the MPOs establish their project priorities, and KYTC includes those in the statewide program. Individual TIPS are available for each Metropolitan Planning Organization.

There are nine Metropolitan Planning Organizations (MPOs) in Kentucky. The following link provides the contact information for each MPO:

<http://transportation.ky.gov/Planning/Documents/Kentucky's%20MPOs.pdf>

## Planning and Long-Term Goals

Each subrecipient shall submit a grant application each year (due April 1 or the first business day in April) to KYTC/OTD. It must include future two-year budgets for operations/planning, future three-year capital budgets, and any long-term public transit goals. Each grant application shall include local elected official support documentation. The subrecipient shall also include, in their grant application, other projects in their operating area that local officials support and/or finance.

## Statewide Transportation Improvement Program (STIP)

The KYTC develops and maintains a Statewide Transportation Improvement Program (STIP) for all areas of the State. The STIP includes a priority list of transportation projects including those completed in the first 3 years of the STIP<sup>1</sup>. A list of rural transit projects is part of the STIP by reference. In addition, the projects included in the STIP must be consistent with the Statewide Transportation Plan; be financially constrained; contain all capital and non-capital

transportation projects; and, in non-attainment areas, conform to federal and state regulations.

The KYTC must notify the Metropolitan Planning Organization (MPO), local jurisdictions, Federal land agencies, and, if applicable, Indian tribal governments when projects under their jurisdiction are included in the STIP. The MPO prepares a Transportation Improvement Program (TIP) and incorporates it into the STIP after approval by the MPO and the Governor or his designee. The Federal Highway Administration (FHWA) and the FTA review the STIP for consistency with the federal regulations and, if acceptable, jointly approve.

The STIP governs nine Kentucky MPOs:

- Ashland/KYOVA
- Henderson/Evansville
- Oak Grove/Clarksville
- Lexington
- Louisville
- Northern KY
- Owensboro
- Bowling Green
- Radcliff/Elizabethtown

# Chapter 2: Overview of Transit Programs

## Section 5307 - Urbanized Area Formula Grants

This Program makes Federal resources available to urbanized areas and to Governors for transit capital and operating assistance in urbanized areas and for transportation related planning. An urbanized area is an incorporated area with a population of 50,000 or more that is designated as such by the U.S. Department of Commerce, U.S. Census Bureau.

Eligible purposes include planning, engineering design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement of buses, overhaul of buses, rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. All preventive maintenance, and some Americans with Disabilities Act complementary paratransit service costs, are considered capital costs.

For urbanized areas, with a population of 200,000 and over, funds are apportioned and flow directly to a designated recipient that is locally selected to apply for and receive Federal funds. For urbanized areas, under 200,000 in population, the funds are apportioned to the Governor of each state for distribution. Kentucky agencies have the option, for §5307 grants for areas with a population between 50,000-199,999, to apply directly to FTA or via the KYTC/OTD upon mutual agreement and approval by FTA.

## Section 5309 - Capital Investment Program

The Federal Transit Administration (FTA) Capital Investment Program funds provide capital assistance for three primary activities: new fixed guideway systems (New Starts program and Small Starts), new and replacement buses and facilities (Bus and Bus Related Facilities program), and modernization of existing rail system (Fixed Guideway Modernization program).

The **New Starts** program provides funds for construction of new fixed guideway systems or extensions to existing fixed guideway systems. The **Small Starts** program provides funds to capital projects that either meet the definition of a fixed guideway for at least 50% of the project length in the peak period or are corridor-based bus projects with 10 minute peak/15 minute off- peak headways or better while operating at least 14 hours per weekday. **Core Capacity** projects may include acquisition of real property, acquisition of rights-of-way, double tracking, signalization improvements, electrification, expanding system platforms,

acquisition of rolling stock associated with corridor improvements increasing capacity, and construction of infill stations.

The FTA administers the §5309 program. It is a discretionary grant program that requires, by law, that projects seeking funding complete a series of steps over several years to be eligible for funding. For New Starts and Core Capacity projects, the law requires completion of two phases in advance of receipt of a construction grant agreement – Project Development and Engineering. For Small Starts projects, the law requires completion of one phase in advance of receipt of a construction grant agreement – Project Development. The law, also, requires projects to be rated by FTA at various points in the process according to statutory criteria evaluating project justification and local financial commitment. FTA requires an 80/20 Federal/Local match for this Program.

KYTC/OTD has, historically, utilized §5309 funds for a local vehicle replacement program for those vehicles that have reached or exceeded useful life and/or to enhance or construct transit facilities/infrastructure. At the discretion of the KYTC, Toll Credits (as long as they remain available) may be allowed for the local share.

#### **Statutory Reference**

49 U.S.C. §5309

#### **USDOT/FTA Reference**

Final Interim Policy Guidance; Federal Transit Administration; Capital Investment Grant Program; June 2016  
AND Infrastructure Investment and Jobs Act

### **Section 5310 – Enhanced Mobility of Seniors & Individuals with Disabilities**

#### **Section 5310 Purpose**

This program is intended to improve mobility for seniors and individuals with disabilities by providing funds for private non-profit groups to serve the transportation needs of older adults and people with disabilities when transportation is unavailable or insufficient in meeting their needs, for public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.), for public transportation projects that improve access to fixed-route service and decrease reliance on complementary paratransit and alternatives to public transportation projects that assist seniors and individuals with disabilities with transportation.

**Statutory References:** 49 U.S.C. Section 5310 / Infrastructure Investment and Jobs Act/Act Section 3006 / Circular: C9070.1G

## **Eligible Recipients**

- Direct Recipients: States (for all areas under 200,000 in population) and designated recipients.
- Subrecipients: states or local government authorities, private non-profit organizations, or operators of public transportation.

## **Eligible Activities**

- At least 55% of program funds must be used on capital projects that are public transportation projects planned, designed, and carried out to meet the needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable.
- The remaining 45% may be used for public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA); improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit; or provide alternatives to public transportation that assist seniors and individuals with disabilities.

## **Funding**

Funds are apportioned for urbanized and rural areas based on the number of older adults and individuals with disabilities.

Federal share for capital projects (including acquisition of public transportation services) is 80%.

Federal share for operating assistance is 50%.

## **Ongoing Provisions**

- Local share may be derived from other federal (non-DOT) transportation sources or the Federal Lands Highways Program under 23 U.S.C. 204.
- Permits Designated Recipients and States to carry out a competitive process to select subrecipients.
- Recipients must certify that projects selected are included in a locally developed Coordinated Public Transit-Human Services Transportation Plan. The Plan must undergo a development and approval process that includes seniors and individuals with disabilities, transportation providers, and others, and is coordinated to the maximum extent possible with transportation services assisted by other federal departments and agencies.
- Permits acquisition of public transportation services as a capital expense.
- Up to 10% of program funds can be used to administer the program, to plan, and to provide technical assistance and funded at 100% federal share.



The §5310 program assists private or designated public non-profit agencies in meeting the transportation needs of older adults and individuals with disabilities. The Office of Transportation Delivery, through the Section 5310 program, provides funds to private non-profit entities, public bodies approved by the state to coordinate transportation services for older adults and individuals with disabilities, or public bodies which certify to the Governor that no private non-profit entity or association is readily available in an area to provide the service.

Federal financial assistance under the Section 5310 program is limited to participation in the cost of capital equipment, cost for purchase of transportation service contract(s), mobility management, and state-level administrative costs to administer the program. Because of the large statewide demand, the current policy of KYTC is to fund replacement vehicles, not expansion vehicles, unless in an extreme and documented case where an expansion of services is needed and greatly benefits the local community and the Commonwealth.

The goal of the Section 5310 program is to improve mobility for older adults and people with disabilities throughout the state and to enhance coordination of federally assisted programs and services in order to encourage the most efficient use of federal resources and achieve the national goal of improved mobility of seniors and individuals with disabilities. In Kentucky, both private and public non-profit agencies are encouraged to coordinate transportation services with agencies that provide transportation services to the public.

KYTC/OTD is the Designated Recipient for small urban and rural areas of the State. The State may also be a Designated Recipient for an urbanized area. A full Coordinated Plan is required. Any applicant wishing to apply for a §5310 grant must follow the directions as detailed in the Section 5310 Application Checklist located on the KYTC/OTD website at

<http://transportation.ky.gov/Transportation-Delivery/Pages/Seniors-Individuals-and-Individuals-with-Disabilities-Program.aspx>

**COORDINATION REQUIREMENTS.** Title 49 U.S.C. 5310, as amended by the Infrastructure Investment and Jobs Act, requires a recipient of Section 5310 funds to certify that projects selected for funding under this program are included in a locally developed, coordinated public transit-human service transportation plan and that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, non-profit transportation and human service providers; and other members of the public. FTA strongly encourages coordination and consistency between the local coordinated public transit- human service transportation plan and metropolitan or statewide transportation planning processes, as described in 23 CFR part 450 and 49 CFR part 613.

## Section 5311 – Formula Grants for Rural Areas

The §5311 funds can be used for the costs of transit planning activities, transit operations and purchase of capital equipment or facilities to aid in provision of transit services in rural areas, as well as provide funds for state-level administration. Federal regulation requires that 15% of these funds be reserved each year to support an Intercity Bus Program, unless the Governor of a state certifies that intercity bus needs in the state are being met.

Through the Section 5311 Program, the Office of Transportation Delivery (OTD) provides administrative, operating and capital assistance to public transportation projects in non-urbanized (rural) areas. The program goals are:

- Assist in meeting the transportation needs of transit-dependent people and to enhance access to health care, shopping, education, employment, public services, and recreation;
- Assist in the maintenance, development, improvement and use of public transportation systems;
- Encourage and facilitate the most efficient use of all federal funds used to provide passenger transportation in non-urbanized areas through the coordination of programs and services;
- Assist in the development and support of intercity bus transportation; and
- Provide for the participation of private transportation providers in rural transportation to the maximum extent feasible.

Section 5311: Circular: C 9040.1G

Low-income populations in rural areas are incorporated as a formula factor, similar to the repealed Job Access and Reverse Commute (JARC) program.

- Planning is an eligible activity.
- Appalachian Development Public Transportation Assistance Formula Program is a set-aside program.
- Administration, planning, and technical assistance set-aside for states is 10%.
- Cost of unsubsidized portion of privately provided intercity bus service that connects feeder service is eligible as in-kind local match.
- Certain expenditures by vanpool operators may be used as local match.

## **Formula Grants for Rural Areas**

### **Funding**

- Federal share is 80% for capital projects.
- Federal share is 50% for operating assistance.
- Federal share is 80% for Americans with Disabilities Act (ADA) non-fixed-route paratransit service, using up to 10% of a recipient's apportionment.

### **Rural Formulas**

- 83.15% of funds apportioned based on land area and population in rural areas
- 16.85% of funds apportioned based on land area, revenue-vehicle miles, and low-income individuals in rural areas.

### **Appalachian Development Public Transportation Assistance Formula Program**

- \$20 million formula program for states in the Appalachian Region.

### **Job Access and Reverse Commute Program (JARC) (Section 5316)**

The Section 5316 Job Access and Reverse Commute Program (JARC Program) was a formula grant program for projects that improve access to employment-related transportation services for welfare recipients and eligible low-income individuals, and that transport residents of urbanized and rural areas to suburban employment opportunities. This program was repealed by MAP-21. While the Section 5316 JARC program was repealed under MAP-21, job access and reverse commute projects are now an eligible project type under the Rural Area Formula Program. (Please see Chapter III – Eligibility – for a list of project types and requirements under Section 5311.)

### New Freedom Program (Section 5317)

The New Freedom Program (Section 5317) was a formula grant program that provided funding for capital and operating expenses to support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation services. The purpose of the New Freedom formula grant program was to provide additional resources to overcome existing barriers facing Americans with disabilities seeking integration into the workforce and full participation in society. The New Freedom Program was repealed by MAP-21.

While the Section 5317 New Freedom Program was repealed under MAP-21, similar projects are eligible under the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program. Program information is available in FTA Circular 9070.1G.

### APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM (ADTAP)

1. PROGRAM SUMMARY. Title (49 U.S.C. 5311 (c) (2)) authorizes the Appalachian Development Public Transportation Assistance Program (ADTAP), which allocates funds by statutory formula (see Formula Allocations section below). This program is funded with a take-down under the Section 5311 program to provide additional funding to States in the Appalachian Region of the United States. FTA apportions the funds to designated States (see Eligible Recipients below) for purposes eligible under Section 5311 including capital, operating, planning, job access and reverse commute projects, and administrative costs.

FTA intends to coordinate with the Appalachian Region Commission (ARC) to foster the development of public transportation service in eligible areas. FTA's ADTAP will enhance existing transportation service and create new services in order to decrease isolation within the 54 Kentucky counties in the region.

2. NATIONAL PROGRAM OBJECTIVES. While this program is funded under FTA's Section 5311 program, the national program objective is to deliver safe, reliable public transportation services to rural areas in the Appalachian region. Consistent with the objectives of the Section 5311 program, funds should enhance access to health care, shopping, education, employment, public services, and recreation.

3. ELIGIBLE RECIPIENTS AND SUBRECIPIENTS. Eligible rural recipients under the

ADTAP include 13 States located in the Appalachian region: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia as defined under Title 40, section 14102 of the Appalachian Regional Development Act. Subrecipients of ADTAP funding include State or local governmental authorities, non-profit organizations, and operators of public transportation services.

ELIGIBLE SERVICES AND SERVICE AREAS. A service area must be located in the Appalachian region to be eligible for funds. The following Kentucky counties are eligible for ADTAP funds: Adair, Bath, Bell, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Garrard, Green, Greenup, Harlan, Hart, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Nicholas, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe.

4. FORMULA ALLOCATIONS. FTA apportions ADTAP funds to designated States by a statutory formula based on the guidelines established under Section 9.5(b) of the Appalachian Regional Commission Code. The allocation includes each State's remaining estimated need to complete eligible sections of the Appalachian Development Highway System (ADHS) as determined from the latest available cost estimates for completion of the System. Cost estimates are produced at approximate five year intervals. Allocations contain upper and lower limits in amounts or percentages to be determined by the Commission and are made in accordance with legislative instructions.

5. FUNDS AVAILABILITY. Appalachian Development Program funds are available for the fiscal year in which they are apportioned plus two additional fiscal years. If the State does not obligate its allocation during this period, FTA reallocates the funds among the States that are eligible to receive this funding by formula.

6. ELIGIBLE PROJECTS. A State may use ADTAP program funds for capital projects, operating assistance, planning, job access reverse commute projects, and the acquisition of public transportation services, including service agreements with private providers of public transportation. The State may also use up to 10% of its ADTAP program funds to administer the program and provide technical assistance to subrecipients. Technical assistance includes project planning, program and management development, public transportation coordination activities, and research the State considers appropriate to promote effective delivery of public transportation in rural areas of the Appalachian region.

7. LOCAL SHARE.

- A 20% local match is required for Capital and 50% for Operating expenses.
- There is no local match required for the additional 10% permitted for administration and technical assistance for ADTAP projects.
- The Sliding Scale rate under Section 5311 is applicable to the ADTAP [for more information, please see Table 1 and Table 2: Sliding Scale Rates for FTA Section 5311 Grants (23 U.S.C. 120 (b)(1) within FTA Circular 9040.1G, Chapter III, Section 4(b)(4)].
- For eligible sources of local match please see FTA Circular 9040.1G, Chapter III, Section 4(e).

8. PROGRAM ADMINISTRATION. The ADTAP funds are a separate allocation, but are apportioned annually, and can be combined in the regular Section 5311 grant application as long as the State DOT accounts for the use of ADTAP funds in the Program of Projects. In order to maximize Section 5311 program funding, an eligible State should use ADTAP formula funding as the funding source for selected rural transit projects within the designated Appalachian region. Section 5311 funds should be used to address needs not covered by the ADTAP allocation.

9. TRANSFER PROVISIONS. States that are eligible for the ADTAP may use amounts that cannot be used for operating expenses for a highway project if the Governor approves the use in writing after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers in the Appalachian region. The Governor must certify that the local transit needs are being addressed. In order for FTA to consider the transfer, a State

must provide documentation to the FTA regional office that includes a description of the consultation used and certification by the local providers (i.e. State, local transit operators, and local RTPPO (if applicable) that all local operating needs are met. Upon receipt, FTA will review the request and if approved will transfer the funds consistent with FTA's transfer process (please see FTA Circular 9040.1G, Chapter III, Section 6).

10. STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) AND/OR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) REQUIREMENT.

A State requesting ADTAP must comply with the planning requirements of 49 U.S.C. 5303 through 5305. Projects proposed for ADTAP funding must be a product of the statewide and nonmetropolitan transportation planning process and/or the metropolitan planning process specified in 23 CFR part 450 and 49 CFR part 613. With limited exceptions, States must include all Federal funds to be used for highway or transit projects in a Statewide Transportation Improvement Program (STIP) consistent with 23 U.S.C. 135 and 49 U.S.C. 5304. States must include ADTAP funds in the STIP (please see FTA Circular 9040.1G, Chapter IV, Section 2 for detailed information).

The Office of Transportation Delivery (OTD) will incorporate Appalachian Program funds within the Section 5311 Rural Program of Projects. The first year of Appalachian Program funds will be offered equally to transit systems that have one (1) of the fifty-four (54) Kentucky Appalachian counties. Historically, transit agencies located in the Appalachian area are underserved and include a large population of individuals with low income, individuals with disabilities, and a high unemployment rate. Transit agencies should utilize the Appalachian Program funds first. Section 5311 Rural funds, if available, will be utilized in the Appalachian area when ADTAP are not sufficient.

### **RTAP Section 5311(b)(3) - Rural Transportation Assistance Program**

Section 5311(b)(3) directs the Secretary to carry out a rural transportation program in rural areas and "to make grants and contracts for transportation research, technical assistance, training and related support services in rural areas. The Rural Transit Assistance Program (RTAP) provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas. RTAP has both state and national program components.

The State program provides an annual allocation to each state for development

and implementation of training and technical assistance programs in conjunction with the State's administration of the Section 5311 formula assistance program. The national program provides for the development of information and materials for use by local operators and state-level administrators and supports research and technical assistance projects of national interest. The objectives of RTAP are:

1. To promote the safe and effective delivery of public transportation in rural areas;
2. To foster the development of state and local abilities to address the training and technical assistance needs of the rural transportation community;
3. To improve the quality of information and technical assistance available through the development of training and technical assistance resource materials;
4. To facilitate peer-to-peer connections through the development of local networks of transit professionals;
5. To support the coordination of public, private, specialized, and human service transportation services; and
6. To maintain the Rural National Database of the small urban and rural public transportation industry.

Funds can be used to directly provide training and/or technical assistance with state staff, to contract with others for provision of training/technical assistance, to assist local entities with the cost of training available from other sources, and to develop local capabilities for self-help.

KYTC/OTD administers RTAP funding through a selection committee. The RTAP Committee is comprised of the Office of Transportation Delivery Executive Director, Public Transit Branch Manager, or their designee; one KYTC/OTD employee appointed by the KYTC/OTD Executive Director, and a member of each of the five Kentucky RTAP regions. The Kentucky Public Transit Association (KPTA) votes upon committee selection every two (2) years. The RTAP Committee meets and determines the selection criteria requirements and is the decision-making body in determining project selection. The Section 5311 Circular states that providers of specialized transportation in urbanized areas, such as Section 5310 funded agencies, as well as public transit operators in small urbanized areas, have many of the same training and technical assistance needs as transit providers in rural areas. FTA permits participation by these providers in RTAP sponsored activities, at the State's discretion, so long as the activities are primarily designed and delivered to benefit rural Transit providers. Depending on availability of funding and training capacity, small urban and urban 5310 systems and 5307 systems may be allowed to participate when there is surplus capacity in training sessions, and they may not be more than incidental beneficiaries.



Any applicant wishing to complete an RTAP application may do so within the §5310 or §5311 application.

## **Section 5311(f)– Intercity Bus Program**

“Eligible Service and Service Areas. States can use Section 5311 funds for public transportation projects, including job access and reverse commute projects, and intercity bus transportation projects in rural areas.” (FTA Circular 9040.1G, Chapter III, Section 2(c)). “The purpose of Section 5311 assistance is the provision of public transportation services and FTA encourages maximum feasible coordination with other rural transportation services” (FTA Circular 9040.1G, Chapter III, Section 2(d)).

Section 5311(f) requires each state to spend 15% of its annual Section 5311 apportionment "to develop and support intercity bus transportation," unless, after consultation with affected intercity bus providers, the Governor certifies that "the intercity bus needs of the state are adequately being met." The required percentage applies only to the amount of FTA's annual apportionment of Section 5311 funds to the state, not to any funds the state subsequently transfers to its rural area formula program from other programs.

“In many States, intercity bus service is a vital link between otherwise isolated rural communities and the rest of the nation. Historically, major intercity bus carriers abandoned many less productive routes. Patronage generated in rural areas, however, appears to be important to the continuing viability of the remaining intercity routes. One objective of the funding for intercity bus service under Section 5311, therefore, is to support the connection between rural areas and the larger regional or national system of intercity bus service. Another objective is to support services to meet the intercity travel needs of residents in rural areas. A third objective is to support the infrastructure of the intercity bus network through planning and marketing assistance and capital investment in facilities. FTA encourages States to use the funding under Section 5311(f) to support these national objectives, as well as priorities determined by the State” (FTA Circular 9040.1G, Chapter VII, Section 2).

In order to promote coordination and to prevent the duplication of services, KYTC will not contract directly with for-profit intercity companies. The company must apply through and be funded through an existing Section 5311 public transit operator. Interline means providing seamless ticketing and travel information for the convenience of customers. 5311(f) transit agencies with regular/fixed routes may interline. To encourage the development of intercity feeder bus networks, FTA allows states to use the capital costs of private, unsubsidized

intercity bus

service as in-kind match for the operating costs of 5311(f)-funded rural intercity for Regular Fixed Routes. 50% of an Intercity Bus service's (such as Greyhound's) total cost per mile can be used as local in-kind match. Demand response intercity feeder service is not eligible to interline in-kind match.

In Kentucky over the last several years, Greyhound has abandoned most of its rural service, but Greyhound and other private Operators maintain service between the larger Cities. Many of the rural public transit systems within Kentucky have picked up those abandoned lines as part of their daily public transportation operations as well as providing feeder service that connects the rural communities to the closest city with intercity bus service. Emphasis is placed on connecting the rural communities with the next larger market economy and connecting bus, rail and air transportation to help provide the vital link between otherwise isolated rural communities and the rest of the nation. The demand responsive intercity feeder service offered by Kentucky's rural public transit systems helps provide intercity connections to rural communities and increases ridership to help support the intercity service that is still provided by Greyhound and other operators offering Intercity Service between the larger cities.

## **Section 5339 - Busan Bus Facilities Grants Program**

### **Purpose**

Provides capital funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities.

### **Statutory References**

49 U.S.C. Section 5339 /Section 3017

### **Eligible Recipients**

- Direct recipients that operate fixed route bus service or allocate funding to fixed-route bus operators;
- State or local governmental entities;
- Federally recognized Indian tribes that operate fixed route bus service that are eligible to receive direct grants under 5307 and 5311.

#### **Subrecipients:**

- Public agencies or private non-profit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income.

## **Eligible Activities**

- Capital projects to replace, rehabilitate and purchase buses, vans, and related equipment, and to construct bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities.

## **Funding Availability, Allocation, and Local Match**

- Funds are available for obligation for three (3) fiscal years. This includes the fiscal year in which the amount is made available or appropriated plus two additional years.
- The three (3) components to this program are:
  - A continuation of the formula bus program established under MAP-21.
  - The bus and bus facilities competitive program based on asset age and condition.
  - A low or no emissions bus deployment program.
- Federal share is 80% with a required 20% local match. However, the Federal share may exceed 80% for certain projects related to the ADA, the Clean Air Act (CAA), and certain bicycle projects.

## **Coordination Planning**

Through a regional coordinated planning effort (discussed in Chapter 5 of this plan), KYTC/OTD has implemented a uniform application and selection process for the Section 5310 Program.

## **Section 5303 and 5304 – Metropolitan and Statewide Planning**

These programs provide funding to support cooperative, continuous, and comprehensive planning for making transportation investment decisions in metropolitan areas and statewide. State Departments of Transportation (DOTs) and Metropolitan Planning Organizations (MPOs) are eligible recipients. Federal planning funds are first apportioned to State DOTs. State DOTs then allocate planning funding to MPOs.

Funds are available for planning activities that support the economic vitality of the metropolitan area; increase the safety of the transportation system for motorized and non-motorized users; increase the security of the transportation system for motorized and non-

motorized users; increase the accessibility and mobility of people and for freight; protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns; enhance the integration and connectivity of the transportation system, across and between modes, for people and freight; promote efficient system management and operation; and emphasize the preservation of the existing transportation system. Section 5303 is for Metropolitan Planning Organizations (MPOs), and Section 5304 is Statewide Planning. Kentucky utilizes funds to contract coordination and technical activities that will assist transit providers with various activities.

Funds are apportioned to states by a formula that includes each state's urbanized area population in proportion to the total urbanized area population for the nation, as well as other factors. The Federal Share is not to exceed 80% of the cost of the projects funded under the Program.

## **State Role in Programs Administration**

It is the goal of KYTC/OTD to maximize the benefits received through Section 5310, 5311, and 5339 programs by facilitating mobility options to business, commercial, educational and other activities in support of local economic progress and development. To this end, the Office of Transportation Delivery (OTD) has integrated the administration of these programs as much as possible to streamline its oversight functions, while remaining committed to the separate goals established for each program by Congress.

The KYTC/OTD shares a partnership role with local governments, or its representatives, and transit agencies committed to operating rural public transportation programs. As administrator of the funds, KYTC/OTD assumes responsibility for the organization and management of these programs. In this capacity, KYTC/OTD functions as a conduit for funds and financial programming. KYTC/OTD also responds to the Federal funding agency (FTA). KYTC/OTD develops criteria for application approval, notifies eligible local recipients of the availability of program funds, reviews and selects applicants for funding, ensures compliance with federal requirements, and monitors project activity.

## Goals and Objectives

### **Kentucky Transportation Cabinet/Office of Transportation Delivery Mission Statement:**

The Kentucky Transportation Cabinet's goal is to provide a safe, efficient, environmentally sound and fiscally responsible transportation system that promotes economic growth and enhances the quality of life in Kentucky.

The public transportation mission of the Kentucky Transportation Cabinet is to assist in the promotion of accessible, safe, cost-effective transportation that fulfills the needs of the citizens of Kentucky.

### **Office of Transportation Delivery Program Objectives**

#### **I. Introduction**

The Commonwealth of Kentucky consists of three distinct areas: rural, small urban and large urban/metropolitan.<sup>2</sup> Each area has specific but varying transit needs. Dispersed populations and vast distances between communities characterize rural areas in Kentucky. Sparse population, combined with the great distances and the lack of transit amenities, intensifies the need for transportation services.

Unable to access such necessities as medical care and nutrition programs, rural seniors and individuals with disabilities become "prisoners" of their environment. The quality of available and affordable transportation in these rural regions has a direct bearing on the quality of life for all residents.

While the small urban areas usually contain basic services, residents of the smaller communities often must travel many miles to access specialized services. Transit systems serving these areas are usually demand response and provide service to seniors and individuals with disabilities including service to the public. The intercity transportation services provided by Kentucky's rural public transit systems help connect the smaller communities with the next larger market economy and connect to bus, rail and air transportation to provide the vital link between otherwise isolated rural communities and the rest of the nation.

All urbanized areas in the Commonwealth are over 50,000 in population and have distinctive transit needs and funding. The large urban/metropolitan areas have access to all basic and specialized services and are able to support both a public fixed route system and a demand response system for individuals with disabilities.

The Governor has designated the Kentucky Transportation Cabinet Secretary who, in turn, designates the Office of Transportation Delivery ("KYTC/OTD") as administrator of all

Federal Transit Administration (FTA) programs affecting small urban and rural areas and the FTA planning grants for the metropolitan areas of the state. KYTC/OTD funds may be available to match up to 10% of capital purchases made under the 49 U.S.C §5307, §5309, §5310, §5311, and §5339 programs. The local subrecipient receives local match funds through unrestricted federal funds, county and city allocations and local fundraisers. Toll Credits may be available for up to 20% of capital purchases.

KYTC/OTD is responsible for the administration of 49 U.S.C. §5303, §5304, applicable §5307 (50,000-200,000 in population), §5309, §5310, §5339, §5311, §5311(b) (3) programs and administration of the state match for the 49 U.S.C. §5307 program.

As the Governor's designee, KYTC/OTD responsibilities include:

- (1) Notifying eligible local entities of the availability of the program;
- (2) Soliciting applications;
- (3) Developing project selection criteria;
- (4) Reviewing and selecting projects for approval;
- (5) Developing an equitable distribution of funds to all eligible recipients within the Commonwealth;
- (6) Forwarding an annual Program of Projects and grant applications to FTA;
- (7) Certifying eligibility of applicants and project activities;
- (8) Ensuring compliance with Federal guidelines by all local recipients;
- (9) Monitoring local projects;
- (10) Overseeing project audits and closeouts;
- (11) In the case of transit planning studies, directly administering the project;
- (12) Assessing new areas in need of public transportation services

This Kentucky State Management Plan (“SMP”) describes each FTA program available to eligible organizations, provides guidelines for compliance, and explains procedures for project selection, vehicle procurement, and project reporting requirements. The SMP is guidance for small urban and rural FTA grant programs.

## **Eligibility**

### **Eligible Subrecipients**

To be eligible to receive an allocation of Section 5307, 5310, 5311, or 5339, an eligible subrecipient must submit an authorized resolution that they are proposing to serve signed by the Authorized Official and certified by their attorney. Additionally, each subrecipient agrees to comply with applicable certifications and assurances. The following specific guidance applies:

## Section 5310 – Transportation for Enhanced Mobility for Seniors and Individuals with Disabilities

49 U.S.C. §5310 states that seniors and individuals with disabilities have the same rights as other individuals to utilize public transportation facilities and services. Therefore, the program recipient shall use special efforts in the planning and design of these facilities and services to assure their availability to this specialized group. This program covers the urban, small urban and rural areas of the Commonwealth.

Funds are available to private non-profit corporations for the specific purpose of providing transportation services meeting the special needs of seniors and individuals with disabilities where public transportation services are unavailable, insufficient or inappropriate. In addition, public bodies approved by the state to coordinate services for seniors and individuals with disabilities are eligible for §5310 funding when no private non-profit is available to apply for and serve the area. While recipients of these funds usually serve specific clientele, they may open their service to all when such service *does not interfere with the transportation service designed to meet the special needs of seniors and individuals with disabilities*. Kentucky strongly urges all §5310 recipients to offer transportation to anyone needing specialized services.

### **Eligible Activities**

- At least 55% of program funds must be used on capital projects that are:
  - Public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable.
- The remaining 45% may be used for:
  - Public transportation projects that exceed the requirements of the ADA.
  - Public transportation projects that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit.
  - Alternatives to public transportation that assist seniors and individuals with disabilities.



## Section 5311 – Formula Grants for Rural Areas

### SECTION 5311 STATUTORY AUTHORITY. The Formula Grants for Rural Areas

Program, codified at 49 U.S.C. 5311 (Section 5311) is authorized under the provisions set forth in the Infrastructure Investment and Jobs Act. Under this program, funding assistance is provided for public transportation in rural areas.

The Federal Transit Administration (FTA), on behalf of the Secretary of Transportation, apportions the funds annually to the Governor of each State and federally recognized Indian Tribes for public transportation projects in rural areas. The code assigned to Section 5311 grants in the Catalogue of Federal Domestic Assistance (CFDA) is 20.509. FTA's Formula Grants for Rural Areas Program is also referred to as the Section 5311 program.

The Section 5311 program includes: the Appalachian Development Public Transportation Assistance Program; the Rural Transit Assistance Program (RTAP); and the Tribal Transit Program. The Tribal Transit Program has both a competitive discretionary and a statutory formula program. For the formula grants for rural areas, 83.15% of funds are apportioned based on land area and population factors. The other 16.85% is apportioned based on land area, vehicle revenue miles, and the ratio of low-income individuals residing in rural areas. No State may receive more than 5% of the amount apportioned for land area or vehicle revenue miles. In addition, FTA adds amounts apportioned based on rural population according to the growing States formula factors of 49 U.S.C. 5340 to the amounts apportioned to the States under the Section 5311 formula.

Annually, Kentucky prepares and submits to FTA a Program of Projects. A State's Program of Projects must provide for fair and equitable distribution of funds within the State. A State may pass through its Section 5311 program funds to subrecipients that are State or local governmental authorities, non-profit organizations, operators of public transportation services, or intercity bus operators.

A State may use Section 5311 program funds for capital projects, operating assistance, planning, job access reverse commute projects, and the acquisition of public transportation services, including service agreements with private providers of public transportation. The State may also use up to 10% of its Section 5311 program funds to administer the program and provide technical assistance to subrecipients. Technical assistance includes project planning, program and management development, public transportation coordination activities and research the State considers appropriate to promote effective delivery of public transportation in rural area. Planning activities are an eligible expense under Section 5311,

and shall be in addition to funding awarded to a State under Section 5305 for planning activities that are directed specifically at the needs of rural areas in the State. There are no limitations on use of Section 5311 funds for operating assistance; however, the State must use at least 15% of its annual apportionment to support intercity bus service, unless the Governor certifies, after consultation with affected intercity bus providers, that the intercity bus needs of the State are adequately being met.

In addition, as of FY 2006, Section 5311(b) (3) provides funding for the Rural Transportation Assistance Program (RTAP) as a 2% takedown from the amount authorized and appropriated for Section 5311. From the amounts made available for RTAP, the Secretary may use up to 15% to carry out competitively selected projects of a national scope with the remaining balance allocated to the States. States can use RTAP funds for technical assistance, training, research, and related support activities.

MAP-21 established an Appalachian Development Public Transportation Assistance Program (49 U.S.C. 5311 (c) (2)). This program is funded with a take-down under the Section 5311 program to provide additional funding to States in the Appalachian Region of the United States.

The formula is established based on section 9.5 (b) of the Appalachian Regional Commission Code. Funds may be used for public transportation activities consistent with the formula grants for rural areas program. The funds are apportioned to the following States: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

#### PROGRAM GOALS.

Pursuant to 49 U.S.C. 5311, FTA apportions or awards funds to States, Indian tribes, or other eligible recipients located in rural areas for planning, public transportation capital projects, operating costs, job access reverse commute projects, and the acquisition of public transportation service. The Section 5311 program supports both the maintenance of existing public transportation services and the expansion of those services through the following program goals:

- a. enhancing access in rural areas to health care, shopping, education, employment, public services, and recreation;
- b. assisting in the maintenance, development, improvement, and use of public transportation systems in rural areas;

- c. encouraging and facilitating the most efficient use of all transportation funds used to provide passenger transportation in rural areas through the coordination of programs and services;
- d. providing financial assistance to help carry out national goals related to mobility for all, including seniors, individuals with disabilities, and low-income individuals;
- e. increasing availability of transportation options through investments in intercity bus services;
- f. assisting in the development and support of intercity bus transportation;
- g. encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development; and
- h. providing for the participation of private transportation providers in rural public transportation.

Eligible recipients of §5311 funds include a State or Indian tribe that receives an FTA grant directly from the Federal Government. Eligible subrecipients are State agencies, local public bodies, transit authorities under KRS 96A and private non-profit organizations. For Section 5311, Private for-profit operators of transit service may participate in the program through contractual agreement with eligible subrecipients who provide public transportation in rural area to be served. Subrecipients must use the Section 5311 funds in the rural (non-urbanized) areas of the state for public transportation.

FTA defines public transportation as public transportation by bus, rail, or other conveyance, publicly or privately owned, which provides general or special service to the public on a regular and continuing basis. *As long as the PUBLIC is afforded an equal opportunity to use the transportation service, §5311 subrecipients can use funds to maximize usage by transportation disadvantaged individuals.* Non-urbanized area subrecipients use §5311 funds to transport to and returning from urbanized areas.

Private for-profit operators of transit or paratransit services may participate in the program through contracts with eligible subrecipients who provide public transportation in the rural areas to be served. The Office of Transportation Delivery is responsible to ensure that any private operator is qualified, will provide eligible service, can comply with Federal and State

requirements, and is the best, or only, provider available to offer service at a fair and reasonable cost.

Providers of public transportation in urbanized areas who provide service to non-urbanized areas may participate in the 5311 program if the following guidelines apply:

- Financial assistance is available only for that portion of the service operated in non-urbanized areas;
- The applicant must be capable of segregating allowable operating and non-operating expenses incurred in providing service to non-urbanized areas; and
- The applicant must be one of the following eligible recipients or subrecipients:
  - Local governmental agencies:
    - A political subdivision of the State
    - Indian tribal government (both Federally recognized and other tribes)
  - Transit Authorities (KRS 96A)
  - Council of Governments (for planning/coordination only)
  - Private non-profit operators of public services
  - Private for-profit operators of transit services or intercity bus services may participate in the program as a third party contractor for eligible subrecipients who provides public transportation in rural areas to be served

### RTAP Section 5311(b) (3) – Rural Transit Assistance Program

KYTC Office of Transportation Delivery is the designated recipient for RTAP funds. The RTAP program is intended to provide training and technical assistance to Section 5310 and Section 5311 subrecipients and public providers in rural areas. Funds can be used to directly provide training and/or technical assistance with state staff, to contract with others for provision of training/technical assistance, to assist local entities with the cost of training available from other sources, and to develop local capabilities for self-help.

### Section 5310 – Transportation for Seniors and Individuals with Disabilities

The goal of the Section 5310 program is to improve mobility for older adults and people with disabilities. Toward this goal, FTA provides financial assistance for transportation services planned, designed, and carried out to meet these special transportation needs in all areas--

urbanized, small urban, and rural. The program requires coordination of federally assisted programs and services in order to make the most efficient use of Federal resources.

An applicant's service area will be defined in the application and verified by its governing board or county government(s) that has designated the agency as an entity to provide transportation for seniors and people with disabilities.

During those periods when a vehicle is not needed for specific grant-related purposes, it may be used for services for older adults and people with disabilities. After the needs of these groups have been addressed, the vehicle may be used for transportation of the public, on a space available basis, if such use is incidental to the primary purposes of the vehicle and does not interfere with the use of the vehicle by older adults and people with disabilities. Subrecipients are encouraged to coordinate their resources in order to maximize accessibility and availability of transportation services.

### **Eligible Activities**

- At least 55% of program funds must be used on capital projects that are:
  - Public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable.
- The remaining 45% may be used for:
  - Public transportation projects that exceed the requirements of the ADA.
  - Public transportation projects that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit.
  - Alternatives to public transportation that assist seniors and individuals with disabilities.

### **Section 5311 Formula Grants for Rural Areas**

Funds available from the Section 5311 program are dedicated to public transportation projects that serve rural areas of the state. Public transportation services that are provided with funding support from the program must be open to the public on a regular and continuing basis. Under the general service provisions which govern the program:

- An eligible transportation service may include the transportation of residents of the rural area to and from the nearest urbanized area or areas. Because of the wide range of circumstances under which an operator may provide services in both urbanized and rural areas, the subrecipient develops a plan, for allocating operating costs between the two FTA funding sources. Similarly, subrecipients that purchase vehicles under either the Section 5307 or 5311 program for use in any part of a combined urbanized and rural service area should ensure that it has capital replacement policies in place to ensure that it is using program funds according to Federal eligibility requirements. KYTC/OTD will review and approve the cost allocation plan and/or policies.
- The service is designed for the general public but may be part of a coordinated project designed to maximize the usage of services by transportation disadvantaged individuals; and
- Joint-funded Section 5307 and Section 5311 transportation projects are encouraged provided the level of 5311 funds allocated for service in the area is fair and equitable. This is usually demonstrated in the local subrecipients cost allocation plan.

The services provided under the Section 5311 grants shall, primarily, focus on the rural areas of Kentucky. This does not preclude service into urbanized areas of the state or into neighboring states (within a 50 mile radius) provided that the public resides in Kentucky and the trip originates from Kentucky.

“The purpose of the Section 5311 program is to support public transportation for people living in any area outside of a UZA [urbanized area] as designated by the Bureau of the Census. A UZA consists of a core area and the surrounding densely populated area with a total population of 50,000 or more, with boundaries fixed by the Bureau of the Census. Areas not within a UZA as of the 2010 Census are eligible for Section 5311 funding even if they are included within the metropolitan area planning boundary, which includes the surrounding area expected to be urbanized within twenty years and/or the air quality nonattainment boundary. Since the goal of Section 5311 is to enhance the overall mobility of people living in rural areas, Section 5311 projects may include transportation to or from rural areas. The service area may include destination across a state line. Operators of interstate service are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations.” (FTA Circular 9040.1G, Chapter III, Section 2(a)) Subrecipients are prohibited from providing exclusive service within an urbanized area. Public transportation providers are prohibited from providing public transportation services outside of their designated geographical service areas unless the purpose is to drop off and/or pick up passengers where the trip originated in the

provider's service area. Whenever possible, subrecipients will coordinate service in areas where there is shared geographic service destinations. Any transportation services provided to destinations in-state and outside the state must be in accordance with all applicable State (KRS 96A & 281) and Federal (FMCSA 49 CFR Parts 300-399) operating authority laws and regulations.

Section 5311 subrecipients must comply with all Federal/State requirements imposed by the Federal Transit Administration and KYTC/OTD.

## **Eligible Assistance Categories**

### **Section 5310**

Funds for the Section 5310 program are available for capital expenses and operating expense for new public transportation services and alternatives beyond those required by the ADA to support the provision of transportation services to meet the special transportation needs of older adults and people with disabilities.

Applicants will not be considered if the primary need is for a vehicle to transport clients whose total transportation costs, including capital, are supported through other governmental funds. The applicant must certify that a requested vehicle will be available for use by other (non-client) individuals who are seniors or have disabilities when not needed by the applicant.

Eligible project costs are defined in FTA Circular 9070.1G. However, the regulations permit the KYTC/OTD to further define those costs, which include, but are not limited to:

### **State Administration**

Up to 10% of the State's total fiscal year apportionment is used to fund KYTC/OTD's program administration costs, that includes staff payroll, travel, operating and supply expenses for Section 5310 including administration, planning and technical assistance. Program administration costs are funded at 100% Federal share.

### **Capital Assistance**

Funds for the Section 5310 program are available for capital expenses and to support the provision of transportation services to meet the special needs of seniors and individuals with disabilities. Examples of capital expenses include, but are not limited to:

- a. buses;
- b. vans;
- c. radios and communication equipment;
- d. bus stop and passenger shelters/vehicle shelters;
- e. wheelchair lifts and restraints;
- f. vehicle rehabilitation, manufacture, or overhaul;
- g. preventive maintenance, as defined in the National Transit Database (NTD);
- h. extended warranties which do not exceed the industry standard;
- i. computer hardware and software;
- j. initial component installation costs;
- k. vehicle procurement, testing, inspection, and acceptance costs;
- l. automated vehicle locators, mobile data terminals, cameras;
- m. lease of equipment when lease is more cost effective than purchase. Note that when lease of equipment or facilities is treated as a capital expense, the State must establish criteria for determining cost effectiveness in accordance with FTA regulations, "Capital Leases," 49 CFR part 639 and OMB Circular A-94, which provides the necessary discount factors and formulas for applying the same;
- n. acquisition of transportation services under a contract, lease, or other arrangement. Both capital and operating costs associated with contracted service are eligible capital expenses. User-side subsidies are considered one form of eligible arrangement. The State, as recipient, has the option to decide whether to provide funding for such acquired services. Funds may be requested for contracted services covering a time period of more than one year. The capital eligibility of acquisition of services as authorized in 49 U.S.C. 5310(a)(3) is limited to the Section 5310 program;



- o. the introduction of new technology, through innovative and improved products, into public transportation;
- p. transit related intelligent transportation systems (ITSs); and
- q. supporting new mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management is an eligible capital cost. Mobility management techniques may enhance transportation access for populations beyond those served by one agency or organization within a community. For example, a non-profit agency could receive Section 5310 funding to support the administrative costs of sharing services it provides to its own clientele with other seniors and/or individuals with disabilities or seniors and coordinate usage of vehicles with other non-profits, but not the operating costs of service. Mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service. Mobility management activities may include:
  - (1) The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, older adults, and low income individuals;
  - (2) Support for short term management activities to plan and implement coordinated services;
  - (3) The support of State and local coordination policy bodies and councils;
  - (4) The operation of transportation brokerages to coordinate providers, funding agencies and customers;
  - (5) The provision of coordination services, including employer-oriented Transportation Management Organizations' and Human Service Organizations' customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;

- (6) The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- (7) Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of Geographic Information Systems (GIS) mapping, Global Positioning System technology, coordinated vehicle scheduling, dispatching and monitoring technologies as well as technologies to track costs and billing in a coordinated system and single smart customer payment systems. (Acquisition of technology is also eligible as a stand-alone capital expense).<sup>3</sup>

KYTC/OTD does provide up to 20%, if available, in state funds for matching assistance under the Section 5310 program. Local participation for capital acquisition will be the remainder of the local share.

### Section 5311

The KYTC/OTD shall make funds available for capital, operating and administrative assistance to projects in non-urbanized areas. Operating project budgets will have priority over capital and administrative project budgets. The budget submitted by the subrecipient through the application process shall define the category and amount of funds the subrecipient wishes to receive. Any variation shall require prior approval from KYTC/OTD.

Eligible project costs under the Section 5311 Program shall be determined in accordance with 2 CFR Part 200 subpart A-F<sup>4</sup>, FTA Circular 9040.1G<sup>5</sup> and guidance issued by KYTC/OTD. Project expenditures shall be categorized as capital, operating, or administrative expenses.

### State Administration, Planning and Technical Assistance

A maximum 10% of the Section 5311 funds apportioned to the State of Kentucky can be used for state program administration that includes staff payroll, travel, operating and supply expenses, planning and technical assistance. These are 100% federal funds and are used to support KYTC/OTD personnel directly involved with Section 5311 program management and administration of public transportation. The balance of the apportionment is available to eligible recipients for capital, operating and, at the discretion of KYTC/OTD, Administrative assistance.

## Capital Expenses

Capital expenses include the acquisition, construction, and improvement of public transit equipment and facilities needed for an efficient and coordinated public transportation system. The federal share of eligible capital expenses is 80% and 20% local match. Eligible capital expenses include, but are not limited to:

- Buses, vans, or other paratransit vehicles;
- Radios and communications equipment;
- Passenger shelters, bus stop signs, and similar passenger amenities;
- Wheelchair lifts, ramps, restraints and related vehicle modifications;
- Operational support such as computer hardware/software;
- Maintenance and/or service vehicles;
- Preventive Maintenance;
- Vehicle rehabilitation where candidate vehicles meet the extended useful life and rehabilitation cost limits established by the KYTC/OTD;
- Construction or rehabilitation of transit facilities including design, engineering and land acquisition;
- Construction of or improvements to park-and-ride lots where such facilities are served by public transportation or ridesharing modes that are a form of public transportation;
- Equipment: defined as an article of nonexpendable, tangible personal property with a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statements purposes or \$5,000; <sup>6</sup>
- Purchase of used equipment with the prior approval of the KYTC/OTD. The project must substantiate that the proposed purchase price represents fair market value and that the equipment is in sound working condition so the project can anticipate a reasonable period of remaining useful life and meet the requirements of the Americans with Disabilities Act;
- Facilities to provide access for bicycles to public transit facilities or equipment for transporting bicycles on public transit vehicles;
- Lease of equipment or facilities when leasing is more cost effective than purchase (when lease of equipment or facilities is treated as a capital expense the state will establish criteria for determining cost effectiveness, including non-economic factors such as management efficiency, availability of equipment,

and staffing capabilities borrowing on guidelines stipulated in 49 CFR Part 639.

- The capital cost of contracting.<sup>7</sup>

## **Operating Expenses**

Operating expenses are costs directly related to system operation. Eligible operating expenses include, but are not limited to:

- Fuel and oil;
- Salaries of drivers, mechanics, schedulers, dispatchers, security, and other personnel performing job duties supporting the system's overall operation.
- Operating Supplies and Materials which is an article of nonexpendable, tangible personal property with a useful life of less than one year or an acquisition cost that is less than the lesser of the capitalization level established by the governmental unit for financial statements purposes or \$5,000;
- Replacement tires;
- Replacement parts that do not meet the criteria for capital items;
- Maintenance and repairs;
- Administrative expenses such as Executive Director, Personnel Director/Manager, Secretary, Bookkeepers, Accounting, can be listed on a separate Administrative budget with 80% federal share and 20% local match. Administrative expenses can also be included on the Operating line item budget with a 50% federal share and 50% local match
- Vehicle licenses and fees;
- Vehicle Insurance (either operating or administration); and
- The cost associated with the use of passenger escorts or driver's aides. However, these costs arise most frequently as a result of a mandate in the provision of a contracted service and should therefore be distributed to the contracting agency whenever feasible.

## **Net Operating Expenses**

Net operating expenses are those expenses remaining after Farebox revenues are subtracted from eligible operating expenses. Farebox revenues include fares paid by riders who are later reimbursed by a human service agency. The federal share of net operating expenses is up to 50% and the remaining percentage is the local share.

## **Operations Deficits**

Federal funds may be applied to system operations deficits subject to the availability of funds. Federal participation allows up to 50% of the eligible net operating deficit (gross eligible operating expenses less revenue).

## **Income from Contracts with Human Service Agencies**

Income from transportation service contracts with human service agencies utilizing FTA funds may be used to provide local match under Section 5311 operating assistance. Kentucky Medicaid non-emergency contract revenues may be used for local match.

## **Local Share and Local Funding Requirements**

The Commonwealth of Kentucky has not matched any operating expenses, incurred by §5310, §5311 agencies. Each agency must match 20% of all capital and 50% of all operating and administrative expenditures unless deemed otherwise by FTA. KYTC/OTD can approve an administrative expense line item as 80% federal and 20% local. KYTC/OTD may match up to 20% of all capital expenditures under these programs. It is imperative that each agency discuss in detail in its application how it will provide a local match. All in-kind must be detailed, supported with documentation, and approved by KYTC/OTD. Contract revenue or revenues received from human service delivery (per Senator Leahy Federal Amendment-1986) may be used to match Program funding.

## **Administrative Expenses**

Under the Section 5311 program, the State may treat project administrative expenses incurred by a local provider as a separate cost category from either capital or operating expenses. This allows States to consider administrative expenses as “non-operating” expenses.

- Salaries and fringe benefits of the project director, secretary and bookkeeper, or other personnel performing job duties of an administrative nature;
- Administrative Office supplies and materials;

- Facilities and equipment rental (not lease-purchase);
- Vehicle insurance;
- Marketing;
- Professional services such as legal and accounting assistance;
- Interest on short-term loans to finance project administration or operating costs, with the prior approval of KYTC/OTD, due to a delay in the Federal apportionment of Section 5311 funds or where there are delays in KYTC/OTD's execution of the respective subrecipient's project agreements; and
- Indirect cost expenses may be eligible for reimbursement if a cost allocation methodology has been established and approved by the appropriate authority and KYTC/OTD.
- Administrative costs for promoting and coordinating ridesharing may be eligible if the activity is part of a coordinated public transportation program. The KYTC/OTD will limit the amount of Section 5311 funds an applicant applies toward administrative costs if the KYTC/OTD determines those costs to be excessive in relation to the service being proposed.

### **Unallowable Costs**

2 CFR Part 200 defines items that are unallowable and ineligible for reimbursement under all federal grant programs. Some of the items deemed ineligible are:

- Entertainment expenses;
- Fines and penalties;
- Interest expenses on loans (not previously approved by KYTC/OTD);

- Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims;
- Personal use of an automobile as a fringe benefit;
- Contributions and donations to other entities;
- Costs of goods or services for personal use of a non-Federal entity's employees.

Additionally, the following transit-related expenses are ineligible for Section 5311 assistance:

- Depreciation accrued by public agencies on facilities or equipment purchased with federal funds (federal share only);
- Indirect transit-related functions or activities of local public governing bodies performed as a normal or direct aspect of public administration (e.g. expenses of a city council in considering transit matters);
- Contributions to a capital reserve account; and/or
- Expenses associated with the provision of charter services, thus warranting the maintenance of a separate account for charter expenses and income. (Profit derived from charter services may be used as part of the local matching share as long as the proper procedures have been followed).

## **Federal/State/Local Participation Ratio**

### **Capital**

	<b>Section 5310</b>	<b>Section 5311</b>	<b>Section 5339</b>	
<b>Federal</b>	Up to 80%	Up to 80%	Up to 80%*	
<b>State</b>	Up to 20%	Up to 20%	Up to 20%	
<b>Local</b>	10%-20%	10%-20%	10-20%	

\* The Federal share may exceed 80% for certain projects related to the ADA, the Clean Air Act (CAA), and certain bicycle projects.

## Operating

	<b>Section 5310</b>	<b>Section 5311</b>	<b>Section 5339</b>	
<b>Federal</b>	Up to 50%	Up to 50%	N/A	
<b>State</b>	0%	0%	N/A	
<b>Local</b>	50% or More	50% or More	N/A	

## Administration

	<b>Section 5310</b>	<b>Section 5311</b>	<b>Section 5339</b>	
<b>Federal</b>	N/A	Up to 80%	N/A	
<b>State</b>	N/A	0%	N/A	
<b>Local</b>	N/A	20% or More	N/A	

## Planning

	<b>Section 5310</b>	<b>Section 5311</b>	<b>Section 5339</b>	
<b>Federal</b>	N/A	Up to 80%	N/A	
<b>State</b>	N/A	0%	N/A	
<b>Local</b>	N/A	20% or More	N/A	

## **Local Funding Requirement**

Generally, applicants must provide evidence of possessing the necessary fiscal and managerial capability to implement and manage the proposed project. Subrecipients must comply with all of the requirements contained in the KYTC Office of Transportation Delivery Application package under which the service proposal and funding request is submitted.

### Eligible Local Match

A subrecipient cannot use Section 5310 or other FTA funds as match for Section 5311 program funds. Even though funds are made available to the rural transit provider through a service agreement with a State or local social service agency or private social service organization, FTA funds may not be used as match because they are derived from a DOT



program. Sources of local match must be identified and described in the grant application at the time of grant award.

Local match includes local appropriations, service contracts, dedicated tax revenues, private donations, and net income generated from advertising, concessions, and incidental charter service income.

In-kind contributions (donations of equipment, supplies, property, and/or services that are beneficial and used by the applicant) must have a documented cash value and must be approved by KYTC/OTD. KYTC/OTD reserves the right to reject or disallow in-kind contributions as local share if the estimated cash value cannot be determined independently.

### Section 5310 Eligible Local Share<sup>8</sup>

The local share for §5310 may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a state or local service agency or private social service organization. Some examples of these sources of local match include:

- State or local appropriations;
- Dedicated tax revenues;
- Private donations;
- Revenue from service contracts;
- Transportation development credits; and
- Net income generated from advertising and concessions.
- Noncash share such as donations, volunteered services, or in-kind contributions is eligible to be counted toward the local match as long as the value of each is documented and supported, represents a cost which would otherwise be eligible under the program, and is included in the net project costs in the project budget.
- Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5310 operating assistance. In either case, the cost of providing the contract service is included in the total project cost.
- Transportation Development Credits (formerly referred to as Toll Revenue Credits).
- Program Income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use Program Income as the local share for the grant that generated the income.

## Section 5311 Eligible Local Share<sup>9</sup>

The local share for §5311 may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a state or local service agency or private social service organization. It may be derived from amounts appropriated or otherwise made available to a department or agency of the government (other than DOT) that are eligible to be expended for transportation. The only DOT funds that states can use as local match for Section 5311 projects are from the Federal Lands Highway Program authorized at 23 U.S.C. 204. A state cannot use Section 5310 or other FTA funds as match for Section 5311 program funds. Even though funds are made available to the rural transit provider through a service agreement with a state or local social service agency or private social service organization, FTA funds may not be used as match because they are derived from a DOT program. Examples of non-federal sources that may be used for any or all of the local share include:

- State or local appropriations;
- Dedicated tax revenues;
- Private donations;
- Net income generated from advertising and concessions;
- Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5310 operating assistance. In either case, the cost of providing the contract service is included in the total project cost.
- In-kind match (Recipients may count noncash shares such as donations, volunteered services, or in-kind contributions toward the local match only if the recipient formally documents the value of each noncash share, and if this value represents a cost that would otherwise be eligible under the project. The net project cost must include the value of any in-kind contributions included in net project cost to the extent it is used as local match).

## Section 5339 Eligible Local Share<sup>10</sup>

The local match for Section 5339 may include:

- Cash from nongovernmental sources other than revenues from providing public transportation services;
- Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues. A voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue;
- Amounts received under a service agreement with a state or local social service agency or private social service organization;
- Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;
- Program Income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use Program Income as the local share for the grant that generated the income;
- In addition to funds from Section 403 of the Social Security Act, in a very limited number of situations, other federal funds may be eligible for inclusion in the local match. Such use is dependent upon agreement by the federal agency;
- In-kind contributions of real property as long as the property to be donated is needed to carry out the scope of the approved project.

The following definitions apply in determining sources of local match:

- "Cash" - may include local appropriations, dedicated tax revenues, or profit generated from eligible charter services.
- "Cash Equivalent" - means a contribution/donation of some portion of the acquisition, construction, or improvement of public transportation facilities or equipment. Examples of such contributions would include the donation of land on which a public transportation facility was to be constructed. Such non-cash sources of local match are eligible only when the value is formally documented in accordance with the Common Rule (49 CFR Part 18; Part 19; & 2 CFR Part 200, Subpart A-F).
- "Unrestricted Federal Funds" (including Title XIX) - those funds authorized by a

federal agency (e.g. Health and Human Services) can be used as local match for Section 5311. The project applicants are responsible for identifying unrestricted funds because of their accountability by the other federal agencies involved.

Subrecipients may use funds from other Federal agencies (non-DOT) for the entire local match if the other agency makes the funds available to the subrecipient for the purposes of the project. **The only DOT funds that States can use as local match for Section 5311 projects are from the Federal Lands Highway Program cited in 49 U.S.C. 5311(g)(3).**

- "Donations, Volunteers, In-kind" - all are eligible as part of the "cash" share of the local match. Such non-cash sources of local match are eligible only if the value of each is formally documented and supported in accordance with 49 CFR Part 18; Part 19; & 2 CFR Part 200, Subpart A-F).
- "Purchase of Service Agreement" - considered any agreement or contract between a Section 5311 service provider and a social service agency or organization (state, local, or private), whereby the social service organization purchases service for its clients at a price and according to terms specified in the agreement. Income from service contracts utilizing non-DOT funds to provide human service transportation may be used as farebox revenue.
- "Program Income" – Gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the Grant Agreement during the grant period (the time between the effective date of the grant and the ending date of the grant reflected in the final financial report). In general, program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of advertising and concessions, from social service contract revenue, and from the sale of commodities or items fabricated under a grant agreement. Program Income may be retained as long as the grantee or subgrantee uses it for public transportation purposes, that is, for allowable capital, and operating expenses.

Subrecipients may count non-cash shares such as donations, volunteered services, or in-kind contributions toward the local match only if the subrecipient formally documents the value of each non-cash share, and if this value represents a cost that would otherwise be eligible under the project. The net project cost must include the value of any in-kind contributions included in net project cost to the extent it is used as local match.

## Section 5310

The State requires local match as indicated earlier from non-Federal funds for the Section 5310 programs. The applicant will certify as to the source and availability of the required match in their annual application for funding to the KYTC/OTD. KYTC/OTD may provide state funds match for Section 5310.

## Section 5311

As provided for under KYTC/OTD regulations, applicants requesting state funds to match Section 5311 Federal funds must provide to KYTC/OTD, evidence of the local share during the application process (e.g., letter of financial commitment signed by local governing board or body or other agency or business committing funds that will be used as local match).

KYTC/OTD may provide state funds as match under Section 5311 for Capital projects. The maximum state match will not exceed 20%, with the remaining being local match. If allowable by Kentucky regulations, and if deemed appropriate, the KYTC/OTD may consider providing state funds as match for: Operating and Administrative expenses. KYTC/OTD does not match Technical Assistance expenses with state funds.

The eligible local share must be from non-DOT sources of funding and can include any local or state sources, unrestricted federal funds, and/or revenues from purchase of service contracts (counted as fares). Examples of local share funds include local appropriations, revenue sharing funds, dedicated tax revenues, and net income generated from programs such as advertising or incidental charter services. Funds received by operators who have an active service agreement with a state or local social service agency or a private social service organization may be used as local match. FTA funds (such as Section 5310) may not be used as match because they are derived from a DOT program.

Income from contracts to provide social service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5311 operating assistance. In either case, the cost of providing the contract service is included in the total project cost.

Donations, volunteers, and in-kind contributions are eligible as part of the “cash” share of the local match. Such non-cash sources of local match are eligible only if the value of each is formally documented and supported. Title 49, Code of Federal Regulations, Part 18.24, provides guidance on this subject.

### Contra-Expenses

Contra-expenses are revenue items that directly offset transit expenses and, therefore, are eliminated from the expenses eligible for Section 5311 assistance. Some examples of contra-expenses are farebox revenues, interest income earned on working capital, cash discounts and refunds that directly offset accrued expenses, and insurance claims and reimbursements that directly offset accrued liabilities.

### Use of Other Federal Funds

Local match may be derived from other federal programs that are eligible to be expended for transportation, other than funds from DOT programs. To be eligible for local match for FTA funds, the other federal funds must be used for activities included in the total net project cost of the project. Expenditure of other federal funds for transportation outside of the scope of the project cannot be applied as a credit for local match in the project. Specific program information for other types of federal funding is available at <https://www.transit.dot.gov/ccam/>.

The Coordinating Council on Access and Mobility (CCAM) non-DOT Partners include:

- Department of Agriculture
- Department of Education
- Department of Health and Human Services
- Department of Housing and Urban Development

- Department of the Interior
- Department of Justice
- Department of Labor
- Department of Veteran Affairs
- National Council on Disability
- Social Security Administration

### **Project Duration**

Most project(s) expenses are for a period of 12-months from July 1 to June 30, unless a contract extension is requested by the subrecipient and approved by KYTC/OTD. Projects are funded on an annual basis with few exceptions. New programs may be considered for mid-year start-up and funding on a case-by-case basis and depending on the availability of federal and/or state funds.

# Chapter 3: Project Selection Criteria and Method of Distributing Funds

## Background

To identify potential recipients, the State can be assisted by regional transportation coordinators. There are coordinators in the western, northern, and eastern parts of the State. The coordinators work with most of the transportation-related agencies in their respective areas, and, thus, help KYTC/OTD to identify and assist all potential recipients. In addition, these coordinators serve as the area coordinator for the §5310 program. Through joint efforts with the §5310 program, we are able to identify potential recipients for other Federal programs.

§5310, §5311, and §5339 program information is disseminated to potential recipients in various ways. A notice seeking proposals (“Call for Projects Notice”) to participate in the §5310, §5311, and §5339 programs is published annually (each winter or early spring) on the KYTC/OTD website at <http://transportation.ky.gov/Transportation-Delivery/Pages/Grant-Descriptions.aspx>. However, it is noted that Section 5310 requires a locally developed, coordinated public transit-human services transportation plan (“Public Transit Coordinated Plan”) before applications for funding can be considered. The plan must be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers and participation by members of the public. These plans identify the transportation needs of individuals with disabilities, older adults, and people with low incomes, provide strategies for meeting these needs, and prioritize transportation services for funding and implementation. Application Checklists and required Forms have been prepared to assist applicants in applying for all funds and are posted to the KYTC/OTD website below the Call for Projects Notice. The Checklists and Forms are reviewed and updated each year. In addition, applicants are required to meet with all transportation providers (public, private, etc.) in their service area. A public hearing will be held before raising a fare or carrying out a major reduction of transportation services to solicit public comment. Awareness of public transportation is promoted with a public transportation conference, which is always heavily publicized and well attended. Also, regional coordinators assist in disseminating information to potential recipients. Project Managers (Federal Program Specialists) will speak at various



functions/meetings throughout the Commonwealth, which will allow opportunities to inform the public of these programs. When possible, each Project Manager attends public hearings and coordination meetings and works closely with every agency to ensure that all applications are complete and submitted on time.

In addition to the Public Transit Coordinated Plan selection process for Section 5310, the selection and internal review process involves several different personnel levels. The personnel levels include the Area Coordinator, Project Manager/Federal Program Specialist, and the Public Transit Branch Manager, with final funding approval by the Executive Director of the Office of Transportation Delivery. If a potential subrecipient is eligible (i.e., a public State agency, local public body, transit authorities under KRS 96A or private non-profit organization), certain criteria have been met, and there are funds available, consideration will be given for funding assistance. Criteria considered includes:

1. The need for the service(s);
2. Maintenance of Effort (MOE), fair and equitable;
3. Efforts at coordination;
4. Financial and management capabilities (unspent grants);
5. Locally developed Coordinated Plan Project Rankings;
6. Quality of the operating plan, ridership projections and the amount of local support;
7. Correlation with regional coordination plan implementation strategies;
8. Addresses gaps in current service provisions for targeted communities;
9. Makes use of available resources and leverage resources to the extent possible;
10. Facilitates coordination across public-private, inter-agency and geographic boundaries; and
11. Coordinates with other Federal and/or state programs.

The §5310 program is administered through a “Lead Agency/Coordinated Plan” process. The Lead Agency/Coordinated Plan is the applicant for all eligible agencies in a specific area or region that submits the application for the entire area. This allows KYTC/OTD to manage several agencies/applications as one (1) unit instead of the potential for over 100. It, also, increases coordination opportunities. The majority of the Lead Agencies are “co-mingled” systems (i.e. they receive §5311 assistance and abide by all the regulations and requirements encompassing that program, including Title VI, DBE, EEO, etc.). Once KYTC/OTD receives the application, the Project Manager reviews the application for compliance with KYTC/OTD/FTA rules and regulations. After the application review is complete, the Project Manager refers to the Local Coordinated Plan ranking criteria within the application. The Project Manager will determine if there are more requests for funding than funds available. If there are more requests for funding than funds available, the Project Manager/OTD Management will develop rankings based on funding availability and performance measures (such as long range feasibility and sustainability) compared to other projects to ensure a fair and competitive process.

Section 5311 applicants for New Starts funding must have completed a feasibility study which includes identification of estimated costs and funding options establishing the need for public transportation in the area. The feasibility study must be approved by the Office of Transportation Delivery. Areas considering public transit in their area may apply for funding for a feasibility study during the annual Section 5311 application cycle.

Continuing Section 5311 subrecipients are exempt from submitting any studies except in the event of a proposed major capital project. Continuing Section 5311 subrecipients complete a grant application each year and must demonstrate that they are eligible to continue to receive funding. However, because Section 5311 funds are used for operations, and the funds are critical to maintaining continuous services, KYTC/OTD, generally, considers Section 5311 subrecipients eligible for funding from year to year, unless the annual application, KYTC/OTD on-site review, or other circumstances demonstrate that an agency is no longer eligible. These circumstances include, but are not limited to, an agency’s transition from Section 5311 to Section 5307 funds, elimination of general public service, or determination by KYTC/OTD that an agency no longer meets state or federal requirements for receiving grant funds.

As the direct recipient of Federal funds, KYTC/OTD will electronically submit an application for §5311, §5310, and §5339 grant funds to the FTA Region IV Office in Atlanta, GA for Federal approval. KYTC/OTD will apply for Federal formula funding designated for Kentucky in the annual USDOT allocation published in the Federal Register. KYTC/OTD will

develop a Program of Projects as part of the overall §5311, §5310, and §5339 grants which is submitted electronically. Applicants for funding assistance must be included in the grant's Program of Projects as a sub-grantee. New or unexpected projects can be added through a Federal grant amendment. As part of the Federal approval process, FTA will send, if applicable, notification to the U.S. Department of Labor for comments and approval. The Program of Projects includes information on unions in the sub-grantee transit areas.

## **Funding Criteria for Section 5310**

Section 5310 funds are available for reimbursement of expenditures incurred in association with approved capital expenses. The project application, submitted to KYTC/OTD, must contain the necessary project supporting documentation as outlined in the Section 5310 Application Checklist for FTA Section 5310 Capital Assistance Program. This Checklist is made available on the KYTC/OTD Website at <http://transportation.ky.gov/Transportation-Delivery/Pages/Seniors-Individuals-and-Individuals-with-Disabilities-Program.aspx>.

The following documentation is required:

- Applicant's request for equipment purchase or purchase of services;
- Information about the proposed project including Operating funds requested for projects beyond those required by the ADA;
- Certification of source and availability of the agency's 20% local match;
- Sufficient operational funds; and
- Certification that all statutory and program requirements have been met.

Specific criteria will be published in the annual application for funding.

## **Funding Criteria for Section 5311**

Section 5311 funds are available for reimbursement of expenditures incurred in providing public transportation services in non-urbanized areas. Applicants must meet the following conditions:

- Submit a completed application to the KYTC/OTD by the set due date (usually April 1);
- Meet KYTC/OTD eligibility criteria as stated in Chapter 2 of this Plan;
- Have their application be approved for funding; and
- Have a contract be executed between the applicant and KYTC/OTD.

The project application to the KYTC/OTD must contain the necessary project supporting documentation as outlined in the Section 5311 Application Checklist which is posted on the KYTC/OTD website at [http://transportation.ky.gov/Transportation-Delivery/Pages/Nonurbanized-\(Rural\)-Area-Program.aspx](http://transportation.ky.gov/Transportation-Delivery/Pages/Nonurbanized-(Rural)-Area-Program.aspx). At a minimum, applications for Section 5311 program funding shall consist of three parts:

- Project Description/Justification
- Project Budget
- Certification Requirements

The Project Description/Justification provides general descriptive information about the applicant, outlines what the public transportation program will accomplish and how it will approach the management of resources and operations, and describes how the proposed project will impact the community. The Project Budget identifies the anticipated budget based on individual line items for administrative, operating, technical assistance and/or capital items. The Certification Requirements are necessary to receive federal funds. The following application process should be adhered to while developing an application for public transportation assistance.

### **Project Description/Justification**

The Project Description/Justification should outline the public transportation program operations and finances clearly and its relationship to the local and state public transportation goals. The Project Description serves as the basis for the application as well as an annual program operations report. New applicants shall submit a completed feasibility study in addition to completing a formal application. A project description shall include the following:

- Description of agency mission, objectives and impact within the geographic area(s) to be served;
- Scope of Service;
- Description of routes, service and service frequency, ridership, farebox recovery and route mileage;
- Anticipated contracts for special services;
- Two-year projection of administrative, operational, three year capital;
- Intended charter services in accordance with FTA's Charter Regulations;
- An explanation of how the proposed project compares to applicant's previous year's project;
- The impact of the proposed project (i.e. number of individuals benefiting, expected achievements) and,
- Description of public involvement.

### **Project Budget**

A detailed Project Budget will be included with the application. Budget information will include but may not be limited to:

- Itemization of personnel, salaries, and fringes with appropriate backup;
- Itemized budget expenditures for capital, operating and administrative needs with appropriate backup; and,
- Proposed revenues and matching funds arrangements with appropriate backup.

### **Certification Requirements**

All applicants must include the certifications and assurances listed in the following Application Checklist in order to receive federal funds for the purpose of providing rural public transportation:

KENTUCKY TRANSPORTATION CABINET  
OFFICE OF TRANSPORTATION DELIVERY  
SECTION 5311 (CFDA #20.509) APPLICATION GUIDELINES  
RURAL AREA FORMULA GRANTS  
SFY 2022 APPLICATION CHECKLISTS  
\*\*DUE APRIL 1, 2021\*\*

Add SAM.GOV

**AGENCY NAME/DBA (both)**

**DUNS#**

**Congressional District**

**PART I PLANNING & PROGRAMMING**

<b><u>PAGE</u></b> <b><u>#</u></b>	<b><u>CABINET</u></b> <b><u>USE</u></b> <b><u>ONLY</u></b>
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**1. Project Description**

– Updated Project Description (Routes, Fares, Hours, Days, etc.) (Please include Rural Public, Appalachian, Intercity Bus, etc.)		
– Appalachian Counties listed (if applicable)		
– HSTD/NEMT Involvement/Participation		
– Vehicle/Facility Maintenance Plans		
– Fixed Route/Supplemental ADA Paratransit		
– Deviated or Flexible Fixed Route		
– Demand-Response		
– Intercity Bus Assurance and Description		
– Incidental Services/Cost Recovery (Facilities, Charter, Meals, etc.)		
– Updated Equipment/Rolling Stock/Real Property Inventory Listing		
– Maps of Service Area for <u>each service</u> (Demand Response/Intercity, etc.)		
– Articles of Incorporation/Transit Authority/Local Gov (current)		
– Updated Drug & Alcohol Policy		
– List of Safety Sensitive Employees (w/o SS#) including Job Titles		
– Low Income Population for Service Area		
– Disabled Population for Service Area		
– Training Conducted during Current and One (1) Past Fiscal Year		
– Status of Open 5311/5309/5339 Capital Projects with Updated Milestones		

**2. Project Justification**

– Benefits/Changes/Impact		
– Personnel		
– Relationship to Community		
– Local Support Letters		

– Inaccessible Vehicle Purchase		
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### 3. Project Budget(s)

– Separate Budget for each Applicable Service (Operating, Administrative, Appalachian, Intercity, Intercity Administrative)		
– Separate <b><u>Detailed</u></b> Backup for <b><u>each</u></b> Line Item on <b><u>each</u></b> Budget		
– Explain Non-Emergency Medicaid Involvement in Detail		
– Indirect Line Item (Approved Non-Profit Rate Agreement)		
– DBE/WBE Goal		
– In-Kind Backup Documentation/Justification		
– RTAP Needs Explained & Budget(s)		
– RTAP Application Spreadsheet		
– Source(s) of Contract Revenue w/Description of Services Provided		

### 4. Purchase Requirement(s)

– Annual Equipment Certification		
– Agency Purchase Procedures (one-time only)		
– Bid or Quote Specifications with Bid Package and ICE for <b><u>each Item Requested</u></b>		

### 5. Planning

– Monitoring Agency(s) (Board, Commission, State, ADD, etc.)		
– Studies & Dates		
– Two One-Year Operating Budgets (SFY22 & SFY23)		
– Three One-Year Capital Budgets (SFY22, SFY23 & SFY24)		
– Population of Service Area by County		
– Community Development Projects Description		

## **PART II COMPLIANCE**

### 1. Coordination Meeting

– Certified Mail/Returned Receipts		
– Providers Notified/Copy of Letter		
– Participants/Summary		

### 2. Public Hearing (if necessary)

– Copy of Advertisement/Proof of Publication		
– Participants/Certified Verbatim Transcript		
– LEP Accommodations		

### 3. Private Sector Participation

– Dates/Early Notification/Consultation		
– Description of Proposals Received		
– Rationale for Inclusion/Exclusion		
– Methods for Periodic Service Review		
– True Cost Comparison Methodology		
– Complaints/Resolutions		
– Written Local Complaint Process		

### 4. Certifications and Assurances

– FY2022 Certifications and Assurances		
– Signed Federal Model Clauses		
– Equivalent Service Analysis		
– Local Share and Authorizing Resolution		

## 5. Title VI

– LEP Access Plan		
– Affirmative Action Plan (100 or more employees)		
– <u>One Time</u> Title VI Documentation		

## 6. Elderly and Persons with Disabilities

– Hearing (if service for disabled changed)		
– Status Report on Service for Disabled <b>DUE in FY23 Application</b>		

## 7. Opinion of Counsel

– Current Letter from Counsel		
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## 8. Labor

– Letter to KYTC		
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\_\_\_\_\_  
Agency Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
State/OTD Project Manager Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Initials State/OTD Staff Assistant or Branch Manager Acknowledgement

**\*\*All elements must be checked or marked N/A, by the Project Manager, for an application to receive State and Federal Approval.**

Revised 12/15/2020



## **Project Selection and Evaluation Criteria**

All applications under the Rural Public Transit Program (Section 5311) are reviewed first by the Project Manager who checks for completion of the application, assesses transit needs, and evaluate previous year performance. A baseline formula may be utilized. The formula may include, but not be limited to: ridership, mileage, fleet, rural counties served/population, and economically deprived counties. Annual adjustments can be made based on such factors as excess revenues, unspent funds, fixed routes/para transit services and financial needs.

Funds made available under Section 5311 should augment, rather than replace, existing sources of transportation funds.

## **Method of Distributing Funds**

KYTC/OTD shall make funds available for capital, operating, administrative, and planning assistance to projects in rural areas. The budget submitted by the subrecipient through the application process shall define the category and amount of funds the subrecipient wishes to receive. Any variation shall require prior approval from KYTC/OTD.

Approved subrecipients have funds disbursed on a reimbursement basis. Invoices are submitted to KYTC/OTD on a monthly basis, at a minimum, for Sections 5310, 5311, and 5339 approved expenses. Capital expenses are reimbursed to the subrecipient at approved federal or state share once the capital has been received and is verified as operational by the subrecipient or KYTC/OTD, as appropriate. All funds paid to recipients for expenditures are on a reimbursement basis only. KYTC/OTD may allow, on a case by case basis, state reimbursement simultaneous with a wire transfer to the vendor, with the coordination of the transit system's banking institution.

Eligible project costs under the Section 5311 Program shall be determined in accordance with 2 CFR Part 200, Subparts A-F, FTA Circular 9040.1G and guidance issued by FTA/KYTC. Project expenditures shall be categorized as capital, operating, or administrative expenses.

## **State Administration and Technical Assistance**

Each program allows a percentage of the apportioned funds to be used by the state for costs to administer a program including administration, planning and technical assistance. The amounts allowed for state administration of each program are:

- Section 5310 - up to 10%
- Section 5311 - up to 10%

FTA allows all, or a portion, of the administrative funds for §5310 to be combined to support activities (such as coordinated planning) that are common to all three programs. KYTC/OTD may combine program administration funds into one administrative account, as long as its use is associated with administering the §5310, §5311, or §5339 programs.

### Section 5310

Federal Section 5310 funding guidelines are based on an equal weighted average of the senior/disabled populations within a region as percentages of the state's overall senior/disabled populations.

### **Deobligated Funds**

Funds that are deobligated from an approved Program of Projects remain available to KYTC/OTD and subrecipients for reobligation during the period that the funds were originally available to KYTC/OTD.

If deobligated funds from a program are available at the close of the project year, KYTC/OTD considers previously identified “alternate” projects as approved by the KYTC/OTD during initial allocation as well as special requests from subrecipients. Requests must be in writing. Allocation of deobligated project funds is limited to the availability of funds.

### **Transfer of Federal Funds**

The Governor of the Commonwealth of Kentucky or his designee (KYTC/OTD) may transfer funds from the §5307 Program (from non-urbanized areas under 200,000 population) to §5311 systems with populations under 50,000. Funds from the §5311 Program may also be transferred to §5307 systems with populations under 200,000. KYTC/OTD staff will determine the need for flexibility to utilize both funding sources. KYTC/OTD will consult affected area transit providers when considering transfer decisions. When §5307 funds are transferred to §5311, all §5311 requirements apply. KYTC/OTD may transfer §5310 funds to the §5311 or §5307 programs if the funds will remain un-obligated at the beginning of the 90-day period before the end of the Federal fiscal year. Surface Transportation Programs (STP), congestion Mitigation and Air Quality (CMAQ) funds, and other eligible flexible funds may be transferred from the Federal Highway Administration to the §5311 or §5310 programs for capital needs. Cabinet staff would make this decision with local area transit providers, the area MPO, and the State Highway Engineer's office with the Cabinet Secretary having the final approval. All contractual, procurement and payment procedures would be according to State and Federal guidelines. Notification to FTA of the intent to transfer funds will be in accordance with FTA Circulars 9040.1G and 9070.1G. KYTC/OTD will follow all of the requirements of 9040.1G regarding the transfer of funds.

## **Intercity Bus Program**

KYTC/OTD shall program 15% of the Section 5311 funds (not including RTAP or Appalachian) for the Intercity Bus Program. As needed, KYTC/OTD will consult with private intercity operators. KYTC/OTD will evaluate the need and continue to assess the Kentucky Greyhound abandoned lines. KYTC/OTD will continue to review the transit applications for the intercity bus mobility needs and funding requests. Both operating and capital intercity bus funding requests are eligible. KYTC/OTD Project Managers will assess the intercity bus needs in their respective areas and recommend funding requests to the Public Transit Branch Manager.

## **State Rural Transit Assistance Program (RTAP)**

### SECTION 5311(b)(3)

The Rural Transit Assistance Program (RTAP) is a broad and flexible program of training, technical assistance, research, and other support services for non-urbanized area operators. It provides a source of funding to assist in the design and implementation of training and technical assistance programs tailored to meet the specific needs of non-urbanized transit operators. Providers of specialized transportation and public transit operations in urbanized areas may participate in RTAP sponsored activities, as long as the designed activities benefit rural transit providers. The objectives of RTAP are:

1. To promote the safe and effective delivery of public transportation in rural areas;
2. To foster the development of state and local abilities to address the training and technical assistance needs of the rural transportation community;
3. To improve the quality of information and technical assistance available through the development of training and technical assistance resource materials;
4. To facilitate peer-to-peer connections through the development of local networks of transit professionals;
5. To support the coordination of public, private, specialized, and human service transportation services; and
6. To maintain the Rural National Database of the small urban and rural public transportation industry.

This program may finance the transit employee in attending conferences, workshops, in or out-of-state training sessions, and direct technical assistance. KYTC/OTD can incorporate new training programs into the program schedule as the schedule permits.

KYTC/OTD administers RTAP funding through a selection committee. The RTAP Committee is comprised of the KYTC/OTD Executive Director (or designee), one KYTC/OTD employee, and a member of each of the five Kentucky RTAP regions. The Kentucky Public Transit Association (KPTA) votes upon committee selection every two years. The RTAP Committee meets and determines the selection criteria, local match requirements, and is the decision making body in determining project selection.

Any applicant wishing to complete an RTAP application may do so within the §5310 or the §5311 application.

# Chapter 4: Annual Program Development and Project Approval

KYTC/OTD has simplified the application process. The application packages are available in electronic format via the KYTC/OTD webpage at <http://transportation.ky.gov/Transportation-Delivery/Pages/Grant-Descriptions.aspx>. KYTC/OTD accepts applications via mail or online. If an agency chooses to submit an application online, they must contact KYTC/OTD beforehand for specific instructions.

KYTC/OTD utilizes all of its program funds under the appropriate program. However, during the project development stage, KYTC/OTD staff shall identify all other program funds that have not been obligated.

## Background

KYTC/OTD makes an annual program announcement for all programs in the winter or early spring. KYTC/OTD also updates all member agencies of the Kentucky Public Transit Association (KPTA) during quarterly meetings. The program period of performance is based on the State Fiscal Year (July 1 – June 30). The announcements provide information on available funds and solicit applications from eligible subrecipients. The review of all applications occurs after the closing date which is April 1<sup>st</sup> (or the first business day of April) of each year.

The annual Program of Projects is approved by the KYTC/OTD, and the approved projects shall serve as the basis for the State Transportation Improvement Plan (STIP) update as well as the State's annual application for funds to the Federal Transit Administration (upon STIP approval).

The Program of Projects shall identify each local subrecipient approved to receive funds for that year, a brief description of what the funding is to be used for, funding level (federal and non-federal), and the amount of funds identified for state administrative expenses and intercity bus, as applicable.

## Notice of the Availability of Funds

The statewide announcements for Sections 5305, 5339, 5310, and 5311 are widely disseminated through various methods, to include:

- Existing public transportation providers;
- County government administrators;

- Metropolitan Planning Organizations (MPOs);
- Other local planning agencies;
- Kentucky Public Transportation Association (KPTA);
- Other interested agencies and operators of public transportation service; and
- Internet via the KYTC/OTD and KPTA website.

## Public Hearing Requirements

The Notice and Public Hearing requirement for capital projects that could substantially affect a community or the public transportation service of a community under 49 USC Chapter 53, Section 5323 (General Provisions) was repealed under MAP-21. It is no longer a requirement for Capital projects. However, there are other requirements for a Public Hearing as part of the environmental review process and various planning processes. Section 5311 agencies must have a Public Hearing for any fare increase or for major reduction of transportation.

The law more clearly associates the public involvement and hearing requirements for capital projects with the environmental review required by the National Environmental Policy Act (NEPA) and its implementing regulations. It also broadens the requirement to apply to all capital projects (as defined in 49 U.S.C. 5302).

The applicant must provide an adequate opportunity for public review and comment on a capital project, and, after providing notice, must hold a Public Hearing on the project if the project affects significant economic, social, or environmental interests. These requirements will be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a Public Hearing on every draft Environmental Impact Statement (EIS).

A Public Hearing on Environmental Assessments (EAs) that have a high probability of being elevated to EISs is also required, which ensures that the applicant has complied with the Public Hearing requirement to include in the environmental record for the project.

## Public Notification

KYTC/OTD publicly advertises availability of funds to potential applicants by notifying potential applicants by letter, through the Office of Transportation Delivery and KPTA web sites and through a publication having general circulation across the state. Transit agencies hold Public Hearings and/or Coordination Meetings in their communities, which is included in their application for funding.

## Application Review and Approval Schedule

KYTC/OTD's annual announcements shall provide a schedule of dates for application submittals and review by KYTC/OTD staff, recording of the approval date by the KYTC/OTD and KYTC/OTD's submission of the respective Program of Projects to FTA for review and approval.

The provisional, general application review and approval schedule for applications is as follows:

April 1 <sup>st</sup>	Receipt of all proposals
April/May	Proposals reviewed by KYTC/OTD
May 30 <sup>th</sup>	Project Manager Recommendations submitted to Public Transit Branch Manager/Executive Director for review
May/June/July	Contract Preparation and Release

## FTA Approval

KYTC/OTD will seek FTA award approval for each grant. KYTC/OTD staff will transmit, under the cover letter of project authorization, one copy of the approved contract agreement(s) for execution by the subrecipient. Each agreement shall contain:

- The approved project budget;
- The detailed scope of services to be performed in accordance with the budget; and
- Required federal and state contract provisions and regulations (Terms and Conditions).

The subrecipient should review/execute the contract agreement(s) and return the original, signed agreement to the KYTC/OTD by the due date as prescribed in the cover letter. KYTC/OTD will sign the original contract and forward an executed copy of the contract to the subrecipient.

## **Certifications and Assurances**

Subrecipients must annually assure the KYTC/OTD that they meet certain requirements. Each fiscal year, FTA publishes the required certifications and assurances in the *Federal Register* and updates the certifications and assurances in the TrAMS system. This Notice indicates which certifications and assurances apply to all grantees and subrecipients.

Subrecipients will submit the appropriate certifications and assurances, with an original signature, each fiscal year for all programs for which they will be funded. Subrecipients should use the most recent version of certifications provided by KYTC/OTD during the annual application process.

## **Period of Performance**

The period of performance for contracts will be based on the State's Fiscal Year of July 1 – June 30. Contract extensions requests must be submitted to the Office of Transportation for review/approval and will be considered on a case-by-case basis.

KYTC/OTD may establish different periods of performance for projects that are programmed for funding but have not yet met all the statutory or administrative requirements of the programs pursuant to applicable FTA Circulars.



# Chapter 5: LOCALLY DEVELOPED, COORDINATED PUBLIC TRANSIT and HUMAN SERVICES TRANSPORTATION PLAN

## **State Program Coordination**

### **Introduction**

Title 49 U.S.C. Chapter 53 is the legislation that governs public transit. 49 U.S.C. 5304 mandates that KYTC incorporate transit projects into the State Transportation Improvement Program (STIP) and develop a transit element in the Statewide Transportation Plan. Additionally, KYTC/OTD has developed a Human Service Transportation Delivery Plan to coordinate services between different Commonwealth agencies. It is a goal that a Coordinated Public Transit Plan should promote continuing, cooperative, and comprehensive planning that improves the performance of the transportation network.

## **Human Services Transportation Coordination**

The Human Service Transportation Delivery (HSTD) Branch, within the KYTC/OTD, is responsible for the oversight of the HSTD program. The HSTD program consolidates transportation services previously provided by various state governmental agencies. Formerly, a voucher system was used which proved fragmented and increasingly costly and was vulnerable to fraud and abuse. In addition, transportation services were not easily accessible in some rural areas and non-existent in other areas. The services are now under the auspices of the KYTC, Office of Transportation Delivery, who ensures a safe, efficient, and reliable service by utilizing resources from both HSTD and Public Transportation. The Commonwealth has contracts for 15 regional HSTD brokerages across the state through a Request for Proposal process whose responsibility is to provide scheduling and transportation services. Rather than having five recipients transported in five separate vehicles to the same geographical location and then issuing five separate payments, the Commonwealth now issues one check to a broker who sends one driver and one vehicle through coordination of Human Service Transportation resources and Public Transportation resources.

The HSTD program provides quality services, curbs fraud, waste, and abuse, and streamlines costs. Prior to coordination, non-emergency medical transportation had increased by an average of 22.3% each year, or cumulatively, grew 270% between 1991 and 1998 without expanding services. After coordination, early program results reflected cost containment as well as an increase in the use of the system by recipients. More trips at less the cost! The goal of providing safe, affordable, and coordinated transportation is continually being

realized today with partnerships that include the Department for Medicaid Services, Office of Vocational Rehabilitation and Office of the Blind. KYTC/OTD aggressively pursues additional partnerships to increase access to transportation for citizens of the Commonwealth. Possible future partners include the Department of Aging and Independent Living, Veteran groups, and recipients participating in Department for Medicaid Services' Money Follows the Person program.

A 1996 Actuarial Study Report predicted cost would be over \$60 Million by 2002 under the old voucher system in the non-emergency medical transportation program alone. In 2007, by using coordination through the existing brokerage system, cost was contained at \$55 million, while increasing ridership. Kentucky's coordinated brokerage services have proven to be a success since implementation. Kentucky is now a nationally recognized leader in the coordination of Human Services Transportation.

### **Section 5310 Coordination Plan Development**

Multiple local Coordinated Plans are utilized to reflect the most cost-effective and efficient options in delivering high quality transportation service. Each Plan for coordinating transportation services will need to be developed for each community's needs, skills, and resources. The Office of Transportation Delivery will help to provide the tools, support the Plan with funding and give guidance throughout the planning stages.

The Office of Transportation Delivery also conducts site visits to ensure compliance with federal and state rules and regulations. Reporting requirements of expenditures and ridership are as follows:

1. Line Item Budget
2. Annual Statistical Report (5310) for each vehicle

As our population ages and increases in size due to better health care service, changes need to happen in Public and Human Service Transportation to better service the changing community needs. The Commonwealth of Kentucky is continuing to move forward through coordination between all 120 counties to better serve the communities in transportation.

The Kentucky Public Transit Coordinated Plan for 5310 shall contain the following items:

- (1) An assessment of available services that identifies current transportation providers (public, private, and non-profit);
- (2) An assessment of transportation needs for individuals with disabilities and seniors. This assessment can be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service;
- (3) Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery; and

- (4) Priorities for implementation based on resources (from multiple program sources), time and feasibility for implementing specific strategies and/or activities identified.

## **Project Evaluation and Selection**

Once KYTC/OTD receives the application, the Project Manager reviews the application for compliance with KYTC/OTD/FTA rules and regulations. After the application review is complete, the Project Manager refers to the Local Coordinated Plan ranking criteria within the application. Projects/and or subrecipients selected are to be included in a locally developed, coordinated public transit-human services transportation plan that was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, and non-profit transportation and human services providers; and other members of the public. To the maximum extent feasible, the services funded under Section 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services.

The Coordinated Plan must be updated every 4 years. KYTC/OTD will determine if there are more requests for funding than funds available. If there are more requests for funding than funds available, the KYTC/OTD will develop rankings to ensure a fair and competitive process.

# Chapter 6: Project Financial Management

## Background

As the primary recipient of FTA funds, and as the State agency designated to administer such funds for public transit activities in Kentucky, KYTC/OTD will manage the fiscal elements of these programs in accordance with its existing procedures, FTA guidelines, and other applicable state and federal regulations.

## Project Identification

All projects included in the annual Program of Projects shall be assigned a project number(s) per contract for use as identification purposes.

## Pre-Award Requirements

Upon initial approval of an applicant for inclusion in the Program of Projects, the KYTC/OTD shall review each project for the following:

- Determine that the subrecipient's accounting system is adequate and capable of segregating, accumulating, and maintaining allocable and allowable costs as they apply to the project and/or contract and to document necessary facts that might be needed in audits;
- Establish that proper record retention will be maintained after project completion (record retention shall be required for a three (3) year period after payment of final billing or completion of the project, whichever occurs last);
- Establish procedures or issue any necessary specific instructions to the project that would help prevent any future misunderstanding;
- Establish that proposed costs are reasonable and in line with those that the subrecipient is currently incurring;
- Establish that the subrecipient has the financial capability to perform the services required;
- Determine that the applicant has an inventory procedure to assure that equipment purchased with federal and/or state funds can be accounted for at any time (documentation of the inventories should be on file at all times);
- Assure that the applicant can comply with the provisions of 2 CFR PART 200, Subparts A-F; and
- Assure that the applicant's policies are current and in compliance with Civil Rights, including Title VI, EEO, DBE, and ADA.

## **Establishment of Project Accounts**

### **Standards for Accounting**

The KYTC/OTD and recipient shall establish and maintain as a separate set of accounts or within the framework of an established accounting system, accounts for the project in the manner consistent with Office of Management and Budget (OMB) procedures. The KYTC/OTD and the recipient must establish and maintain an adequate financial management system that provides for:

1. Accumulation and reporting of accurate, current and complete financial information for each grant.
2. Records that identify the source and application of funds for grant-supported activities.
3. Control and accountability for all funds, property, and other assets, including safeguards against unauthorized use.
4. KYTC/OTD will compare the actual outlays with budgeted amounts for each grant funded.
5. KYTC/OTD will assure the shortest elapsed time between U.S. Treasury deposits and KYTC/OTD disbursements.
6. Recipient must comply with 2 CFR Part 200, Subparts A-F and the following procedures for determining reasonableness, eligibility, and proper allocation of costs:
  - a) Common Rule 49 CFR Part 18; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
  - b) Common Rule 49 CFR Part 19; Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
7. Source documentation must support accounting records.
8. Procedures that assure timely and appropriate resolution of audit findings and recommendations.
9. The KYTC/OTD and the Recipient must meet the following accounting system standards:

- a) The accounting system must be complete and reliable. It must embrace and accurately represent the status of all funds, property, assets and liabilities, obligations, receipts and revenues, expenditures and costs.
- b) Recipient must support and show documentation for financial transactions in the recipient's files with pertinent documents available for audit. All transactions must be recorded when made, and in a way that readily permits them to be traced from originating documents through summary records and financial reports.

## **Requests for Payment**

Before a subrecipient may begin requesting and receive payment of funds, an application must be approved and on file, and a fully executed agreement must exist between the subrecipient organization and the KYTC. A subrecipient shall submit invoices on forms provided by the KYTC/OTD and in a manner prescribed by the KYTC/OTD.

Upon receipt of a Request for Payment Invoice, the KYTC/OTD will fully examine the invoice to verify that all applicable requirements are met. The KYTC/Division of Accounts will review each payment request in Pre-Audit.

## **Revisions and Amendments to the Approved Contract**

During the course of the contract it may become necessary to make modifications to the project in the form of budget revisions or contract amendments.

### **KYTC/OTD Contract Amendment:**

A change in the scope or purpose of a contract or the federal and/or state participation.

***Requirement*** - A contract amendment is required when proposed changes in the contract would:

- Alter the scope or purpose of the approved project; or
- Require an increase in the project amount or a change in the federal/state/local matching ratio.

***Change of Scope or Purpose*** - The scope or purpose of a contract is changed by any of the following circumstances:

- Changes in the scope that will involve an increase in the federal and/or state financing of the project; or
- Adding or deleting a project budget category from the contract; or
- Changes to the size or physical characteristics of items being purchased that are originally under contract; or

- Changes that will increase or reduce the number of units to be purchased or constructed where the change exceeds the greater of one (1) unit or 10% of the number approved in the line item; or
- Changes that will extend the period of availability of funds; or
- A change that the KYTC/OTD concludes is significant which modifies a category, project description, or the size of items specified in any contract.

## **Budget Revision**

Changes may be made in the form of a budget revision if the purpose, scope and amount of the contract will remain consistent with the applicable Approved Project Budget. This may include a transfer of funds between or among budget categories within an approved contract. A budget revision cannot be used to change the purpose, scope, total dollar amount or terms and conditions of the contract. The subrecipient may not make budget revisions without the prior approval of KYTC/OTD.

## **Procedures**

Recipient must follow these procedures for any contract change or budget revision:

- All requests for contract amendments or budget revisions must be submitted in writing to KYTC/OTD along with appropriate justifications.
- KYTC/OTD shall notify the subrecipient in writing regarding approval, modification, or rejection.
- In order for a Contract Amendment to be effective, it must be fully executed by both the agency and KYTC/OTD.

## **Close-Out and Audit Procedures**

### **Contract Closeout**

Grant projects are closed at the end of the contract period. The Project Manager, Public Transit Branch Manager and Executive Director will determine at what point a project is ready to close. Fiscal staff is directed to close out the project in EMARS (Electronic Management Administrative and Reporting System). When a capital Section 5310/5311/5309/5339 project has reached the end of the contract period, and there is a balance of funds, the Project Manager will prepare a letter to the transit system stating that this project will be closed. In some instances, capital contracts may be extended by six (6) months or longer with sufficient justification and documentation from the transit system. The decision to extend the period of a grant will be made by the Project

Manager, Public Transit Branch Manager and the Executive Director. A contract amendment will be necessary to extend the period of a contract. All closeout documentation should be maintained in the Project File. In case of a finding of overpayment, as a result of the audit report, the Project Manager will seek a refund from the transit system. The Executive Director will direct fiscal staff to process the refund within EMARS and the appropriate grant fund. These funds are immediately re-programmed within the federal grant scope.

Throughout the grant year, the Project Manager will monitor all revenue earned by a transit system. At the end of the Section 5311 operating grant year, the Project Manager must determine whether all revenues earned by the system have been properly documented and utilized or whether a refund of federal funds is required. Any excess contract revenue must have KYTC/OTD approval to be placed back into the subgrantee's system for "mass transit purposes only." It is preferred for transit agencies to maintain sufficient cash and/or receivables to pay obligations and demonstrate **Operational Financial Stability (OFS)**.

The total amount of transit operating expenses from an agency's highest four (4) months of the grant's past year will be used to determine the agency's Operational Financial Stability (OFS). The total (before farebox) amount of transit operating expenses incurred during the previous year's highest four (4) months will be the amount of excess revenues, if available, to maintain solvency or OFS. Section 5311 federal operating and administrative dollars (**NOT** including Intercity and Appalachian) may not be accessed until a transit agency's excess revenues are equal to or less than the OFS amount. Emergency supplemental operating funds (such as the Coronavirus Response and Relief Supplemental and Appropriations Act 2021) allocated by USDOT/FTA may be accessed, regardless of the OFS amount, when eligible expenses have been incurred. Any excess revenues carried forward must have written approval from KYTC/OTD. Section 5311 financial assistance is to assist areas that have a "demonstrated financial need."

Capital projects are not closed by KYTC/OTD until the equipment has met its useful life (vans 100,000 miles or 4 years or older). There are three "closeouts" recognized as follows:

- (1) State "subgrantee" closeout at the end of the project period
- (2) State/Federal closeout recognized by FTA. Federal approval is required after an entire grant is closed.
- (3) Final State closeout: This recognizes all equipment in a grant. The retention period has been met, and all files are archived or disposed.

## **Audit**

The KYTC/OTD and recipient shall permit the Secretary and the Comptroller General of the United States or any of their duly-authorized representatives to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts of the KYTC/OTD and recipients with regard to the project. To the extent the charges for such audits are necessary for the



administration and management of functions related to the project, the costs of such audits are allowable. KYTC/OTD and recipients shall comply with the Single Audit Act Amendments of 1996 and 2 CFR Part 200, Subparts A-F.

Each recipient must have an independent, certified audit performed in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Two copies of the audit report are to be submitted to KYTC/OTD, and postmarked within 30 calendar days after receipt of the Auditor's report or nine (9) months after the end of the fiscal year (March 31<sup>st</sup> of each year), whichever comes first in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. If the due date falls on a Saturday, Sunday or Federal Legal Holiday, the audit is due the next business day. The Office of Transportation Delivery will utilize the issue date on the Independent Audit Report Letter as the receipt date unless the recipient provides evidence that the Audit Report was actually received (via hand delivery, Postal Mail or E-mail) on a different date. A recipient's board approval date of the audit or the Audit Report release date are not accepted dates of receipt. Any recipient expending less than \$750,000 in federal funds in a fiscal year, is not required to have a 2 CFR PART 200-Audit, but should submit an annual independent financial audit to the KYTC/OTD within 30 days after receipt of the auditor's report(s) or nine months after the end of the Fiscal Year, whichever comes first. Subrecipients are to electronically submit the data collection form to the Federal Audit Clearinghouse (FAC) on time as required by 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This regulation requires that the data collection form must be submitted to FAC within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the fiscal year.

KYTC/OTD will log each audit received and submit the audit report for those agencies receiving more than \$750,000 to the KYTC/Division of Internal Audits to perform a desk review in accordance with generally accepted auditing practices. KYTC/OTD will conduct a financial and grant review of the audit report. If a finding is discovered by Internal Audits or KYTC/OTD, a letter or follow-up asking for an explanation on the finding(s), will be made. The Office of Transportation will utilize the Audit Report date (on the letter the auditor issued in the report) unless it is otherwise documented that the actual date the transit agency took receipt of the audit report (as submitted to the transit agency from their Independent Auditor) is a date different from that on the letter. The thirty (30) days will begin from the date the Audit Report Letter is issued.

# Chapter 7: Procurement and Third-Party Contract Management

## Procurement Options through the Commonwealth of Kentucky

Each step of the procurement process must be reviewed and approved by KYTC/OTD before the subrecipient can proceed with the next step. KYTC/OTD will have final approval on the quote/bid/proposal award.

### I. METHODS OF PROCUREMENT CAPITAL PURCHASES

#### Reference FTA Circular 4220.1F

As a one-time submission, subrecipients will submit their Board/Commission-approved Procurement Procedures and any revisions thereafter. KYTC/OTD will review and approve for compliance with applicable Federal and State procurement laws and regulations.

- A. *Procurement by Small Purchases.* Small purchase procedures are those simple and informal procurement methods that are used to secure services, supplies, or other property that do not cost more than the state maximum as stated in KRS 45A.385 or the federal Simplified Acquisition Threshold (currently \$250,000) as stated at 48 CFR Subpart 2.101 and 2 CFR 200.88.
- B. *Procurement by Sealed Bids.* The sealed bid procurement method is the preferred procurement method for acquiring property, construction, and other services. The contracting party shall solicit all bids publicly and shall award a firm-fixed-price contract to the responsive and responsible bidder whose bid is the lowest in price.
  - 1. The following conditions should be present:
    - a) A complete, adequate, and realistic specification or purchase description is available;
    - b) Two or more responsible bidders are bidding and able to compete effectively for the business;
    - c) Price is the basis for awarding a fixed-price contract;
    - d) Contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award;
    - e) Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

2. The following requirements apply:

- a) The Invitation for Bids (IFB) will be publicly advertised, and bids shall be solicited from at least two, but three or more are encouraged, known suppliers;
- b) The Invitation for Bids (IFB) shall define the items or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid;
- c) Bidders are allowed sufficient time to prepare bids before the date of bid opening;
- d) All bids will be publicly opened at the time and place announced in the Invitation for Bids (IFB);
- e) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder; and
- f) The contracting party shall reject any bid and all bids if there is a sound documented business reason.

C. *Procurement by Competitive Proposals (Request for Proposals)*. Competitive proposals are a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding, and the recipient expects that more than one source will be willing and able to submit an offer or proposal.

1. The following conditions should be present:

- a) The property or service to be acquired will be described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present;
- b) Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids (IFB), and the subrecipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid;
- c) Contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price;
- d) Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

2. The following requirements apply:

- a) Requests for Proposals (RFP) will be publicized;
- b) All evaluation factors and their relative importance will be identified in the solicitation, but numerical or percentage ratings or weights need not be disclosed;
- c) Proposals will be solicited from, at least, three qualified sources;
- d) There will be a specific, written method for conducting technical evaluation of the proposals received and to determine the most qualified offeror;
- e) A responsible offeror, whose proposal is most advantageous to the KYTC/OTD or recipient's program with price and other factors considered, will receive an award;
- f) A contract may be awarded to the offeror whose proposal provides the greatest value to the recipient. To do so, the solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The determination should be based on which proposal represents the "best value" by an analysis of the tradeoff of qualitative technical factors and price or cost factors.

D. Architectural Engineering (A&E) Services and Other Services. FTA's enabling legislation at 49 U.S.C.

Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below.

- a) Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for

an FTA assisted construction project must be selected through qualifications-based procurement procedures.

- b) Qualifications-Based Procurement Procedures Prohibited. Unless FTA determines otherwise in writing, a recipient may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Even if a contractor has performed services listed herein in support of a construction, alteration, or repair project involving real property, selection of that contractor to perform similar services not relating to construction may not be made through the use of qualifications-based procurement procedures.

A project involving construction does not always require that qualifications-based procurement procedures be used. Whether or not qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project are not services for which qualifications-based procurement procedures may be used. Nor is actual construction, alteration, or repair to real property the type of services for which qualifications-based procurement procedures may be used.

- c) Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:

- Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
- Price. Price is excluded as an evaluation factor.
- Most Qualified. Negotiations are first conducted with only the most qualified offeror.
- Next Most Qualified. Only after failing to agree on a fair and reasonable price may

negotiations be conducted with the next most qualified offeror. Then, if necessary,

negotiations with successive offerors in descending order may be conducted until contract

award can be made to the offeror whose price the recipient believes is fair and reasonable.

- Effect of State Laws. To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based-procurement requirement for acquiring architectural, engineering, and design services, State procedures, rather than Federal “Brooks Act” procedures (40 U.S.C. Sections 1101 through 1104), may be used.

E. Other than Full and Open Competition.

Normally, the recipient must provide for full and open competition when soliciting bids or proposals. However, under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

When Appropriate. A recipient may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

1. Adequate Competition. After soliciting several sources, FTA expects the recipient to review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the recipient determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the recipient may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
2. Sole Source. When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.
  - a. Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:
    - i. Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.

- ii. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
  - iii. Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - iv. Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- b. Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- i. Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.
  - ii. Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.
3. Unusual and Compelling Urgency. The Common Grant Rule for governmental recipients permits the recipient to limit the number of sources from which it solicits bids or proposals when a recipient has such an unusual and urgent need for the property or services that the recipient would be seriously

injured unless it were permitted to limit the solicitation. The recipient may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.

4. Associated Capital Maintenance Item Exception Repealed. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) repealed the special procurement preference previously authorized for associated capital maintenance items. Thus, any sole source procurement of associated capital maintenance items must qualify for an exception under the same standards that would apply to other sole source acquisitions.

F. Small and Minority Firms and Women's Business Enterprise.

- The KYTC/OTD and recipient will take all necessary affirmative steps to ensure the use of minority firms, women business enterprises, and small business firms to the fullest extent practicable. These steps include:
  - a) Placing qualified small and minority businesses and women business enterprises on solicitation lists;
  - b) Assuring that small and minority businesses and women business enterprises are solicited whenever they are potential sources;
  - c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women business enterprises;
  - d) Establishing delivery schedules, where the requirement permits, that encourage participation by small and minority business and women's business enterprises;
  - e) Use the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce and the KYTC Office of Civil Rights and Small Business Development;
  - f) Requiring the prime contractor to include the preceding provisions in FTA assisted subcontracts.
  - g) Maintaining a bidders list in compliance with 49 CFR Part 26.

- G. Contract Cost and Price. The KYTC/OTD or recipient must perform a cost or price analysis in connection with every procurement action over the Simplified Acquisition Threshold (currently set at \$250,000), including change orders/contract modifications and sole source procurements. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, independent



estimates must be made before receiving bids or proposals. An Independent Cost Estimate (ICE) must be performed prior to every procurement over the Simplified Acquisition Threshold (currently set at 250,000).

- H. Pre-Award and Post Delivery Audit Certifications (49 CFR Part 663). For rolling stock purchases, the subrecipient conducts a Pre-Award and Post-Delivery Audit to assure compliance with its bid specifications, Buy America, and Federal Motor Vehicle Safety Standards (FMVSS) requirements. Forms are included on the KYTC/OTD website at <http://transportation.ky.gov/Transportation-Delivery/Pages/Forms.aspx>.

#### Pre-Award Audits

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock. A Pre-Award Audit includes:

1. A Buy America Certification as described in 49 CFR §663.25;
2. A Purchaser's Requirements Certification as described in 49 CFR §663.27; and
3. A manufacturer's Federal Motor Vehicle Safety Certification as described in 49 CFR §663.41 or §663.43.

A Pre-Award Buy America Certification is a certification that the recipient keeps on file that:

1. There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
2. The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
  - a. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
  - b. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

A Pre-Award Purchaser's Requirements Certification is a certification that the recipient keeps on file that:

1. The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and
2. The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

A Pre-Award Federal Motor Vehicle Safety Standards Certification requires the following if compliant:

1. The FMVSS self-certification sticker information from the manufacturer and,
2. A completed Pre-Award FMVSS compliance certification

A Pre-Award Federal Motor Vehicle Safety Standards Certification requires the following when exempt:

1. The manufacturer's certified statement that the contracted vehicles will not be subject to the FMVSS regulations, and
2. A completed Pre-Award FMVSS exemption certification.

#### Post-Delivery Audit Requirements

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a Post-Delivery Audit is complete before title to the rolling stock is transferred to the recipient. A Post-Delivery Audit includes:

- A Post-Delivery Buy America Certification as described in 49 CFR §663.35;
- A Post-Delivery Purchaser's Requirements Certification as described in 49 CFR §663.37;
- and
- A manufacturer's Federal Motor Vehicle Safety Standard (FMVSS) self-certification information as described in 49 CFR Part §663.41 or §663.43.

A Post-Delivery Buy America Certification is a certification that the recipient keeps on file that:

1. There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or

2. The recipient is satisfied that the rolling stock received meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
  - a. Component and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
  - b. The actual location of the final assembly point for the rolling stock, including a description of the activities which took place at the final assembly point and the cost of the final assembly.

A Post-Delivery Purchaser's Requirements Certification is a certification that the recipient keeps on file that:

1. Except for procurements covered under No. 3 in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall
  - A. Provide accurate records of all vehicle construction activities; and
  - B. Address how the construction and operation of the vehicles fulfills the contract specifications.
2. After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.
3. An on-site resident inspector is not required for (1) procurements of 10 or fewer buses; or (2) procurements of 20 vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) any number of primary manufacturer standard production and unmodified vans. For such procurements, only visual inspection and road testing upon delivery to the recipient are required to certify compliance with the contract specifications.
4. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size. One in-plant inspector can meet the

requirement for multiple grantees. The inspector may not be an agent or employee of the manufacturer.

49 CFR §663.39 Post-delivery audit review.

- (a) If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.
- (b) This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

A Post-Award Federal Motor Vehicle Safety Standards Certification requires the following if compliant:

- 1. Verification that the manufacturer's FMVSS sticker is affixed to each vehicle; and,
- 2. A completed Post-Delivery FMVSS compliance certification.

A Post-Award Federal Motor Vehicle Safety Standards Certification requires the following when exempt:

- 1. The manufacturer's certified statement that the contracted vehicles are not subject to the FMVSS regulations, and
- 2. A completed Post-Award FMVSS exemption certification.

KYTC/OTD will review and concur in the bid award and vendor agreement, by requiring copies of the signed Pre-Award Audit Certifications. The recipient may not sign the vendor agreement prior to receipt of the Pre-Award Audit Certifications. As part of the review and reimbursement process, upon vehicle arrival, KYTC/OTD will require copies of the signed Post-Delivery Audit Certifications.

## **Lobbying**

Recipients of federal grants from any source exceeding \$100,000 annually must certify that they have not and will not use federally appropriated funds for lobbying (45 CFR Part 93). State agencies administering 5310 and 5311 programs certify to FTA; 5310 and 5311 subrecipients certify to the KYTC/OTD. State agencies and subrecipients must impose lobbying restrictions on their third-party contractors and must obtain certifications.

Lobbying is defined as influencing or attempting to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining a federal grant, cooperative agreement, or any other federal award.

Currently, subrecipients certify to KYTC/OTD through the grant agreements and the annual certifications and assurances. Specific contracts, grants or cooperative agreements are actions covered by the restrictions on lobbying. For example, activities such as submitting grant applications, status inquiries, and professional and technical services are not lobbying and do not need to be disclosed. Efforts to influence Federal officials about specific grants and contracts or to ask Congressional representatives for support of a particular application or bid must be disclosed. Also, lobbying restrictions do not apply to activities that might influence policy issues.

Subrecipient responsibility:

- Sign a certification of compliance pertaining to lobbying activities.
- Where third party contractors are involved, subrecipients must obtain a signed certification of compliance from the contractor.
- If non-federal funds have been used to support lobbying activities in connection with a grant from KYTC/OTD, and the subrecipient receives federal grants exceeding \$100,000, fill out a Standard Form-LLL and submit to KYTC/OTD
- If contractors receive more than \$100,000 in federal funds and use non-federal funds to support lobbying, subrecipients must obtain the completed Standard Form-LLL for the contractor and submit to KYTC/OTD.

## **Debarment and Suspension**

To prevent fraud, waste and abuse in federal transactions, individuals or entities that, by defined events or behavior, potentially threaten the integrity of federally administered programs are excluded from participation in FTA-assisted programs.

KYTC/OTD will not enter into any third-party contract or agreement with any party included in the “List of Parties Excluded from Federal Procurement or Non-procurement Programs.” This pertains to all FTA sponsored program funds. Listing of excluded parties can be located at: Systems for Award Management (SAM) <https://www.sam.gov/>.

Subrecipients receiving more than \$25,000, through a project from KYTC/OTD, must certify they are not debarred or suspended from any Federal agency. This is accomplished through the application process and the annual certifications and assurances.

Subrecipient responsibilities:

- Sign a certification of compliance pertaining to debarment and suspension.
- Verify that a third-party contractor is not disqualified by a Federal agency by including a snapshot of the Systems for Award Management (SAM) screen showing no findings with their request for award concurrence.
- Obtain a signed certification or add a clause or condition to the contract or subcontract regarding debarment and suspension.

### **Buy America Provisions/Pre-Award & Post-Delivery Audits/New Model Bus Testing**

Buy America provisions are federal “domestic content” regulations. Buy America affects vehicle and equipment purchases and construction contracts valued at \$150,000 or more. It provides, with exceptions, that federal funds may not be obligated for transportation projects unless the steel and manufactured products used in them are produced in the United States.

### **Pre-Award and Post-Delivery Audits**

Vehicle procurements must be conducted in accordance with “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases” (49 CFR Part 663). The rule requires that any subrecipient who purchases rolling stock, with federal funds, certify to the KYTC/OTD that it has conducted a Pre-Award and Post-Delivery Audit to ensure compliance with its bid specifications, Buy America requirements and Federal Motor Vehicle Safety Standards.

Recipients must keep a Post-Delivery Purchaser’s Requirements Certification on file that certifies:

- A resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture and completed a report on the manufacture of the vehicles; AND
- After reviewing the Resident Inspector's Report, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.

Recipients are required to have an on-site resident inspector at the manufacturing site throughout the manufacturing period. The resident inspector must:

- Visit component manufacturing sites, as necessary, during the period of manufacture;
- Remain full-time at, or periodically visit, the final assembly location during the period of manufacture; and
- Visually inspect, participate in, and witness performance tests for the vehicles.

The resident inspector must prepare the Resident Inspector's Report that, at a minimum, provides:

- Accurate records of all vehicle construction activities (i.e., component manufacturing processes, final assembly activities, and collected quality control data);
- A summary of how the construction and operation of the vehicles meet (or do not meet) the contract specifications. The report should reference the above cited manufacturing processes, final assembly activities, and quality control data.

It is the recipient's responsibility to ensure that the vehicles comply with the contract specifications and identify areas of noncompliance. The purpose of the Resident Inspector's Report is to assist the recipient in verifying that the vehicles meet the contract specifications.

Upon delivery of the vehicles and following receipt and review of the Resident Inspector's Report, the recipient must visually inspect and road test the vehicles.

Once the recipient has reviewed the Resident Inspector's Report, successfully inspected and tested the delivered vehicles, and is satisfied the Purchaser's Requirements have been met, the recipient must then:

- Complete a Post-Delivery Purchaser's Requirements Certification.

Recipients must maintain a file for future FTA reviews that should include:

- The Post-Delivery Purchaser's Requirements Certification,
- A copy of the Resident Inspector's Report and any associated supporting documentation,

- The solicitation specification,
- The manufacturer's bid specification,
- Authorizations of approved equals, and
- Any other supporting documentation.

### **New Model Bus Testing**

New bus models must be tested by the Vehicle Systems and Safety Program staff at the FTA sponsored Altoona Bus Research and Testing Center in Altoona, PA before federal funds can be expended to purchase them. The FTA rule exempts certain vehicles from testing (usually sedans and unmodified mass-produced vans). The primary purpose of the testing program is to determine the strengths and weaknesses inherent in the particular model for typical operating conditions. Ideally, subrecipients use the bus-testing report as one of the criteria used to select the vehicle for purchase.

Subrecipients purchasing equipment with federal funds are required to receive the Altoona/STURAA bus test report for each vehicle purchased and include it in procurement files, if the test is required. The vendor, prior to subrecipients signing off, should provide the report on post-delivery certification forms and acceptance of the vehicle(s) from the vendor. On August 1, 2016 (and effective October 31, 2016), FTA issued a new pass/fail standard and new aggregated scoring system for buses and modified vans that are subject to FTA's bus testing program, as mandated by Section 20014 of MAP-21. The pass/fail standard and scoring system address the following categories as required by MAP-21: structural integrity, safety, maintainability, reliability, fuel economy, emissions, noise, and performance. Recipients of FTA grants are prohibited from using FTA financial assistance to procure new buses that have not met the minimum performance standards established by this Final Rule. FTA, also, requires bus manufacturers to provide country-of-origin information for test until bus components, in lieu of applying Buy America U.S. content requirements to all buses submitted for testing.



The remaining actions, as stated in the Final Rule, are discretionary actions to strengthen the program:

- Establish testing procedures and establish minimum performance standards, which are generally based upon the pre-MAP-21 tests, and a pass/fail scoring system for new bus models, with a minimum passing score of 60 points. A bus model could receive up to an additional 40 points based on its performance above the proposed minimum performance standard in particular test categories. Buses would need to achieve at least a minimum score in each category in order to pass the overall test and be eligible for procurement using FTA financial assistances.
- Establish check-in procedures, including FTA approval, for new bus models proposed for testing.
- Require transit vehicle manufacturers to submit Disadvantaged Business Enterprise (DBE) goals to FTA prior to scheduling a test.
- Determine a new bus model's total passenger load based on the manufacturer's maximum passenger rating, including accommodations for standees.
- Establish a simulated passenger weight of 150 lbs. for seated and standing (standee) passengers, and a weight of 600 lbs. for passengers who use wheelchairs.
- Require test model buses to identify the country-of-origin for the components of the test vehicle to facilitate a transit agency's ability to compare it with the actual production model.
- The replacement of the on-road fuel economy test with the fuel economy testing already conducted during the emissions test on the chassis dynamometer.

Subrecipient responsibilities:

- Review the manufacturer's Buy America certification and supporting documentation before a contract is awarded to purchase vehicles (pre-award audit). The documentation review should include vehicle sub-components (place of origin, cost and place of final assembly).
- Subrecipients must determine to their own satisfaction that the manufacturer can meet the Buy America requirements.
- Perform a post-delivery audit after vehicles have been delivered. This post-delivery audit ensures that the manufacturer complied with Buy America, the Federal Motor Vehicle Safety Standards, and the subrecipient's specifications. Subrecipients must complete the post-delivery audits before they accept the vehicles and pay the vendor.

- Submit all documentation and certifications to the KYTC/OTD. Documentation must be received by the KYTC/OTD prior to final payment to the subrecipient.
- Contact the KYTC/OTD for technical assistance if needed.

Reimbursement for capital items will not be made until all required documentation is submitted to KYTC/OTD and has been reviewed and approved by KYTC/OTD staff.

KYTC/OTD may allow, on a case by case basis, state reimbursement simultaneous with a wire transfer to the vendor, with the coordination of the transit systems banking institution.

## **Purchase of Service Contracts**

Subrecipients may purchase service from private sector transportation providers as well as public providers. Under such arrangements, certain special conditions apply to the purchase of service agreement. Subrecipient must ask permission in writing from KYTC/OTD to use Purchase Service Contracts. KYTC/OTD shall approve the proposed purchase of service contracts prior to execution by the subrecipient.

## **Vehicle Purchasing and Leasing**

KYTC/OTD does not purchase vehicles directly with state or federal funds. Subrecipients are responsible for purchasing equipment and services financed by contract award. Subrecipients may make purchases through State purchasing agreements that include the Federal Clauses; however, Subrecipients must secure KYTC/OTD approval prior to using any State Price Contract or joint bid through the Kentucky Public Transit Association (KPTA). KYTC/OTD reviews and approves every step of the procurement process for all KPTA joint bid packages.

Vehicles not purchased off a state contract or joint bid with KPTA are to be procured by provider agencies using an open competitive bid process that follows federal and state procurement laws and rules. Any Request for Proposals (RFP) must be reviewed and approved by KYTC/OTD prior to a subrecipient signing a contract with a vendor. KYTC/OTD offers technical assistance concerning the purchase of equipment. The KYTC/OTD and subrecipient are responsible for protecting the state and federal interest in all equipment and facilities purchased.

If cost effective, lease agreements may be permissible, but subject to KYTC/OTD approval.

## **Bid Protests/Appeals**

- The subrecipient is responsible for settling disputes resulting from any procurement action.
- Under limited circumstances, a bidder may protest to KYTC/OTD pursuant to a subrecipient's award of a contract.

## **FTA Third Party Contracting Standards**

1. KYTC/OTD and the recipient must comply with Kentucky Revised Statute 45A and FTA Circular 4220.1F when entering into procurement contracts. During the procurement process, both parties shall refer to and use Federal Transit Administration “Best Practices Procurement & Lessons Learned Manual” dated October 2016.
2. The KYTC/OTD will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. The KYTC/OTD and the recipient will assure that ethical conduct is maintained by adhering to the following requirements:
  - a) The KYTC/OTD and recipients will maintain a written code of standards of conduct governing the performance of their employee(s) engaged in the award and administration of contracts. No employee, officer, or agent of the KYTC/OTD or recipient shall participate in the selection, award or administration of a contract supported by FTA funds, if a conflict of interest, real or apparent, would be involved.
  - b) The KYTC/OTD and recipient’s officers, employees, or agents will neither solicit nor accept gifts or gratuities totaling a value greater than \$25 in a single calendar year, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
  - c) A written policy shall include procedures for identifying and preventing real and apparent organizational conflicts of interest.
4. KYTC/OTD and recipients’ procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items.
5. To foster greater economy and efficiency, the KYTC/OTD and the recipient are encouraged to enter into state and local government agreements for procurement of use of common goods and services, if all required Federal clauses are included in the purchase agreement.
6. All FTA recipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such is feasible and reduces project costs.
7. The KYTC/OTD and subrecipients are encouraged to use value-engineering clauses in contracts, for construction projects of sufficient size, to offer reasonable opportunities for cost reduction. To ensure that systematic and creative analyses of each contract item or task is at the overall lowest cost, both parties shall use value-engineering.
8. The KYTC/OTD and subrecipient will make awards only to responsive and responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Both parties shall consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

9. The KYTC/OTD and subrecipient will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, reasons for selection of contract type, reasons for contractor selection or rejection, and the justification for the contract cost or price. The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. KYTC/OTD and FTA recognize that these written records will vary greatly for different procurements.
10. In accordance with good administrative practice and sound business judgment, the KYTC/OTD and subrecipient, alone, will be responsible for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to: source evaluation and selection, protests of awards, disputes, and claims. The FTA, also, encourages the recipient to use appropriate alternative dispute resolution procedures. The recipient/subrecipient is not relieved of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration. These standards do not relieve the KYTC/OTD or subrecipient of any contractual responsibility under its contracts.
11. The KYTC/OTD and subrecipient will have written procedures to handle and resolve protests relating to their procurements and shall, in all instances upon FTA request, disclose information regarding a protest to FTA. FTA reserves the right to require the recipient to provide copies of a particular protest or all protests, and any or all related supporting documents as FTA may determine necessary.
12. Governmental recipients are required to notify FTA when it receives a third party contract protest to which this circular applies, and to keep FTA informed about the status of the protest. A non-governmental recipient involved in a protest is similarly expected to notify FTA when it receives a third party contract protest to which the circular applies, and to similarly keep FTA informed about the status of the protest. The recipient is expected to provide the following information:
- a. Subjects: A list of protests involving third party contracts and potential third party contracts that:

- i. Have a value exceeding \$100,000, or
  - ii. Invoice a controversial matter, irrespective of amount, or
  - iii. Involve a highly publicized matter, irrespective of amount.
- b. Details: The following information about each protest:
  - i. A brief description of the protest,
  - ii. The basis of disagreement, and
  - iii. If open, how far the protest has proceeded, or
  - iv. If resolved, the agreement or decision reached, and
  - v. Whether an appeal has been taken or is likely to be taken.
- c. When and Where: The recipient should provide this information:
  - i. In its next quarterly Milestone Progress Reports, and
  - ii. At its next Project Management Oversight review, if any.

### **3<sup>rd</sup> Party Contract Competition**

1. Except as permitted by Federal/State law or regulations, a recipient of Federal assistance is required to use third party procurement procedures that provide full and open competition which means that all responsible sources are permitted to compete. 49 U.S.C. Section 5325(a), also, requires an FTA recipient to conduct all third party procurement financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. Restrictive situations include, but are not limited to:
  - a) Imposing unreasonable business requirements for bidders or offerors;
  - b) Requiring unnecessary experience and excessive bonding;

- c) Noncompetitive pricing practices between firms or between affiliated companies;
- d) Noncompetitive awards to any person or firm on retainer contracts if that award is not for the property or services specified for delivery under the retainer contract;
- e) Organizational conflicts of interest;
- f) Specifying only "brand name" products without allowing offers of "an equal" product, or allowing "an equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award;
- g) Any arbitrary action in the procurement process; and
- h) Using prequalification procedures that conflict with prequalification standards described in FTA Circular 4220.1F.
- i) The KYTC/OTD and recipient will conduct procurement in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals. Exceptions expressly mandated or encouraged by Federal law include the following:
  - i. Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
  - ii. Licensing. A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.
  - iii. Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

2. The KYTC/OTD and recipient will have written selection procedures for procurement transactions.

The procedure must ensure that all solicitations:

- a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service. Such description shall not contain features that unduly restrict competition.
- b) Identify all requirements that the offers must fulfill and all other factors used in evaluating bids or proposals.

# Chapter 8: Satisfactory Continuing Control and Equipment Maintenance

## Background

Capital management is an important aspect of public transit since it affects the safety, marketability, and financial integrity of the transit system. Transit is dependent on its capital equipment to accomplish its mission. All property/rolling stock purchased with federal dollars is the responsibility of the transit system. The transit system retains title to all property, via a Deed of Restriction, providing the property is used for public transportation. Subrecipients of federal dollars, administered by the KYTC/OTD, are required to certify that any property purchased with those funds is used for public transportation services within the subrecipient's service area or other area described in the grant application for the useful life of the equipment or facility.

All property acquired using federal funds shall be utilized and disposed of in accordance with the applicable FTA program circular, FTA Circular 5010.1D (as amended) and 49 CFR Part 18. (For grants and cooperative agreements executed prior to December 26, 2014 and in accordance with 2 CFR part 1201 after that date.)

Title to all-rolling stock purchased with federal funds shall be vested in the name of the subrecipient with KYTC/OTD as the first and only lien holder.

The subrecipient shall have the requisite fiscal capability to carry out the project and be responsible for maintaining required insurance coverage (KYTC/OTD must be placed as loss payee on respective policies), property records, conducting physical inventories, implementing adequate property control systems and maintaining the equipment in proper working condition. Documentation must be available upon request by KYTC/OTD or FTA.

KYTC/OTD shall provide technical assistance to the transit agencies in developing a Safety and Security Management Plan according to FTA guidance.

Transit systems are required to maintain the property at a high level of cleanliness, safety, and mechanical soundness. Each transit system must establish an equipment/vehicle maintenance program that, at a minimum, meets the equipment manufacturer's recommendations. KYTC/OTD has the right, and obligation, to review the transit system's maintenance and safety programs and to conduct periodic inspections of equipment and facilities funded with state and federal funds administered by KYTC/OTD.

## Equipment and Real Property Management

### Inventory

Any capital equipment, including computers, office equipment, cameras, etc., purchased with federal or state funds administered by the KYTC/OTD must be inventoried with KYTC/OTD. At a minimum, a complete inventory must be updated annually via the application process. Any equipment purchased with these funds must be reported quarterly to KYTC/OTD on the requisite inventory data collection form provided to subrecipients. The form should be updated and provided to KYTC/OTD as soon as new or transferred equipment (including vehicles or property) is received or acquired.

All vehicles and equipment shall be assigned an identification number to allow the items to be traced easily. Include the identification number on the Property Inventory Form. Once an item is assigned a number, it retains that unique number throughout its life. An inventory number should not be reused. Equipment purchased as an integral part of the vehicle does not need to be separately inventoried. For example, a lift or destination sign that is purchased as part of a vehicle does not need to be inventoried

An annual inventory update for equipment and real property is required from all transit systems on items with a current market value of \$5,000 or more. Subrecipients are required to provide KYTC/OTD a standardized inventory form, provided by KYTC/OTD that includes, at a minimum, the following information:

- Identification number;
- Year of vehicle;
- Make of vehicle;
- VIN number;
- Maximum Passenger Capacity;
- Maximum Wheelchair Capacity;
- Vehicle type (i.e. cutaway, minivan, bus);
- Current mileage;
- Seller/vendor;
- Acquisition date;
- Cost;
- Percentage of Federal participation in the cost;
- Project Contract Number under which it was procured;
- Location, use and condition;
- Any disposition data (including the date of disposal and sale price, or, where applicable, the method used to determine its fair market value);



- Warranty;
- Manufacturer recommended oil change intervals.

All information contained in the inventory is verified or corrected and returned to KYTC/OTD no later than the requested due date. Generally, the inventory update is submitted to KYTC/OTD with the annual application. The subrecipient inventory of equipment is reviewed by the KYTC/OTD and the results reconciled with KYTC/OTD equipment records at least once every two years. KYTC/OTD staff reconciles the subrecipient inventory report during on-site visits. Any differences must be investigated by KYTC/OTD and the subrecipient to determine the cause of the difference.

## **Allowed and Prohibited Uses of Federally Funded Vehicles**

### **Incidental Use**

Vehicles and equipment purchased with state and federal transit assistance funding is justified solely based on proposed use for public passenger transportation. KYTC/OTD does allow incidental use of vehicles and equipment under the following conditions:

- The incidental use does not interfere with the public transit services for which it was originally obtained, and the incidental use does not exceed 20% of the total use of a vehicle.

Incidental use may include meal and parcel delivery, restricted client services, and FTA allowable charters.

**Each subrecipient must sign an Incidental Services Certification.**

### **Charter Service**

FTA grantees are prohibited from using federally funded equipment and facilities to provide charter service except on an incidental basis and when it falls under one or more of the applicable exceptions set forth in the charter service regulation at 49 CFR Part 604. Charter service is an allowable activity on an incidental basis if the subrecipient transit agency sends an emailed notice of the trip to Registered Charter Providers in the recipient's geographic service area (email addresses are obtained from the FTA Charter Registration Website) and no Registered Charter Provider responds affirmatively within the appropriate timeframe or if the trip falls under an "exemption" or "exception" as detailed in the Charter regulation. All allowable incidental charter service must be fully paid for by the charter service itself with no charge to federally funded programs. No mileage, trips and hours associated with allowable incidental charter shall be represented in the subrecipient's annual operating statistics.

## Meal Delivery for Homebound Individuals

Public transportation service providers receiving Section 5311 or Section 5310 funds may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers. KYTC/OTD expects the nutrition program to pay the operating costs attributable to meal delivery. The number and size of vehicles applied for under federal or state programs must be determined **only** by the number of passengers to be transported, not meal delivery capacity. Federal capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

## Emergency Leases between Systems

If emergency situations arise, and a vehicle will be out of service for several months, a transit system may want to lease another vehicle to replace the "out-of-service" vehicle. If available, a vehicle may be leased short-term from another transit system to maintain transportation needs within a service area. KYTC/OTD should be notified of any pending lease agreement. Any lease must be approved by KYTC/OTD and a copy kept on file at KYTC/OTD.

## Vehicle Use Agreements

KYTC/OTD encourages transit systems to retain direct control of their vehicles. Therefore, KYTC/OTD discourages placing vehicle(s), equipment or real property under the control of other agencies and reserves the right to approve or disapprove all vehicle/equipment/property use agreements that involve items purchased with state or federal dollars. When a transit system has justified that the best use of the vehicle(s) or equipment would be under a vehicle use agreement, several issues should be addressed before the vehicle use agreement is signed. Some issues that should be discussed with the subcontractor are:

- Drivers of the transit system or drivers from another agency may drive the vehicles as long as insurance coverage is adequate for these uses;
- The vehicle use agreement must state who is responsible for items such as: insurance, maintenance, drivers, emergencies, backups, etc.;
- The vehicles must be operated as open to the public and without discrimination;
- Incidental service ridership and revenue miles must be reported as such and separate from the service open to the general public;
- Drivers licensing requirements; and
- Drug and alcohol testing requirements.

The transit system remains responsible to KYTC/OTD for compliance with all state and federal rules and regulations. KYTC/OTD must be notified of the location of the vehicle or equipment.

## **Useful Life and Replacement Standards**

### **Useful Life Standards and Utilization**

FTA establishes minimum useful life standards to ensure that vehicles and other equipment are maintained for transit use for their normal service lives and to ensure that the vehicles and equipment purchased are necessary for public transit service. If KYTC/OTD determines that a transit system is failing to use or maintain any equipment item properly, the KYTC/OTD will notify the transit system and may withhold further state and federal assistance. This may be done until sufficient measures are taken to correct the inadequate use or maintenance of the equipment. In some instances, KYTC/OTD may ask that the equipment be offered for transfer to another transit system or that the state and/or federal share of the item purchased be returned to KYTC/OTD.

### **Vehicle Title**

Copies of the title and liens to all property purchased pursuant to a Section 5309/5339/5310/5311 award shall be maintained by the KYTC/OTD until the useful life of the vehicle has been met, no further federal interest exists, and the vehicle has been adequately disposed of.

### **Service Life of Rolling Stock**

Useful life of rolling stock begins on the date the vehicle is placed into revenue service and continues until it is removed from service. If a vehicle is out of service more than 30 days, KYTC/OTD must be notified on the quarterly report. The period of time that the vehicle is out of service does not count toward the minimum useful life. Incidental service mileage does not count toward the minimum useful life.

If a vehicle is rehabilitated or rebuilt (Rebuild: A recondition at the end of useful life that creates additional useful life). Rebuild is a capital expense incurred at or near the end of the rolling stock's useful life that results in a new useful life of the rolling stock that is consistent with the extent of the rebuilding, with federal funds, with a 50% and a new replacement threshold. Minimum useful life for vehicles is determined by years of service and/or accumulation of miles, as follows:

<b>TYPE OF VEHICLE</b>	<b>AGE OF VEHICLE</b>	<b>MILEAGE</b>
Van/Cutaway (5 – 15 passenger)	4 years	100,000 miles
Medium Bus (16 – 29 passenger)	7 years	200,000 miles
Large Bus (30 – 35 passenger) Includes rubber wheeled trolleys	10 years	350,000 miles
Large Bus (36 passenger and greater)	12 years	500,000 miles

## **Fleet Utilization Standards**

KYTC/OTD encourages full utilization of all vehicles within a fleet throughout their useful life, especially vehicles purchased with funds administered by KYTC/OTD. Once a vehicle has reached the useful life threshold, it may be considered a backup or spare vehicle upon review and approval by KYTC/OTD. The recommended maximum spare ratio for a subrecipient fleet is not to exceed 20%.

To ensure that all vehicles receive maximum utilization, KYTC/OTD suggests rotating vehicles within the service area, between service areas, or from lightly traveled routes to heavily traveled routes. Any system failing to meet the minimum standard for its primary fleet (excluding backup vehicles) may be denied replacement or rehabilitation funds.

## **Vehicle Rehabilitation/Rebuild**

When a vehicle, owned by a transit system, reaches the KYTC/OTD minimum useful life standard, it may be replaced or rehabilitated. Rehabilitation may be a cost effective alternative to replacement. The decision whether to replace or rehabilitate is up to the transit system. FTA rules require vehicles rehabilitated with federal funds to be operated for an additional one-half of the original useful life. Systems are encouraged to consider the rehabilitation alternative, but are reminded of the commitment to operate the vehicle for an additional 50% of the original useful life.

Reference is made to the Rolling Stock Rebuilding Policies in FTA Circular 5010.1E. FTA laws, regulations, policies, and procedures allow the use of capital funds for vehicle rebuilding programs that meet the vehicle requirements in Federal Motor Carrier Vehicle Safety Standards and Americans with Disabilities Act Accessibility Specifications for Transportation (49 CFR part 571 and 49 CFR part 38

Buses to be rebuilt should be at the end of the minimum useful life and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. The eligibility of this major capital bus rebuild work is in addition to the eligibility of vehicle overhauls as described in Chapter IV, Subsection 4.h., “Rolling Stock Overhauls,” in FTA Circular 5010.1E. KYTC/OTD should contact the regional or metropolitan office to determine the extent which the useful life of the bus is affected by the rebuild. The minimum extension of useful life is four years.

**Rolling Stock Overhauls.** Rolling stock overhauls are an eligible capital expense as preventive maintenance. Overhauls are usually done to make sure rolling stock reaches its useful life. Overhaul does not extend the useful life of rolling stock. This eligibility is in addition to eligibility of rebuilding specifically discussed in Chapter IV, Subsection 4.h of FTA Circular 5010.1E.

## **Utilization Standards for Other Equipment**

Equipment such as computers, radios, and fare boxes purchased with state or federal dollars must also be used to their maximum capacity.

### **Computers and Other Office Equipment**

Computers, copiers, and other office equipment are eligible items for capital funding to the extent that they are used for support of the recipient's public transit program.

Subrecipients that may be multi-purpose agencies (cities, Council of Governments, Community Action Agencies, etc.) must either affirm that the equipment will be dedicated to public transit use or prepare a cost allocation proposal. Such a proposal must either show what percentage use of the proposed equipment will be dedicated to transit or show the transit percentage of use of an overall multiple equipment package. (Example: Transit might buy a network printer used by others, but, in return, have free use of color copier funded by another program).

### **Use of Facility/Real Property**

KYTC/OTD encourages incidental uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. KYTC/OTD approval (based on receiving Federal Transit Administration approval) is required for incidental use of real property which must be compatible with the original, approved purposes of the project and not interfere with intended public transportation uses of project assets.

Incidental use of project real property is subject to the following considerations:

- Needed Property. This policy applies only to property that continues to be needed and used for an FTA project or program. It is KYTC/OTD's intention to assist only in the purchase of property that is needed for an FTA project.
- Purpose & Activity. The incidental use must not compromise the safe conduct of the intended purpose and activity of the initial public transit project activity.
- Continuing Control. Incidental use must not in any way interfere with the continuing control over the use of the property or its continued ability to carry out the project or program.
- Non-Profit Use. While KYTC/OTD is particularly interested in encouraging incidental use as a means of supplementing transit revenues, non-profit uses are also permitted under certain circumstances.

- Income. Proceeds from licensing and leasing of air rights or other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized use of air rights may be retained by the subrecipient (without returning the Federal share) if the income is used for eligible transit capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA/KYTC/OTD grant.

## **Disposition of Federally Funded Equipment**

Transit systems are required to dispose of any federally funded equipment or facilities that are no longer needed for support of the public transit program. This would normally include equipment that has been replaced, as well as any equipment that is no longer used to capacity because of changing needs due to loss of contracts, service cuts, changed nature of services, or dissatisfaction with the equipment.

No vehicles or equipment funded through Section 5339, 5310, 5311, or applicable 5309 programs may be disposed of or transferred without advanced written permission from KYTC/OTD.

## **Vehicle Disposal**

The subrecipient may dispose of equipment at the end of its useful life after notifying and receiving disposition instructions from KYTC/OTD. The KYTC/OTD staff maintains copies of Titles and vehicle liens until disposition is complete. Procedures for disposal are:

- A formal request for lien release shall be submitted to KYTC/OTD. If the vehicle is to be transferred to another transit agency, a 10% local share may be paid by the agency receiving the vehicle. The agency requesting the transfer may be required to submit a fair market value estimate.
- KYTC/OTD shall send a written authorization to the subrecipient to sell the vehicle(s) or to junk the vehicles(s). If junked, KYTC/OTD must receive a copy of the junk title.
- Disposal procedures must be approved in advance by KYTC/OTD. Employees, board members, and the immediate family members (spouse, parent, child, sibling, and their respective spouses, regardless of where they reside), and individuals living in the same household as such individuals, whether related or not, of the transit agency cannot submit a sealed bid involving sealed bids that are controlled by the transit agency. They may participate in an auction process that is controlled by a third party.
- In the case where the transit agency is going to hold the sealed bid process internally, the transit agency will need to include a disclaimer for eligibility requirements such as, “Employees and the immediate family members (spouse, parent, child, sibling and their respective spouses, regardless of

where they reside) and individuals living in the same household as such individuals, whether related or not, are not eligible to participate in the bidding process.”

The subrecipient may dispose of equipment with remaining useful life upon receiving approval and written instructions from KYTC/OTD.

- KYTC/OTD may offer the equipment for sale to other subrecipients in the state. Should another subrecipient want the equipment, the federal financial interest in the equipment would be transferred, and the new owning project would be responsible for reimbursing the original owning project for the local share of the current fair market value of the equipment.
- If no other subrecipient is interested in purchasing the equipment, the subrecipient may be advised to sell it and return the proportional (federal/state) share of the proceeds to KYTC/OTD. Per FTA Circular 5010.1E, “FTA retains financial interest in equipment with a unit value exceeding \$5,000, and supplies with an aggregate value exceeding \$5,000, even if useful life has been met.”
  - “FTA is entitled to its share of the remaining federal interest upon disposition of federally assisted property before the end of its useful life or for a value greater than \$5,000 after the useful life has been met.”

- Bipartisan Infrastructure Law Disposition.

The Infrastructure Investment and Jobs Act (IIJA) changed the provisions for transit asset disposition [49 USC § 5334(h)(4)(B)]. For rolling stock, equipment and aggregate supplies that have met their minimum useful life and were (1) purchased with federal assistance (2) with a fair market value of more than \$5,000 and (3) sold after November 15, 2021, the subrecipient (transit agency) may retain a portion of the funds -- \$5,000 plus the percentage of its local share in the original award. Any remaining federal share must be returned to FTA. The federal share of the sales proceeds cannot be retained for public transportation use.

**How are the local and federal shares calculated?**

The distribution of the local and federal shares starts with the sales proceeds of the item sold for fair market value. Of that amount, the subrecipient retains \$5,000. Of the remaining amount of the sales proceeds, the subrecipient retains the amount calculated by its percentage of participation in the cost of the original purchase.

For example, if a bus, purchased with federal assistance at an 80/20 split, is sold for the fair market value of \$12,000, the subrecipient retains \$5,000 plus 20% of the remaining \$7,000, or \$1,400, for a total of \$6,400. The subrecipient is required to return 80% of \$7,000, or \$5,600, to FTA via the KYTC/OTD.

All payments to the Federal Transit Administration must be processed electronically. One of the following options to make a payment when returning funds to FTA will be applied by KYTC/OTD. The transit agency will contact KYTC/OTD's project manager to discuss reimbursement options to the KYTC/OTD.

#### KYTC/OTD Payment Options to FTA.

1. Plastic Card
2. Automatic Clearing House Payment (ACH Direct Debit)
3. Paper Check

- “The federal interest is determined by calculating the fair market value of the federally assisted property immediately before the occurrence prompting the withdrawal of that property from appropriate use (e.g., sale, loss, etc.). The federal interest that the recipient is required to return to FTA is the greater of FTA's share of the unamortized value of the remaining useful life per unit, based on straight line depreciation of the original purchase price or the federal share of the sales price. The following example is provided to determine the straight-line depreciation of a vehicle: for a vehicle with a 12-year, 500,000- mile minimum useful life, the vehicle's value decreases each year by one-twelfth of its original purchase price. Alternatively, the value decreases for each mile driven  $1/500,000$  of its original purchase price. The unamortized value of the remaining useful life per unit is the value obtained by calculating the straight-line depreciation based on either miles or years whichever is more advantageous to the recipient.
- Any exchange of funds or trade of equipment or services in consideration for the federally assisted property is considered a sale. The sales price is based on the value of the funds, equipment, or services provided by the purchaser, and the federal share of that price is calculated as described above. Recipients and purchasers may not separate any portion of the sales prices as reimbursement in order to reduce the federal share.
- If the recipient is authorized to sell the property, it will be required to employ proper sales procedures that ensure the highest possible return is achieved in the disposition of the federally assisted asset.
- Reimbursement to FTA will be an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original Award. The recipient's transmittal letter should state whether the equipment will be retained or sold. Use of sales proceeds are discussed elsewhere.



Disposal consideration may be given for equipment (vehicles) that has extenuating maintenance problems.

Documentation for this type of consideration includes, but is not limited to:

- The number of days in the shop within the past 12 months;
- The total amount expended on repairs since the vehicle was purchased along with a copy of any repair bills over \$100.00;
- Identification of the defective part(s);
- The original date of delivery by the vendor;
- A copy of the agency's maintenance plan; and
- Maintenance records of vehicle.

### **Transfer of Federal/State Share**

KYTC/OTD's policy is to arrange transfers of any vehicles purchased under FTA programs administered by KYTC/OTD, or any vehicles purchased with revenues collected by utilizing FTA vehicles (such as contract revenue funds received from non-emergency Medicaid services), so that the vehicles will continue to be used in public transit throughout their useful life. If any transit system has equipment purchased with FTA/KYTC funds, administered by KYTC/OTD, which is no longer needed for use by the public transit program, the equipment will be made available for transfer to any other state transit system willing to use the equipment to the end of its useful life. Agencies with vehicles meeting their useful life may request approval, in writing, from the KYTC/OTD to transfer/donate the vehicle to local agencies such as shelters, homes for children, city and county governments or community outreach programs.

If vehicles are disposed of prior to meeting the KYTC/OTD established useful life standards, the federal interest in the vehicle must:

- Be transferred to another transit system that commits to operate the equipment up to the minimum useful life. If more than one transit system seeks to obtain the equipment, preference will be given to transit systems eligible for the FTA program under which the equipment was originally funded.
- Be credited against the cost of a future replacement vehicle thereby reducing the federal participation by a like amount, or
- Be refunded to FTA/KYTC/OTD

If necessary, KYTC/OTD may make the determination which transit system has the greatest need for the equipment, based on the following criteria:

- Emergency needs due to problems with the fleet;
- Emergency needs due to service expansion;

- Anticipated needs due to proposed expansion;
- Proposed level of utilization;
- Capability to maintain transferred equipment;
- Consistency with system's planning and programming; or
- Other factors that may be appropriate.

The federal/state interest in equipment transferred prior to meeting useful life standards will be transferred outright to the recipient system.

Compensation for local share in the equipment shall not be required but may be negotiated between the transit systems, if the recipient agrees.

### **Transferring Federally/State Funded Vehicles/Equipment**

All transfers must seek KYTC/OTD approval before the transfer can be made. A letter listing details of the equipment to be transferred should be sent to KYTC/OTD. Each party and KYTC/OTD receives an original in any transfer involving KYTC/OTD administered federal funds.

Direct recipients of FTA Section 5307 or 5309 funds must have FTA concurrence prior to transferring federal equipment. The transit system transferring the vehicle signs the title and gives it to the system receiving the vehicle. The transit system transferring the vehicle must also provide the system receiving the vehicle with a signed odometer statement. The system receiving the vehicle is responsible for titling and licensing the vehicle. The system transferring the vehicle must delete the equipment from the system's inventory, and the system receiving the vehicle must add the transferred equipment to its inventory.

### **Insurance Settlements**

When a vehicle funded through KYTC/OTD has been in an accident and totaled or can no longer be used as a safe public transit vehicle, KYTC/OTD must be notified immediately. Insurance information, a letter stating the damages, and the amount of the proposed settlement to the transit system should be sent to KYTC/OTD. KYTC/OTD must concur with the decision to 'total out' any vehicle funded through programs administered by KYTC/OTD.

The settlement funds can be used for purchase of a similar vehicle for continued transit use. The subrecipient must request instructions from KYTC/OTD on the procedures for the purchase of another vehicle, and KYTC/OTD must concur with the purchase. If the vehicle has not met the replacement threshold and a replacement is not purchased, the federal/state share of the vehicle must be returned or used for public transit

services. This is based on straight-line depreciation or settlement values, whichever is greater. If the vehicle has met the replacement threshold and is not replaced, any insurance funds should be used in the public transit program.

If a system settles with an insurance company on damages to the vehicle and does not use the full amount of the settlement for costs related to the damage, the remainder must be put back in the public transit program. However, vehicles must be repaired to the point where they are mechanically sound, safe and in presentable condition.

### Repayment of Federal/State Share

As noted above, if any FTA/KYTC/OTD funded equipment is disposed of prior to reaching its minimum useful life, the residual federal/state interest must be refunded or credited toward purchase of another piece of equipment. If equipment purchased with funds administered by KYTC/OTD are used to the minimum useful life or beyond prior to disposition, no repayment of federal/state share is required, but sale proceeds must be retained in the system's public transit program.

### **Maintenance Standards and Policies**

Subrecipients are required to certify that any property purchased under the project shall be used for the provision of public transportation services within the subrecipient's service area or other areas as described in the grant application, and for the life of the equipment or facility in compliance with the property management standards of 49 CFR 18.31 through 18.34. (For grants and cooperative agreements executed prior to December 26, 2014 and in accordance with 2 CFR part 1201 after that date.)

A copy of the title, lien and, if applicable, a deed of restrictions to all property purchased pursuant to a federal/state award from KYTC/OTD to a subrecipient, shall be maintained by the KYTC/OTD until the useful life of the property has been met and no federal/state interest exists.

The KYTC/OTD shall require all subrecipients to submit a system maintenance plan that will include, at a minimum, the procedure for maintaining vehicles, facilities and ADA accessibility features.

Sample checklist:

**Office of Transportation Delivery  
Facility Maintenance Plan Checklist**

Agency: \_\_\_\_\_

Y or N

1. Maintenance Supervisor: Employee, Training, and Certifications
2. Maintenance Plan Goals & Objectives
3. Plan Explains Agency's Facility assessment method/checklist:  
How do they survey the facility to check for safety & maintenance needs?  
Is there a plan in place to do this?
4. Plan describes the frequency of preventative maintenance inspections.  
(e.g. Daily/Monthly/Annually/When reaching certain # of hours of use)
5. Does the plan explain where the agency maintains records of maintenance history for facilities and equipment? Do they have an appropriate record-keeping system?
6. Does the Plan Address Security Equipment? (e.g. Locks/Cameras/Security System)
7. Plan addresses specific mission criteria:  
(e.g. HVAC/Roofing/Overhead Doors/Fire Safety/Elevators/Plumbing/Parking Lots, etc.)
8. Does the Facility meet ADA requirements?
9. Plan gives detailed description of warranties on capital equipment
10. Is the plan for preventative maintenance consistent with the minimum requirements from the Manufacturer for facilities and equipment under warranty?
11. The plan has an executed date and signature page. Date last updated: \_\_\_\_\_

Sample checklist:

**Office of Transportation Delivery  
Vehicle Maintenance Plan Checklist**

Agency: \_\_\_\_\_

Y or N

1. Vehicle Maintenance Supervisor: Employee, Training, and Certifications.
2. Maintenance Plan Goals & Objectives included.
3. Preventative maintenance checklists are included in plan.
4. Plans and preventative maintenance checklists are consistent with current operating fleet.
5. Plans and preventative maintenance checklists are consistent with manufacturers' minimum maintenance requirements for vehicles under warranty.
6. Plan gives detailed description of the warranty for vehicles in the fleet.
7. Does the plan explain how the agency will track that the manufacturers' recommended maintenance is followed for vehicles under warranty?
8. The plan addresses preventative maintenance for on-board security vehicle cameras.  
(If the agency does not have on-board security vehicle cameras; is it stated in the plan?)
9. Does it address how ADA accessible features are maintained?
10. The plan has an executed date and signature page.      Date last updated: \_\_\_\_\_

## **General Maintenance**

Subrecipients shall allow KYTC/OTD to have access to facilities and records to monitor maintenance performance, as KYTC/OTD deems necessary.

KYTC/OTD shall perform maintenance inspections of vehicles and equipment. KYTC/OTD shall be permitted to view and copy any vehicle maintenance records, inspect vehicles and equipment, and request subrecipient personnel to drive vehicles, as may be deemed necessary, to evaluate the condition of vehicles and equipment. All rolling stock and equipment must be maintained in accordance with the Manufacturer's recommendations.

## **Records**

### **General**

Subrecipients shall maintain an up-to-date vehicle file for each vehicle containing, at a minimum, the following information:

- Make of vehicle;
- Model of vehicle;
- Vehicle Identification or Serial number/Fleet number;
- License number;
- Funding Information (Federal and/or State);
- Contract/Grant Number;
- Date received;
- Date placed in service;
- Rebuilds and major component replacements;
- Vehicle repairs;
- Preventative Maintenance Inspection Reports;
- Daily vehicle conditions reports;
- Works orders;
- Rolling Stock under warranty should have a system to identify warranty claims, record claims, and enforce claims against the manufacturer(s). Clear procedures should exist to identify warranty repairs, record warranty claims, submit claims to manufacturer, and follow-up on unpaid claims.

## **Preventative Maintenance Schedule**

The subrecipient shall ensure that all vehicles under its control, and all required accessories on the vehicles, are regularly checked and inspected, maintained, and lubricated to ensure that they are in safe and operating condition. The subrecipient shall have a means of indicating the types of inspection, maintenance, and lubrication operation to be performed on each vehicle and the date or mileage that these operations are due.

## **Equipment Maintenance Standards**

- All wheelchair lift-related equipment and ramps shall be inspected, serviced and lubricated at intervals necessary to ensure that the wheelchair lifts and ramps are fully operational whenever the vehicle is used in revenue service.
- Brake inspections and adjustments shall be performed at intervals that ensure the safe and efficient operation of the braking system.
- All components of the vehicle bodies/frames shall be maintained in a safe, sound and undamaged condition at all times. Damage (including body damage, glass and all vehicle components) shall be repaired in a professional manner within three weeks (21 calendar days) of occurrences.
- All mechanical, electrical, fluid, air, and/or hydraulic systems shall be maintained in a safe and fully functional manner, as designed, at all times.
- The interior passenger compartment shall be free of exhaust fumes from the engine, engine compartment, and exhaust system from the vehicle.
- Heating, ventilation, and air conditioning (HVAC) systems shall be maintained and used to ensure that the passenger compartment temperature is comfortably maintained under all climatic conditions, at all times, on all in-service runs. Subrecipient shall maintain the HVAC systems in an operable condition throughout the entire year.
- Seats shall be maintained in proper operating condition at all times. All rips, tears, cuts, gum, graffiti, and other damage shall be cleaned or repaired in a professional manner, immediately, upon their discovery. Seat covers, which are worn or cannot be professionally repaired, shall be replaced by the subrecipient using materials, which are identical in design and color as those materials being replaced.
- The subrecipient shall establish and maintain an on-going spare parts inventory sufficient to permit that peak hour vehicle requirements are met at all times.
- Rolling Stock/Equipment under warranty should have a system to identify warranty claims, record claims, and enforce claims against the manufacturers. Clear procedures should exist to identify warrant repairs, record warranty claims, submit claims to the manufacturer, and follow-up on unpaid claims.

## **Out of Service**

A vehicle shall be designated as unfit for revenue service (considered Out of Service) if, upon inspection, any of the following conditions are found:

- Brakes out of adjustment;
- Loose steering components;
- Wheelchair Lift and related equipment not functioning properly;
- Air conditioning unable to maintain a temperature 20° F lower than ambient or 72° F;
- Heating or Defroster inoperative;
- Tires with a tread depth of less than 4/32;
- Failure to clean each vehicle;
- Failure to repair vehicle body damage (interior or exterior) within twenty-one (21) days of the date damage occurred;
- Inoperative Emergency Exits/Doors/Windows;
- Inoperative Sensitive Edges on wheelchair lifts or exit doors;
- Any condition not in compliance with the Americans with Disabilities Act;
- Any condition not in compliance with applicable Federal or State Regulations; or
- Any vehicle inspected and found unfit for service will be taken out of service and not returned until corrected.



# Chapter 9: Construction or Renovation of Facilities

## Background

The construction or renovation of project facilities for Section 5311 subrecipients may be necessary to provide for an efficient and coordinated rural public transportation system. The costs of construction or rehabilitation of transit facilities, including design, engineering, and land acquisition, are eligible capital expenses. The responsibility for construction management and oversight lies with the Subrecipient.

Real property must be acquired, managed, used and disposed of in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91–646) and 49 CFR Part 24, the implementing regulation. Additional guidance is found in FTA Circular 5010.1E. The objectives of the Uniform Act are:

- To provide uniform, fair, and equitable treatment of individuals whose real property is acquired or who are displaced in connection with federally funded projects;
- To ensure relocation assistance is provided to displaced individuals to lessen the emotional and financial impact of displacement;
- To help improve the housing conditions of displaced individuals living in substandard housing;
- To encourage and expedite acquisition by agreement and without coercion.

The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives. Objectives of FTA Circular 4703.1, Environmental Justice Policy Guidance for Federal Transit Administration Recipients will be considered when administering the requirements of NEPA, Title VI and related statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Congressionally-authorized planning requirements, and other laws, regulations, and Executive Orders that address or affect infrastructure planning and decision-making, social-economic or environmental matters, public health or public engagement.

To ensure eligibility for Federal funding, the subrecipient should follow the typical process sequence when acquiring real property for a project:

Title VI Equity Analysis → National Environmental Policy Act (NEPA) Approval → Title Search → Appraisal → Appraisal Review → Just Compensation Determination → KYTC/OTD Concurrence → Offer to Owner → Settlement

## Pre-Award Review

The following guidelines have been developed for transportation providers based on the procedures set forth by the State Management Plan issued by the KYTC/OTD. If federal or state funds are used, applicable federal and state guidelines and requirements must be followed in accordance with FTA Circulars 4220.1F and 5010.1E and any revisions thereafter. In addition, **all construction related activities shall require pre-award review and approval by the KYTC/OTD.**

## Planning

Planning activities in advance of the construction or renovation of rural public transportation facilities are an eligible Section 5311 expense. These may include, but are not limited to, feasibility studies, alternative site analyses, environmental assessments, environmental impact statements, or other studies necessary as a prerequisite to undertaking the project. A Title VI Environmental Justice analysis should be conducted during the planning stage. Planning activities may be funded from Section 5311 administrative funds.

## Land Acquisition

### **Overview**

Real property acquisition and relocation activity must be conducted in accordance with the requirements in the *Uniform Relocation Assistance and Real Property Uniform Relocation Act of 1970, as amended (Uniform Act)*, and codified in *49 CFR, Part 24*. FTA guidance states, “The objective of the Uniform Act is that owners of real property to be acquired for Federal and Federally assisted projects be treated fairly and consistently; that individuals displaced be treated fairly, consistently and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective.” Subrecipients may not incur costs prior to receiving approval from KYTC/OTD.

Any Section 5311 construction or renovation activity which involves the acquisition of land or the displacement of any individuals, firms or businesses shall be subject to the provisions of the 49 CFR part 24 and the regulations of FTA Circular 5010.1E, "Grant Management Requirements" or FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.”

Real property is acquired at its current fair market value, established on the basis of independently prepared appraisals.

In addition, and associated with the acquisition of real property, the state requires the preparation of an environmental assessment (to at least Level I) completed by a professional environmental firm.

Incidental uses of real property which may raise additional revenues for the transit system or, at a reasonable marginal cost, enhance system ridership, are subject to the regulations contained in FTA Circular 5010.1E.

## **Responsibilities**

### **Subrecipient:**

- Obtains appraisals and prepares initial environmental and other required documents including Title VI Equity Analysis **prior to or with the** application submission.

### **KYTC/OTD**

- Reviews submittals for accuracy and conformance to policy. KYTC/OTD must sign off on just compensation.
- Provides policy direction and guidance.

## **Appraisal**

1. Appraisers must be certified or licensed with a State Appraisal Board as required by the URA regulations at Section 24.103(d) (2).
2. Real property must be acquired at its current fair market value. Fair market value will be established based on a recent, independently prepared appraisal by a certified appraiser,
3. An additional appraisal may be made if the grantee finds the valuation problem complex and deems a second appraisal to be appropriate.
4. Subrecipients shall instruct appraisers to disregard any decrease or increase in the fair market value of the real property caused by the likelihood that the particular property is to be acquired for the project.
5. An appraisal and a reviewer's analysis will be required.
6. Instead of using its power of eminent domain, when a property cannot be purchased at appraised value, a subrecipient may propose acquisition through negotiated settlement.
7. The subrecipient must document that reasonable efforts to purchase it at the appraised amount have failed and prepare written justification supporting why the settlement is reasonably prudent and in the interest of the public.
8. When the settlement exceeds the offer by \$10,000, a litigation attorney must provide a written assessment of proposed settlement risks over the risks of proceeding in court. Prior FTA concurrence is required when a settlement of \$50,000 or more and must be further negotiated. FTA has identified exceptions to obtaining a full appraisal.
9. Full appraisal or negotiation procedures are not necessary in certain instances. The KYTC/OTD should be contacted for further guidance when any of the following conditions apply:
  - The owner is donating the property.

- The subrecipient does not have authority to acquire property by eminent domain.
- The property qualifies as a voluntary acquisition as defined in 49 CFR 24.101(a).
- The valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on available data.

10. Unless one or more of the exceptions above applies, the project application that includes real property acquisition is considered incomplete without an appraisal.

11. An estimated property value of \$500,000 or greater will require FTA approval of the Appraisal and Review Appraisal.

## **Negotiation**

Federal land acquisition regulations require that appraisals, including an “offer of just compensation” (with supporting documentation) be prepared before entering into negotiations or executing a purchase agreement for the land.

A subrecipient may **initiate** the negotiation process prior to grant approval and subrecipient shall secure prior approval from KYTC/OTD before an offer is made. However, no reimbursement will be made for costs incurred prior to execution of the standard agreement.

It is, therefore, important for subrecipients to await notification that the standard agreement is fully executed before entering into the purchase agreement. The purchase agreement is normally executed at or prior to the opening of escrow.

Payments are made on a reimbursement basis upon presentation of proper invoices and supporting documentation. Grant funds will not be available for deposit in escrow. Subrecipients should, therefore, be prepared to finance land acquisitions initially with local funds.

## **Architectural and Engineering Services**

A project will obtain architectural and engineering (A/E) consulting services in accordance with competitive proposal procedures for qualifications-based procurement as outlined in FTA Circular 4220.1F and in accordance with KRS 45A. This type of procurement will also be used for architectural and engineering related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Following this method, competitors' qualifications are evaluated, and the most qualified competitor will be selected subject to negotiation of fair and reasonable compensation.

The scope of work in the project's Request-for-Proposal (RFP) will incorporate planning procedures for design and construction of capital improvement projects.

KYTC/OTD will approve the negotiated contract between the project and the architectural/engineering consultant.

The selected architectural/engineering consultant will not commence work on the project until receipt of the executed design agreement.

## **Facility Design**

The A/E firm will be responsible for filing all applicable permits, plans, specifications, and other documents with any local, state or federal agency having jurisdiction over any part of the project.

KYTC/OTD will coordinate the design review among the state agencies that may have review responsibility over the project. The A/E consultant will be responsible for submitting the specified number of copies of design documents to accomplish this review.

The actual amount of Section 5311 funds obligated will be based on the programmed amount and the cost estimate prepared by the project's A/E consultant and is dependent upon the availability of federal funds.

The A/E consultant will be responsible for establishing the date for receipt of bids in consultation with the project and KYTC/OTD. Adequate notice will be required between publication of the advertisement for bids and their receipt.

A certified tabulation of the bids received, along with the project's approval process and recommendation for bid award, will be submitted to KYTC/OTD for review and approval.

KYTC/OTD will approve the award of construction contracts prior to execution of agreements between the project and the successful bidders.

## **Facility Construction**

The agency/project, through its A/E consultant, will be responsible for all inspection and construction administration activities during facility construction.

The agency/project will forward two (2) copies of the final construction report to KYTC/OTD. KYTC/OTD staff may conduct separate inspections and attend any of the construction/contractor meetings during the construction process.

## **Property Management**

Facilities constructed or renovated with federal funds will be the property of the project as long as the facility is used for public transportation purposes. If for any reason the facility is no longer needed for the purposes of public transportation services in non-urbanized areas, the provisions of FTA Circular 5010.1E, regarding property disposition, will be followed.

All subrecipients shall have an effective facilities and equipment maintenance plan that ensures that federal and state investment in facilities and equipment is protected adequately. The maintenance plan should be written and include an organization and assignment of responsibility for facility and equipment maintenance, a series of inspections and routine maintenance actions designed to ensure the proper care and maximum useful service life of facilities and equipment, and a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment. KYTC/OTD will ensure compliance through periodic on-site inspections.

### **Maintenance Requirements**

Properties purchased or constructed with federal or state funds such as land, buildings (i.e. bus barns), and facilities (i.e. passenger shelters and transfer stations) should be maintained free of defects and graffiti to ensure the area remains in a usable condition and a safe environment. The properties must be used for the purposes described in the application and agreement.

All subrecipients are required to have maintenance plans for buildings and facilities and submit them to KYTC/OTD for review. The KYTC/OTD will monitor and require the maintenance of ADA accessibility features for vehicles and transit facilities.

### **Restrictive Covenants/Deed of Restrictions**

KYTC/OTD requires that land and permanent buildings purchased or improved with federal or state funds have a restrictive covenant filed with the property deed. The covenant is to protect the federal interest in the property. Because passenger shelters are not permanent buildings, they are exempt from this requirement.

### **Disposition of Property**

Land, buildings or facilities purchased or improved using federal or state funds may only be used for the originally authorized purpose. Such property shall not be transferred to another party, disposed of, or have other liens or claims imposed, without obtaining the approval of KYTC/OTD pursuant to the procedure below.

When property funded with federal or state funds is no longer needed for the originally authorized purpose, the subrecipient is required to contact the KYTC/OTD for disposition instructions. The options are as follows:

- Retain title of the property after compensating the awarding agency (KYTC/OTD);
- Sell the property and compensate the awarding agency (KYTC/OTD); or
- Transfer title to the awarding agency (KYTC/OTD) or to a third-party designated or approved by the awarding agency.

The fair market value of the property shall be used when property is sold, transferred to another party, or voluntarily converted to a non-transit use by the transit agency. Subrecipients must have a commercial appraisal or other fair market valuation to determine fair market value. KYTC/OTD must review and approve the fair market valuation if a commercial appraisal is not used.

When compensating KYTC/OTD under the procedures identified above, KYTC/OTD receives an amount equal to the fair market value times the percent of federal or state reimbursement as identified in the original subrecipient agreement. The subrecipient retains an amount equal to the fair market value times the percent of match provided as identified in the original subrecipient agreement.

The disposition of property that is involuntarily converted (i.e. acts of God, other) will be negotiated on a case-by-case basis between KYTC/OTD and the subrecipient.

Subrecipients must reinvest any funds received from the sale of property or insurance proceeds into the transit program. Funds received by KYTC/OTD shall be reinvested into the originating grant.

#### Subrecipient responsibilities:

- Contact KYTC/OTD for technical assistance regarding any applications for federal or state funding for land acquisition or development of permanent structures.
- Obtain restrictive covenants/deed of restrictions on land or permanent buildings
- Submit maintenance plans for land, buildings and facilities to KYTC/OTD.
- Keep an inventory of land, buildings or facilities purchased with federal funds and submit to KYTC/OTD.
- Name KYTC/OTD as additional insured for premise insurance.
- Contact KYTC/OTD for assistance regarding disposal of land, buildings or facilities acquired with federal or state funds.
- When disposing of property, obtain a commercial appraisal or other fair market valuation, and submit the documentation to KYTC/OTD for approval.
- Compensate KYTC/OTD as described above if disposing of property.
- Reinvest any proceeds from the sale of property into the transit program.
- Request approval for any incidental use from KYTC/OTD.

## **Labor Protections**

### **Davis-Bacon Act**

For FTA programs, 49 U.S.C. 5333(a) applies Davis-Bacon Act prevailing wage requirements. The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government” [40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5)]. The Acts apply to any federally funded or assisted contracts over \$2,000 [40 USC 3142(a), 29 CFR 5.5(a)] for the construction, alteration or repair (including painting and decorating) of public buildings or public works. 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.



This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) of the Act requires the Secretary to take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining “adequate assurance” that required labor standards would be maintained upon the construction work.

Subrecipients are required to have current labor certifications and assurances from the Federal Transit Administration. These assurances should be reviewed and incorporated into subrecipient proposals and awards made for real property construction and/or renovation.

# Chapter 10: Other Applicable Provisions

## Background

Several laws and administrative requirements apply in common to all federal grant programs and, therefore, are applicable to the Sections 5310, 5339 and 5311 Programs as well. Compliance features for some of these requirements have been further defined by the Federal Transit Administration (FTA), inclusive of several unique provisions applicable to all FTA grant assistance programs.

## Civil Rights

The KYTC Title VI Program Manual was developed in response to federal nondiscrimination regulations issued by the United States Department of Transportation (USDOT).

- The OTD Civil Rights Project Manager is responsible for the Disadvantaged Business Enterprise (DBE) Program. The KYTC/Office for Civil Rights and Small Business Development (OCSBD) certifies all businesses through the Uniform Certification Program. All certified firms are listed on the KYTC website. New firms are added to the website as they are approved. With each annual §5311 subrecipient budget, a goal is set for eligible purchases and approved by KYTC/OTD as part of a subrecipient's annual budget. KYTC/OTD and its subrecipient transit agencies will move toward more race neutral measures in obtaining the services of DBE and small business firms and will require more good faith efforts by transit agencies and prime contractors in accordance with 49 CFR Part 26. Transit systems report DBE eligible purchases semi-annually. The Project Managers give this information to the Civil Rights Project Manager for compilation. KYTC/OTD uses this information in the semi-annual DBE reports prepared by the Civil Rights Project Manager and submitted to FTA. The Civil Rights Project Manager, the Public Transit Branch Manager and the Executive Director, in conjunction with the OCSBD reports on file in the Cabinet, prepare the goal report due every three (3) years unless significant changes are made. KYTC/OTD submits this report to FTA by August 1<sup>st</sup> of the year due.
- The Civil Rights Project Manager also prepares the Title VI update report by compiling information on their systems from each of the regional Project Managers. Unless there are significant changes, the Title VI update will be submitted to FTA every three years.

KYTC/OTD will ensure that the Title VI Notice of Protections Against Discrimination (Beneficiary Notice) should be adopted by the subrecipient. This notice should be posted on the subrecipient's website, if applicable, and disseminated through such measures, including but not limited to, public hearings, posters, flyers, and on transit vehicles. Subrecipients' Title VI Programs will be approved by KYTC/OTD.

## **Limited English Proficiency (LEP)**

The KYTC/OTD and its transit agencies must take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP). Necessary steps will be based on four (4) factors: (1) the number and proportion of LEP individuals served or encountered in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program, activity, or service; (3) the nature and importance of the program, activity, or service provided by the program; and, (4) the resources available to the agency and costs. Using the four (4) factors above, and in conjunction with the KYTC/OTD's subrecipients, the KYTC/OTD updates an implementation plan to address the identified needs of the populations served. The plan has five (5) components: (a) identifying LEP individuals who need language assistance; (b) developing language assistance measures; (c) training staff; (d) providing notice to LEP individuals; and, (e) monitoring and updating the plan. Many resources are being used in the development of this plan, including local planning agencies, universities, social service agencies, and various websites. LEP Plans will be submitted to KYTC/OTD for review and approval as part of the Title VI Plan.

**Reference: Executive Order 13166 on Accessing Transportation for Individuals with Limited English Proficiency**

## **Equal Employment Opportunity (EEO)**

All Section 5310 and 5311 subrecipients are required to submit to KYTC/OTD assurances indicating their compliance with FTA's Equal Employment Opportunity objectives, as detailed in FTA Circular 4704.1A.

Any subrecipient meeting the following thresholds specified in that Circular must implement all of the EEO Program elements:

- Employs 100 or more transit-related employees, and
- Requests or receives capital or operating assistance in excess of \$1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of \$250,000 in the previous Federal fiscal year.

These subrecipients will submit an EEO program to KYTC/OTD for review and approval, documenting their nondiscrimination on the basis of race, color, religion, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, or other protected class.

Copies will be made available to the FTA upon request.

Agencies between 50–99 transit-related employees are required to prepare and maintain an EEO Program that includes the Statement of Policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system. These smaller agencies are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program every four years. Instead, these agencies will be required to provide the EEO Program to FTA if requested by the Office of Civil Rights or for any State Management Review or Triennial Review.

All FTA applicants, recipients, subrecipients and contractors who do not meet the EEO Program threshold are not required to submit an EEOP, but are still required to comply with all Equal Employment Opportunity statutes and regulations.

### **Disadvantage Business Enterprises (DBE)**

All FTA recipients must use Disadvantaged Business Enterprises (DBE) to the extent possible, for the procurement of office supplies, gasoline, oil, maintenance, and other supplies necessary for the operation of their transit service. Disadvantaged businesses are small businesses which are at least 51% owned by one or more socially and economically disadvantaged individuals. Socially and economically-disadvantaged individuals are defined as citizens of the United States who are: African American, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or other individuals so classified by the Small Business Administration (SBA).

The Federal Model Clauses included in all vendor agreements includes clause language incorporating the payment terms and conditions applicable to all subcontractors based in 49 CFR Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Protection of the Environment/Environmental Justice**

FTA's environmental impact regulation requires different levels of analysis and documentation for the various types of projects funded through its programs. The great majority of projects and activities funded through the Section 5311 program do not normally involve significant environmental impacts. Such projects are termed “categorical exclusions” in FTA's procedures because they are types of projects that have been categorically excluded from the requirement to prepare an environmental document. FTA's regulation classifies categorically excluded actions and projects into two groups:

- Those having very limited or no environmental effects at all such as planning and technical studies,

preliminary design work, program administration, operating assistance and transit vehicle purchases; and

- Those involving more construction and greater potential for off-site impacts, such as new construction or expansion of transit terminals, storage and maintenance garages, office facilities and parking facilities. These can be built and operated without causing significant impacts if they are sited in areas with compatible land use where the primary access routes are adequate to handle additional transit vehicle traffic.

The vehicles, radio and computer equipment and other related equipment items routinely purchased under the Section 5310 program are considered categorical exclusions from FTA's requirements to prepare environmental documentation. Both Sections 5310 and 5311 subrecipients shall submit declarations of environmental assessments for approval by FTA through their respective application process, as necessary. An Environmental Justice analysis may be a part of this process as described in FTA Circular 4703.1.

## **Labor Protection**

### **Employee Protection Provisions of Section 5333(b) Special Warranty**

KYTC/OTD addresses issues relating to Section 5333(b) Special Warranty, Labor Protection Provisions, when applications are received from subrecipients for project consideration.

When KYTC/OTD recommends a project for funding, each subrecipient is required to provide a written acceptance of the terms and conditions of the Special Section 5333(b) Warranty. The written acceptance provides assurance that the subrecipient agrees to be bound by certain portions of the National (Model) Agreement.

Additionally, subrecipients are required to list all (private or public) providers of public transportation in their services area in the Section 5311 application.

Each Section 5311 subrecipient will contractually assure compliance with the provisions of Section 5333(b) of the Federal Transit Law, indicating that the project will be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Section 5311 project and of any other surface public transportation provider in the subrecipient's service area.

All Section 5311 applicants will assure compliance with the above through the application process. In 1974, the Secretary of Transportation determined that it was not "necessary or appropriate" to apply the conditions of Section 5333(b) to organization subrecipients under the Section 5310 program.

## **Charter and School Bus Regulations-Oversight**

Charter service is an allowable activity on an incidental basis only if the subrecipient transit agency

sends an emailed notice of the trip to Registered Charter Providers in the recipient's geographic service area (email addresses are obtained from the FTA Charter Registration Website) and no Registered Charter Provider responds affirmatively in the appropriate timeframe or if the trip falls under an "exemption" or "exception" as detailed in the Charter regulation. All allowable incidental charter service must be fully allocated with no charge to federally funded programs. No mileage, trips and hours associated with allowable incidental charter shall be represented in the Subrecipient's annual operating statistics. Quarterly reports must be completed, using the form in the Charter regulations, and submitted to KYTC/OTD to put into the Federal TrAMS system on a quarterly basis.

Subrecipients must comply with the Charter Regulation 49 CFR 604.11 to request or petition to the Administrator (FTA) for an exception from Charter Service Regulations. KYTC/OTD does not review subrecipient's requests for FTA's exceptions. However, subrecipients are required to copy KYTC/OTD on all charter exceptions correspondence sent to FTA. All subrecipients considering charter service are responsible for complying with the notification process to registered charter providers as required under FTA Charter regulations, 49 CFR Part 604, and any amendments that may be issued.

All complaints, investigations, hearings and appeals will be handled in accordance with 49 CFR Part 604. Note: To save time and expense for all concerned, KYTC/OTD and FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process as outlined in 49 CFR Part 604 Subpart F.

KYTC/OTD reviews compliance with the Charter Rule during periodic on-site visits. On receiving a written complaint alleging that a violation has occurred, KYTC/OTD shall investigate and determine whether a violation has occurred. KYTC/OD will look to the subrecipient to remedy any claims against the subrecipient in association with Charter service in violation of 49 CFR Part 604. KYTC/OTD may bar a subrecipient from receiving further funding when a continuing pattern of documented violations occurs.

## **School Bus**

No subrecipient shall engage in school bus operations using buses, facilities or equipment funded with federal funds. A subrecipient may, however, use such buses, facilities and equipment for the transportation of school students, personnel and equipment in incidental charter bus operations. Such use of project equipment is subject to 49 CFR Part 604 of Federal Public Transit Regulations.

## **Section 504 and ADA Program Requirements**

Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended (29 U.S.C. 794), prohibits

discrimination on the basis of disability by recipients of federal financial assistance. The Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. 12101 et seq.), affords equal opportunity for employment, transportation, telecommunications, and places of public accommodation for people with disabilities.

Both Sections 5310 and 5311 subrecipients must comply with 49 CFR Parts 27, 37, and 38 implementing the ADA and Section 504. These provisions:

- Prohibit discrimination against individuals with disabilities;
- Specify accessibility requirements for the design and construction of new transportation facilities; Require that vehicles acquired be accessible to and usable by individuals with disabilities, including individuals using wheelchairs (with limited exceptions for demand responsive systems providing equivalent service to individuals with disabilities) or a demonstration of inability to obtain an accessible vehicle despite good faith efforts to do so;
- Require governmental authorities (including a private non-profit entity “standing in the shoes” of the Commonwealth), as a subrecipient operating fixed route transit, to have complementary paratransit plans on file (effective January 26, 1992); and
- Subrecipients of federal funds should ensure compliance in the areas of employment, public services, public accommodations, telecommunications, and other provisions.

Certification is accomplished annually through the funding application package containing appropriate assurances.

If a Section 5311 subrecipient is operating fixed route transit, the subrecipient must submit an annual Paratransit Plan to the KYTC/OTD no later than January 26. The KYTC/OTD must comment on the Paratransit Plan submitted and transmit them to the FTA Regional Office by April 1 of each year.

KYTC/OTD must also ensure that all vehicles acquired with Section 5311 funds are equipped, maintained, and operated in accordance with 49 CFR Parts 27, 37 and 38 and that service provided does not discriminate against individuals with disabilities. Newly constructed facilities, including joint use stops and depots for intercity bus transportation, must comply with ADA accessibility standards.

### **Reasonable Modification of Policy**

Per 49 CFR 37.5(i)(3), “Public entities that provide designated public transportation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services, subject to the

limitations of §37.169(c)(1)(3). This requirement applies to the means public entities use to meet their obligations under all provisions of this part.”

In 2015, USDOT amended its ADA regulations by issuing the Final Rule on Reasonable Modification of Policies and Practices. As stated in the Final Rule’s preamble, reasonable modification means that “the nature of an individual’s disability cannot preclude a public transportation entity from providing full access to the entity’s service unless some exception applies.”

Reasonable modification is often best illustrated with examples. Consider a transit agency with a policy of only stopping buses at designated bus stops. This policy would be modified for “an individual using a wheelchair who needs to access the bus even though sidewalk construction or snow prevents the individual from boarding the bus from the bus stop.” In this case, “the operator of the bus will need to slightly adjust the boarding location so that the individual using a wheelchair may board from an accessible location.” Appendix E to 49 CFR Part 37 contains 27 scenarios and provides guidance as to whether a particular passenger request should be granted or denied consistent with the Final Rule.

As part of the final rule, § 37.169 was added to Part 37. As stated in the preamble, “[§37.169 covers] the reasonable modification obligations of public entities providing designated public transportation, including fixed route, demand-responsive, and complementary paratransit service. The key requirement of [§37.169] is that these types of transportation entities implement their own processes for making decisions on and providing reasonable modifications to their policies and practices.”

#### Responding to Reasonable Modification Requests Requirement

“(1) A public entity providing designated public transportation, in meeting the reasonable modification requirement of §37.5(i)(3) with respect to its fixed route, demand responsive, and complementary paratransit services, shall respond to requests for reasonable modification to policies and practices consistent with this section. (2) The public entity shall make information about how to contact the public entity to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices. (3) This process shall be in operation no later than July 13, 2015” (§37.169(a)).

“The process shall provide a means, accessible to and usable by individuals with disabilities, to request a modification in the entity’s policies and practices applicable to its transportation services. (1) Individuals requesting modifications shall describe what they need in order to use the service. (2) Individuals requesting modifications are not required to use the term ‘reasonable modification’ when making a request. (3) Whenever feasible, requests for modifications shall be made and determined in advance, before the transportation provider is expected to provide the modified service, for example, during the paratransit eligibility process, through



customer service inquiries, or through the entity’s complaint process. (4) Where a request for modification cannot practicably be made and determined in advance (e.g., because of a condition or barrier at the destination of a paratransit or fixed route trip of which the individual with a disability was unaware until arriving), operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request. Operating personnel may consult with the entity’s management before making a determination to grant or deny the request” (§ 37.169(b)).

Section 37.169(a)(1) requires transit agencies to respond to requests for reasonable modification of policies and practices, and § 37.169(a)(2) requires agencies to make information about the process for requesting reasonable modifications readily available to the public. When making this information available to the public, a transit agency must use the same means it uses to inform the general public about its policies and procedures. For example, if an agency uses printed media and a website to inform customers about bus and complementary paratransit services, then it must use these means to inform people about the reasonable modification process. As stated in the preamble, “like all communications, this information must be provided by means accessible to individuals with disabilities.” Section 37.169(b) requires transit agencies to provide an accessible means by which individuals with disabilities can request a reasonable modification. Section 37.169(b)(1)–(2) explains that individuals requesting modifications only need to describe what they need in order to use the service and do not need to use the term “reasonable modification” to ~~validly~~ request such a modification.

Section 37.169(b)(3) encourages individuals requiring a reasonable modification to make their requests, and that the agency make the necessary determinations, in advance of the need for the modified service, whenever feasible. This is particularly appropriate where a permanent or long-term condition or barrier is the basis for the request (e.g., difficulty in access to a complementary paratransit vehicle from the passenger’s residence, the need to occasionally eat a snack on a rail car to maintain a diabetic’s blood sugar levels, or lack of an accessible path of travel to a designated bus stop due to sidewalk or road construction, resulting in a request to have the bus stop a short distance from the bus stop location). The rule does not require that agencies establish a separate process for handling reasonable modification requests; procedures already in place may suffice. As stated in the preamble, “In many cases, agencies are handling requests for modifications during the paratransit eligibility process, customer service inquiries, and through the long-existing requirement in the Department’s Section 504 rule for a complaint process. Entities will need to review existing procedures and conform them to the new rule as needed.” Section § 37.169(b)(4) makes provisions for situations in which an advance request and determination are not feasible. In those situations, operating personnel are to make the determination of whether the modification should be provided at the time of the request. These situations are sometimes more difficult to handle than advance requests, but responding to them is necessary.

#### Exceptions to Granting Reasonable Modification Requests Requirement

“Requests for modification of a public entity’s policies and practices may be denied only on one or more of the following grounds: (1) Granting the request would fundamentally alter the nature of the entity’s services, programs, or activities; (2) Granting the request would create a direct threat to the health or safety of others; (3) Without the requested modification, the individual with a disability is able to fully use the entity’s services, programs, or activities for their intended purpose” (§37.169(c)).

“In determining whether to grant a requested modification, public entities shall be guided by the provisions of Appendix E to this part” (§ 37.169(d)). “In any case in which a public entity denies a request for a reasonable modification, the entity shall take, to the maximum extent possible, any other actions (that would not result in a direct threat or fundamental alteration) to ensure that the individual with a disability receives the services or benefit provided by the entity” (§ 37.169(e)).

Part 27, which is applicable only to agencies that receive Federal funding, states: “Reasonable accommodations. A recipient shall make reasonable accommodations in policies, practices, or procedures when such accommodations are necessary to avoid discrimination on the basis of disability unless the recipient can demonstrate that making the accommodations would fundamentally alter the nature of the service, program, or activity or result in an undue financial and administrative burden. For the purposes of this section, the term reasonable accommodation shall be interpreted in a manner consistent with the term ‘reasonable modifications’ as set forth in the Americans with Disabilities Act Title II regulations at 28 CFR 35.130(b)(7), and not as it is defined or interpreted for the purposes of employment discrimination under Title I of the ADA (42 U.S.C. 12111–12112) and its implementing regulations at 29 CFR Part 1630” (§ 27.7(e)).

Section 37.169(c) states three grounds on which a transportation provider may deny a requested modification, which apply to both advance requests and on-the-spot requests. Section 27.7(e) adds a fourth exception involving undue financial and administrative burden. The grounds are:

- Granting the request for a modification would fundamentally alter the provider’s services (e.g., a request for a dedicated vehicle in paratransit service, a request for a fixed route bus to deviate from its normal route to pick up someone) (§ 37.169(c)(1)).
- Granting the request for a modification would create a direct threat to the health or safety of others (e.g., a request that would require a driver to engage in a highly hazardous activity in order to assist a passenger, such as having to park a vehicle for a prolonged period of time in a no parking zone on a high-speed, high-volume highway that would expose the vehicle to a heightened probability of being involved in a crash) (§ 37.169(c)(2)).
- The requested modification would not be necessary to allow the passenger to fully use the entity’s services, programs, or activities for their intended purpose (e.g., the modification might make transportation more convenient for the passenger, who could nevertheless use the service successfully to get where he or she is going without the modification) (§ 37.169(c)(3)).

- For FTA recipients, a request may also be denied if it would create an undue financial or administrative burden (§ 27.7(e)).

Appendix E to Part 37 provides additional examples of requested modifications that transportation providers usually would not be required to grant for one or more of the above-stated reasons. Section 37.169(e) requires a transportation provider that has a sound basis for denying a reasonable modification request under the above-stated grounds to do what it can to enable the requester to receive the services and benefits it provides (e.g., a different work-around to avoid an obstacle to transportation from the one requested by the passenger).

## **Complaint Procedures**

49 CFR Part 37.17(b) states: “Adoption of complaint procedures. An entity shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR Parts 27, 38 and 39. The procedures shall meet the following requirements:

- (1) The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under paragraph of this section, must be sufficiently advertised to the public, such as on the entity’s Web site;
- (2) The procedures must be accessible to and usable by individuals with disabilities;
- (3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response.”

This requirement is also in § 27.13(b).

USDOT’s 2015 Reasonable Modification of Policy and Practices final rule included revisions to the local complaint process requirement that affect the local handling of all complaints, not just those involving reasonable modification of policy. The Section 504 regulations have long required transit agencies to have administrative procedures in place that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints. The regulations now require additional steps described below.

### **Advertising the Process for Filing a Complaint**

Section 37.17(b)(1) requires transit agencies to sufficiently advertise the process for filing a complaint, so that individuals know where to direct their complaints. Having a well-defined and advertised central point for collecting complaints helps prevent riders from mistakenly assuming they have filed formal complaints when communicating with transit personnel outside the established process. At the same time, the procedures help the

agency ensure it provides appropriate due process for any actual ADA complaints received.

Agencies must advertise the process through means such as agency websites and include the contact information (name, address, telephone number, and email address) for the employee designated to coordinate compliance. In lieu of providing the name of an individual, FTA has found it acceptable to provide a title (e.g., “ADA Coordinator” or “Customer Complaint Representative”) so long as any communications to the job title are directed to the designated employee who can then promptly respond. This can be accomplished by forwarding telephone calls, retrieving recorded messages, forwarding emails, or other means.

Section 37.17(b)(2) requires a transit agency’s complaint procedures to be accessible to and usable by individuals with disabilities. Alternative formats must be provided to individuals as necessary.

### Communicating the Response to the Complainant

One of the primary changes to the local complaint process requirement in the reasonable modification rule involves communication. Per §37.17(b)(3), a transit agency must promptly communicate its response to the complainant, including the reasons for the response, and document this response for purposes of recordkeeping.

To facilitate prompt resolution, many transit agencies offer various means of communication, including written, electronic, in-person, and telephonic. Many agencies have also created interactive forms on their websites to receive complaints and use such procedures to share the information with the agency’s ADA Coordinator. Typically, such interactive forms also generate automated emails to the complainant acknowledging receipt of the complaint and indicating further communications will occur once the investigation is complete.

The regulations do not require a written response to the complainant. The agency, however, must communicate its response to the complaint allegations to the complainant and document its response to the complainant in its internal records or database.

### Using Contracted Service Providers

FTA notes that establishing complaint policies and procedures is the responsibility of the transit agency, not its contractors, meaning that complaint procedures apply to all transit service provided by the agency, whether directly or by contract. FTA cautions agencies against directing local complaints to their contracted service provider for resolution, since the agency itself is ultimately responsible for ADA compliance.

### Combining ADA and Title VI Procedures

Grantees have long been required to have procedures for processing complaints from members of the public alleging discrimination based on race, color, or national origin under Title VI of the Civil Rights Act of 1964. (See FTA’s Title VI Circular 4702.1B.) FTA notes that agencies can use the same process for accepting and investigating ADA and Title VI complaints. While agencies may find consolidating the processes more

efficient, ADA complaints must be categorized distinctly from Title VI complaints in internal and external communications. For example, it is not appropriate to have a “Title VI Complaint Form” that includes “disability” as one of the bases for filing a complaint; this incorrectly implies that disability is a covered basis under Title VI. Instead, an agency may elect to have one “Discrimination Complaint Form,” or a similarly titled form, that covers both the Title VI and ADA bases and clearly distinguishes the two statutes.

## **Standard Assurances**

FTA employs a one-time-submission of standard assurances to cover requirements of a repetitive nature which applicants place on file with the FTA Regional Office. This is a statement that the state applicant and local subrecipients will comply with the laws and regulations cited therein to the extent they may apply to the grant project. Each subrecipient must comply with the applicable standard assurances to the extent they may apply to the respective project. Updates are required on an as needed basis.

## **Buy America Provision**

All procurements shall be reviewed by KYTC/OTD staff for Buy America requirements. No reimbursement for capital expenses will be issued until all required documentation has been received and reviewed by KYTC/OTD and is satisfactorily complete.

## **Buy America Requirement**

49 U.S.C. 5323(j) [formerly Section 165 of the Surface Transportation Assistance Act of 1982] provides that, with exceptions, federal funds may not be obligated for public transportation projects unless steel and manufactured products used in such projects are produced in the United States. The Intermodal Surface Transportation Efficiency Act of 1991 added iron to the commodities covered.

Subrecipients must comply with 49 CFR Part 661 and any amendments thereafter. Buy America requirements apply to all purchases above **\$150,000**, including materials or supplies funded as operating costs. Buy America waivers must be submitted to FTA for approval. There are four exceptions to the basic requirement:

- Impracticable or inconsistent with the public interest;
- Non-availability - If materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

- Information technology that is a commercial item. The restriction on purchasing foreign construction material does not apply to the acquisition of information technology that is a commercial item; and
- Unreasonable cost. The cost of domestic construction is unreasonable in accordance with 41 U.S.C. Chapter 83, Subpart 25.204.

Per 49 U.S.C. 5323(j), final assembly of the rolling stock must occur in the United States, and when procuring rolling stock, the cost of components and subcomponents produced in the United States:

1. For fiscal years 2016 and 2017, is more than 60% of the cost of all components of the rolling stock;
2. For fiscal years 2018 and 2019, is more than 65% of the cost of all components of the rolling stock; and
3. For fiscal year 2020 and each fiscal year thereafter, is more than 70% of the cost of all components of the rolling stock.

## Clean Air Act

The Clean Air Act Amendments of 1990 establish many new substantive requirements in order to bring air quality regions, which currently violate the National Ambient Air Quality Standards, into attainment by prescribed dates.

The principal requirement for which both Section 5310 and Section 5311 subrecipients must be aware of is the transportation/air quality conformity review process. In general, transportation plans, programs, and projects must conform with approved State (air quality) Implementation Plans before FHWA or FTA can fund them.

Most of the projects typically funded under Section 5311 have been exempted by regulation from the conformity review process, e.g., operating assistance, purchase, and rehabilitation of transit vehicles, operating equipment and construction of most storage and maintenance facilities. However, this could become an issue for certain large facilities, e.g. transit terminals and park-and-ride facilities. A complete list of exempted highway and transit projects is found in 40 CFR 93.126. Therefore, Section 5311 projects should consult with FTA, when in question, as early as possible in the development of their programs to establish the need for further analysis to support FTA's conformity determination.

Other Clean Air Act requirements may apply to Section 5310 and 5311 subrecipients. For example, phase-in of more stringent bus emissions standards. The FTA Regional Office can supply up-to-date information on various provisions of the Clean Air Act related to mobile sources. Subrecipient transit agencies will be encouraged to procure alternative-fueled vehicles and to make renovations and construction projects

environmentally friendly.

## Safety

Safety is paramount and inherent in the provision Of KYTC/OTD services both at the organizational level as well as to the ultimate customer - the transit passenger.

FTA's authority in the area of transit safety was codified at 49 U.S.C 5329. FTA, through the authority delegated by the Secretary of the Department of Transportation, must create a comprehensive Public Transportation Safety Program. Most notably, Section 5329 provides FTA with the following explicit authorities to administer the Safety Program and to take enforcement actions:

- 49 U.S.C. 5329(f), provides FTA with the authority to inspect and audit a public transportation system; make reports and issue directives with respect to the safety of a public transportation system or the public transportation industry generally; issue subpoenas and take depositions; require the production of documents; prescribe recordkeeping and reporting requirements; investigate public transportation accidents and incidents; enter into and inspect the equipment, rolling stock, operations and relevant records of a public transportation system; and issue regulations.
- 49 U.S.C. 5329(g) authorizes FTA to take enforcement actions against a recipient of Federal financial assistance under 49 U.S.C. chapter 53 that is noncompliant with Federal transit safety law, through issuing directives, requiring more frequent oversight, imposing more frequent reporting requirements, requiring that chapter 53 funds be spent to correct safety deficiencies before those funds are spent on other projects, and withholding funds from a recipient.
- 49 U.S.C. 5329(h) authorizes FTA to impose restrictions and prohibitions on a recipient's operations, where FTA determines that an unsafe practice or condition creates a substantial risk of death or personal injury.

The final rule, dated August 11, 2016, added a new Part 670, "Public Transportation Safety Program," to Title 49 of the CFR.

As the designated recipient for federal funds in Kentucky, the KYTC/OTD is empowered to carry out the authority indicated above. KYTC/OTD will also exercise authority to remove vehicles and facilities from service if it is deemed that identified vehicles or facilities present an unsafe environment for employees and transit customers.

When applicable, Subrecipient transit agencies will develop a Public Transportation Agency Safety

Plan (PTASP).

Under the Infrastructure Investment and Jobs Act FTA has the authority to establish and enforce a new comprehensive framework to oversee the safety of public transportation throughout the United States as it pertains to heavy rail, light rail, buses, ferries, and streetcars. The law requires, among other things, that FTA update the State Safety Oversight (SSO) Program to ensure that rail transit systems are meeting basic, common-sense safety requirements. The law also includes important safety provisions for bus-only operators. FTA will implement the new law in consultation with the transit community and the U.S. Department of Transportation (DOT) Transit Rail Advisory Committee for Safety (TRACS), which has been working since September of 2010 to help guide this effort.

FTA must develop safety performance criteria for all modes of transportation.

### **Vehicle Safety Performance Standards**

On August 1, 2016 (and effective October 31, 2016), FTA issued the Final Rule titled “Bus Testing: Establishment of Performance Standards, a Bus Model Scoring System, a Pass/Fail Standard and Other Program Updates.” FTA issued a new pass/fail standard and new aggregated scoring system for buses and modified vans that are subject to FTA’s bus testing program, as mandated by Section 20014 of MAP-21. The pass/fail standard and scoring system address the following categories as required by MAP-21: structural integrity, safety, maintainability, reliability, fuel economy, emissions, noise, and performance. Recipients of FTA grants are prohibited from using FTA financial assistance to procure new buses that have not met the minimum performance standards established by this Final Rule. FTA also requires bus manufacturers to provide country-of-origin information for testing unit bus components, in lieu of applying Buy America U.S. content requirements to all buses submitted for testing.

### **Public Transportation Safety Certification Training Program for Federal and State**

#### **Personnel**

FTA has developed an interim public transportation safety certification training program that applies to transit grantees regardless of mode. After the interim provisions are in place, FTA will prepare a Public Transportation Certification Training Program, which will be established by regulation. The program is for federal and state employees or other designated personnel who conduct safety audits and examinations and employees of public transportation agencies responsible for direct safety oversight.

Section 5307 and 5311 recipients may use up to 0.5% of formula funds to pay for up to 80% of the cost of participation by an employee who has direct safety oversight responsibility of the public transportation system.

### **Transit Agency Safety Plans for all Federal Transit Recipients**



The FTA issued a Notice of Proposed Rulemaking (NPRM) proposing requirements for Public Transportation Agency Safety Plans as authorized by Section 20021 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). This proposed rule would require operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop and implement Public Transportation Agency Safety Plans based on the Safety Management System approach. Development and implementation of agency safety plans will help ensure that public transportation systems are safe nationwide.

Part 673, “Public Transportation Agency Safety Plans,” to Title 49 of the Code of Federal Regulations. The rule would implement the requirements of 49 U.S.C. 5329(d).

One year after FTA issues a final rule to carry out Section 5329(d), each State, local governmental authority, and other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53, must certify that it has established and implemented a comprehensive Public Transportation Agency Safety Plan. 49 U.S.C. 5329(d)(1). FTA proposes that large transit providers that are direct recipients of Section 5307 funds would develop their own plans, have the plans approved by their Boards of Directors (or equivalent authority), and certify to FTA that those plans are in place. FTA also proposes that transit providers which receive funds under the Enhanced Mobility of Seniors and Individuals with Disabilities Program authorized by 49 U.S.C. 5310 (which tend to be much smaller transit providers) and transit providers that receive funds under the Rural Area Formula Program authorized by 49 U.S.C. 5311, as well as small public transportation providers may have their plans drafted or certified by the State in which they operate. At a minimum, and consistent with 49 U.S.C. 5329(d), FTA proposes that each Public Transportation Agency Safety Plan must:

- Include a Safety Management System consisting of four main pillars: (1) Safety Management Policy, (2) Safety Risk Management, (3) Safety Assurance, and (4) Safety Promotion, as discussed in more detail below (49 CFR 673.11(a)(2));
- Include performance targets based on the safety performance criteria established under the National Public Transportation Safety Plan, and the state of good repair standards established in the regulations that implement the National Transit Asset Management System and are included in the National Public Transportation Safety Plan (49 CFR 673.11(a)(3));
- Address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and National Public Transportation Safety Plan (49 CFR 673.11(a)(4)); and
- Establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan (49 CFR 673.11(a)(5)).

A transit agency would be able to develop one Public Transportation Agency Safety Plan for all modes of

service, or it may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity. 49 CFR 673.11(b). A transit agency would be required to maintain records associated with its Public Transportation Agency Safety Plan. 49 CFR 673 subpart D.

A State or transit agency would be required to make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process, and to the maximum extent practicable, a State or transit agency would be required to coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets. 49 CFR 673.15.

On an annual basis, a transit agency or State would be required to certify its compliance with this rule. 49 CFR 673.13.

## **Transit Asset Management**

### **What is Transit Asset Management?**

Transit asset management is the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation.

### **What is a Transit Asset Management Plan?**

The 2012 Asset Management Guide specifies that, in general, an asset management plan outlines the activities that will be implemented and resources applied to address the asset management policy and strategy. For many transit agencies, the plan will address the activities and changes to be implemented to increase the maturity of asset management practice.

Primarily, asset management plans have two major components:

- Enterprise-wide implementation actions that provide enabling support and direction for asset management across all asset classes and services.
- Direction and expectations for asset class owners and department managers regarding lifecycle management planning and processes—with a focus on the lifecycle management plans.

Plans should outline how people, processes, and tools come together to address the asset management policy and goals. They, also, provide accountability and visibility for increasing the maturity of asset management practices, and can be used to support planning and budgeting activities, communicating to internal and external stakeholders, and as an accountability mechanism.

### Final Rule

The Final Rule, for Transit Asset Management, added a new Part 625 to Title 49 of the Cod of Federal Regulations. Section 625.17 establishes basic principles of transit asset management and requires a transit provider to balance competing needs when considering the life-cycle investment needs of its assets. The disrepair of any particular asset within a public transportation system does not necessarily mean that other assets are in disrepair; whether an asset has achieved a state of good repair is an independent determination that would be made by each transit provider.

Sections 625.25 through 625.33 set forth specific requirements for TAM plans. Each transit provider that receives Chapter 53 funds as a recipient or subrecipient and either owns, operates, or manages capital assets used in the provision of public transportation, is required to develop and implement a TAM plan. A TAM plan is a tool that will aide transit providers in: (1) assessing the current condition of its capital assets; (2) determining what the condition and performance of its assets should be (if they are not already in a state of good repair); (3) identifying the unacceptable risks, including safety risks, in continuing to use an asset that is not in a state of good repair; and (4) deciding how to best balance and prioritize reasonably anticipated funds (revenues from all sources) towards improving asset condition and achieving a sufficient level of performance within those means.

Section 625.25 lists the TAM plan requirements, including an asset inventory, condition assessments, a description of analytical processes or decision-support tools used to estimate and prioritize capital investment needs over time, and a project-based prioritization of investments. In general, an asset inventory must include all equipment, rolling stock, facilities and infrastructure that a provider owns. A provider may exclude from its asset inventory any equipment with an acquisition value of less than \$50,000, unless the asset is service vehicle equipment. The inventory also must include all rolling stock (revenue vehicles), passenger stations, administrative and exclusive use maintenance facilities, and guideway infrastructure owned by a third-party and used by the provider in the provision of public transportation. The level of detail in a provider's asset inventory should be commensurate with the level of detail in its program of capital projects. A transit provider is required to conduct a condition assessment on all inventoried assets for which the provider has direct capital responsibility, and also set targets and develop a project-based prioritization of investments for those assets.

Section 625.27 requires States to develop a group TAM plan for all subrecipients under the Rural Area

Formula Program, authorized under 49 U.S.C. § 5311, including American Indian tribes. TAM plan sponsors, which include States, and designated and direct recipients, must develop group TAM plans for their tier II provider subrecipients, except those subrecipients that also are direct recipients under the Urbanized Area Formula Program authorized at 49 U.S.C. § 5307. Tier II providers are those transit operators that do not operate rail fixed-guideway public transportation systems and have either one hundred (100) or fewer vehicles in fixed-route revenue service during peak regular service or have one hundred (100) or fewer vehicles in general demand response service during peak regular service hours. Tier I providers are those operators with one hundred and one (101) or more vehicles in revenue service during peak regular service or operators of rail fixed-guideway public transportation systems. Tier I providers must develop their own, individual TAM plan.

The group TAM plan approach is intended to reduce the burden on smaller transit providers of developing their own TAM plans and reporting to FTA's National Transit Database (NTD). A group TAM plan is subject to the same requirements for individual TAM plans. However, sponsors and participants should coordinate to determine their specific roles and responsibilities in complying with the rule.

Section 625.33 implements requirements for investment prioritization. Transit providers are required to rate state of good repair projects in order of priority. The investment prioritization requirements aid a transit provider in making more informed investment decisions to improve the state of good repair of its capital assets.

Sections 625.41 through 625.45 implement specific performance management requirements. Section 625.41 lists the objective standards for measuring the condition of capital assets. Section 625.43 establishes SGR performance measures based on the SGR standards. Section 625.45 requires recipients and subrecipients to set one or more performance targets per asset class based on the SGR measures and also requires transit providers to coordinate with States and with Metropolitan Planning Organizations (MPOs), to the maximum extent practicable, in the selection of State and MPO performance targets.

Together, these requirements allow transit providers to better assess their SGR needs, and in turn make more informed investment decisions. The coordination amongst transit providers, States and MPOs should influence MPO and State transportation funding investment decisions and is intended to increase the likelihood that transit SGR needs are programmed, committed to and funded as part of the planning process.

Section 625.55 requires transit providers to report their targets and the condition of their capital assets annually to FTA's NTD. This data both helps FTA better estimate the Nation's SGR backlog and supports the need for additional funding at all levels of government to maintain, improve, and replace the Nation's aging transit capital assets.

### **Additional Authorities**

FTA has the authority to inspect and audit all public transportation systems; to make reports and issue directives with respect to the safety of public transportation systems; to issue subpoenas and take depositions; to

require the production of documents; to prescribe recordkeeping and reporting requirements; to investigate public transportation accidents and incidents; to enter and inspect equipment, rolling stock, operations and relevant records; and to issue regulations to carry out Section 5329.

FTA has enforcement authority, and is permitted to issue directives, require more frequent oversight, impose more frequent reporting requirements, and require that formula grant funds be spent to correct safety deficiencies before funds are spent on other projects.

## **Drug and Alcohol Program**

§5311 recipients must comply with the provisions of USDOT and FTA Drug and Alcohol Rules: 49 CFR Part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” and 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.” For those §5310 systems, with vehicles requiring CDL licenses, Project Managers will assist with compliance with the USDOT/Federal Motor Carrier Safety Administration regulations, 49 CFR Part 382, “Controlled Substances and Alcohol Use and Testing.” The basic components of these regulations are:

Policy: Each §5311 recipient must have a policy statement on drug use and alcohol misuse in the workplace. The policy must identify which categories of employees are subject to testing; it must describe prohibited behavior; it must describe testing procedures; and it must describe the recipient agency’s consequences for violating the drug and alcohol regulations. KYTC/OTD must have an updated, Board-approved Policy on file with this office. The recipient must submit an updated policy with each grant application. The Project Manager will assist the recipient in policy development and in developing a policy for approval. The Project Manager will determine if policies are in compliance and are up-to-date. The Project Manager will determine that all recipient employees receive a copy of the policy and all updates.

Education and Training: The Project Manager will assure that the following training or education requirements are followed:

1. Educational materials must be provided to employees explaining the requirements of the FTA drug and alcohol testing regulations and the recipient’s policies and procedures;
2. Information on the effects and consequences for substance abuse on personal health, safety and the work site, as well as indicators of substance abuse must be provided to employees; and,
3. Recipient supervisors must receive additional training on the physical, behavioral, and

performance indicators of substance abuse if they are responsible for determining Reasonable Suspicion testing. Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Every two years, or when there are major regulation changes, KYTC/OTD may provide regional and individual training to recipients on the regulations. KYTC/OTD may hold individual sessions for Supervisory training. KYTC/OTD may supply training material to the recipients so that they can conduct in-house training and provide posters and pamphlets.

Testing: KYTC/OTD initiated a statewide drug and alcohol consortium made up of §5311 and §5310 systems. A consortium committee (Committee) guides the direction of the recipient's testing programs. The Committee consists of eleven recipient members and two members from KYTC/OTD. The Consortium Committee has contracted with a Third Party Administrator (TPA) to help manage the program. The TPA sets up and contracts with collection sites and provides Medical Review Officer services. The TPA is knowledgeable regarding the USDOT/FTA testing regulations. Each recipient has a separate account with the TPA under the umbrella of Kentucky Public Transit. The TPA may also provide training and regulatory materials. The TPA may also conduct Random Testing in accordance with USDOT Transit Drug and Alcohol Regulations.

As a deterrent, KYTC/OTD will maintain the 50% random drug draw as initiated by the statewide drug and alcohol consortium. Section 5311 agencies may, as a deterrent, have a higher random drug draw over 50%.

When there are major regulation changes, KYTC/OTD may provide regional and individual training to recipient's on the regulations. KYTC/OTD may hold individual sessions for Supervisory training. KYTC/OTD may supply training material to the recipient's so that they may conduct in-house training and provide posters and pamphlets.

Project Manager Responsibilities: The Project Manager or a designated Project Manager must assure that a recipient's testing program is set up according to FTA regulations. The Project Manager must assure that the recipient knows when to test, why to test, and what to test for. The Project Manager must assure that the recipient assures the privacy and dignity of the transit employee at all times. Project Managers will inspect area collection sites during some §5311 Compliance Reviews and will conduct random inspections when notified of issues with a site to assure that the sites have an understanding and abide by the testing regulations in 49 CFR Part 40.

Compliance: KYTC/OTD may use the following guidelines to ensure compliance with the annual reporting requirements and to prepare and maintain a summary of the results of the anti-drug and alcohol misuse testing programs performed during the previous year (MIS reporting):

Recipients shall maintain a monthly drug testing report which will show if the testing is spread out during the hours and days the transit system is in operation.

- The Office of Transportation Delivery staff may request a D & A report for FTA compliance.
- The Executive Director, Transit Branch Manager, or designee may incorporate transit agency reports into a spreadsheet for each agency;
- A letter may go out in to each recipient stating that all monthly reports for the calendar year are to be verified and re-submitted to KYTC/OTD by specified date;
- The electronic format is received from FTA with appropriate reporting instructions;
- If requested, the Executive Director, Transit Branch Manager, or designee shall ensure receipt of reports from a recipient, and determine what report format should be used for each recipient, i.e., short form if no positive drug or alcohol results were reported or the more extensive long form if a recipient reported a positive drug test or a positive alcohol result;
- The Executive Director, Transit Branch Manager, or designee has an option to complete the appropriate drug MIS form and the appropriate alcohol MIS form for each recipient. The completed reports may be sent to the recipient with a request to have the appropriate official sign the front page of each report and make changes on the other pages and to return by a specified date. KYTC/OTD will complete the required MIS form on behalf of the State and if required, approve the recipient submittals. Explanations are required with any changes made;
- The Executive Director, Transit Branch Manager, or designee shall work with the Third Party Administrator and the Section 5311 agency for differences, or discrepancies when completing the MIS report. The final and full MIS report, for all recipient's for the previous year, is maintained on file; and,
- KYTC/OTD will submit the MIS report or specific recipient reports to FTA's Office of Safety and Security by March 15<sup>th</sup> or any date that may be prescribed by FTA.

## **DRUG-FREE WORKPLACE ACT**

The Drug-Free Workplace Act of 1988, as amended, as well as 41 U.S.C §8103 requires all grantees receiving grants from any state agency to certify they will maintain a drug-free workplace.

## **Private Sector Participation**

FTA requires public involvement in the application process for all FTA grant programs. §5310 and §5311 applicants must receive support letters from local transportation providers (if applicable) and local

government showing their concurrence with the proposed application. §5311 applicants are encouraged to involve the public in every step of the application process. Each year the KYTC/OTD will advertise a Solicitation of Proposals for Federal Transit Grants online and/or in a newspaper of local circulation, thus ascertaining applications are competitive.

Federal law requires the public to be involved in the transportation planning process and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urban and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

Under the requirements of 49 U.S.C. 5323(a)(1)(B), States or local governmental authorities may use FTA funds to operate public transportation service in competition with, or in addition to, transportation service provided by an existing public transportation company, only if the grantee “provides for the participation of private companies engaged in public transportation to the maximum extent feasible.”

In view of the KYTC/OTD’s continued commitment, to the maximum extent feasible, to the involvement of private enterprise in the provision of mass transit services, the following applies: Applicants must provide reasonable notice to transportation providers regarding proposed services and opportunities for their participation in such services. Applicants must provide in each application certified receipts of letters that the Applicant sent to private-for-profit transportation providers notifying them of all applicable Public hearings and coordinated meetings. An email or other documentation from the private-for-profit transportation provider that acknowledges awareness of the applicable public hearing or coordinated meeting will also be accepted.

To ensure that all interested individuals, businesses, and agencies have been notified of a subrecipient's intention to provide transportation services, and that they have adequate opportunity to comment, the subrecipient must issue a public notice describing its proposed services. The notice should invite any interested private operator within the service area to comment or request a public hearing on the proposed services by written notice to the subrecipient. A minimum of 14 days response time must be provided.



## SAMPLE CALL FOR PROJECTS

### KENTUCKY TRANSPORTATION CABINET OFFICE OF TRANSPORTATION DELIVERY SOLICITATION OF PROPOSALS FOR FEDERAL TRANSIT GRANTS STATE FISCAL YEAR 2022 (July 1, 2024 through June 30, 2025)

#### NOTICE DATE:

The Office of Transportation Delivery of the Kentucky Transportation Cabinet is seeking proposals from public and non-profit entities to assist in the delivery of public and specialized transportation services. Services would be provided under 49 U.S.C. Sections 5303, 5304, 5310, 5311, and 5339, including all amendments. These transportation programs have been reauthorized through the yearlong extension of the Infrastructure Investment and Jobs Act.

**Section 5303** provides Federal transit planning assistance with required local match to assist with the development of long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State as well as the establishment of performance targets that address national transit performance measures issued by the US DOT and based on goals outlined in law.

**Section 5304** provides Federal statewide and non-metropolitan transit planning assistance with required local match to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people while working and coordinating with the State, regional transportation planning organizations and public transit operators.

**Section 5311** provides Federal operating, planning and capital assistance with required local match for general public transportation assistance in rural areas with populations less than 50,000. Section 5311 coordinates programs and services to improve service levels in areas with minimal service and assists in the maintenance and improvement of public transportation systems in rural areas. This program also provides services to low-income individuals for job access and reverse commute projects. Grants to support public transportation in the Appalachian region are also available under this program. Federal regulation requires that 15% of these funds be reserved each year to support an Intercity Bus Program (5311(f)), unless the Governor of a state certifies that intercity bus needs in the state are being met. Through the Rural Transit Assistance Program (RTAP) funds are distributed to aid in the implementation of training and technical assistance of projects and support services tailored to meet the needs of the transit operators in these non-urbanized areas.

**Section 5339** provides funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities. This program requires up to a 20% local match.

**Section 5310** provides Federal capital assistance with required local match (20%) for eligible agencies that help increase the mobility of seniors and individuals with disabilities in urban or non-urbanized areas where transportation services are unavailable, insufficient, or inappropriate. At least 55% of program funds MUST

be spent on these types of capital programs. The remaining 45% of the State allocation MAY be used to provide funding for services for individuals with disabilities that go above and beyond the requirements of the Americans with Disabilities Act

(ADA). These funds may be used for operating expenses at a 50% local match or for capital expense with a 20% required match. Local transit providers must participate in the development of a Coordinated Public Transit-Human Service Transportation Plan.

**COORDINATED PUBLIC TRANSIT-HUMAN SERVICE PLAN:** All 5310 applicants must be a part of and included in an approved locally-developed Coordinated Plan.

Final Applications for these programs are due in the Office of Transportation Delivery by April 1, 2021 for the 2022 State Fiscal Year beginning July 1, 2021. All proposals and related documents shall be subject to financial assistance between the Kentucky Transportation Cabinet and the United States Department of Transportation /Federal Transit Administration. Transportation entities receiving Federal assistance will be required to comply with all applicable Federal, State and local laws and regulations. To apply for assistance as a first-time applicant under any of these Sections, please notify Tabitha Martin at [vickie.bourne@ky.gov](mailto:vickie.bourne@ky.gov) or [tabitha.martin@ky.gov](mailto:tabitha.martin@ky.gov) by February 5, 2021 of your intent to submit a proposal. Proposals are subject to availability of funding. In addition, new applicants shall submit a completed feasibility study in addition to completing a formal application.

Final applications may be submitted online or via mail at KYTC/Office of Transportation Delivery, Attention: Vickie Bourne, 200 Mero Street, Frankfort, KY 40622. All applications must be received by the end of the day on April 1, 2021. For questions, please contact Tabitha Martin at (502) 564-7433.

The Kentucky Transportation Cabinet's goal is to "provide a safe, efficient, environmentally sound and fiscally responsible transportation system which promotes economic growth and enhances the quality of life in Kentucky." The Kentucky Transportation Cabinet is an equal opportunity employer M/F/D.

## Commercial Driver License

Drivers have been required to have a commercial driver's license (CDL) in order to drive certain commercial motor vehicles (CMVs) since April 1, 1992. The types of vehicles and operations requiring a CDL are outlined below. Mechanics that drive the vehicles must also have a CDL. Pursuant to Federal standards, States issue CDLs and CLPs to drivers according to the following license classifications:

**Class A:** Any combination of vehicles which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds) whichever is greater.

**Class B:** Any single vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), or any such vehicle towing a vehicle with a gross vehicle weight rating or gross vehicle weight that does not exceed 4,536 kilograms (10,000 pounds).

**Class C:** Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR Part 172 or is transporting any quantity of a material listed as a select agent or toxin in 42 CFR Part 73.

# Chapter 11: Project Reporting, Monitoring and On- Site Reviews

## Background

The Federal Transit Administration gives States, to the extent permitted by law, maximum discretion in designing and managing the Section 5310, 5339, and 5311 Programs. FTA staff provide overall policy for the respective programs; apportion funds annually to the States; develop and implement financial management procedures; and conduct national program reviews and evaluations.

The FTA defers to the state, where possible, the development of specific program standards, criteria, procedures, and policies in order to provide Kentucky the flexibility to standardize its management of these federal programs and related state programs.

All participants in the Section 5310, 5339, and 5311 formula grant programs in Kentucky are required to complete and submit periodic forms designed to capture data that reflects key performance and utilization aspects of their efforts in rendering transportation services.

## Project Monitoring and Reporting

Participants in the Section 5311 program are required to monitor and report on a variety of items, including ridership, revenues, expenses, vehicle and equipment management, drug and alcohol testing, involvement of DBE, service coordination efforts. Subrecipients file DBE reports semi-annually and KYTC/OTD files DBE reports to FTA semi-annually and annually.

A continuous system of checks and balances is built into project monitoring through various means such as subrecipient reports, invoice processing, and the generation of supplemental agreements. These methods are enhanced through open channels of communication, site visits, and a compliance review process.

The open channels of communication and compliance review process are complementary and intended to provide a qualitative closing the “loop” method by continually ensuring that the subrecipient(s) requirements, as identified in the application and resultant contract, are being met through what KYTC/OTD is providing.

## **Required Reporting**

### **Reporting**

FTA requires KYTC/OTD to provide semi-annual reports on the progress of their DBE program, yearly reports on the progress of the Drug & Alcohol Testing Programs (Management Information System) and 5311 ADA Paratransit Plans.

#### **National Transit Database Program**

The National Transit Database (NTD) is the USDOT/Federal Transit Administration's primary national database for statistics on the transit industry. Section 5311(b)(4) specifies that each Section 5311 recipient shall submit an annual report containing information on capital investment, operations, and service provided under Section 5311. Items to be reported include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership.

The Office of Transportation Delivery, of the Kentucky Transportation Cabinet, as the state agency responsible for administering FTA's Formula Program for Non-Urbanized Areas (Section 5311), is responsible for ensuring that data is collected and compiled for the data collection and compilation for each Section 5311 subrecipient and transportation provider in the State that benefits from the grant. KYTC/OTD collects the data for the National Transit Database Program through the monthly submission of uniform operating and financial reports from each transit agency. The information is accumulated and compiled into the format required by the National Transit Database Program. The report is submitted annually to the National Transit Database on the date mandated in the Rural Reporting Manual.

1. Recipient Requirements -The recipient must provide KYTC/OTD with the following monthly reports:
  - Drug & Alcohol Testing and Random Testing
  - Monthly budget line item and invoice
  - Section 5311 Monthly Summary Report

Annual vehicle utilization reports are required for vehicles purchased through Section 5310. Subrecipients should direct any questions concerning these reports to their Project Manager.

## **Compliance Reviews**

The Project Manager for each Subrecipient performs on-site Compliance Reviews. Virtual Compliance Reviews by the Project Manager, including vehicle inspections, may be necessary and will be enacted under emergency or unusual circumstances. The Project Manager will conduct a follow-up review within six months if the Project Manager has any areas of concern. Project Managers will have a due date from the date of the compliance review or follow up review to write up the report for review by the Public Transit Branch Manager. Project Managers will inspect 5% of the total fleet, or at least one vehicle each review, for safety equipment, overall condition, spill kits, ~~bus card~~, etc. Periodically, the Project Manager will ride on a bus route to talk to the riders and to observe driver operations, lift operations, etc. KYTC/OTD maintains all compliance review reports in a FY Compliance Notebook.

On-site Compliance Reviews are performed by the Project Manager on §5310 agencies at the same time the §5311 review is performed if the system receives funding from the respective program. On-site Compliance Reviews are performed on §5310-only agencies periodically. Virtual Compliance Reviews by the Project Manager, including vehicle inspections, may be necessary and will be enacted under emergency or unusual circumstances. The Project Manager will perform a follow-up review within six months, if necessary. KYTC/OTD maintains all compliance review reports in a FY Compliance Notebook.

The Project Manager assigned to ADA will respond to any general public or transit concerns or questions regarding the Americans with Disabilities Act of 1990. The ADA Project Manager will send out letters in December or January to the Section 5311 fixed-route systems regarding the annual ADA certification. If the Project Manager agrees that the transit system's paratransit service is fully meeting all service criteria, then only the ADA assurance is required. The ADA Project Manager should receive the signed assurance by January 26<sup>th</sup>. KYTC/OTD forwards the signed assurances to FTA by April 1<sup>st</sup>. Future or new §5311 fixed route systems will be required to go through the entire ADA Paratransit Plan process, including public hearings and the development of an ongoing mechanism for the participation of individuals with disabilities in service decisions.

The Civil Rights Project Manager is responsible for the Disadvantaged Business Enterprise (DBE) Program. The KYTC/Office for Civil Rights and Small Business Development (OCRSBD) certifies all businesses through the Unified Certification Program. All certified firms are listed on the KYTC website. New firms are added to the website as they are approved by OCRSBD. With each annual §5311 sub-grantee budget, a goal is set for eligible purchases and approved by KYTC/OTD as part of a sub-grantee's annual budget. Transit systems report DBE eligible purchases semi-annually. The Project Managers give this information to the Civil Rights Project Manager for compilation. KYTC/OTD uses this information in the Semi-annual DBE reports

prepared by the Civil Rights Project Manager and submitted to FTA. The Civil Rights Project Manager, the Public Transit Branch Manager, and the Executive Director in conjunction with the OCRSBD reports on file in the Cabinet, prepare the goal report every three (3) years. KYTC/OTD submits this report to FTA by August 1<sup>st</sup>.

The Civil Rights Project Manager, also, prepares the Title VI update report by compiling information from the subrecipients' Title VI Plans in accordance with the Title VI Circular. Unless there are significant changes, the Title VI update will be submitted to FTA every three years.

Once a year, or when an expense/revenue issue may arise, the Project Manager will review all the pertinent fiscal files of a §5311 transit system, which may include all or portions of the General Ledger. The Project Manager will review all receipts, invoices, etc., for each line item of a specific month's request. If there are audit or budget concerns, KYTC/OTD may request additional backup documentation on various months.

Each Project Manager is responsible for all aspects of grant compliance. Therefore, as an issue arises, the Project Manager shall investigate and offer technical assistance to the sub-grantee on issues such as Charter, Buy America, Drug and Alcohol Testing, Private Sector, Purchases, Maintenance, RTAP/Training, etc.

## **Project Invoicing**

Invoicing allows KYTC/OTD to ensure the quality progression of a project. It also provides an excellent opportunity for the interaction of the various staff members at KYTC/OTD who are involved with a project. All subrecipients are required to use a Standard Line Item invoice provided by KYTC/OTD.

The subrecipient's invoice is submitted to KYTC/OTD to the attention of the Executive Director, and to the Public Transit Branch Manager/Project Manager. The Project Manager reviews and recommends payment. Once the Project Manager recommends for payment the invoice is entered into the statewide accounting system (EMARS). After the invoice is entered into EMARS, it must be reviewed and approved by the Public Transit Branch Manager and/or Staff Assistant and/or Executive Director of KYTC/OTD & the Division of Accounts/Pre-Audit.

KYTC/OTD reserves the right to request, at such time and in such manner as it requires, any other project reports to adequately monitor progress or as may be required under federal or state regulations.

The aspect of inventory control is crucial in identifying the myriad of resources distributed throughout the state. It is an issue directly related to project management and is especially relevant to increased fleet acquisition and spare ratios. In capital equipment requests, replacement versus expansion plays an integral role in the decision-making process.

# Chapter 12: Technical and Management Assistance

KYTC/OTD is comprised of a staff of financial, planning, project management, and operational specialists who are available to provide a wide range of technical assistance to local areas upon request. Additionally, the KYTC/OTD may draw upon other resources within KYTC (i.e. Legal, Data Processing, Purchasing, Central Accounting, Auditing, Safety, Information Technology, Civil Rights and Engineering) as well as contracted professional services to provide technical and management assistance to the Sections 5310/5311/5339 Programs.

## **Technical and Management Assistance**

KYTC/OTD will be available to provide technical and management assistance to existing, new, and future projects including but not limited to the following areas:

- The preparation of project grant applications;
- The preparation of transportation development plans;
- Transportation coordination issues;
- The involvement of private sector transportation providers in service delivery;
- Grants management functions including invoicing, record keeping and accounting issues;
- System operations and management;
- Procurement and third party contracting;
- Development and provision of driver training and preventive maintenance programs;
- Development and review of vehicle specifications;
- Development and evaluation of service routes and schedules;



- Participation in local planning issues; Development of local financing strategies;
- Establishment of programs for providing service to Seniors and people with disabilities;
- The establishment of programs to comply with civil rights requirements;
- Procedural matters relating to facility construction; and
- Other issues/requests and needs, which may arise from time to time.
- Final disposition of property and facilities, transit studies

## FOOTNOTES:

<sup>1</sup> Commonwealth of Kentucky State Transportation Improvement Plan can be found at [2019 Statewide Transportation Improvement Plan \(STIP\) Book | KYTC](#)

<sup>2</sup> 49 U.S.C. Chapter 53 defines a rural area as a population less than 50,000, small urban area as a population over 50,000 but less than 200,000 and a large urban/metropolitan area as a population over 200,000.

<sup>3</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070\\_1G\\_FINAL\\_circular\\_4-20-15%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070_1G_FINAL_circular_4-20-15%281%29.pdf)

<sup>4</sup> [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

<sup>5</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070\\_1G\\_FINAL\\_circular\\_4-20-15%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070_1G_FINAL_circular_4-20-15%281%29.pdf)

<sup>6</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FINAL\\_FTA\\_circular9030.1E.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FINAL_FTA_circular9030.1E.pdf)

<sup>7</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Circular\\_9040\\_1Gwith\\_index\\_-\\_Final\\_Revised\\_-\\_vm\\_10-15-14%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Circular_9040_1Gwith_index_-_Final_Revised_-_vm_10-15-14%281%29.pdf)

<sup>8</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070\\_1G\\_FINAL\\_circular\\_4-20-15%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070_1G_FINAL_circular_4-20-15%281%29.pdf)

<sup>9</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Circular\\_9040\\_1Gwith\\_index\\_-\\_Final\\_Revised\\_-\\_vm\\_10-15-14%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Circular_9040_1Gwith_index_-_Final_Revised_-_vm_10-15-14%281%29.pdf)

<sup>10</sup> [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final\\_FTA\\_C\\_5100\\_4-16-15.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_C_5100_4-16-15.pdf)