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## CHAPTER X. OTHER PROGRAM COMPLIANCE ELEMENTS

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### INTRODUCTION

Each Section 5311 Program grantee is responsible for being aware of and complying with all of the compliance elements of the Section 5311 program. These are contained in the most current version of FTA Circular 9040.1 which can be accessed at [http://www.fta.dot.gov/legislation\\_law/12349.html](http://www.fta.dot.gov/legislation_law/12349.html). This chapter, however, provides an overview of each of these program requirements and the responsibilities of the grantee. Again, this is a summary, and grantees should review the Circular in its entirety to ensure that they meeting all of the program requirements.

### LABOR

For almost all Federal transit programs involving transit operations, including the Section 5311 program, 49 U.S.C. § 5333(b), <http://www.dol.gov/olms/regs/compliance/statute-sect5333b.htm>, require that fair and equitable arrangements must be made to protect the interests of employees affected by such assistance. The United States Department of Labor (USDOL) is responsible under Federal law for the administration of Section 5333(b). A simplified process for assuring employee protections has been developed to accommodate the needs of participants in the Section 5311 program and is described below.

#### Special Warranty

A simplified process for assuring employee protections has been developed to accommodate the needs of participants in

the Section 5311 program. USDOL and USDOT agreed upon a Special Section 5333(b) Warranty for Section 5311 projects (hereinafter referred to as the “Special Warranty”), which was certified by the Secretary of Labor on May 31, 1979. The Warranty is available at [http://www.dol.gov/olms/regs/compliance/transit/07\\_Special\\_Warranty.htm](http://www.dol.gov/olms/regs/compliance/transit/07_Special_Warranty.htm).

Acceptance of the Special Warranty by grantees substitutes for the certification by USDOL of individually negotiated labor agreements for each project within the INDOT program of projects for Section 5311. If DOL has certified comparable arrangements to be substituted for certain parts of the Special Warranty for use in a particular situation, acceptance of the warranty as modified is treated the same as acceptance of the Special Warranty.

Before undertaking a project, the Section 5311 grantee (or a legally responsible entity designated by INDOT) must agree in writing to the Special Warranty. INDOT, in turn, certifies to USDOL that each grantee included in the program of projects for each annual funding cycle has agreed in writing to the Special Warranty. The agreement to the Special Warranty is a prerequisite before a grantee is permitted to draw down Section 5311 funds for a project.

#### Other Required Labor Elements

An additional requirement of this section is that grantees must submit to INDOT with each grant application an accurate, up-to-date listing of all existing transportation providers that are eligible recipients of transportation assistance under Section

5311. Additionally, a list of any labor organizations representing the employees of such providers must be provided. INDOT has prepared (included in the INDOT annual application package) a special form that must be completed with the grant application for purposes of meeting these requirements.

The grantee must post the entire signed and completed Special Warranty where affected employees may see it. A bulletin board in a driver's room or other conspicuous place is a good location.

The text of the National (Model) Agreement and additional guidance concerning the Special Warranty for Section 5311 may be obtained at <http://www.dol.gov/olms/regs/compliance/compltransit.htm> or by contacting:

U.S. Department of Labor  
Office of Labor-Management Standards  
Division of Statutory Programs  
Washington, DC 20210  
Telephone: (202) 693-0126  
Fax: (202) 693-1342  
[OLMS-DSP@dol.gov](mailto:OLMS-DSP@dol.gov)

DOL procedures established for using the Special Warranty do not extend beyond the Section 5311 program. DOL guidelines, 29 CFR Part 215, <http://www.gpo.gov/fdsys/granule/CFR-2010-title29-vol2/CFR-2010-title29-vol2-part215>, have established different labor protection procedures for FTA's Section 5309 capital program and Section 5307 urbanized area formula program. Note that those procedures apply to Section 5339 funds that the state may receive on behalf of recipients in nonurbanized areas. Unlike the Special Warranty for Section 5311, employee protective arrangements for each grant under other FTA programs must be certified

by DOL prior to grant award. The terms and conditions that DOL may certify for Section 5307 and 5339 grants, however, are generally similar to those of the Special Warranty for Section 5311.

## PRIVATE SECTOR PARTICIPATION

Section 5323(a) (1), <http://www.gpo.gov/fdsys/granule/USCODE-2011-title49/USCODE-2011-title49-subtitleIII-chap53-sec5323/content-detail.html>, requires that FTA funded projects "to the maximum extent feasible" provide for "the participation of private mass transportation companies." While FTA no longer prescribes a particular private sector participation process, Section 5311 grantees still have obligations under this requirement. The statewide and metropolitan planning process is assumed to adequately address private sector concerns. If, however, the state's planning process does not address rural transit projects in sufficient detail to provide adequate notice to potential private operators in the service area of Section 5311 projects, the state may need to adopt supplemental procedures in order to be able to make the required assurance.

## CHARTER SERVICE

**INDOT expressly prohibits the provision of charter service by Section 5311 grantees.** As such Section 5311 grantees, however, must understand what charter service is to ensure that the service it provides does not meet the definition of charter.

Charter service as defined in 49 CFR Part 604, <http://www.gpo.gov/fdsys/granule/CFR-2012-title49-vol7/CFR-2012-title49-vol7-part604/content-detail.html>, is

transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. It does not include demand response service to individuals. The following features may be characteristic of charter service:

- ◆ A third party pays the transit provider a negotiated price for the group.
- ◆ Any fares charged to individual members of the group are collected by a third party.
- ◆ The service is:
  - Not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or
  - A third party determines the origin and destination of the trip as well as scheduling.
- ◆ Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration, and:
  - A premium fare is charged that is greater than the usual or customary fixed route fare; or
  - The service is paid for in whole or in part by a third party.

Other key elements in this definition are defined by FTA as follows:

- ◆ Demand Response-means any non-fixed route system of transporting individuals that requires advanced scheduling by the customer including services provided by public entities, nonprofits, and private providers.
- ◆ Exclusive-means service that a reasonable person would conclude is intended to exclude members of the public.

### **What does this definition mean?**

1. The group has acquired the exclusive use of the vehicle.
2. The group has specified the origin, destination, and any intermediate stops in the travel itinerary.

If these conditions exist, it is likely that the service being provided is charter service subject to the provisions of 49 CFR part 604.

FTA excludes from charter regulations coverage of recipients under the Section 5310 and Section 5311 Programs, **if** the service to be provided is considered for "program purposes." FTA defines program purposes as "*...transportation that services the needs of either human service agencies or targeted populations (elderly, individuals with disabilities and /or low income individuals).*"

*If the service does not meet the above definition, then the program exemption **does not apply.***

The definition specifies several characteristics of charter service. These significant changes to the Charter components are:

1. The service is provided using vehicles and facilities financed by FTA.
2. The service is provided to a group of persons (two or more persons).
3. The group travels pursuant to a common purpose.
4. There is a contract, either written or oral, between the group and the provider.
5. The agreement stipulates an agreed charge for the services rendered, consistent with the provider's customary and usual charges.

Regulations include new exemptions, new exceptions, new reporting and recordkeeping requirements, new web-based registration for private charter providers, new complaint procedures, and the elimination of the requirement to fully allocate costs. Attachment VIII-1, FTA's Charter Regulation: A Compliance Guide for Rural Public Transit Systems, is an excellent resource. However, if a system is unsure if the requested service is charter, the system must contact INDOT for further guidance. Remember, **INDOT does not permit the provision of charter service by Section 5311 grantees.**

## SCHOOL TRANSPORTATION

Section 5323(f) of the Federal Transit Act of 1964, as amended, prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR Part 605, <http://www.gpo.gov/fdsys/granule/CFR-2011-title49-vol7/CFR-2011-title49-vol7-part605>) does permit regular service to be modified to accommodate school students who ride along with the general public. For the purpose of FTA's school bus regulation, Head Start transportation (Head Start is a pre-school program financed by DHHS) is considered social service agency transportation, not school bus transportation. FTA recipients may operate vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.

## BUY AMERICA

Section 5311 funds, with certain exceptions, may not be obligated for mass transportation projects unless steel and manufactured products used in such projects are produced in the United States. Section

5311 recipients must conform to the FTA regulations (49 CFR Part 661, [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr661\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr661_main_02.tpl)). Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases.

There are four exceptions to the basic requirements that may be the basis for a waiver. The requirements will not apply:

1. If its application is not in the public interest.
2. If materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. In a case involving the procurement of buses and other rolling stock (including train control, communication, and traction power equipment) if the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components and subcomponents of the vehicles or equipment, and if final assembly takes place in the United States.
4. If the inclusion of domestic material will increase the overall project contract by more than 25 percent.

Requests for Buy America waivers under the non-availability, price differential, and public interest exceptions must be submitted to FTA. A waiver is not required for rolling stock meeting the domestic content and final assembly requirements. FTA has issued a general waiver for selected items, including all purchases under the Federal small purchase threshold, currently \$100,000.

## **PRE-AWARD AND POST-DELIVERY REVIEW**

Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with the FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases" (49 CFR Part 663 – Volume II, Appendix Q). The regulation requires any recipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, conduct a pre-award and post-delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal Motor Vehicle Safety requirements, and to complete specific certifications. Purchase of more than ten vehicles, other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated state procurements on behalf of multiple recipients, the in-plant inspection requirement is triggered only if any single recipient will receive more than ten of the vehicles.

## **NEW MODEL BUS TESTING**

Any new bus models must be tested at the FTA sponsored test facility in Altoona, PA, before FTA funds can be expended to purchase them (49 CFR Part 665, <http://www.gpo.gov/fdsys/granule/CFR-2012-title49-vol7/CFR-2012-title49-vol7-part665/content-detail.html>). This requirement applies to all buses and modified vans, but not to unmodified vans, including vans with raised roofs or lifts installed in strict conformance with the original equipment manufacturer modification guidelines.

A new model is defined as one that has not been used in mass transportation service in the United States before October 1, 1988, or that has been used in such service but which, after September 30, 1988, is being produced

with a major change in configuration or components. A major change in "configuration" is defined as a change which may have a significant impact on vehicle handling and stability or structural integrity. A major change in "components" is defined as a change in one or more of the vehicle's major components such as the engine, transmission, suspension, axle, or steering.

INDOT must ensure that the manufacturer has complied with the testing requirement by requesting a copy of the bus testing report, which must be provided to INDOT before any FTA funds can be expended for those vehicles.

Testing reports and other information can be obtained from:

Altoona Bus Research and Testing  
Center  
2237 Old Route 220 North  
Duncansville, PA 16625  
Phone: (814)695-3404  
Fax: (814) 695-4069  
<http://altoonabustest.psu.edu/home>

## **DEBARMENT AND SUSPENSION**

The purpose of the so-called "integrity" certification required of grantees and their subcontractors receiving over \$100,000, is to ensure that Section 5311 funds are not given to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration regularly publishes a document entitled "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" (<http://www.gsa.gov/>). The burden of disclosure is on those debarred or suspended. If at any time the grantee or other covered entity learns that a certification it made or received



was erroneous when submitted, or if circumstances have changed, disclosure to INDOT is required. To document a grantee's determination of contractor responsibility, INDOT has developed the *Contractor Responsibility Determination Form* that is available in the Forms Section of the INDOT website, <http://www.in.gov/indot/2436.htm>.

## **SAFETY AND SECURITY**

FTA has the authority to withhold further financial assistance from any grantee that fails to correct any condition that FTA believes "creates a serious hazard of death or injury." As the designated entity responsible for the administration of FTA funds in nonurbanized areas, INDOT, through its regular program of monitoring, scheduled/unscheduled site visits, and compliance reviews, will identify any potential safety-related issues at the grantee level that should be brought to FTA's attention for further investigation. In addition, MAP-21 has granted new authority to FTA regarding transit safety, as described below.

### **MAP-21 and the Safety and Management System (SMS)**

MAP-21 grants FTA 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 new 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.

All recipients of FTA funding must develop an agency safety plan and certify that the plan meets FTA requirements. At a minimum these plans must include:

- ◆ Strategies for identifying risks and minimizing exposure to hazards;
- ◆ An adequately trained Safety Officer to report directly to the General Manager or equivalent;
- ◆ Performance targets based on safety performance criteria; and
- ◆ An ongoing staff safety program specific to safety sensitive job functions.

Additionally, FTA has the authority to inspect and audit all transportation systems, to make reports and issue directives with respect to safety, to issue subpoenas and take depositions, to require the production of documents, to prescribe record keeping and recording documents, 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 safety requirements that meet MAP-21 conditions. 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.

FTA's Safety Management Systems (SMS) is a comprehensive, collaborative approach that brings management and labor together to build on the transit industry's existing safety foundation to control risk better, detect and correct safety problems earlier, share and



analyze safety data more effectively, and measure safety performance more carefully.

## **SAFETY MANAGEMENT SYSTEMS (SMS)**

SMS is about strategically applying resources to risk. It is based on ensuring that a transit agency has the necessary organizational infrastructure in place to support decision-making at all levels regarding the assignment of resources. This is essential to effectively manage safety risks during the delivery of service. The elements of an organizational infrastructure include:

### **SMS: Scalable and Flexible**

- ◆ SMS activities, and the processes necessary to support them, are scalable to the size of the transit agency and the complexity of the service delivery model

### **Key SMS Activities**

- ◆ Collecting and analyzing data and information to proactively identify hazards
- ◆ Taking actions to mitigate the risk associated with the potential consequences of hazards
- ◆ Ongoing monitoring of risk through a system of safety controls
- ◆ Using data to support allocation of resources that promote and support safety performance

### **Key SMS Features**

- ◆ Accountability for the management of safety at the highest level of the transit agency
- ◆ Collaboration between management and labor to ensure agreement on safety risk priorities
- ◆ Structured and strategic decision making for safety resource allocation

- ◆ Enhanced service safety performance through proactive safety risk analyses
- ◆ Increased confidence in safety risk controls through safety assurance
- ◆ Partnership and knowledge sharing between transportation agencies, state agencies and the FTA
- ◆ A positive safety culture that supports safety communication and reporting

### **SMS Components**

SMS is comprised of four components:

- ◆ Safety Policy – safety commitment and accountability, safety roles and responsibilities, safety resource allocation to support safety performance targets
- ◆ Safety Risk Management – safety hazard identification, safety risk-based analysis and implementation of safety risk controls
- ◆ Safety Assurance – monitoring of safety risk controls to ensure they are achieving their intended objective while assessing the need for new risk control strategies
- ◆ Safety Promotion – achieving the safety mission through clear safety communication channels and safety training programs

### **SMS Benefits**

- ◆ An SMS helps agencies see the whole picture when it comes to risk. For example, a pedestrian fatality in a crosswalk may have been avoided when driver's reports of near misses were investigated and changes were made in the operating environment that mitigated a likelihood of a pedestrian strike. Supervisors should proactively investigate the operating environment, and management should support organizational accountability rather than only assessing individual blame after a situation takes place. This leads

to changes in procedures and training that result in reduced risks.

### **The Role of Senior Management in SMS**

- ◆ Regardless of the size, mode, or operating characteristics of a transit agency, the success of SMS depends on the extent to which senior management understands and accepts its role of accountability in promoting safety and managing transit agency safety programs.
- ◆ Ensuring employee partnership and participation in all safety matters.

### **SMS and the Existing Safety Structure**

- ◆ SMS builds on existing transit agency resources, both human and technical, and refocuses agency activities to more effectively utilize tools and existing talent and expertise within the transit agency.
- ◆ SMS ensures that safety decision-making is integrated into the management processes that drive the organization.

### **Security, Emergency Preparedness and SMS**

- ◆ When considering overall risk to passengers, employees and the transit agency, SMS ensures that transit management integrates security and emergency preparedness information into its assessments of risk.
- ◆ SMS helps management and employees understand their total safety risk exposure and apply resources strategically and effectively.

### **SMS and Safety Culture**

- ◆ SMS facilitates a shift in the attitudes regarding safety within a transit agency, by changing both leadership and

employee perceptions of safety and its importance in day-to-day activities.

- ◆ SMS places a strong emphasis on safety training and safety communication to guarantee that the entire transit agency fully understands SMS policies and procedures, and supports an effective safety-reporting environment within all levels of the workforce.
- ◆ SMS promotes an environment where management and employees work together to identify risks and act together to control them.

Local transit systems should have transit operating procedures for safety and security that include at a minimum the following:

### **Standard Operating Procedures**

- ◆ Recruitment and Selection
- ◆ Training
- ◆ Performance Evaluation
- ◆ Wellness/Fitness for Duty
- ◆ Drug and Alcohol Testing
- ◆ Criminal Background and Driver Licensing checks for Drivers
- ◆ Maintenance Procedures
  - Preventive Maintenance
  - Vehicle Maintenance Documentation
- ◆ Safety and Security Committees

### **Emergency Operating Procedures**

- ◆ Transit Emergency Response Material
- ◆ Accident and Incidents
- ◆ Acts of Nature
- ◆ Hazmat
- ◆ Organizational Infrastructure
- ◆ Evacuation Procedures
- ◆ Incidents Management
- ◆ Accident Investigation
- ◆ Drills, Simulations and Exercises
- ◆ Relationships with Community Emergency Responders

## **Transit Security**

- ◆ Transit Vehicle Security
- ◆ Facility Security
- ◆ Handling Conflict or Acts of Violence on the Bus
- ◆ Dealing with a Hostage Situation
- ◆ Reacting to Bomb Threats and Suspicious Mail
- ◆ Domestic of International Terrorist Threat and Risk
- ◆ Being Alert and Aware with in the Transit Environment and the Community
- ◆ Identifying and Reporting Unusual Behavior and Activity
- ◆ Identifying and Reporting Unusual Vehicles
- ◆ Identifying and Reporting Suspicious Items
- ◆ Conventional Weapons and Improvised Explosive Devices
- ◆ Reacting to Weapons and IED Threat and Attack
- ◆ Chemical, Biological and Radiological Release

As of the writing of this Manual (May 2015), States are still awaiting the issuance of FTA's safety guidelines for the full implementation of SMS. Previously, on March 24, 2015, the Federal Transit Administration's Office of Transit Safety & Oversight (TSO) conducted a webinar on the State Safety Oversight of Rail Public Transit Systems and Public Transportation Safety Certification Training Program Interim Provisions. As FTA indicated during the webinar, at this time, only public rail systems fall under MAP-21 safety-related rule making. However, FTA strongly suggested that public bus transit systems voluntarily follow the SMS model. The webinars and transcripts are available on TSO's website at the following link: [http://www.fta.dot.gov/tso\\_15918.html](http://www.fta.dot.gov/tso_15918.html). As soon as any regulations are proposed for Section 5311 grantees, INDOT will issue specific guidance regarding the necessary steps for compliance.

## **DRUG AND ALCOHOL POLICY**

### **Background**

The FTA recognizes that prohibited drug use and alcohol misuse affect everyone in the United States in one way or another. The final rule on the prevention of alcohol misuse and prohibited drug use in transit operations (49 CFR Part 655), <http://www.gpo.gov/fdsys/granule/CFR-2012-title49-vol7/CFR-2012-title49-vol7-part655/content-detail.html>, went into effect on August 1, 2001. In addition, the Department of Transportation has issued 49 CFR part 40 (as amended), "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," <http://www.transportation.gov/odapc/part40>, which prescribes testing methods to be followed.

Grantees should note that there have been a number of updates to these two regulations published in the *Federal Register*. To ensure that you are aware of all current and future updates:

- ◆ Subscribe to and read the FTA Drug and Alcohol Regulations Update, FTA's quarterly newsletter. To subscribe, go to <https://public.govdelivery.com/accounts/USDOTFTA/subscriber/new>.
- ◆ Subscribe to the Office of Drug and Alcohol Policy and Compliance (ODAPC) listserv: <http://www.transportation.gov/odapc/get-odapc-email-updates>.

An additional document summarizing all of the federal guidelines is the FTA publication "*Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit*". This document, last updated in 2009, is available at [http://www.fta.dot.gov/documents/ImplementationGuidelines\\_Oct2009.pdf](http://www.fta.dot.gov/documents/ImplementationGuidelines_Oct2009.pdf).

INDOT requires all Section 5311 grantees to submit to drug and alcohol compliance reviews and other inspections every four (4) years and as necessary to ensure compliance with the FTA mandated drug and alcohol testing program. These reviews include vendor compliance, program manager, record retention, and policy review.

### **Required Participation**

Any recipient of Federal financial assistance under the Section 5311 program, or any recipient of Federal financial assistance under Section 103(e)(4) of title 23 of the United States Code, must comply with these regulations. Generally, these are transit agencies that receive FTA funding and State agencies that assist in distributing FTA funding to transit agencies.

FTA regulations require that the following program elements be implemented:

- ◆ A policy statement on drug use and alcohol misuse in the workplace;
- ◆ An employee (for drug program only) and supervisor education and training program;
- ◆ A prohibited drug and alcohol testing program for employees and applicants for employment in safety-sensitive positions;
- ◆ An evaluation of the employee who has violated the drug and alcohol regulations; and
- ◆ An administrative procedure for recordkeeping, reporting, releasing information, and certifying compliance.

### **COMMERCIAL DRIVER'S LICENSE**

In 1986, Congress passed the Commercial Motor Vehicle Safety Act, prescribing that a national system of licensing should be adopted to ensure the fitness of individuals

driving commercial motor vehicles. The legislation required the states to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the U.S. Secretary of Transportation, 49 CFR Part 383, <http://www.fmcsa.dot.gov/regulations/title49/part/383>.

All drivers of vehicles designed to transport 16 or more people (including the driver) must have a Commercial Driver's License (CDL) pursuant to this Act. Mechanics that drive the vehicles must also have a CDL.

Systems are required to provide written documentation that mechanics who drive the vehicles are CDL holders. This includes outside vendors that provide maintenance for these vehicles.

### **INDIANA PUBLIC PASSENGER CHAUFFEUR'S LICENSES**

In accordance with Indiana Code 9-13-2-21 and 9-13-2-143 operators who are transporting less than 15 passengers for hire are required to have a PPC license. In order to obtain a Public Passenger Chauffeurs (PPC) license, an operator must hold a valid operator's license and be at least 18 years of age. Drivers must complete a test with the BMV and submit a valid PPC physical form completed by a qualified physician.

INDOT requires FTA Section 5311 public transit operators to hold a PPC, and, in addition, to meet the physical examination requirements of the Indiana Medical Qualification program (see previous section) which may be used to meet the BMV physical requirement. The MQ physical examination requirement was changed from

annual to biannual to better coordinate with the BMV requirement.

## **INDIANA MEDICAL QUALIFICATION PROGRAM**

INDOT has developed a model Medical Qualification (MQ) Program and required its use by all Indiana Rural Transit (Section 5311) Systems. The purpose of the program to 1) ensure the safety of both Indiana's rural transit drivers and the traveling public, and 2) to establish standards for consistency in the medical standards used to evaluate safety-sensitive employees required to hold a CDL or PPC license and who operate rural public transit vehicles. The required MQ Program consists of the following components:

- ◆ Medical Qualification (MQ) Policy
- ◆ Example MQ Medical Release Form (as a result of a return to active status situation or triggering event).
- ◆ Example Medical Disqualification Form
- ◆ Supplemental Rx/OTC Medication Policy
- ◆ Rx/OTC Medication Procedures
- ◆ Rx/OTC Medication Information Form
- ◆ Post Accident Investigation Procedures and Forms
- ◆ Medical Qualification Driver's Physical Examination Form
- ◆ Medical Determination Appeals Procedure

Medical qualification assessments and determinations are made by a Medical Determination Officer (MDO), a medical professional under contract to the individual transit systems. The MDO performs a variety of medical services including, but not limited to, physical examination services/fitness or duty assessments for all safety-sensitive transit positions in accordance with Indiana Code 20-9.1-3-1 and applicable transit system policies including Medical Qualification and Substance Abuse Policies. As such, the MDO provides a written recommendation for an applicant's ability to perform the essential duties of a safety-sensitive job. The example MQ Medical Release Form and example Medical Disqualification Form shown as examples above are provided as a guide to the MDO. However, the actual forms used may actually be a composite of these forms and suggestions from the MDO. The Model Medical Qualification Program and the MDO contracts are administered by the Indiana Rural Transit Assistance Program (Indiana RTAP). All of the required MQ forms are available for download at [www.indianartap.com](http://www.indianartap.com).

## **DRIVER TRAINING**

INDOT requires that all safety-sensitive employees receive the following training as a condition of program funding:

<b>Training</b>	<b>Description</b>	<b>Frequency</b>	<b>Recommended Source</b>
Manager/Supervisor Passenger Assistance – Wheelchair Securement	ADA, Passenger Sensitivity, Lift Operation and Wheelchair Securement	Within (1) year of employment  Triennial, after initial training	Indiana RTAP
Operator Passenger Assistance – Wheelchair Securement	ADA, Passenger Sensitivity, Lift Operation and Wheelchair Securement	New Hires – Within (6) months of employment  Bi-annual, after initial training	Indiana RTAP
Emergency Evacuations	Vehicle preparation, hazardous conditions, securing the vehicle, breakdown procedures, accident procedures, and passenger illness/injury	New Hires – Within (6) months of employment  Triennial, after initial training	Indiana RTAP
Defensive Driving	Vehicle safety inspection, defensive driving tools, rules of the road, following distance, breaking distance, merging, rail crossings, hazards, intersection etiquette, passing, etc.	New Hires – Within (6) months of employment  Triennial after initial training	Indiana RTAP
Pre-Trip Inspections	How to conduct a thorough pre-trip inspection, mx problem areas, maintaining the wheelchair lift & securements, reporting deficiencies, establishing service intervals and monitoring repair history	New Hires – Within (6) months of employment  Triennial, after initial training	Indiana RTAP

## **RESTRICTIONS ON LOBBYING**

Federal financial assistance, including Section 5311, may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any Federal contract, grant, or cooperative agreement.

Grantees awarded FTA assistance exceeding \$100,000 must sign a certification so stating and also must disclose the expenditure of non-Federal funds for such purposes (49 CFR Part 20, <http://www.gpo.gov/fdsys/granule/CFR-1998-title49-vol1/CFR-1998-title49-vol1-part20/content-detail.html>). Other Federal laws also govern lobbying activities. For example, Federal funds may not be used for lobbying Congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign, to influence legislation (31 U.S.C. § 1352). General advocacy for transit and providing information to legislators about the services a recipient provides in the community are not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

## **PROTECTION OF THE ENVIRONMENT**

All projects undertaken with Federal funds must assess the project's potential impact on the environment. Most 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.

In the annual certifications and assurances, the state assures FTA that all the projects in the application are categorical exclusions under 23 CFR §771.117(c), <https://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0771.htm>, unless otherwise noted. FTA's regulation classifies categorically excluded actions and projects into two groups.

The first group contains activities and projects which have 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. Because environmental impacts of these activities are either nonexistent or minimal, no environmental documentation is required.

The second group of projects, which normally qualify for a categorical exclusion are projects involving more construction and greater potential for off-site impacts. Examples are: new construction or expansion of transit terminals, storage and maintenance garages, office facilities, and parking facilities. Experience has shown that these projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible land use where the primary access routes are adequate to handle the additional transit vehicle traffic. These construction projects may be designated as categorical exclusions after FTA approval, but no presumption exists concerning the significance of environmental effects. It is the applicant's responsibility to provide documentation that clearly demonstrates that the stated conditions or criteria are met and that no significant adverse effects will result. Such documentation is usually narrowly focused on one or a limited number of environmental



concerns or questionable areas. Depending on the circumstances, some technical analysis may be required, such as a noise impact assessment or a street capacity analysis; but in most cases, the documentation will focus on consistency with local land-use plans, zoning and any state or local plans or programs governing the protection and management of environmental resources, such as air quality, water quality, and noise abatement. The documentation will provide a written record of coordination with those state and local agencies having jurisdiction or a special interest in some aspect of the project. There is no formal public review for these types of environmental studies. FTA reviews this information and determines if a categorical exclusion is appropriate. In order to include or advance such a project to Category A, the state must have on file a letter from FTA approving the categorical exclusion.

For any project that is not found to be a categorical exclusion, the state may be required to prepare an Environmental Assessment (EA) for public comment and FTA review to determine if a Finding of No Significant Impact (FONSI) is appropriate. A project which requires an EA may not be included in Category A before FTA has issued a FONSI for the project. In the unlikely event that significant environmental impacts are identified for a Section 5311 project, an Environmental Impact Statement (EIS) will be required.

There are a number of environmentally related statutes, orders, and compliance procedures that may apply to a given project even if it is properly classified as a categorical exclusion. The environmental requirements which may come into play for Section 5311 projects are: Clean Air Act conformity provisions; protection of public parkland, wetland, and waterfowl refuges,

and historic sites (49 U.S.C. §303); Section 106 of the National Historic Preservation Act (protection of historic and archaeological resources); and Section 404 of the Clean Water Act (Corp of Engineers' permit requirements for dredge and fill activities in "waters of the United States"). FTA policy is to require compliance with these environmentally related requirements within the overall environmental process. The EA or environmental documentation to support a categorical exclusion must address these related requirements. Compliance with these requirements must be completed before a construction project can be included in Category A.

FTA's procedures categorically exclude most Section 5311 projects. INDOT conducts its initial assessment of potential environmental impacts of each project when the agency conducts its application review. The grant application package requires prospective grantees to sufficiently document the project in order for INDOT to make the necessary determination to recommend to FTA that the project should be classified as a Categorical Exclusion. Similarly, INDOT will also identify those projects where additional documentation and study may be necessary before an environmental determination can be rendered. INDOT will coordinate with the FTA Regional Office on all projects falling into this latter category.

Any project involving new construction of a facility or substantial rehabilitation of an existing facility will be discussed with FTA to determine the need for information supporting a categorical exclusion and the applicability of any additional environmental requirements. Early coordination is also necessary to identify those projects for which the state must prepare an EA. If an EA is required, further steps to develop the

project will not be authorized (e.g., property acquisition, final design, and construction) until FTA makes a final environmental finding for the project.

## **CLEAN AIR ACT**

The Clean Air Act, as amended, establishes many substantive requirements in order to bring air quality regions that violate the national ambient air quality standards into attainment by prescribed dates. Most "nonattainment" areas are heavily urbanized, but in the case of areas that are nonattainment for ozone or small particulate matter (PM-10), substantial rural areas may be included within the nonattainment area boundaries.

The principal requirement that the state and Section 5311 subrecipients must be aware of is the transportation/air quality conformity review process. In general, transportation plans, programs, and projects must be found to "conform" with approved state (air quality) implementation plans before they can be funded by FHWA or FTA. 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, construction of most storage and maintenance facilities, *etc.* A complete list of exempted highway and transit projects is found in 40 C.F.R. §51.361. Other types of projects may require detailed air quality analysis (either burden analysis or dispersion modeling) in order to determine whether the project would create a violation of a standard or make an existing violation worse. While this is not an issue for most Section 5311 projects, it could be for certain large facilities, *e.g.*, transit terminals and park-and-ride facilities.

The state should consult with FTA as early as possible in the development of the program of projects to establish which projects, if any, will require further analysis to support FTA's conformity determination.

Consultation with the Environmental Protection Agency and state and local air quality agencies is also required for all projects subject to the conformity review process; thus, it is in the best interests of the state and subrecipient to identify these projects to the FTA regional office as soon as possible.

Other Clean Air Act requirements may apply to the state and Section 5311 subrecipients, *e.g.*, phase-in of more stringent bus emission standards. The FTA regional office can supply up-to-date information on various provisions of the Clean Air Act related to mobile sources.

## **BLOODBORNE PATHOGENS POLICY**

Any employer that has employees with occupational exposure to blood or other potentially infectious materials must develop a written Exposure Control Plan designed to eliminate or minimize employee exposure. "Occupational Exposure" means "reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties."

Most transit systems have determined that their employees do face periodic exposure to potentially infectious materials. As a result, the provisions of OSHA Regulation 1910.1030 [https://www.osha.gov/pls/oshaweb/owadi.sp.show\\_document?p\\_table=STANDARDS&p\\_id=10051](https://www.osha.gov/pls/oshaweb/owadi.sp.show_document?p_table=STANDARDS&p_id=10051) should be addressed by all grantees.

Under this rule, **annual** training must be provided to all drivers and mechanics. New hires should receive training as soon as possible following the hire date. The training documentation must include date of training, individuals trained, name of person (or video) conducting the training, and any materials used in the training. All transit systems must be equipped with the proper safety and disposal equipment. A thorough explanation of a Transit Manager's responsibilities to implement the proper training and procedures is contained in the document entitled, "Managing Bloodborne Pathogens: Guidelines for Transit Managers," Erskine Walther, Walther Consultancy, Greensboro, NC 27401 (September 1993). Copies of this document are available from INDOT. In addition, INDOT RTAP has developed an Exposure Control Plan template for Section 5311 systems that is available through their office. The local Health Department may be able to provide you with further information INDOT strongly recommends that drivers be offered the Hepatitis B series of vaccination. If a driver selects not to accept the vaccination, a waiver form must be signed. The waiver form is included in the INDOT Exposure Control Plan.