

requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 26, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA-2008-0009]

National Transit Database: Policy on Reporting of Coordinated Human Services Transportation Data

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Final Policy on Reporting of Coordinated Human Services Transportation Data to the National Transit Database.

SUMMARY: This notice announces the Federal Transit Administration's (FTA) policy on the reporting of coordinated human services transportation data to the National Transit Database (NTD). On August 12, 2008, FTA proposed a new policy clarifying how transit providers reporting to the NTD may include sponsored trips in their reports. FTA received two comments on the proposed policy and is now formally adopting the new policy.

DATES: *Effective Date:* March 4, 2009.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366-5430 (telephone); (202) 366-7989 (fax); or john.giorgis@dot.gov (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366-0675

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SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) was established by Congress "to help meet the needs of * * * the public for information on which to base public transportation service planning * * *" (49 U.S.C. 5335). To support this goal, recipients or beneficiaries of Urbanized Area Formula Grants (49 U.S.C. 5307) or Other Than Urbanized Area Formula Grants (49 U.S.C. 5311) are required to report to the NTD. Some other providers of transit service in urbanized areas report voluntarily to the NTD for purposes of benefitting their local urbanized area in the urbanized area apportionments. Currently, over 650 transit providers in urbanized areas and over 60 State, Territorial, and Tribal Departments of Transportation representing over 1,300 transit providers in rural areas report to the NTD through an Internet-based reporting system. Each year, performance data from the urbanized area submissions are used to apportion over \$6 billion of FTA funds under the Urbanized Area Formula Grants and Fixed-Guideway Modernization Grants (49 U.S.C. 5309(b)(2)) Programs. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, in meeting FTA's obligations under the Government Performance and Results Act, and in public reports available on <http://www.ntdprogram.gov>.

For many years, it has been FTA's policy to require urbanized area transit providers reporting demand response service to the NTD to exclude from their reports service data for certain sponsored trips. These trips were typically arranged and paid for by a third party for a specific group of clients (such as participants in programs like Medicaid, Head Start, sheltered workshops, or assisted living centers), and these sponsored trips were often not open to the general public at large. Excluding data for these trips from the NTD also excluded them from the calculation of the apportionment of formula grants for urbanized areas. In light of FTA's policies and guidance on Coordinated Human Services Transportation, FTA proposed to clarify this policy for the 2008 NTD Report Year to specify that transit providers are to report data for all of their demand response service as public transportation, except for those services that are defined as charter service under

FTA's recently revised charter rule (49 CFR 604, 73 FR 2326, January 14, 2008). FTA also proposed to require transit agencies in urbanized areas to separately report their "regular unlinked passenger trips" and their "sponsored demand response unlinked passenger trips" for demand response service.

II. Comments and FTA Response to Comments

On August 12, 2008, FTA published a notice in the **Federal Register** (73 FR 47641) inviting comments on this proposed policy on reporting coordinated human services transportation data to the NTD. FTA received two comments on the proposed change.

One commenter supported the proposed policy. A second commenter objected to this policy on the grounds that the policy would impose NTD reporting requirements on human services transportation providers that are coordinated through a brokerage operated by a reporting transit provider, and that the burdensome nature of the NTD reporting requirements on these small-scale human service transportation providers would result in a reduction in service from these providers. The commenter noted that almost all of the human services transportation providers coordinated through the brokerage received very little Federal funding, and that this Federal funding was usually not through the Section 5307 Program. The commenter also noted that many of the required NTD reporting elements are not currently collected at all, and the ridership metrics that are collected are not compliant with FTA Circular 2710.1A.

Response: FTA clarifies that this policy only applies to what trips a transit provider reports to the NTD, but does not extend NTD reporting requirements to any other transit provider. The NTD requires a transit provider to report all transit trips provided using its own directly-operated equipment or through its own subcontractors. Coordinating a trip through a brokerage does not create a subcontractor relationship with the other human service transportation providers participating in a brokerage. Thus, such trips should not be reported to the NTD by a transit provider operating a brokerage. The only trips from the brokerage that the transit provider should report to the NTD are those referred to itself and carried out using its own directly-operated equipment or using its purchased transportation subcontractors.

If a transit provider wishes to benefit from the service data generated by trips coordinated through a brokerage, it may do so by requesting a separate NTD Identification Number (NTD ID) for making a consolidated report on behalf of the participants in the brokerage. The transit provider would then be responsible for ensuring that this consolidated report is fully in compliance with all NTD reporting requirements found in the Reporting Manuals and with the Uniform System of Accounts.

FTA also wishes to clarify that it is not necessary for the ridership metrics of unlinked passenger trips (UPT) and passenger miles traveled (PMT) reported to the NTD to be collected as described in FTA Circular 2710.A. This Circular delineates requirements for reporting UPT and PMT data through statistical sampling when 100% counts of UPT and PMT are either unavailable or unreliable. Transit providers should report 100% counts of UPT and PMT to the NTD whenever they are available and reliable, and should not report this data to the NTD through statistical sampling in these cases. Almost all demand response systems keep records of their UPT sufficient to report a 100% count. Most demand response systems also record origins and destinations of their passengers, which may be used to generate a 100% count of PMT, and so avoid statistical sampling.

III. Final Policy

This policy shall take effect for the 2008 NTD Report Year, so that any transit provider wishing to take advantage of this policy for the 2008 NTD Report Year may do so. Since many transit providers have already begun completing their 2008 NTD Reports, however, FTA will also accept any reports from the 2008 NTD Report Year made under the old policy. This policy will take effect for all agencies beginning with the 2009 NTD Report Year. Any transit provider unable to comply with this policy for 2009 may request a waiver for up to one year from FTA through the efile functionality of the NTD Online Reporting System.

Transit providers should report all demand response services provided to individuals as public transportation services, regardless of whether the trip was sponsored in whole or in part by a third party, except for those services that are defined as charter service under FTA's recently revised charter rule (49 CFR Part 604, 73 FR 2326, January 14, 2008). Service that meets the definition of charter service must be reported on

a quarterly basis to the charter registration Web site, as required by the charter rule, and data for these trips should not be reported as revenue service to the NTD.

Charter service is defined, in part, as "transportation provided * * * at the request of a third party for the exclusive use of a bus or van at a negotiated price," with the caveat that "charter service * * * does not include demand response service to individuals." Transit providers reporting to the NTD may distinguish their demand response services, particularly their sponsored demand response service, from charter service by a number of factors:

(1) Charter service is *exclusive*, whereas demand response service is *shared-ride*. If the transit provider may mix passengers from a trip sponsor with other demand response passengers on the same trip, then the trip is shared-ride service, and service data for that trip should be reported to the NTD as public transportation.

(2) Charter service is *service to a group*, whereas demand response service is *service to individuals*. Service to individuals can be identified by a vehicle trip that includes multiple origins, multiple destinations, or both, even when the clients have exclusive use of the vehicle. Some demand response sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops, may be provided on an exclusive basis, but are provided to service multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. Transit providers should report service data for these trips to the NTD as public transportation.

(3) Charter service is *for a specific event or function*, whereas demand response service is *regular and continuing*. Some demand response sponsored trips carried out as part of a Coordinated Human Services Transportation Plan may be exclusive, and may be for a group from a single origin to a single destination, but may occur on a frequently reoccurring basis, such as daily, weekly, biweekly, or monthly. Transit providers should report service data for these trips to the NTD as public transportation.

(4) Demand response service may also include certain trips that are exclusive, for a group, from a single origin to a single destination, and that reoccur on a less-frequent basis than once per month, so long as these trips are *arranged and operated under the same*

terms and conditions as the demand response system for individuals. These terms and conditions include advance notice requirements, service windows for pick-up and drop-off, and price.

Service carried out by the demand response units of transit providers that are exclusive, for a group, from a single origin to a single destination, for a single event, and not under the usual terms and conditions of the demand response system for individuals should be considered to be charter service. Transit providers should report these services to the charter registration Web site. The following diagram provides a visual representation of this guidance.

Transit providers reporting to the NTD must specifically exclude from their reports on revenue service any service that meets the definition of "charter service" under the charter rule, and thus, must be reported to the charter registration Web site. This exclusion includes charter service legally provided to a Qualified Human Services Organization (QHSO), as provided for by the charter rule.

Transit providers reporting to the NTD must report their *regular unlinked passenger trips* and their *sponsored unlinked passenger trips* separately for demand response service, but not for any other modes of service. *Regular unlinked passenger trips* would refer to those demand response trips that are arranged and paid for by individuals, even when those individuals pay the fare with user-side subsidies, such as coupons or passes provided a QHSO. *Regular unlinked passenger trips* would include all demand response trips provided pursuant to the requirements of the Americans with Disabilities Act of 1990. *Sponsored unlinked passenger trips* would include all trips where the transit provider is directly reimbursed in whole or in part by some third party that has helped arrange for the trips. This distinction would make reporting of these services for urbanized area transit providers consistent with the reporting of these services for transit providers in rural areas to the Rural NTD. Since this proposal is being announced late in the 2008 Report Year, FTA will grant a waiver from reporting separately regular and sponsored unlinked passenger trips for the 2008 Report Year to any NTD Reporter that requests such a waiver.

Issued in Washington, DC, this 20th day of February 2009.

Matthew Welbes,
Acting Administrator.

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Evaluation of Transit Demand Response vs. Charter

