RULES AND REGULATIONS PART 975
STATEWIDE MASS TRANSPORTATION OPERATING ASSISTANCE PROGRAM

(Statutory authority: Transportation Law, § 18-b)

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975.1 Authority.

Section 18-b of the Transportation Law establishes the State Transit Operating Assistance program and authorizes the Commissioner of Transportation to prescribe rules and regulations to effectuate the purposes of the statewide mass transportation operating assistance program and to define terms necessary to carry out that program. Annual appropriation language has consistently modified Section 18-b of the Transportation Law and provides additional authority regarding program rules and regulation.

975.2 Basic Eligibility Requirements.

In order to receive funds under the Statewide Mass Transportation Operating Assistance Program (STOA) for mass transportation services, all participants must be public transportation systems as defined in this Part. Only those public transportation systems eligible under the rules and regulations established for the section 18-b program are authorized to receive supplemental or special operating assistance under section 88-a of the Finance Law. The quarterly applications of unspecified bus systems under the formula portion of the program must meet the definition of bus system and contain only revenue passengers and revenue vehicle miles in accordance with the provisions of this Part.

(a) "Public transportation system" shall mean any public benefit corporation constituting a transportation authority, or subsidiary thereof, which provides or contracts for the provision, under joint support arrangements, of mass transportation services; any Indian tribe which provides or any county or city which provides or contracts for the provision, pursuant to section 119-r of the General Municipal Law, of mass transportation services that directly serve or primarily benefit its residents, or any intercity bus company which contracts with the Commissioner to provide mass transportation services in exchange for state transit operating assistance.

(b) "Mass transportation services eligible for state transportation operating assistance" shall mean commuter rail, subway, rapid transit, bus and commuter ferry revenue services, available to the public on a regular and continuing basis, having predetermined and publicly posted fares and service hours. Fixed route or route deviation services (not demand responsive shall also have printed schedules. Demand-responsive services must have published service areas, hours of operation, fares and the phone number to arrange for service. Such services shall be between an origin and destination, both of which are within the boundaries of New York State. Services that, due to geographic
locations or routing, operate in a State other than New York in providing services to passengers that have origins and destinations in New York State, are eligible for state operating assistance provided that the primary reason for operating outside New York State is to transport New York State passengers to and from their New York State origins and destinations.

However, the Commissioner may review such services under the provisions of section 975.9 (a) to ensure that the assistance will be used exclusively for the benefit of New York State riders. The public transportation system must also meet the requirements of Section 975.20 if the organization providing the service receives fifty percent or more of its revenue from human services agency contracts or if the organization previously or currently provides substantial services for clients of human service agency(ies). While eligible services must be available to the general public, some portion(s) of a public system's services may be oriented to address the needs of the transit disabled (as defined in section 975.4 (k)). The transit disabled services must also satisfy the provisions of section 975.19. School tripper services consistent with the criteria contained in section 975.4 (v) are also eligible to receive STOA.

If yellow school buses are to be used for STOA eligible services, prior approval must be obtained from the Department before such services are to be considered eligible for STOA. Exceptions for use of yellow school buses may be granted if the system demonstrates that: (1) no other vehicles are available to provide the service on an interim basis; (2) that it would be a financial hardship to obtain non-yellow buses even for an interim period and; (3) no State Education Department funding is available for the services in question. Also, the yellow school buses to be used must satisfy minimum adult seating/standing requirements as identified by the Department's Traffic and Safety Division's Regulations 921.7 and 921.8. Any yellow buses utilized for STOA-eligible services are not permitted to either display "school bus" signs or use "flashing red lights", or they will be considered to be providing exclusive school bus services.

Services defined as ineligible for state transportation operating assistance include: exclusive airport services (as defined by Section 975.4(s)), special charter operations, exclusive school bus operations, (including services provided by school district owned transportation systems, services provided under contract with private school bus operators and school service provided by regular transit operators under purchase of service contracts), transportation services provided by client agencies that are designed only to meet the specific needs of their clients, sightseeing services, deadheading (as defined by section 975.4 (u)); hotel contract services, van service (as defined in subdivision 35 of section 2 of the Transportation Law), services which are held out to be, are designed to be
or become transportation services primarily to serve gambling casinos or bingo parlors, or services commonly known as "invalid coach service" or "ambulette services" or services on routes or trips not available to the general public except as defined above. Also defined as ineligible services are any services authorized by the Interstate Commerce Commission after November 19, 1982 without corresponding intrastate authority issued by the New York State Department of Transportation, if NYSDOT determines that intrastate authority should have been sought pursuant to the New York State Bus Regulatory Reform Act, (Chapter 635 of the Laws of 1983).

(c) "Revenue Vehicle, nautical ferry, or car mile" shall mean the movement of one bus vehicle, ferryboat or rail car providing mass transportation services for a distance of one mile in revenue service. This shall include local and to the end point of the revenue trip commuter services (initial and return trip) and intercity route mileage that meets the mass transportation services provisions identified in section 975.2 (b). Deadhead mileage is not eligible for calculating STOA service payments (see section 975.4 (u)).

(d) "Revenue Passenger" shall mean a person who is transported between an origin and destination, both of which are within New York State, by mass transportation services, for whom a per-passenger fare is collected by the public transportation system. Such per-passenger fare or transfer fee shall be at least thirty cents per rider (fifteen cents for the elderly, transit disabled, and the young) for unspecified systems where the quarterly service payment is determined based on quarterly revenue vehicle mile and revenue passenger statistics. Persons are not to be included who ride or transfer free onto or within the system except as noted below. If a local government chooses to, it may provide the public transportation system with additional voluntary local subsidies (beyond those required to satisfy any minimum local match requirements) in order for the system to count those riders that would otherwise not be considered eligible passengers under the minimum fares. It will be necessary to show that these additional local government fare subsidies were provided on a per-passenger and/or a per-transfer basis. If the fare for a class of riders (e.g., elderly, disabled, students) is subsidized in whole, or in part, through a contract, the appropriate portion of this contract revenue must be provided and counted as farebox revenue at a per-passenger rate commensurate with the established fare structure. If this per-passenger rate also satisfies the minimum fare levels established above, these riders can also be considered eligible passengers under this program. Estimated revenue passenger statistics, if submitted, must also satisfy the provisions identified in section 975.7 on statistical sampling.

(e) "Bus services" shall mean mass transportation services provided by a person, firm or corporation authorized by the Commissioner of Transportation, the appropriate New
York City regulatory agency or the Interstate Commerce Commission to serve the general public on an individual fare basis, or such public transportation services when operated by a municipal agency or public benefit corporation, or subsidiary thereof, in accordance with federal, state and local laws. When provided by a person, firm or corporation, that entity must have passenger transportation as its primary purpose as stated in its certificate of incorporation. Eligible bus services shall be limited to those provided in motor vehicles having a manufacturer's rated carrying capacity of fifteen or more passengers, excluding the driver. Exceptions will be granted for use of motor vehicles having a capacity of 8 to 14 passengers when it is determined by the Commissioner that the use of motor vehicles having a capacity of 15 or more passengers is not the most effective and efficient means of providing basic mobility to:

(1) transit disabled individuals in urbanized areas; and,

(2) persons, who by reason of physical, economic or other circumstances, do not have access to private personal transportation or are unable to use private personal transportation, either permanently or temporarily.

975.3 Application.

All applications for mass transportation operating assistance made to the Commissioner of Transportation shall be in such form as prescribed by the Commissioner. Such applications must be completed and filed between the 2nd and 17th day of the first month of each quarter in which a transportation system elects to participate in the statewide mass transportation operating assistance program. The quarters are coincident with the state fiscal year, as follows: April through June, July through September, October through December, and January through March.

975.4 Definitions.

For the purposes of this Part, the following additional definitions will apply:

(a) "Service payment" shall mean the amount of state assistance made available to an eligible public transportation system by the Commissioner of Transportation, within the provisions and limits of state mass transportation operating assistance program legislation and appropriations.

(b) "Chief executive officer," of a public transportation system defined by subdivision 1 of section 18-b of the Transportation Law, shall mean the chief executive
officer of the public benefit corporation constituting a transportation authority or, in the case of a county, the chairman of the board of supervisors or legislature; except that in those counties having a county administrator, director, executive, manager or president, it shall mean such latter officers; or, in the case of a city, the mayor; except that in those cities having a city manager, it shall mean that officer; or the officially designated representative of any of the above, or, in the case of an intercity bus company, the chief executive or operating officer of said firm or corporation, or a designee of the chief executive or operating officer empowered to enter into joint service agreements on behalf of the company.

(c) "Revenues" shall mean income either directly or indirectly derived from, or in connection with, the mass transportation services. It will include "operating revenue" such as but not necessarily limited to: farebox revenues and special fare subsidies (including third party per passenger payments); baggage or mail revenues; income from advertising, concessions and leases. It also includes "subsidies" from state, federal and local governments; and other government payments to finance operating deficits.

(d) "Expenses" shall mean expenses, as may be determined by the Commissioner of Transportation, either directly or indirectly incurred from, or in connection with, the operation of public transportation services, including but not necessarily limited to: transportation expenses (wages, fringe benefits, fuel, oil, etc.); maintenance and garage expenses (repairs, tires, etc.); station expenses (supplies and expenses relating thereto); traffic expenses (tickets, advertising, etc.); insurance and safety expenses; marketing, advertising and other reasonable expenses directly related to the provision of public transportation service and a reasonable portion of general administration expenses including auditing costs. Capital expenses, and depreciation on the portion of plant assets purchased with government funds, are not considered allowable expenses for the purposes of this program. For private operators, further definition of eligible and ineligible expenses are found in the determination of maximum operating assistance process defined in section 975.17.

(e) "Peak hours" shall mean the hours when additional services are provided to handle higher passenger volumes. This period begins when normal scheduled headways are reduced, and ends when headways are returned to normal. Generally, these hours are 7 a.m. through 9 a.m. and 4 p.m. through 6 p.m., each day, Monday through Friday, or such other similar periods as local conditions may dictate.

(f) "Off-peak hours" shall mean all time periods other than peak hours. Generally, these will be the hours 9 a.m. through 4 p.m., and the hours 6 p.m. through 7 a.m.
each day, Monday through Friday, or such other similar periods as local conditions may dictate; it shall also include the entire 24-hour period for each State and/or Federal holiday, as well as Saturdays and Sundays.

(g) "Commuter rail system" shall mean a system of mass transportation services operating rail passenger cars on rail guideways, and providing service in more than one county (for purposes of section 18-b of the Transportation Law, the City of New York shall be considered as one county), with a substantial portion of the riders using the service to go to and from work between suburbs and their central city.

(h) "Subway or rapid transit system" shall mean a system of mass transportation services operating rail passenger cars on rail guideways within one county (for purposes of section 18-b of the Transportation Law, the city of New York shall be considered as one county).

(i) "Commuter ferry system" shall mean a system of mass transportation services operating on a navigable body of water, and providing services within one county (for purposes of section 18-b of the Transportation Law, the City of New York shall be considered as one county), with a substantial portion of the riders using the service to go to and from work.

(j) "Elderly" shall mean, those persons of age 65 or over.

(k) "Transit disabled" shall mean individuals who, by reason of illness, age, injury, congenital malfunction or other permanent or temporary incapacity or disability, are unable, without special facilities, planning or design, to use mass transportation facilities effectively.

(l) "Urbanized area" shall mean an area not less than the urbanized area delineated by the latest determination of the Bureau of the Census (in accordance with such provisions of Title 13, U.S. Code as may be appropriate); and if desired, adjacent areas may be included by responsible State and local officials in accordance with the provisions of title 23, U.S. Code 134(3) (c).

(m) "Appropriate officials" shall mean the principal elected officers of municipalities.

(n) "Comprehensive and continuing planning process" shall mean a planning process which includes the operational procedures and working arrangements by which
short-and long-range plans are conceived, developed and continuously evaluated to meet changing conditions in accordance with the provisions of title 23, U.S. Code 134(3)(c).

(o) "Economy, efficiency and effectiveness indicators" shall refer to a series of criteria established by the Department to measure the performance of transit operations in terms of their operating and capital cost input, as compared to their service quantity, quality and usage output. Examples of indicators that may be used are:

(1) revenue vehicle hours per employee hour;
(2) revenue vehicle miles per employee hour;
(3) operating cost per vehicle hour;
(4) operating revenue compared to operating cost;
(5) operating revenue plus voluntary local assistance per passenger mile;
(6) revenue passengers per vehicle hour;
(7) revenue passenger miles per vehicle hour;
(8) revenue passenger miles per vehicle mile;
(9) operating cost per revenue passenger mile;
(10) operating revenue plus voluntary local assistance per revenue passenger mile;
(11) revenue passengers per employee hour;
(12) revenue passenger miles per employee hour; and
(13) percent on time performance.

(p) "Reasonable return on equity or operating revenues and expenses" shall refer to the guidelines developed by the Department to ensure that State service payments do not result in excessive profits to private transportation operators. These guidelines are established as identified in section 975.17.

(q) "Unspecified public transportation system" shall refer to any public transportation system that does not receive a specific line item appropriation for operating assistance in the State budget.

(r) "Intercity Bus Company" shall mean a bus company authorized to transport the general public in interstate commerce by the Interstate Commerce Commission and/or in intrastate commerce by the New York State Department of Transportation on a regular and continuing basis in two or more counties within New York State in a service that is intended primarily to satisfy longer distance travel demand between cities, villages and unincorporated urban places having a population of two thousand five hundred or more. Such company may also provide other services, including commuter and locally oriented services.
(s) "Exclusive airport service" shall mean service provided to and from one or more airports, with travel between intermediate points prohibited by statute, regulation, order or company policy or if accommodation of passengers to such intermediate points is clearly incidental to the airport service.

(t) "Commuter bus service" shall mean bus service provided by a bus system, as defined in section 975.2 (e), which primarily takes riders to and from work.

(u) "Deadhead mileage" is ineligible for operating assistance under this program. It shall include such transit vehicle mileage as: mileage between the garage and the beginning of the route where passengers may board; mileage from the end of one route to the beginning of another route and mileage from the end of a route to a garage or other service or storage facility.

In order to categorize transit vehicle mileage as eligible revenue service, except for the return trips of commuter runs, which are specifically considered to be eligible miles in Section 975.2(c), a viable market for the service must be demonstrated. For example, transit vehicle mileage between a bus garage and the beginning of a route cannot be classified as eligible revenue vehicle miles simply because the route is redefined as beginning at the garage. Two conditions have to be satisfied for transit vehicle mileage to be considered eligible revenue vehicle miles.

First, the increased route mileage, with added stops, must be incorporated formally into published schedules. Secondly, there must be more than incidental use of this additional service by revenue passengers. To prove more than incidental use for such additional service, it will be necessary to demonstrate that the service at least minimally satisfies several of the economy, efficiency, and effectiveness indicators identified in Part 975.4 (o). The following descriptions provide basic guidance as to what constitutes deadhead mileage by type of service:

(1) Deadheading - Scheduled Fixed Route Services

For scheduled fixed route transit services, vehicle travel between the garage and the beginning of the route where passengers may board is deadheading. Other deadheading includes vehicle travel from the end of one route to the beginning of another route, travel from the end of a route to a garage or other service or storage facility.

(2) Deadheading - Non-Scheduled Services
While the concept of deadheading is not as well defined for non-scheduled, non-fixed route services, in general, the following guidelines should be followed:

(i) Vehicles traveling from a dispatching point to the point where the first passenger will be picked up are considered to be deadheading and not in revenue service; i.e., these miles should not be reported as vehicle revenue miles.

(ii) Similarly, travel without passengers back to a dispatching location should not be reported as vehicle revenue miles.

(iii) All vehicle travel with or without passengers, when the vehicle is available to carry passengers between starting and ending places such as described in (i) and (ii) above should be considered as revenue miles.

(iv) If vehicle storage/maintenance locations are different from the locations from which the vehicles are dispatched, travel between any of these locations should be considered deadheading.

(v) "School tripper service" shall mean mass transportation service provided by a public transportation system which is added to regularly scheduled mass transportation service routes to meet the additional demand of students traveling to and from school. The school tripper service may be eligible for STOA service payments if it satisfactorily meets each of the following service characteristics:

(1) Such service must be open to the general public, shown on the system's guides or schedules available to the general public and be advertised and marketed on a regular basis as being available to all people on an equal basis. Such marketing information should include a phone number for riders to contact the system.

(2) Such service must be on the established public route structure; i.e., the tripper's route must also be operated at other times of the day. However, school trippers are not required to travel the entire established route. Minor route deviation from the regular route structure for a portion of a route is permitted.

(3) Such service must be provided using vehicles that meet the requirements identified in section 975.2 (e). The vehicles must be clearly
marked as open to the general public by using one of the following sign patterns:

(i) Display of a destination sign reflecting the regular route designation, or

(ii) Display of such additional, prominent "open to the general public" signs as may be considered adequate to reasonably convey such a message to the riding public when the vehicle's normal destination sign reflects a school instead of the regular end point for that route.

(w) "The Commissioner's Annual Report" refers to the report required to be completed annually by private operators who have been granted regulatory authority. The filing provisions of section 975.6 shall apply to the filing of this report.

(x) "Specialized transportation service" shall mean transportation service specifically designed to serve the needs of persons, who, by reason of transit disability, are unable to use existing mass transportation services designed for the use of the general public in a given service area.

(y) "Specialized Transportation Service Plan" shall mean a plan and or report for the provision of specialized transportation services to persons who are transit disabled. Such plan shall be developed through a public participation process and, in urbanized areas, in consultation with the Metropolitan Planning Organization (MPO). The filing provisions of Section 975.19(d)(1) shall apply to the filing of this report.

(z) "Coordinated Transportation Service" shall mean a passenger transportation service formed by the pooling or sharing, by contract, of several pre-existing human or social service agencies' funds, facilities, vehicles, equipment and/or other resources used for passenger transportation, for the purpose of improving the mobility of persons through increased service levels, with the coordinated service under the direction and control of a single operator of passenger transportation having the authority for the service's operating hours, routes, schedules, dispatching, and other operating features, and the resulting transportation service serving more passengers for the same or reduced amount of government expenditure than the previously uncoordinated, piecemeal and duplicative services.
(aa) "Operator of mass transportation service" shall mean the municipal government or public transportation authority which assumes full responsibility and liability for the operation of the service, or a common carrier under contract to said government or authority, for the purpose of assuming said responsibility.

(bb) "Principal operator" shall mean the public transportation operator which provides the majority of mass transportation service in a given service area. Where there is more than one operator in a service area, the Department will determine which one is the principal operator.

(cc) "Urban area" shall mean an area, as defined by the Census Bureau, that is comprised of all persons living in urbanized areas, see provisions of Section 975.4(l), and in places of 2,500 population or more outside urbanized areas.

975.5 Uniform system of accounts for corporation or individuals.

Any person, firm or corporation providing mass transportation services and receiving assistance, pursuant to section 18-b of the Transportation Law shall maintain its accounting records in compliance with the uniform system of accounts for bus corporations as prescribed by the Commissioner of Transportation and contained in Article 7 of Subchapter D of Chapter VI of this Title (Parts 760 through 777), and/or such other accounting standards as determined by the Commissioner.

975.6 Reports of public transportation systems, corporations or individuals.

In order to receive funds under the STOA Program, any participating public transportation system shall submit applications and reports in the form and at the time prescribed as follows:

(a) Applications must be submitted each quarter using forms to be supplied by the Department. Such applications shall be filed between the second and seventeenth day of the first month of each quarter, with the quarters tracking the State's Fiscal Year.

(b) All systems must file an annual report. Those systems that provided more than one million vehicle, car or nautical miles in local revenue service or carried more than one million revenue passengers during the preceding state fiscal year must file the report specified by the commissioner. For those systems receiving federal funds, the reports filed
with the cognizant federal agency may be submitted (with the permission of the commission under such terms as the commissioner may prescribe). In the case of such systems not required to file either of the two above-identified reports, such systems must file an annual report using a form to be provided by the Department.

All operators holding authority from the Commissioner of Transportation shall also file the report required by Part 741 of this Title. All operators holding authority from any city pursuant to Section 80 of the Transportation Law shall also file a copy of any annual report required by such city.

(c) Filing Deadlines: The required annual financial and service data reports, shall be submitted to the New York State Department of Transportation Transit Division within one hundred twenty days (120) days of the completion of the operator's fiscal year. These reports must be signed by the Chief Executive Officer. All authorized operators' reports shall be submitted on or before March 31st of each year.

Failure to file required annual reports noted in (b) above within the specified period from the end of the operator's fiscal year shall result in the operator's next quarterly STOA payment otherwise due being withheld pending receipt of the report. In the event that the required annual report is still outstanding by the succeeding quarter, the funds withheld from the prior quarter will then be returned to the general account for redistribution to all other eligible program participants. Besides withholding STOA for failure to file timely annual reports, the Commissioner may also withhold future State operating assistance payments from public transportation systems or private operators that do not provide such operational, financial, performance data, or such other information as may be required and deemed necessary by the Commissioner.

(d) Section 15 data. When a public or private bus operator receives State operating assistance and that bus operator provides service to or within an urbanized area of over 200,000 population, such operator shall file with the cognizant Federal agency such applications and/or reports (such as Section 15 data reports) as would serve to obtain and/or increase the Federal assistance apportioned to such area. Such applications or agents will cover fiscal years starting on or after July 1, 1989. Transit operators must file such applications or reports even if a transit operator is not receiving Federal aid from an urbanized area's apportionment. The local Metropolitan Transportation Organization (MPO) transit planning process is the proper forum to determine the allocation of Federal funds to individual transit operations.
(e) The Commissioner may grant exemptions to transit systems serving an urbanized area of over 200,000 population from having to file these required applications or reports. Any request for an exemption must be filed by such affected transit systems directly with the Commissioner. Exemptions to filing these applications or reports will be granted by the Commissioner only in those cases where extraordinary circumstances, such as financial hardship, warrant exemption treatment.

(f) Corporation or individuals: Any transportation system contracting with a corporation, firm or individual for the provision of mass transportation services, pursuant to section 18-b of the Transportation Law and section 119-r of the General Municipal Law, shall provide within that contract such requirements as it deems necessary to obtain the information required by this section.

975.7 Statistical Sampling Provisions.

(a) In order to ensure the submission of valid revenue passenger statistics in all instances where the system submits "estimated" data, the STOA program will impose, effective January 1, 1990, annual precision (10%) and confidence (95%) requirements on any system's sampling and/or data collection technique used to calculate estimated passenger data and any revenue passenger-related data. Thus, any system that does not submit actual revenue ridership data must be able to document that its annual passenger statistics submitted for STOA from April 1990 on, will be in compliance with these annual confidence and precision limits.

(b) For demand responsive systems, however, it is required that such operations, document and present "actual" quarterly revenue passenger statistics.

(c) Each public transportation system is required to categorize all riders into eligible revenue passengers (including cash fares, tokens and other pre-payment instruments that satisfy the per passenger minimums specified in Section 975.2 (d)) and into ineligible non-revenue passengers. It will be the responsibility of the public transportation system to certify that its sampling technique and sample size provide estimates of quarterly revenue passengers, such that when considered on an annual basis they satisfy the required levels of confidence and precision (95% and 10%, respectively).

(d) Vehicle Mile Data - Each public transportation system is required to calculate eligible revenue vehicle mile data by employing one of the two following methods:
(1) compute total actual miles and adjust for deadhead and other non-revenue miles, or

(2) derive revenue vehicle mile portion of total miles from schedules and adjust for missing trips; and

(3) furthermore, the transit system must certify and be able to demonstrate that there is a system in place to account for missing trips and/or deadhead and other non-revenue mileages. The system must also certify and be able to document that any standard mileages that are preassigned for individual routes reflect audited, actual mileages for such routes accurate to the nearest one tenth of a mile.

975.8 Economy, efficiency and effectiveness annual performance evaluation.

(a) An evaluation of a public transportation system, that provided more than one million revenue vehicle, car or nautical miles in local revenue service or carried more than one million revenue passengers during the preceding State fiscal year, that applies for a service payment, will be performed annually by the Department of Transportation. Using the financial and operational data submitted as well as the plans of the public transportation system, and any other information deemed necessary, the Department will review the economy, efficiency and effectiveness of operators.

(b) The Department will report its findings in a public report. The Commissioner of Transportation will submit copies of such performance evaluations to the chairman of the Senate Finance Committee and the chairman of the Assembly Ways and Means Committee concurrent with submission to the Director of the Budget. The evaluation will include performance indicators covering the economy, efficiency, and effectiveness of public transportation systems. The Commissioner may request any public transportation system, to develop plans to address performance deficiencies.

975.9 Contract service requirements.

Prior to making service payments to a transportation authority, county, or city for services provided under contract with a corporation, firm or individual to provide mass transportation services, pursuant to section 18-b of the Transportation Law and section l19-r of the General Municipal Law, a copy of such contract must be provided to the Department.
If the contract involves intercity bus services, services that extend outside of New York State, services that extend outside of the boundaries of the contracting city, county or transportation authority, then the following procedures and provision also apply:

(a) Intercity Bus Services

Prior to entering into, extending or continuing such a contract for intercity bus services with any intercity bus company such transportation authority, county, or city shall submit the proposed service contract and supporting records describing the services and its finances to the Department for review and approval. The Department review will determine if the service is already under contract, duplicates other subsidized services, is provided in an effective manner and meets other program requirements.

(b) Services that operate outside N.Y. State

Any new, amended or renewed contract between a transportation authority, county, or city and a corporation, firm or individual, to provide mass transportation services, pursuant to section 18-b of the Transportation Law, shall reflect the following general policy of the Department of Transportation where such service, or a portion of such service, is to be interstate commerce. In order for a public transportation system that provides mass transportation services outside of New York State to be eligible for a State service payment, such system must demonstrate to the Commissioner that such assistance will be used exclusively for the benefit of New York State riders.

(1) To the degree practicable, the benefits of the receipts of State moneys pursuant to such contract for mass transportation services by such corporation, firm or individual shall be applied either:

   (i) to discount, or otherwise reduce, or minimize the fares charged for interstate service with origin and destination points within the State of New York; or
   
   (ii) to provide additional service or routes within New York State pursuant to such contract.

(2) Such general policy may be carried out in either of the following manners as prescribed by the Commissioner:
(i) a plan therefore submitted through the transportation authority, county, or city by the corporation, firm or individual, to the Commissioner of Transportation for approval, and such plan being subsequently approved; or

(ii) the contract containing a clause that the benefits from the operating assistance shall be reflected in the fares for interstate trips having an origin and destination within the State of New York by discount or credit that is equal to the percentage relationship between the total subsidy payment and the full farebox revenues generated by such interstate trips.

(3) Such corporation, firm or individual, when required by such contract to provide additional service or routes, may deduct any deficits generated by such operations from the total subsidy payment in determining the required fare discount, other reduction, or minimization of fares. Should such corporation, firm or individual be receiving payment of moneys pursuant to a valid existing contract with a transportation authority, city or county which does not contain plan submission or discount or credit provisions as outlined herein, such contract shall be amended so as to incorporate such a provision as soon as is legally possible.

(c) Services that extend outside the boundary of the contracting Municipal Corporation.

In order for counties or cities contracting for mass transportation services under the provisions of Section 119-r of the General Municipal Law to be eligible for a State service payment for service that extends beyond its boundaries then the following will apply:

(1) Vehicle miles both inside and outside the Municipal Corporation can be submitted as eligible for calculating service payments if the service is local bus service or commuter bus service that extends to a destination in a nearby county if such service is of primary benefit to the residents of the contracting county or city. Counties or cities intending to contract for commuter bus services under this provision must obtain Department approval to do so by no later than the seventeenth day of the first month of a quarter for which the service is to be provided. Requests for approval shall describe the commuter services to be contracted for outside of the jurisdictional boundaries and the benefits that their residents receive from such services. In approving such services, the Department shall consider the type and need for subsidy to maintain adequate service, reasonable return on equity, operating cost guidelines, and impact on other operators.
(2) Counties and cities may sponsor intercity bus services that serve more than one county, and that meet the requirements of Section 975.9 (a) but only for the services that are within their municipality; i.e., they may only submit the revenue vehicle miles and revenue passengers within the jurisdictional boundaries of the sponsoring county or city.

975.10 Application for Federal aid.

(a) Where a transportation system is eligible to apply for Federal operating assistance and Federal funds have been identified and reserved for this purpose, the transportation system must apply for such Federal aid or jeopardize its claim to any State operating assistance.

975.11 Provision for elderly and transit disabled.

A system shall also provide reduced fares for elderly and transit disabled persons in off-peak periods to the extent necessary to enable the public transportation system to apply for Federal operating assistance payments. In the event a local public transportation system does not comply with these requirements, the Commissioner may reject the application, in whole or part, or delay quarterly service payments to the system until it fully complies, or demonstrates that it will comply fully, at the earliest possible date.

975.12 Service Payments

(a) Combined service and usage distribution formula. As authorized by legislation, the Commissioner may develop a single formula to distribute mass transportation operating assistance payments authorized by separate appropriations in order to facilitate program administration and to ensure an orderly distribution of such funds.

(b) Calculation of Service Payments for initial or final quarter of service. Service payments for a quarter will be based on the statistics of the previous quarter. Estimates of operating statistics from a new participant i.e., a public transportation system, initial quarter may be accepted. Adjustment, based on actual, will be made in the second quarter. In the event that a participant ceases to participate in the program, operating assistance due for the final quarter that service is provided shall be based upon the actual total number of revenue passengers and revenue vehicle miles carried during that quarter. In the event the participant received an overpayment of STOA, the public transportation system must return the overpayment to the State. The State will take whatever steps are appropriate to recover the overpayments directly from the public transportation system.
(c) Discounted Payments. Whenever it is determined by the Commissioner that the amount of money appropriated for service payments or the funds in the appropriate account of the Mass Transportation Operating Assistance fund is less than the total amount of money for which all public transportation systems are eligible, the commissioner shall establish, on a quarterly basis, a maximum service payment limit which is lower than that earned by the formula components. This discounting procedure shall be applied so that all unspecified systems within a geographic region as identified by legislation will be provided, to the extent needed, the same "pro rata" share of the funds available. Similarly, when authorizing legislation provides separate geographic mass transportation operating assistance accounts to fund appropriations, funds within such appropriations will be evenly distributed on a "pro rata" share basis to the "specified" as well as the "unspecified" systems.

975.13 Matching payments.

Each county, municipality or Indian tribe served by a public transportation system which receives a service payment shall make a quarterly matching payment to the public transportation system at least equal to that portion of the Section 18-b service payment received from the local assistance account of the general fund. Such matching payments shall be made not later than the 25th day of the second month of each quarter (not later than May 25, August 25, November 25, February 25). Sums so paid by the local jurisdiction shall not be used for other than the purposes of operating the public transportation systems.

Additionally, the following provisions shall apply:

(a) Where more than one county or municipality is served by a regional transportation authority, the matching shares for each county or municipality are established by the Legislature by annual appropriation. Matching payments required of counties served by regional transportation authorities must be in addition to the mortgage taxes, bridge and tunnel tolls and special reduced fare programs earmarked for the regional transportation authorities and assessments paid for station maintenance, capital engineering, debt service and transit police.

(b) The local match to STOA may come from any local source of revenue available to the system, other than (1) farebox or other operating revenues, (2) other per-passenger reimbursement made by a third party in lieu of fares, (3) Federal or other State funds, or (4) local funds used to match any other Federal or State programs. Revenue sharing funds, if available to a system, will be treated as local funds.
975.14  Plan to dispose of surplus funds.

After audit of the revenues and expenses of a public transportation system, or through the use of certified financial statements, as required by section 975.6, if the commissioner determines that the revenues, as defined in section 975.4 (c) of this Part, exceed the expenses, as defined in section 975.4 (d) of this Part, the transportation system must submit a plan to dispose of the surplus funds by maintaining or reducing fares or maintaining or increasing services. The transportation system shall submit the plan within 30 days of receiving the order in such form as may be prescribed by the Commissioner. Upon approval, the plan shall be implemented as soon as practical. Upon the failure of the transportation system to submit or implement a plan, the surplus shall be used to reduce the proportionate shares of the State and the county, municipality or Indian tribe required to make matching payments to the transportation system or, in the event that no future payments are to be made to the transportation system, the surplus funds shall be proportionately refunded to the State and the county, municipality or Indian tribe involved.

975.15  Alternate allocation of service payments to operators.

Any public transportation system that proposes to take any of the following actions:

(1)  allocate service payments and/or matching payments as required by Section 18-b of the State Transportation Law to operators on a basis other than on the calculated amounts (or a uniform percentage) of the service payment formula attributable to each operator;

(2)  use a portion of service payments and/or matching payments for system expenses not directly incurred by the operators, except for reasonable audit expenses as permitted under Section 975.21 of this part;

(3)  want its profit cap under Section 975.17 to be calculated as a system rather than on an individual operator basis shall be required to submit annually to the Commissioner of Transportation for review and approval, an alternate distribution plan that describes the proposed method of distributing Federal, State, and local operating aid no later than one month prior to the start of the system's fiscal year.

Such Alternate Distribution Plan shall be prepared in accordance with a format prescribed by the Commissioner of Transportation, and shall include:
For public transportation systems submitting a plan under (1) above, the ADP shall describe (i) the nature of the service, passengers serviced, other public transit modes available, cost structure, and/or fare policy that results in adequate service to the public from operators that do not receive their full formula allocation, and (ii) the need for those operators to receive more than their full allocation.

For public transportation systems submitting a plan under (2) above, the ADP shall describe the nature and amount of expenses provided outside the operating company and supporting reasons for the proposed provision of these services. Only expenses directly supporting transit operations as defined in 975.4(d) are eligible expenses.

For public transportation systems submitting a plan under (3) above, the ADP shall describe the basis for determining the level of profit for those companies that will exceed the profit level that would be established under Part 975.17 including the consideration given, if any, to alternative providers of service.

In addition, the plan shall include a table, a narrative description consistent with the table containing a pro forma of expenses, revenues, profits, and all subsidies by source and by operator (and for the government sponsor, if appropriate, under (2) above). If the profit level is contingent on the performance of the operator, those factors shall be described in the plan.

For ADP's submitted under criteria (3) above, the Department will issue conditional approval subject to local government meeting the criteria in Section 975.17 based on actual certified data.

975.16 Interest recovered on overpayments of State Operating Assistance.

In the event that an audit of a public transportation system or private operator discloses the existence of an overpayment of state operating assistance, recovery will include interest on the amount of the overpayment in accordance with a rate to be established by the Department of Taxation and Finance in addition to recovering the amount of state operating assistance overpaid. The recovery of interest will be made in the case of an overpayment resulting from an audit of revenue passengers and revenue vehicle mile operating statistics and/or in the case of an audit of private operators where more than a reasonable return based on equity or operating revenues and expenses has resulted.
Interest will be calculated over a time period marked by: (1) the estimated date of receipt by the system of the STOA overpayment (which will be identified as the date of the State Comptroller's warrant, plus five more days for delivery); and (2) the date of the Department letter which provides a final determination regarding a STOA overpayment. Interest will not be charged on any maximum profit overpayments discovered as an outgrowth of the normal, annual regulatory cap case. Such ROE overpayments are specifically exempted from interest recovery provisions.

975.17 Determination of Maximum Operating Assistance for Private Bus Operators.

In accordance with legislation, the commissioner will annually establish a maximum service payment limit for each private bus operator that reflects a reasonable return on equity or operating expenses and revenues. In establishing, the maximum service payment limit, consideration may be given to prior years as well as the current fiscal year's return on equity or operating revenues and expenses. Additional criteria are also specified below regarding the profit provided to private operators that are part of a system where the local government provides local government funds in excess of mandated levels to further improve the utility, effectiveness, and/or coordination of its system of services.

All private transit operator financial records must conform to the uniform system of accounts, and their Annual Report to the Commissioner must be consistent with the uniform system of accounts as identified in Part 975.5. Annually, the Department will evaluate the financial position of each private operator and establish a maximum service payment limit (cap) pursuant to the guidelines established by the Department's Carrier Certification and Compliance Bureau by regulatory process (profit cap case). Financial data not conforming to these Regulatory case guidelines will be adjusted by the Department and may result in a lower payment limit.

The annual limit established for one year may be used in the following year until a new limit is established based on the previous year's actual data. The Department may amend an established annual maximum service payment limit when circumstances that will substantially change estimated expenses and revenues (such as a fare increase) warrant such an updating.

Any public transportation system that proposes to distribute, or has been found to have distributed, to any individual private bus operator (or for all operators in the system where the requirements of Section 975.15(3) regarding profit cap on a system level have been met) a total amount of operating assistance that would exceed, or has exceeded, its individual
maximum operating assistance allowance, as determined by the current regulatory case issued by the Department, and which seeks to allow such profits to be retained by the operator and not result in reduced State transit operating assistance payments to the public transportation system, shall comply with the following requirements:

(a) Submit a report that describes the methodology employed by the sponsor to allocate operating expenses for STOA eligible services, and includes an explanation of the rationale for making an adjustment to any category of expense that is inconsistent with any determination made by the Department in the final profit cap case for those operators that they propose to provide a profit in excess of the established statewide standard. Such report shall also include an explanation and reconciliation of any differences in expenses, revenues, and subsidies shown on any other financial report submitted to the Department by the sponsor to fulfill STOA Program reporting requirements (ex. the annual estimates and projections prepared pursuant to Section 17-a of the Transportation Law and annual appropriation language).

(b) Demonstrate that the amount of local voluntary aid is at least equal to the profit paid to private bus operators that is in excess of the operator's maximum operating assistance allowance as calculated by the Department.

(c) Demonstrate that the individual private bus operator (s) is more economic than provision of service of comparable quality and quantity by a comparable public authority or public municipal system. Operator cost per revenue vehicle hour is an acceptable comparable measure. The Department will assist in providing data on comparable public system, if requested.

(d) Certify that the profit level being provided has been reviewed and is reasonable, consistent with maintaining adequate service to the public.

The certification must be made by the chief executive officer of the public transportation system. The public transportation system must indicate its intent in writing to make a submission under this provision not later than 45 days after the issuance of the final profit cap case in order to avoid recovery of state aid equal to the amount of profits in excess of the profit standard established by the Department.

The deadline for submission of the documentation specified above shall be 60 days from the date of issuance of the final profit cap case by the Department.

975.18 Deferred Reduction in Formula Earnings - Hold Harmless Provision.
Under certain circumstances where an unspecified public transportation system reduces the number of vehicle miles of service, the Department of Transportation may approve (for one year) the deferral of any corresponding reductions in service payments. In order for the Department of Transportation to approve, with the concurrence of the Director of the Budget, such a deferred reduction in service payments, the following conditions must be met:

(a) Hold Harmless Eligibility Criteria Defined:

(1) The public transportation system must be a county, or city. (Services contracted directly by the Department of Transportation are not eligible.)

(2) The city or county must contribute an enhanced cash match as described below, toward covering the operating expenses incurred by the public transportation system. A cash match contributed by a private transportation provider to the city or county and returned by the public transportation system to the private transportation provider for the purpose of meeting the cash match requirement will not be considered an eligible cash match for the purposes of this provision.

(b) Procedure Defined

(1) The public transportation system must submit to the Department of Transportation a service and fare policy plan. This plan is required in order that the Department can assess whether the service reductions are fair and equitable and whether essential services are being maintained. In order to accomplish these objectives, the plan should contain the following information.

(i) a description of the services provided prior to the service reductions;

(ii) a description of the service reductions;

(iii) an explanation of the process and/or criteria used to identify the particular service reductions selected;

(iv) where an entire route is being eliminated, a discussion of the transit alternatives remaining for the affected riders;
(v) a budget for the year following the service reductions showing estimates of passengers, vehicle miles, operating cost, fare levels, operating revenue, and anticipated local, State, and Federal subsidy levels;

(vi) documentation of the sponsoring agency's contribution of the required cash match as described in 975.18(a) (2) above.

(2) The service and fare policy plan must be approved by the Commissioner of the Department of Transportation.

(c) Payment Calculation Process: In carrying out this provision for deferred reductions in service payments, the Department intends to follow the procedures described below:

(1) Once the Commissioner has approved a service and fare policy plan, each of the following four service payments would then be based on the preceding year's equivalent quarter passenger and vehicle mile statistics. (As an example, the October-December 1987 payment would normally be based on the July-September 1987 statistics. If an approved service and fare policy plan were in effect, the July-September 1986 statistics would determine the October-December 1987 payment level.) Subsequent service payments will be based in the usual way on the passenger and vehicle mile statistics of the immediately-preceding quarter.

(2) The actual cash match required each quarter from the sponsoring agency will consist of two components: 1) the 18-b cash match required by the State service payment generated by the statistics of the quarter occurring one year prior to the most recent quarter, plus; 2) the difference between the total State service payment generated by the passenger and vehicle miles statistics of the quarter occurring one year prior to the most recent quarter and the total State service payment that would normally have been generated by the passenger and vehicle mile statistics of the most recent quarter, less the difference between the 18-b match required by the State service payment generated by the statistics of the quarter occurring one year prior to the most recent quarter and the 18-b match that would normally have been required by the passenger and vehicle mile statistics of the most recent quarter.

(3) For any public transportation system contracting with more than one transit operator that chooses to take advantage of this provision, the Department will compute the additional amount of service payments earned under this provision and
the required local cash match for the entire system not for individual transit operators. In such cases, the public transportation system's service and fare policy plan must address the service of all of the sponsored operators and must also propose a method for allocating service payments.

975.19 Eligibility requirements for specialized transportation services for the transit disabled.

(a) To be eligible for STOA, any specialized transportation service must be available to all transit disabled persons in the service area on an equal opportunity basis and may not give preference to any particular client subgroup. This requirement is not intended to preclude market segmentation based on the amount of physical assistance required by the rider. Service must operate in accordance with the published service area, hours of operation and fares. Acceptable arrangements will be made to market the availability of the service.

(1) Service Funding:

(i) A public transportation system may accept a per passenger payment from a human service agency in lieu of collecting a fare from a human service agency client. Also, the public transportation system may charge the human service agency a fare higher than the fare charged to other riders in those circumstances where accommodating the travel demand of an agency requires the system to operate a level of service which exceeds available Federal and State mass transportation operating assistance and the local match to that assistance.

(ii) Where a human service agency's transportation needs are met by a public transportation system, such system will continue, to the extent necessary, to use human service agency program funds to cover that portion of the cost of specialized transportation services not covered by farebox, Federal and State mass transportation operating assistance and the local match to that assistance.

(iii) If Federal operating assistance is available, it must be included as a source of revenue to cover the costs of the specialized service in at least the same proportion as it covers the costs of the services to the general public. In urbanized areas, the use of Federal assistance must be approved by the area's Metropolitan Planning Organization in the Transportation Improvement Program. Voluntary local assistance (in excess of STOA match requirements) may be substituted for available Federal operating assistance.
(2)  

(a) Where it is necessary to establish procedures for prioritizing service delivery in order to allocate scarce resources, the prioritizing procedures must be fully documented and may not give preference to any client group.

(b) Where the principal operator of mass transportation service for the general public as defined in Section 975.4 (bb) directly provides specialized transportation services which are open to all members of the transit disabled public and where such services meet other eligibility requirements as specified in the STOA regulations, these specialized services are eligible for State transit operating assistance.

Where more than one mass transportation system in the same service area proposes to provide specialized transportation services, the New York State Department of Transportation will determine which system is the system eligible to receive STOA for the provision of specialized services to the transit disabled.

(c) To be eligible for STOA, specialized transportation service provided in any county having no urbanized areas, or cities receiving STOA, must be operated, or purchased through a contract, by the principal operator of general public transportation in the county.

(d) In counties where there is more than one public transportation system, and a specialized service is proposed to be provided by an operator other than the principal operator, as defined in Section 975.4(bb), such specialized service may be eligible for STOA under the following additional conditions:

(1) Specialized Transportation Service Plan:

(i) A specialized service plan must be developed. Service is to be provided in accordance with a specialized service plan, which details appropriate justification for the operation of service by other than the principal operator and includes comments of the principal operator. The service plan should document service area; eligibility; hours of service; fares; service characteristics; restrictions; prioritization; and advance reservation requirements; organizational structure; and service agreements. The plan must also specify acceptable arrangements to market the availability of the service to persons who are disabled.
(ii) Such a plan is subject to review by the Department to establish eligibility for STOA program funding. A program/report prepared to meet Federal requirements as meeting the plan requirements of this subpart provided all requirements of this subpart are included or appended may be acceptable.

(2) Service Contract:

(i) Private, for-profit and private, non-profit operators operating in the proposed service area must be afforded an equal opportunity to bid on the proposed contract(s), and contract(s) should be reoffered for bid on a regular basis.

(ii) Eligibility must be limited to an operator(s) (1) whose primary organizational purpose, as stated in its incorporation papers, is as an operator(s) of passenger transportation, (2) who has or is obtaining an operating permit as a common carrier from NYSDOT, and (3) who will subject its vehicles to NYSDOT inspections.

(iii) The public transportation system must substantially control all transportation service components of the specialized transportation service system, including holding of contracts with the operators, marketing, and the compilation of Federal and State reports. The contract for service must insure that the service complies with these regulations including the scheduling and dispatching of operations.

(3) Justification for use of Multiple Operations:

Where mass transportation services for the transit disabled is best accomplished by contracts with more than one service operator, because of reasons of geographic coverage or market segmentation necessitated by differing amounts of physical assistance required by the passengers, then the justification, economic or otherwise, for employing more than one service operator must be documented in the plan.

(e) Ineligible service(s):
(1) Transportation services limited to the disabled and/or elderly will not be eligible for STOA in any service area where there is no public transportation system offering service for use by the general public.

(2) Transport of meals or goods or emergency medical trips are not eligible services.

(3) Portions of the specialized services which are client-specific and not available to the general transit disabled population are not eligible to be included in the calculation of State operating assistance.

(4) Only services provided to disabled persons, as defined in Section 975.4 (k) are eligible for STOA. Where the specialized service system also serves non-disabled persons, according to this definition, a method of allocation of service passengers and vehicle miles must be documented and approved by the Commissioner, such that STOA payments can be made only on behalf of persons qualified to receive specialized services (i.e., persons who are disabled).

Where a human service agency's transportation needs are met by a public transportation system, such system shall continue, to the extent necessary, to use human service agency program funds to cover that portion of the cost of public transportation services not covered by farebox, Federal and State mass transportation operating assistance and the local match to that assistance.

975. 20 Eligibility Requirements to Insure Services are Open to the General Public

(a) When a public transportation system requests STOA for 1) a coordinated transportation service as defined in Section 975.4(Z), or 2) for any other public transportation service where the service receives fifty percent or more of its operating revenue from human service agency contract(s), or 3) where the operator of the bus service was previously or is currently providing substantial services for human service agency(ies), then the public transportation system must develop and adopt a mass transportation service plan that must define and provide the publicly-available information regarding the following:

(1) service area;
(2) hours of service operation;
(3) fares and third-party reimbursement rates;
(4) routes and schedules/timetables (if fixed route service);
(5) phone number to arrange for service if demand responsive service;
(6) advanced reservation requirements, if any;
(7) marketing and public information regarding service to the general public;
(8) means of restricting access to the service if demand exceeds capacity; (Note: Prioritization procedure for STOA eligible service cannot give preference to human service agency clients.)
(9) description of the financial plan including estimated cost and operating revenue, state, federal, and local financial assistance for the coming fiscal year:
(10) description of any contracts with human service agencies including the amount of compensation, passengers, and whether reimbursement is on a per passenger or other basis; (Note: A per passenger payment from a human service agency may be accepted in lieu of collecting a fare from a human service agency client (see Section 975.2(d)). Where a public transportation system proposes to meet human service agency's transportation needs, the system should carefully review if the service can be met most economically, efficiently, and effectively by an exclusive service that does not receive STOA or as part an open-to-the-public service that is eligible for STOA. Portions of a service that give preference, or are restricted, to a particular client group(s) are not eligible for STOA.)
(11) contracts for services (For coordinated transportation service, one operator—preferably the principal operator—must control all transportation service components of the coordinated transportation service system including marketing, scheduling, dispatching operations, and the compilation of federal and state reports.)
(12) public transportation vehicles to be used (If school buses are to be used, they must be identified in the plan and describe the actions taken to satisfy the provision of 975.2(b) to insure that the service is recognized as open to the general public. If vehicles are purchased through the use of federal or state funds, they must be identified. This section of the plan can also contain the material to satisfy the provision of Section 975.2(e) regarding vehicle capacity.)

(b) The plan for services submitted for STOA must be approved by the governing board of the public transportation system. The approving resolution must recognize the service as being fully open to the general public on an equal opportunity basis and relevant to the travel needs of the general public.
(c) The commissioner will review the plan for determining service eligibility for STOA.

(d) The transportation service plan developed by public transportation systems for coordinated transportation services under the Rural Public Transportation Coordination Assistance Program (RPTCAP) may fulfill the requirements of this section.

(e) Where a public transportation system provides both open-to-the-general-public and specialized service, the transportation service plan requirements of this section and Section 975.19 can be met in a single document.

(f) New systems must submit their plans sixty days prior to the effective date of STOA eligible service. Systems currently receiving STOA must submit their plan within 180 days of the effective date of these regulations.

975.21 Audits

(a) The Commissioner pursuant to Sections 18b and 14g of the Transportation Law, and any city or county contracting for the provision of mass transportation services pursuant to section 119r of the General Municipal Law has the power to audit and examine the accounts, books, records, documents and papers of any participating public transportation system or person, firm, or corporation. In the event the system, or person, firm, or corporation refuses to comply with the audit provisions, all future operating assistance payments will be withheld to that system or person, firm, or corporation, until the system, or person, or firm or corporation complies with the audit provisions. Furthermore, the Commissioner shall be provided, upon request with copies of audits performed by or in satisfaction of requirements for other levels of government that directly related to the provision of governmental operating aid.

(b) When either final financial report, subject to adjustment by audit, or an audit of a prior year does result in an overpayment, the amount of the overpayment including interest per section 975.16 of this part will be recovered either from the municipal sponsor or directly from intercity carriers under contract from the Department. Overpayment amounts can be recovered through the reduction of future STOA payments or repayment from the local government. In the event there are no further STOA payments due, the State will take whatever steps are appropriate to recover the funds.

(c) If a county or city elects to contract with a municipality, corporation, firm, or individual for the provision of mass transportation services, pursuant to section 18-b of the
Transportation Law and section ll9-r of the General Municipal Law, auditing expenses necessitated solely by State operating assistance program participation may be considered as part of the required matching payment; however, eligible annual auditing expenses may not exceed one percent of the amount of state operating aid received in a year or $5,000 per subsidiary, corporation or individual operator, whichever is greater.

975.22 Safety

Pursuant to the provisions of Section 1000.2(e) and 1000.3(d) of this Title, every public transportation system and any person, firm or corporation providing mass transportation services receiving all or a portion of statewide mass transportation operating assistance is required to prepare, follow and publicize a plan for transportation safety. Such plan shall be prepared and filed with the Public Transportation Safety Board (PTSB) in accordance with Section 1000.12 of this Title. As therein provided, if any public transportation system or any person, firm or corporation providing mass transportation services fails to file a safety plan or amendment or shall file a safety plan or amendment which the Commissioner, in consultation with the Safety Board, determines to be unsatisfactory, and then fails to file a satisfactory safety plan or amendment within 90 days of the sending of notice of such determination, or fails to follow such plan, the Commissioner is authorized to withhold all state mass transportation operating assistance from such system or person, firm or corporation.

The responsibility to verify that the private operator(s) has adequately responded to any deficiencies regarding service safety identified by the New York State Department of Transportation or the State Public Transportation Safety Board rests with such offices. Notice to the public transportation system will be provided should it be necessary to withhold STOA from an operator(s) of mass transportation services that fails to comply with a PTSB directive.

975.23 Special Mobility Improvement Projects related to Transit Enhancements within the Metropolitan Commuter Transportation District and congested portions of urbanized areas outside the Metropolitan Commuter Transportation District.

(a) Authority for this sub-section is established by Aid to Localities portion of the New York State Budget Act beginning with 1993-1994 and any future appropriation, which specifies funding for Special Mobility Projects.
(b) Purpose: To provide for the development and implementation of new and innovative services to improve mobility in the Metropolitan Commuter Transportation District and in congested portions of urbanized areas outside the Metropolitan Commuter Transportation District. This program is intended to help overcome the traditional barriers to new and innovative services. Grants awarded from this allocation may be for a period of up to two years, subject to re-appropriation in the second year by the legislative

(c) Eligibility Requirements: All service providers, within the specified geographic areas, who are now eligible for funding under the State Mass Transportation Operating Assistance Program (STOA) are eligible to compete for funding under this program.

In addition, private for-profit, private non-profit, quasi-public transit or ridesharing service providers are eligible and encourage to compete for these funds.

All applications must be sponsored by and any grant monies received must be contracted through a STOA-eligible public agency (e.g. City or County) or non-profit corporation. Applicants eligible under Section 14-g of the Transportation Law may contract directly with NYSDOT.

Transit services now eligible under STOA, such as express commuter, local circulation, shuttle/feeder and reverse commute services will be eligible under this new provision, provided that they constitute new and innovative services that do not duplicate existing transit service.

In addition, certain activities not now eligible under STOA (17 NYCRR) may be deemed eligible for funding from this sub-section if they are deemed to be innovative in addressing the mobility needs of the specified geographic areas targeted in this program. Such activities may include but are not limited to: new services utilizing smaller vehicles (14 seats or less), travel demand management projects (such as employer based parking management, rideshare/vanpooling and guaranteed ride home programs), marketing new innovative services and selective supportive capital costs that facilitate new and innovative services.

(d) Application Process: Applicants competing for funding under this sub-section shall submit an application to the New York State Department of Transportation at a mailing address identified in the Program’s project solicitation material. Applications submitted under this sub-section shall include the following:
(1) Service Operating Plan to include:

(a) The market to be served;
(b) The nature of the service (bus, van, feeder, reverse commute, etc.);
(c) Proposed approach to marketing and public information;
(d) Fee structure of service;
(e) Monitoring, reporting and performance milestones.

(2) Project Budget (operating and capital) include the funding split between this program and other sources;

(3) A narrative description of service objectives, in terms of improving mobility, reducing congestion, improving air quality, involving private sector partners and meeting federal mandates.

(e) Selection Criteria: The following criteria will be used in determining which of the competing projects will receive funding.

(1) Improvements to regional mobility

(a) Provision of regionally based service that cross City or County boundaries.

(b) Facilitate greater use of the existing transit system by bridging gaps in existing transit service.

(c) Service is tailored to major employment sites, and/or new development or redevelopment that has integrated transit into project design.

(d) Consultation with other regional transportation and land use agencies, as appropriate. Such entities may include: Transportation management associations, public transit providers, metropolitan planning organizations, private providers of public transportation, county planning agencies, municipal planning agencies, parking providers and agencies, major employers or business associations, NYSDOT Regional Offices.

(2) The amount of non-state funds to be leveraged or contributed by the entity requesting assistance;
(a) Direct private sector employer or local government participation in planning and funding;

(b) The extent to which the service shows the promise of being self-sustaining following the demonstration grant period;

(c) Potential for revenue to be gained during the grant period through user fees.

(3) The cost effectiveness of the project

(a) Demonstrated commitment to monitor and accurately report service performance;

(b) The extent to which the service utilizes existing capital and planning/market data resources.

(4) Reductions in traffic congestion and improvements in air quality;

(5) The contribution the project will make in meeting other Federal and State requirements.

(6) The quality of the application and proposed work program.

(f) Selection Process: Within the Metropolitan Commuter Transportation District a project selection committee or committees will review all applications submitted and select the proposals that will receive funding under this program, based upon the above listed criteria. These committees will consist of representatives from NYSDOT Passenger Transportation Division, the NYSDOT Regional offices and others as designated by the Passenger Transportation Division or NYSDOT Region Offices. In the congested urban areas outside the Metropolitan Commuter Transportation District Projects will be selected for funding by the Director of the NYSDOT Passenger Transportation Division, following a review and ranking of all applications submitted, based upon the above listed criteria.

Grant amounts will be based on a committee review of the project budget, total grant funds available and the objective of funding the maximum number of projects practicable, while insuring that all funded projects have adequate funds to achieve the mobility goals of this program. The maximum amount dedicated to any project funded out of the appropriation
shall not exceed one half of the authorized appropriation in the first year of this grant and in any future years appropriation.

(g) Contracting, Funding Disbursement and Administration:

(1) A grant agreement between NYSDOT and the Grantee will establish performance milestones to be met within agreed upon reporting intervals.

(2) Funding Disbursement will be based on these performance milestones to be met by the service provider at the specified reporting intervals. At each reporting interval the grantee will report on: services provided, performance measures and other information specified in the grant agreement. After NYSDOT review of these reports and a finding that the service has successfully met the agreed upon performance milestones, funds will be disbursed according to a payment schedule contained in the grant agreement.