

## 4. SATISFACTORY CONTINUING CONTROL

### BASIC REQUIREMENT

The grantee must maintain control over real property, facilities, and equipment and ensure that they are used in transit service.

### AREAS TO BE EXAMINED

#### 1. *Real Property*

- a. Compliance with requirements for incidental use of real property acquired with FTA funds
- b. Management of excess real property

#### 2. *Equipment*

- a. Equipment records
- b. Biennial physical inventory and reconciliation
- c. Property control system
- d. Control of FTA funded, contractor-operated equipment

#### 3. *Disposition of Excess Real and Personal Property*

- a. Procedures for competitive sale
- b. FTA reimbursement
- c. FTA notification for removal of real property and equipment before the end of service life
- d. FTA permission for like-kind exchange, equipment trade-in, or retained sale proceeds

Note to Reviewers: Certain states receive Triennial Reviews. In accordance with 49 CFR 18.32 (b), a State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. This may differ from 5010.1D equipment requirements. If a Triennial Review of a state is being conducted, coordinate with the regional office to address Questions 3, 4, 5, 6, 8, 10 and 11 of this section.

#### 4. *Revenue Vehicles*

- a. Fixed route bus spare ratio
- b. Contingency fleet
- c. Rail fleet management plan

### REFERENCES

1. [49 USC Chapter 53](#), as amended by the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*.
2. [49 CFR Part 18](#), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
3. [FTA Circular 5010.1D](#), "Grant Management Requirements."
4. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."
5. [FTA Circular 9300.1B](#), "Capital Investment Program Guidance and Application Instructions."
6. [FTA Master Agreement](#).

# QUESTIONS FOR THE REVIEW

1. *Does the grantee make incidental use of any real property? If yes, was FTA approval obtained? Does the grantee maintain continuing control over the property? Is revenue used for transit planning, capital, or operating expenses?*

## EXPLANATION

Incidental use is defined as the authorized use of real property and equipment acquired with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Such use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project assets. FTA encourages grantees to make incidental use of real property when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. A typical example of incidental use is the lease of air rights over transit facilities. Note: Licenses and leases of air rights are treated as incidental uses, not disposition of excess property.

FTA approval is required for incidental use of real property. The property must continue to be needed and used for an FTA project or program, and the incidental use cannot compromise safety or continuing control over the property. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenue, non-profit uses are permitted, under certain circumstances.

If a grantee leases part of an intermodal terminal developed with FTA assistance to an intercity bus operator, the grantee is permitted to charge a nominal rent (e.g., \$1.00). The intercity operations are treated as incidental use, and the intercity operator must pay rent to the grantee. If grantees wish to charge more than a nominal amount, they may do so, up to fair-market rates. The grantee should select the carriers afforded below-market rents on the basis of a competitive selection process. The income from the incidental use may be applied to transit expenses, or the grantee may use the deduction method to reduce the FTA and grantee contributions of a capital project.

## REASON FOR THE QUESTION

[49 CFR 18.25 \(g\)](#)

[49 CFR 18.31](#)

[FTA C 5010.1D](#), Ch. I, Section 5.hh and Chapter IV, Section 2.i

[FTA Master Agreement](#) Section 19

## SOURCES OF INFORMATION

If the grantee sought FTA approval for incidental use, the regional office files will include copies of this correspondence. This information may be in grant files. Otherwise, during the site visit facilities inspection, you may observe incidental use of project property. The grantee should provide documentation that the incidental use meets FTA requirements. Lease agreements should include language ensuring that the grantee has continuing control of the property. Budgets or financial reports should show how the revenue is used.

## DETERMINATION

If the grantee makes incidental use of project property with FTA approval, maintains control of the property, and uses the revenue for transit purposes, it is not deficient. If FTA did not approve the incidental use, the grantee is deficient. If the incidental use interferes with transit purposes or the grantee otherwise does not maintain control, it is deficient. It is not typical to find that revenues are used for non-transit purposes, but a finding of deficiency is also justified in that case.

## SUGGESTED CORRECTIVE ACTION

The grantee must obtain FTA approval for any incidental use and implement procedures for continuing control.

2. *Does the grantee have any excess real property? If yes, is there an excess real property inventory and utilization plan? Has the plan been updated, if necessary?*

## EXPLANATION

If FTA funded real property is no longer needed for any transit purpose, grantees are required to prepare or update an excess real property utilization plan. The grantee's plan should identify and explain the reason for excess property. [FTA C 5010.1D](#) describes that the inventory list should include such things as: property location; summary of any conditions on the title, original acquisition cost and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.

Property no longer needed should be used for other purposes or removed from service. Grantees are required to notify FTA when property is removed from the service that was originally intended in the grant award and put to additional or substitute use.

### REASON FOR THE QUESTION

49 CFR 18.31

FTA C 5010.1D, Ch. IV, Section 2.j

### SOURCES OF INFORMATION

During the desk review, examine grant files for excess property utilization plans. Check previous triennial review files for any unresolved issues. The grantee should provide excess property utilization plans and documentation of disposition of FTA funded property.

### DETERMINATION

If the grantee has excess real property and has not prepared a written plan for disposing of it or if the plan does not include all the elements required by FTA C 5010.1D, it is deficient. If the plan identifies disposition of real property or other actions that the grantee has not completed, the grantee is deficient.

### SUGGESTED CORRECTIVE ACTION

The grantee must prepare a written excess real property utilization plan or implement the existing plan.

If real property has been removed from service without FTA approval, the grantee should inform FTA how it will come into compliance with the requirements of FTA C 5010.1D and report on the disposition activity.

3. *Does the grantee have equipment records that provide the following required information?*

*Description, I.D. Number, Acquisition Date, Cost, Federal Percentage, Grant Number, Location, Use and Condition, Disposition Action, Vested Title, Useful Life (\*).*

*\*Useful Life requirement added with issuance of FTA C 5010.1D.*

### EXPLANATION

FTA defines equipment as all tangible, nonexpendable, personal property that has a service life of more than one year and an acquisition and installation cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition includes at least all equipment defined

above. A grantee must keep records of FTA funded equipment.

Grantees must maintain equipment records with all the above information included. Many grantees have computerized databases for property records. It is acceptable if no single report shows all the required data as long as the grantee can demonstrate that the records are complete. Any FTA-funded property put into service on or after November 1, 2008 (the effective date of FTA C 5010.1D) must have a useful life defined.

### REASON FOR THE QUESTION

49 CFR 18.32

FTA C 5010.1D, Ch. IV, Section 3.k

### SOURCES OF INFORMATION

The information will be found in the grantee's written or computerized property records. Information on useful life may be included in grantee depreciation schedules or in other fixed asset accounting records.

### DETERMINATION

If the grantee's records are missing some of the required information, or if some information is not current, it is deficient. The inclusion of useful life in the property records is effective November 1, 2008, for any property acquired on or after that date. It is strongly recommended, but not required that grantees update their property records for items put into service prior to that date to include useful life.

### SUGGESTED CORRECTIVE ACTION

The grantee must update its records with the required information.

4. *Did the grantee conduct a physical inventory of equipment in the past two years?*
5. *Were the results of the inventory reconciled with the equipment records?*
6. *Does the grantee have an adequate control system to prevent loss, damage, or theft of property?*
7. *Does the grantee maintain control of any federally funded contractor-operated equipment?*

## EXPLANATION

The Common Rule ([49 CFR Part 18](#)) and [FTA C 5010.1D](#) require grantees to conduct a physical inventory of equipment and to reconcile the results with the equipment records at least once every two years. The grantee must have a control system to prevent loss, damage, or theft of property. Typically, grantees tag all FTA funded equipment with a property control number, but other systems can be used such as serial numbers or vehicle identification numbers. Tags are not required. The grantee is responsible for developing an adequate system. Any loss, damage, or theft must be investigated and documented by the grantee. To confirm that the system works, the reviewer may select several items from the equipment records and physically check to see if the control number corresponds to the records.

The grantee must ensure that any federally funded, contractor-operated equipment is controlled. The requirements for a biennial physical inventory and other control measures also apply to equipment that is leased or provided to a service contractor.

## REASON FOR THE QUESTION

[49 CFR 18.32](#)

[FTA C 5010.1D](#), Ch. IV, Section 3.k and Ch. II, Section 3

## SOURCES OF INFORMATION

The grantee's records should show that the biennial inventory was completed as required. The grantee also should have documentation of the reconciliation of inventory results to equipment records. Examine the annual financial audit reports and any internal audit reports to learn if any discrepancies have been identified. Financial reports will show any changes in the book value of property and may reflect adjustments for missing equipment. The grantee should demonstrate the safeguards that are in place to prevent loss, damage, or theft. Be sure that the grantee has extended these protections to grantee-owned/contractor-operated equipment.

## DETERMINATION

The grantee is not deficient if it can document that a physical inventory was conducted within two years of the site visit and the results were reconciled with the equipment records. The grantee is deficient if it has not conducted a biennial inventory. If a physical inventory has been conducted, but results have not been reconciled to records, the grantee is deficient. The grantee is deficient if procedures, leases, and/or service agreements do not provide for property use and control.

## SUGGESTED CORRECTIVE ACTION

The grantee must complete the equipment inventory and document that the results have been reconciled. If leased or contractor-operated equipment is not monitored, the grantee should develop procedures for improved control.

8. *Did the grantee dispose of any FTA funded project property during the past three years? If yes, obtain list. Were competitive sales procedures used to ensure the highest possible return on the sale of real property? Has FTA been reimbursed for its share of real property or equipment, if required?*
9. *Was any project property removed from public transit service before the end of service life? If yes, was FTA notified?*
10. *Did FTA provide prior concurrence in the method of disposition of real property or equipment removed from service before the end of its service life?*
11. *Did the grantee receive FTA permission for any vehicle like-kind exchange, equipment trade-in, or retained sale proceeds?*

## EXPLANATION

The Common Rule ([49 CFR Part 18](#)), [FTA C 5010.1D](#) and the [Master Agreement](#) have requirements for removing assets from transit service. Grantees should request FTA instructions on proper procedures for disposition of real property. There are several alternatives. A grantee may acquire clear title to real property by compensating FTA for its share, may market and competitively sell the real property (reimbursing FTA for its share), or may transfer the property to another FTA grantee or public agency. For active projects (i.e., projects for which the grant is still open), the proceeds from the sale of real property can be applied to the real property line item of the original total cost of real property purchased for that project. In all cases of real property disposal, the grantee should use competitive sales procedures to ensure the highest possible return on the property or at least fair market value.

For equipment that is no longer needed for FTA supported projects or programs, the grantee may

retain it or dispose of it. Removal of equipment that has reached the end of its service life and for which the unit market value exceeds \$5,000 requires reimbursement to FTA of the proportionate share of the fair market value or the proceeds of the sale. Equipment with a unit market value of \$5,000 or less after its service life requires no FTA reimbursement. Removal of equipment before the end of its service life, however, requires a proportionate reimbursement to FTA of the greater of the straight line depreciated value (based on years or miles for rolling stock), or the sale price.

FTA must be notified of any equipment removed prematurely from service. FTA is entitled to its share of the remaining federal interest. The grantee may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

Service life for rolling stock and facilities is defined at the end of this section. The grantee should have a mechanism to adjust the service life of any FTA funded vehicle that is removed from service for an extended period (e.g., more than six months).

There is no need to notify FTA of property removed from service that has exceeded its service life, although, as noted above, reimbursement may be due to FTA, if the value exceeds \$5,000.

Federal Transit law (49 USC Chapter 53) at Section 5334(g) (4) provides an additional option for handling proceeds from the sale of federally funded assets. This provision allows a grantee, with FTA approval, to sell, transfer, or lease real property, equipment, or supplies acquired with FTA assistance and no longer needed for transit purposes. The net proceeds of the transaction may then be used to reduce the gross project cost of other federally assisted capital transit projects.

Item	FTA-Defined Service Life
Rail vehicles	25 years
35'-40' heavy duty transit bus	12 years or 500,000 miles
30' heavy duty transit bus and articulated buses	10 years or 350,000 miles
30' medium-duty transit bus	7 years or 200,000 miles
25'-35' light-duty transit bus (e.g., body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (e.g., small buses, regular and specialized vans)	4 years or 100,000 miles
Fixed guideway steel-wheeled trolley*	25 years
Fixed guideway electric trolley-bus*	15 years

Passenger ferry*	25 years
Other ferries without refurbishment*	30 years
Other ferries with refurbishment*	60 years
Railroad or highway structure*	50 years
Most other buildings and facilities (concrete, steel and frame construction)*	40 years

\*Added with issuance of FTA C 5010.1D

Note: The difference between a heavy-duty and medium duty transit bus is that a heavy-duty transit bus is built as a bus, whereas a medium-duty bus is actually a truck with a bus shell.

### REASON FOR THE QUESTION

49 USC 5334 (g) (4), as amended by SAFETEA-LU.  
 49 CFR 18.31-18.32  
[FTA C 5010.1D](#), Ch. IV, Sections 2.j and 3  
[FTA Master Agreement](#), Section 19

### SOURCES OF INFORMATION

The grantee should be able to provide a list of all federally funded real property and equipment removed from transit service during the review period. Fleet availability reports or maintenance records may indicate buses that are out of service for an extended period; this unavailability may require an adjustment to a vehicle's service life. Typically, grantees will dispose of old buses if new ones are acquired, but it is not common for grantees to dispose of equipment that is still useful. At the site visit, the grantee should describe procedures for property removal. Procedures for sale of assets are often included in Procurement or Purchasing Manuals. Public notices of auctions or other removal procedures and subsequent reports from an auctioneer or other party should be examined along with sales records. Financial reports should also show revenue from the sale of equipment. The grantee should have records to document how fair market value was arrived at for any equipment not sold competitively. FTA guidance on real property disposal and approval for like-kind exchange of rolling stock or retention of the proceeds from the sale of assets should be on file in the regional office.

### DETERMINATION

The grantee is deficient if FTA funded real property or equipment has been disposed of and competitive sales procedures were not used or if real property or equipment has been removed from service prematurely without FTA approval. If the grantee has not reimbursed FTA proportionately for the depreciated value of items that had not yet reached the end of their service life or for items valued greater than \$5,000 that had reached the end of their service

life or has not obtained approval for retaining the proceeds, the grantee is deficient.

### SUGGESTED CORRECTIVE ACTION

The grantee should develop procedures to ensure the competitive sale of FTA funded real property and to notify FTA of any premature removal of equipment from service. The grantee must reimburse FTA for the FTA share of disposed property.

12. *Provide an inventory of bus and paratransit vehicles owned/operated by the grantee.*

*For the fixed-route bus (NTD Motorbus category) please provide the following:*

- a. *Total number revenue vehicles = \_\_\_\_\_*
- b. *Number of vehicles required for maximum service = \_\_\_\_\_*
- c. *Actual number of spare vehicles = \_\_\_\_\_ (“a” – “b”)*
- d. *Actual spare ratio = \_\_\_\_\_ (“c”/ “b”)*

*Does the spare ratio exceed FTA’s 20 percent guideline for bus fleets of 50 or more revenue vehicles?*

13. *Is there a bus contingency fleet? If so, is there a contingency plan?*

### EXPLANATION

For grantees with 50 or more fixed route buses, a reasonable spare ratio should not exceed 20 percent of the vehicles operated in maximum fixed route service, according to [FTA C 9030.1C](#). Maximum service means the revenue vehicle count during the peak season of the year, on the week and day that maximum service is provided. It excludes atypical days and one-time special events. Whether vehicles are locally funded, FTA funded, or the vehicles have exceeded their service life are not relevant factors. For fleets with fewer than 50 fixed-route vehicles, judgment must be applied to determine the reasonable number of spare vehicles.

The FTA recognizes two types of vehicles—active and contingency. During a period of vehicle replacement, some buses could be inactive, awaiting disposition. This is a temporary condition and can be considered a third category. However, to be not deficient, the grantee should have specific plans and dates for disposition.

Vehicles that are historic and used for parades or public relations or that have been converted to mobile offices or in other ways removed from revenue service should not be considered part of the active revenue fleet or counted in the calculation of the spare ratio.

To calculate the spare ratio, divide the number of spare vehicles by the peak requirement. The number of spare vehicles is the difference between the total fleet and the peak requirement. The peak requirement is the number of vehicles operated in maximum service.

Buses may be stockpiled in an inactive contingency fleet in preparation for emergencies. No bus may be stockpiled before it has reached the end of its service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan. The plan should be updated as necessary, to support the continuation of a contingency fleet. These vehicles do not count in the calculation of spare ratio.

### REASON FOR THE QUESTION

[49 CFR 18.32](#)

[FTA C 9030.1C](#), Ch. V, Sections 9.a(5)-(6)

[FTA C 5010.1D](#) Ch. IV, Section 3.i

### SOURCES OF INFORMATION

If the grantee has a contingency fleet, ask for a copy of its contingency plan. The grantee should provide a rolling stock roster. Pull-out logs or fueling logs can be checked to verify peak hour requirements and buses in service at the time of the site visit. The equipment records also provide a listing of the fleet.

### DETERMINATION

If the grantee has a spare ratio that is 20 percent or less of the active fixed-route bus fleet, the grantee is not deficient. If the active fixed route bus fleet is greater than 50 vehicles and the spare ratio is more than 20 percent of the peak fleet, the grantee is deficient. If the grantee has a contingency fleet but no current contingency plan, the grantee is deficient. If the grantee has excessive vehicles due to the arrival of new vehicles and has no plan for disposal, the grantee is deficient.

If the grantee has fewer than 50 buses, a judgment call needs to be made based on the age of the fleet and operating conditions. A peak fleet of 40 buses with more than 8 spare vehicles is probably deficient.

### SUGGESTED CORRECTIVE ACTION

If the spare ratio is excessive, the grantee must identify its approach for coming into compliance. For example, the grantee could dispose of equipment, increase its peak vehicle requirement, and/or establish a contingency fleet. Note that if the grantee

submits a plan for reducing its spare ratio that cannot be completed within 90 days and is to be implemented over several quarters, progress should be reported in Milestone/Progress Reports.

In some cases, grantees may have reduced service as a result of a local or national economic downturn, which results in an increased spare ratio. If the grantee expects to resume increased operations or add new service within a reasonable period of time, it is not necessary to require that the grantee dispose of excess vehicles. The grantee should develop a bus fleet management plan to account for vehicle use, maintenance, and storage while service is reduced.

If the grantee has a contingency fleet but no contingency plan, a plan must be developed.

**14.** *If the grantee is a rail operator, is a fleet management plan on file? If yes, does the plan include:*

- a. Operating policies*
- b. Peak requirements*
- c. Maintenance/overhaul program*
- d. System and service expansions*
- e. Railcar procurements/schedules*
- f. Spare ratio justification*

**EXPLANATION**

Because rail transit operations tend to be distinct from grantee to grantee, FTA has not established a numerical requirement for rail car spare ratios. FTA examines a grantee's rail car spare ratio and the rationale supporting that spare ratio as part of the grant application review and during the triennial review. At the time of the site visit, a rail operator must have a fleet management plan on file. The plan should include the elements listed above. These requirements apply to all types of rail operations.

The spare ratio justification should consider the average number of cars out of service for scheduled maintenance, unscheduled maintenance, and overhaul programs. It should take into account historical variations in ridership and ridership changes that affect car needs due to system or service expansions. The justification should account for contingency needs due to destroyed cars and procurement schedules for fleet replacement and expansion. Cars delivered for future expansion and cars that have been replaced but are in the process of being disposed of should be identified and separated from other spares so as not to inflate the spare ratio.

FTA has defined peak vehicle requirement to include "standby" trains that are scheduled, ready for service, and have a designated crew.

**REASON FOR THE QUESTION**

[49 CFR 18.32](#)  
[FTA C 9030.1C](#), Ch. V, Section 15.b(5)  
[FTA C 5010.1D](#), Ch. IV, Sections 3.i and k

**SOURCES OF INFORMATION**

If the grantee is a rail operator, the fleet management plan may be on file in the regional office if a recent grant application included funds for rail cars. If not, the plan should be requested of the grantee.

**DETERMINATION**

The grantee is not deficient if it has a current fleet management plan that includes all required elements.

The grantee is deficient if it has not prepared a plan or the plan is incomplete or out-of-date.

**SUGGESTED CORRECTIVE ACTION**

The grantee should be required to prepare a plan or update the existing plan. The plan must include all required elements.