

WORKBOOK

FY2008

Triennial Review Workshops



Federal Transit Administration
U.S. Department of Transportation
Washington, DC

SUMMARY OF CHANGES

PROCESS

Added a list of FTA headquarters, regional office, metropolitan office and contractor contacts.

1. LEGAL

Added information on reviewing Opinions of Counsel that accompany Certifications and Assurances.

2. FINANCIAL

Areas to be Examined

Expanded the description of the sampling procedure used to examine the ECHO drawdowns.

3. TECHNICAL

Question 4

Revised citation under Reason for the Question (49 CFR 18.50).

Question 7

Added a sub question asking if the Project Management Plan includes a Security Management Plan, if required. Expanded the Explanation section to describe contents of a Security Management Plan. Updated the Reason for the Question to include a citation to FTA C 5800.1.

Question 9

Revised citation under Reason for the Question (49 CFR 18.36).

4. SATISFACTORY CONTINUING CONTROL

Basic Requirement

Added instructions to reviewers on applicability of equipment management questions for states that receive Triennial Reviews.

5. MAINTENANCE

No substantive changes.

6. PROCUREMENT

Exhibit 6.1 and 6.2

Revised contract threshold for Contract Work Hours and Safety Standards Act clause to >\$100,000.

Exhibit 6.3

Updated List of Buses Tested to reflect changes through July 14, 2007.

7. DBE

Questions 3-7

Separated questions so that Explanation, Reason for Question, Sources of Information, Determination/Deficiency and Suggested Corrective Action sections related to few questions.

Eliminated question on Policy Statement

Question 6

Added more guidance on prompt payment.

Question 12

Added additional guidance on UCP.

8. BUY AMERICA

Question 7

Revised the Explanation to state that the final assembly of rolling stock must take place in the United States. Provided clarification relative to typical final assembly activities associated new, remanufactured, or overhauled rolling stock.

9. SUSPENSION/DEBARMENT

No substantive changes.

10. LOBBYING

No substantive changes.

11. PLANNING/POP

Updated relevant questions to incorporate provisions of SAFETEA-LU.

Added a section on the incorporation of JARC and New Freedom coordination in the planning process.

12. TITLE VI

Revised section to conform with new circular issued May 2007.

13. PUBLIC COMMENT PROCESS FOR FARE INCREASES AND SERVICE REDUCTIONS

Basic Requirement

Clarified that the grantee is expected to have a written copy of its locally developed Public Comment Process on Fare or Service Changes.

14. HALF-FARE

No substantive changes.

15. ADA

Questions 2

Added further emphasis on reviewing the grantee's monitoring of the implementation of fixed route service provisions.

Question 10

Added information on reviewing fare-free zones for fixed route service and the appropriate fare for complementary paratransit trips in that service area.

Question 15 and 17

Revised questions to further review the grantee's phone reservation standards and policies.

Question 20

Added new question on cancellation and suspension policies and procedures.

Question 32

Added additional information on applicability of maintenance of ADA features on all lift-equipped vehicles (not only FTA-funded vehicles) and on accessibility features of facilities.

16. CHARTER BUS

No substantive changes.

17. SCHOOL BUS

No substantive changes.

18. NATIONAL TRANSIT DATABASE

No substantive changes.

19. SAFETY AND SECURITY

No substantive changes.

20. DRUG FREE WORKPLACE

No substantive changes.

21. DRUG AND ALCOHOL PROGRAM

Question 3

Added information related to description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test. Revised guidance on negative dilute tests.

Question 7

Added information on making post-accident determinations.

Question 8

Eliminated this question on release of test results.

Question 14

Added direction to not request information from terminated or former contractors.

22. EQUAL EMPLOYMENT OPPORTUNITY

Question 3

Provided additional information about program reporting requirements for contractors.

23. ITS ARCHITECTURE

No substantive changes.

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Introduction | 1 |
| 1. Legal..... | 1-1 |
| 2. Financial | 2-1 |
| 3. Technical | 3-1 |
| 4. Satisfactory Continuing Control | 4-1 |
| 5. Maintenance | 5-1 |
| 6. Procurement | 6-1 |
| 7. Disadvantaged Business Enterprise..... | 7-1 |
| 8. Buy America | 8-1 |
| 9. Suspension/Debarment | 9-1 |
| 10. Lobbying | 10-1 |
| 11. Planning/Program of Projects..... | 11-1 |
| 12. Title VI | 12-1 |
| 13. Public Comment Process for Fare and Service Changes | 13-1 |
| 14. Half Fare | 14-1 |
| 15. ADA | 15-1 |
| 16. Charter Bus | 16-1 |
| 17. School Bus | 17-1 |
| 18. National Transit Database | 18-1 |
| 19. Safety and Security | 19-1 |
| 20. Drug-Free Workplace | 20-1 |
| 21. Drug and Alcohol Program | 21-1 |
| 22. Equal Employment Opportunity..... | 22-1 |
| 23. ITS Architecture..... | 23-1 |

INTRODUCTION

The triennial review is one of the Federal Transit Administration's (FTA) management tools for examining grantee performance and adherence to current FTA requirements and policies. Mandated by Congress in 1982, the triennial review occurs once every three years. It examines how recipients of Urbanized Area Formula Program funds meet statutory and administrative requirements, especially those that are included in the Annual Certifications and Assurances that grantees submit. Consistent with SAFETEA-LU, at least once every 3 years, the Secretary of Transportation shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed. The review currently examines 23 areas. In addition to helping evaluate grantees, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements and aids FTA in reporting to the Secretary, Congress, other oversight agencies, and the transit community on the Urbanized Area Formula Program.

Since May 1990, FTA has used contractors to assist its regional staff in conducting triennial reviews. FTA Regional Administrators are responsible for organizing the triennial review process. Contractors work closely with the Triennial Review Coordinators in each region. The contractor conducts desk reviews, which include interviewing FTA regional staff to gain an understanding of the grantee, prepares an agenda package and the transmittal letter, and is responsible for contacting the grantee, making arrangements for the site visit, conducting the site visit, and preparing the draft and final reports.

FTA staff has the ultimate responsibility for the triennial review. Monitoring, follow-up, and close-out of open findings are the responsibility of the regional office staff, primarily the Triennial Review Coordinators.

TRIENNIAL REVIEW WORKSHOPS WORKBOOK

This document is designed to serve as a guide for contractors who conduct triennial reviews. The guide has three major sections:

- The introduction includes an overview of the triennial review process. This introductory section discusses the steps in conducting and documenting the review.

- The review areas provide detailed guidance for grantees. There is a section for each of the 23 triennial review areas. Each review area includes a summary of the basic requirement and identifies the major topics to be examined. The triennial review questions then are listed. Each question or group of questions is followed by an explanation of FTA's requirements; the reason for the question, citing the statutory, regulatory, or administrative source document; sources of information the reviewers should access during the desk review and site visit; the determination, or what constitutes a deficiency; and suggested corrective actions.
- The appendix includes exercises that are used during the Triennial Review Workshops (Note: these exercises are only distributed with the hard copy Workbooks at the workshops).

This workbook provides an overview of FTA requirements. For additional details, reviewers should refer to the statutes, regulations, or FTA Circulars cited in the "Reason for Question" sections. This guide is not a substitute for these primary reference documents, but is a portable summary for the reviewer's use, particularly during a site visit. Reviewers should periodically consult FTA's homepage on the Internet (<http://www.fta.dot.gov>) for FTA's most recent policies and directives.

BACKGROUND ON THE TRIENNIAL REVIEW

In 1989, FTA issued Order 9010.1A to provide guidance to FTA staff on conducting triennial reviews as required by Section 5307 of the Federal Transit Act. Regional office and headquarters staff performed these original reviews. The following year, FTA began using contractors to assist with triennial reviews. By 1996, contractors participated in all reviews. The Triennial Review Order was updated and superceded by FTA Order 9010.1B, issued in April 1993. Additionally, in November 1994, FTA issued FTA Order 5400.1 "Oversight Reviews".

The triennial review program has been fine-tuned continuously. FTA has added areas to be reviewed to reflect new requirements (e.g., the ITS Architecture). The format and delivery schedule for the draft and final reports has been changed. The terms used when making findings have been revised. In addition, in 1993 FTA issued the first detailed Triennial Review Handbook, now known as the Contractors' Guide, which is updated annually.

From 1989-1999, FTA required reviewers to prepare a comprehensive draft triennial review report that addressed the grantee's performance in each triennial review area and specified corrective actions. These reports, due within 30 days after the site visit, documented the grantee's activities and procedures for each particular area, including actions that were fully in compliance. During this decade, reviewers made determinations that the grantee was in compliance, in compliance with follow up, or not in compliance in each review area.

In April 1999, FTA instituted major changes in the Triennial Review process that revised the report format and time frame as well as the nature of the findings. With these changes, FTA instructed reviewers to deliver draft reports on site at the exit conference, with regional office concurrence. The report format was streamlined considerably. The new reports documented the findings only; narrative information not pertinent to the findings was omitted. The grantee was required to submit comments on the draft report to FTA within seven days. The regional office had another seven days to forward comments to the lead reviewer, and the final report was due 30 days after the site visit. A standard 90-day time frame for responding to the corrective actions was established, except for Drug and Alcohol findings, which usually required correction within 30 days.

Concurrent with these changes, findings were categorized as in compliance, deficient, not applicable, or not reviewed. Reviewers no longer made findings of non-compliance, and the follow-up category was eliminated. Similarly, though the final report would acknowledge any actions taken by the grantee and any findings that could be closed, the discussion of the deficiencies and the deficiency codes shown on the report's summary table remained unchanged and were included in OTrak, FTA's automated oversight tracking system.

In May 2000, FTA instituted an additional change in the triennial review finding codes. The finding of in compliance was changed to not deficient. The other finding codes remained as before.

Beginning with the reviews for FY2001, FTA also added questions in the Safety and Security area for which a finding of advisory comment is made.

FRAUD DETECTION AND REPORTING

The Office of Inspector General (OIG) of the United States Department of Transportation has established a Contract/Grant Program to promote the prevention and detection of fraud involving the expenditure of funds under the Federal Transit Laws. The OIG has four regional investigation offices, located in New York, Atlanta, Chicago, and San Francisco. In each

OIG Regional Office, a senior special agent is designated as the Regional Contract/Grant Fraud Coordinator to handle all grant and contract fraud matters involving appropriate FTA regions.

If a reviewer detects or becomes aware of fraudulent activities involving FTA grant funds during a triennial review, he or she should contact the regional Triennial Review Coordinator as soon as possible. Be prepared to provide available information. It will be the responsibility of the regional coordinator to pursue the matter further, including contacting the appropriate Regional Contract/Grant Fraud Coordinator.

SCHEDULING AND COORDINATION OF TRIENNIAL REVIEWS

All FTA 5307 recipients are reviewed on a triennial basis. The current practice is to include all direct FTA grant-funded programs of these recipients during a triennial review, to include 5307, 5309, 5310, 5311, 5316, and 5317 grant activities. The regional staff determines each grantee's review cycle. The Contracting Officer's Technical Representative (COTR) assigns reviews to the contractors. The contractor's Project Manager is responsible for arranging a kick-off meeting with the regional staff and coordinating the development of a work plan for all activities assigned in that region. Specifically, the work plan should include a preliminary schedule of key milestones such as desk review and site visit dates for each grantee.

The triennial review site visit schedule discussed above should be coordinated with the other oversight reviews and/or audits to be conducted during the fiscal year. Once a preliminary triennial review schedule is developed, it will be shared by the COTR with the appropriate Program Offices. Each reviewer will be responsible to ensure that site visit dates for multiple reviews are coordinated through the regional office staff as much as possible.

APPROACH TO THE TRIENNIAL REVIEW

The triennial review involves the following major steps:

- Conduct the desk review
- Schedule the site visit
- Prepare the agenda package
- Contact the grantee
- Review grantee input and prepare draft report
- Finalize site visit schedule
- Conduct the site visit
- Prepare the final report
- Input findings in OTrak

- Finalize worksheets and source documents
- Provide technical assistance
- Close-out corrective actions.

Conduct the desk review. The desk review provides an opportunity to review documentation on file in the regional office and to discuss specific issues with the regional staff. The reviewers begin to complete the triennial review worksheets at this time. Information available in the regional office varies with the size and complexity of the grantee, but in general, the reviewers can access:

- TEAM System data to obtain information on open grants, including budgets, balances remaining, disbursement activity, and financial status and progress reports
- Certifications and Assurances
- Civil rights files
- Audit reports, if available, including any pertinent General Accounting Office (GAO) or Office of Inspector General (OIG) audits
- Planning files, including key documents and results of the Planning Certification Review
- National Transit Database correspondence
- Any complaints on file regarding civil rights, Americans with Disabilities Act (ADA) compliance, charter bus service, school bus service
- Project Management Oversight quarterly reports for major capital projects
- Buy America waiver requests
- Prior triennial review reports, findings, and files
- Other oversight reports and findings (Financial Management Oversight reports, Procurement System Reviews, etc.).

In addition, the contractors meet with regional staff to discuss specific issues included in the triennial review questions. The staff can identify particular concerns that should be highlighted in the agenda letter and during the site visit.

Schedule the site visit. During the desk review, a contractor or regional staff member contacts the grantee to identify a convenient date for the site visit. The site visit typically takes about one and one-half to two days for a small to mid-sized grantee, and several days for a larger, multi-modal grantee. The site visit should be scheduled at a time when the appropriate grantee officials will be available to meet with the review team and discuss the issues that are identified.

Prepare the agenda package. The review team prepares a package for the region to send to the grantee giving detailed information about the site visit. The agenda package includes a preliminary site visit schedule, information regarding the grantee profile, a list of documents required for the review, and the questions that remain to be answered. The site visit schedule should address the order in which the

review areas will be covered and the time of day at which the topics will be addressed.

The list of documents assigns each item to one of two categories: information that should be sent to the review team leader in advance of the site visit and documents that the grantee should have available on site. The documents requested in advance are due four to six weeks prior to the site visit.

The questions that remain to be answered during the site visit also are included in the agenda package. Grantees are requested to provide written answers to the review questions four to six weeks prior to the site visit.

The agenda package should be sent at least 8 to 10 weeks prior to the site visit to allow time for the grantee to gather the requested documentation, prepare written answers to the questions, and send the materials to the review team. The cover letter is prepared for signature by the Regional Administrator or the Director of the Office of Operations and Program Management and the regional office sends the entire package (hard copy and electronic version) to the grantee after receiving it from the contractor. A sample agenda package is included in the appendix to this Contractors' Guide.

Contact the grantee. The reviewer should telephone the grantee seven to 14 days after the regional office sends the agenda package. This contact serves several purposes. It is a courtesy for the reviewer to introduce the team before arriving at the grantee's office. The reviewer can confirm that the agenda package arrived and ask the grantee if there are any questions about the items to be reviewed. The reviewers also can remind the grantee to send the materials and written answers to the questions by the due date. The reviewers can obtain directions to the grantee's office and get advice on other necessary logistics, such as software compatibility and printer availability for printing the draft report.

Review grantee input and prepare draft report. The reviewer examines the materials and written answers to the questions that the grantee submits. After completing this step, the reviewer needs to decide if any items require follow-up with the grantee. This may be necessary if the grantee did not submit all of the requested information and/or did not provide complete answers to the questions. The reviewer should let the grantee know, by telephone, email, or letter, if the missing information/answers to follow-up questions need to be provided by a certain date before the site visit or can be made available during the site visit. After all the input provided by the grantee is reviewed, the reviewer should complete as much of the draft report as possible.

Finalize site visit schedule. The reviewer should finalize the site visit schedule and a list of grantee/contractor facilities to be visited after

reviewing the the grantee's input. Any areas that do not require follow-up need not be discussed further during the site visit. The reviewer also may indicate to the grantee which procurements and facilities have been selected for examination during the site visit. This final schedule should be forwarded to the regional staff for approval, and then sent to the grantee at least seven days before the site visit date.

Conduct the site visit. It is important that the site visit be well planned and executed. All files, notes, and other papers that the reviewers use should be organized neatly. The reviewers should conduct themselves with professionalism and courtesy at all times. The atmosphere should not be adversarial. While FTA wants the discussion to be friendly, the time is limited and participants must stick to the agenda. Reviewers should observe the following procedures:

- Conduct entrance conference. The site visit begins with an entrance conference with the grantee's management officials. The entrance conference consists of a reiteration of the purpose of the review, a discussion of the findings of the desk review, and summarizes the steps in the preparation of the draft and final reports. The regional office staff participate in the entrance conference either in person or by telephone. The reviewer records the names and titles of all participants at the entrance conference. While the senior staff is assembled at the entrance conference, it is a good idea to go over the schedule for the site visit and confirm the expected time for the exit conference.
- Review each area. Following the entrance conference, the reviewer begins to discuss the outstanding questions in each review area. For reviews conducted by a team, only one team member should ask questions in a particular area. At the end of the questioning, the lead reviewer may invite further questions from other members of the team, but one person should have primary responsibility for the area. When the review of an area is complete, the reviewer should state that it is time to move on to the next area. It is important to stay focused on the area under review. Do not ask questions from another area. This practice can confuse the grantee and makes the reviewers appear disorganized. If necessary, make a note of the question and raise it at a later time.
- Visit facilities and inspect records. The reviewer should have selected the grantee/contractor facilities to be visited in advance of the site visit. The purpose of the visit is to verify that the facility is in transit use; allow the reviewers to make a general observation about the facility's condition; review preventive maintenance records for a sample of FTA funded revenue vehicles and

facilities; and verify that the grantee has equipment control procedures.

- Complete the draft report and transmittal letter. At the end of the review but prior to the exit conference, ask the grantee to get answers to any remaining questions not yet resolved. For consistency among all reviews, it is important to use the language for corrective actions that appears in this guide.
- Receive input from regional staff. The review team should confer separately with the regional staff about the findings in each area. Follow the preferences of the region in issuing the draft report. Usually, the regional staff member on site will review the draft report and may sign a transmittal letter if one is to be issued. If no regional staff members are present at the site visit, the draft report or the Summary of Findings table and the transmittal letter should be faxed or e-mailed to the region for approval before the exit conference is to begin.
- Conduct exit conference. The site visit concludes with an exit conference. The regional office staff participate in the exit conference either in person or by telephone. The regional office staff thanks the grantee's staff for their cooperation. The reviewer then presents the draft report.

The reviewer also discusses the timeframe for review of the draft report and issuance of the final report. The grantee has seven days to review the draft report and provide comments to the region. The regions have another seven days to prepare comment for the review team. Within 14 days of the site visit, the regional office should submit all comments on the draft report to the reviewer.

Prepare the final report. The reviewers will receive comments from the grantee and the region within 14 days and finalize the report within in 21 days after the site visit. The reviewers will transmit the final report file to the regions in MS Word format. The regional office will issue the final report to the grantee within 30 days after the site visit. The reviewer will place the final report in the grantee's folder on the TEAM system.

Input findings in OTrak. OTrak is the electronic oversight tracking system. The findings from each triennial review should be input to OTrak by the reviewer within 30 days of the submission of the final report.

Finalize worksheets, sources of documents, and files. Once the final report is issued, the reviewers finalize their worksheets and sources of documents for the review and submit the file electronically to the regional office. The reviewers prepare file folders with hard

copies of supporting documents and mail the files to the regional office. The file structure is described in the following section. The electronic and paper files should be submitted no later than 30 days following the submission of the final report. The reviewer also will place the worksheets in the grantee's folder on the TEAM system.

Provide technical assistance. Reviewers may provide technical assistance to the grantees to close out open findings on an "as needed" basis for up to 90 days after the site visit. The triennial review contractors' Project Manager, with input from the reviewers, will coordinate with the regional staff to identify follow-up technical assistance needs and the time frame.

Close-out corrective actions. The regional office is responsible for monitoring the implementation of and closing out corrective actions that result from a triennial review. After the 90-day period for technical assistance noted above, the regional staff will provide technical assistance to the grantee if, needed.

TRIENNIAL REVIEW WORKSHEETS, SOURCES OF DOCUMENTS, AND FILES

The triennial review worksheets aid reviewers in the organization and completion of the work assignment and provide support for the findings made during the review. Worksheets are completed by reviewers electronically. The worksheets should include the name of the reviewer, the dates that the desk review and site visit were conducted, and the sources of the information used to develop findings and conclusions. The worksheets should include citations of documents and note where the documents can be found in the regional office and in the grantee's files. A complete set of worksheets should substantiate the fact that sufficient, competent documentation was obtained through inspection, observation, inquiries, and testing to afford a reasonable conclusive basis regarding any grantee finding.

Supporting documents that are provided by the grantee in advance of the site visit or made available on site should be organized in a set of files for each review. The following table lists the contents of paper and/or electronic files by topic area. Individual topic area files need to be prepared for each review set and should include the suggested contents. Each file should be properly labeled. The actual file contents will vary, depending on the size and complexity of each grantee. Reviewers should use their professional judgement in determining what documents to retain on file and what documents should be cross-referenced in the worksheets as accessible in FTA's or the grantee's files. Each region will determine the extent to which it wants to receive electronic files on a CD or a combination of paper and electronic files.

| File Name | Applicable Contents |
|------------------------------------|---|
| A. File Contents | - Table of Contents indicating which files are included in paper and/or electronic format (see example at the end of this section) |
| B. Final Report | - Final Report - Transmittal Letter |
| C. Worksheets | - Completed Worksheets |
| D. Administration | - Agenda package - Final site visit schedule - Sign-in sheets - Letters and e-mail correspondence with the region and grantee. |
| 1. Legal | - Authorizing Resolution - Delegation of Authority |
| 2. Financial | - Capital and Operating Budget - Financial Statements for the Past Three Years - Three to Five Year Capital and Operating Financial Plan - List of ECHO Drawdowns examined - Audit reports with findings related to the grantee |
| 3. Technical | - Organization Chart - Grant Management Procedures - Grant Close-Out Schedule - Cost-effectiveness Evaluation for Capital Leases |
| 4. Satisfactory Continuing Control | - Sample of property leases - Excess Real Property Inventory/Utilization Plan - Sample of property records of federally funded equipment - Proof of inventory and inventory reconciliation |
| 5. Maintenance | - Maintenance plans - Sample of maintenance requirements for contracted services (e.g., contracts and/or RFPs) - List of buses and rail cars selected in the PM inspection sample |
| 6. Procurement | - Procurement policies - List of procurements examined |
| 7. DBE | - Proof of UCP Agreement - DBE complaints |
| 8. Buy America | - Audit procedures, if applicable |
| 9. Suspension/Debarment | - None |
| 10. Lobbying | - Standard form LLL updates |

| File Name | Applicable Contents |
|---|---|
| 11. Planning/POP | <ul style="list-style-type: none"> - MPO Agreement - Public Participation Procedures - TIP/POP Public Notices - Planning process complaints |
| 12. Title VI | <ul style="list-style-type: none"> - Service standards - Title VI complaints |
| 13. Public Comment Process for Fare and Service Changes | <ul style="list-style-type: none"> - Procedures for Public Comment on Fare Increases and Major Service Reductions |
| 14. Half Fare | <ul style="list-style-type: none"> - Fare structure description - Half-Fare Program Description |
| 15. ADA | <ul style="list-style-type: none"> - Public information materials describing Complementary Paratransit service, eligibility, and appeals - Operating policies regarding ADA Paratransit trip reservations and scheduling - Performance reports, including on-time pickups, denial rate, no shows etc. - Procedures describing accessibility policies including stop announcements, lift use, etc. |
| 16. Charter Bus | <ul style="list-style-type: none"> - Publication of Annual Notice - Charter Policy/Procedures |
| 17. School Bus | <ul style="list-style-type: none"> - Bus schedules and/or system map |
| 18. National Transit Database (NTD) | <ul style="list-style-type: none"> - Exemption/Waiver Letters, if applicable |
| 19. Safety and Security | <ul style="list-style-type: none"> - Documentation supporting security expenditures |
| 20. Drug-Free Workplace | <ul style="list-style-type: none"> - Drug-Free Workplace Policy - Correspondence/notification to employees |
| 21. Drug and Alcohol Program | <ul style="list-style-type: none"> - Drug and Alcohol Program - Evidence of monitoring program |
| 22. Equal Employment Opportunity (EEO) | <ul style="list-style-type: none"> - Organization chart - EEO Complaints |
| 23. ITS Architecture | <ul style="list-style-type: none"> - Evidence of inclusion of projects in Regional Architecture |

QUALITY CONTROL

Quality control checks are built in every step of the triennial review program. This contractors' guide establishes common steps to be followed by every reviewer in conducting triennial reviews in all FTA regions. This guide also presents a common interpretation of FTA requirements and corrective actions to be implemented when a grantee is deficient. Reviewers should contact their respective

Project Managers with questions and/or clarification; or when faced with an unusual situation. The Project Manager may decide to seek additional guidance from the COTR/Program Offices so that findings are consistent with FTA's interpretation of the requirement. The reviewers are not allowed to contact the COTR/Program Offices directly about the information presented in this guidance document.

FTA provides extensive training to the triennial review contractors' team members. New contractor team members should receive classroom training on FTA requirements and the contents of this contractors' guide. They also receive practical training by accompanying experienced reviewers on several desk reviews and site visits. FTA updates the contractors' guide annually.

Other quality control steps include regional staff oversight. Reviewers work closely with the regional staff during every step of a triennial review. After the desk review, the regional staff reviews an agenda package before it is forwarded to the grantee by the region. Draft reports are expected to be reviewed by an experienced member of the contractors' team, other than the one who is responsible for conducting the site visit. The regional staff review and provide comments on the draft report before it is transmitted to the grantee during the exit conference. The final report is reviewed and edited by an experienced member of the contractors' team before it is forwarded to the regional staff. The regional staff reviews the final report before it is forwarded to the grantee.

PERFORMANCE REPORTING

The Monthly Triennial Review Performance Measures Report prepared by FTA tracks the timely issuance of the final reports to the grantees and the number of findings closed. The timely issuance of the final report is tracked based on the date that the final report was sent to the grantee by the region. In order to accurately track this date, the region will copy the reviewer when they issue the final report to the grantee.

RELATIONSHIP OF THE TRIENNIAL REVIEW TO OTHER OVERSIGHT REVIEWS

The triennial review is only one of FTA's oversight tools. Other reviews may result from the findings of the triennial review.

The reviewers should ascertain from the regional office the status of any special purpose reviews. When FTA has scheduled other oversight activities with a grantee, the reviewers should coordinate the

triennial review site visit schedule through the regional office.

In some cases, if a special purpose review or an audit has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), a review of that area is not necessary and a finding of "Not Reviewed" (NR) should be made. A special purpose review or an audit is considered to be conducted if a site visit was, or is scheduled to be, completed during the three year period mentioned above, even if the final report has not been issued. In other cases, the reviewer should ask some or all of the triennial review questions on the worksheets. Specific guidance for each type of special purpose review or audit follows.

Full Scope Financial Management Oversight Review (FMO)

Description – The FMO was established to assess a grantee's financial management systems in order to determine whether they meet the standards of the Common Rule (49 CFR 18.20). The contractors conduct an initial desk review in the regional office, followed by an on-site assessment phase that lasts approximately one week, followed by an on-site final testing phase that lasts from one to three weeks. The contractors generate a draft and a final report in which they express an objective, external, independent professional opinion to FTA in accordance with established public accounting standards on the effectiveness of the grantee's internal control environment. The seven standards for financial management systems stated in the Common Rule are: Financial Reporting, Accounting Records, Internal Control, Budget Control, Allowable Costs, Source Documentation, and Cash Management. The findings in an FMO report may impact other areas of a triennial review beyond Financial (e.g., Satisfactory Continuing Control, Maintenance, etc.).

Guidance – If an FMO review has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), triennial reviewers should eliminate the questions in the Financial area under *Part B: Funds Management* and *Part C: Audits* in the Financial area.

Follow-Up Financial Management Oversight Review (FMO)

Description – These reviews are performed primarily to ensure that recommendations resulting from full scope reviews were implemented and working properly. If this type of review is performed, it will occur between 12-18 months after the full scope review. Contractors conduct a regional office desk review to gather data on the initial review, followed by an on-site assessment and testing phase. The on-

site phase lasts generally one to two weeks. A draft and final report is generated as a result of this review.

Guidance – If a Follow-up FMO review has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), triennial reviewers should note it on the worksheets. All questions in the Financial area of the triennial review guidance should be asked.

Financial Capacity Assessments (FCA)

Description – These assessments are conducted for selected grantees involved in major capital investment projects to assess their financial capability to meet Full Funding Grant Agreement (FFGA) obligations. Consideration is given not only to the ability of the grantee to fulfill the requirements of the FFGA, but also to the financial capacity of the grantee in general. The FCA process varies from grantee to grantee, but generally involves an initial assessment and report, followed by periodic monitoring of the grantee for a certain period of time.

Guidance – If an FCA has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), the questions in *Part A – Financial Capacity* in the Financial area of the triennial review can be eliminated.

Procurement System Review

Description – Depending on the results of the annual risk assessment, FTA may schedule a Procurement System Review (PSR) of particular grantees. In addition to assessing the grantee's compliance with the requirements of [FTA C 4220.1E](#), the PSR encourages improved operations and fosters best practices in the procurement area. There are three phases to the PSR.

- Assessment Phase – This phase examines the grantee's organizational structure, management direction, and policies and procedures. The assessment includes a review of documentation and interviews with staff at the regional office (i.e., desk review), a review of documents provided by the grantee, and an initial site visit to conduct interviews with grantee staff. The result of these activities is an assessment of the grantee's procurement system as a whole through an overall risk rating of low, medium, or high.
- Contract Review Phase – In this phase, a sample of contracts is reviewed for compliance with FTA requirements. The sample typically includes contracts for each method of procurement (i.e., micro-purchase, small purchase, RFP, IFB, and sole source). The number of contracts selected for each method is dependent on the grantee's

size, number of modes operated, and overall risk rating. As many as 34 individual procurements (possibly more in some cases) may be selected for review. The sample contracts are reviewed during a second site visit in which preliminary findings are established and an exit conference is conducted with the grantee.

- **Reporting Phase** – Within 30 days of the second site visit, a draft report summarizing the findings from the Assessment and Contract Review phases is prepared and submitted to FTA for review and comment. The report then is issued to the grantee. Grantees are asked to develop corrective action plans and schedules based on the findings and submit them and any comments to the regional office and/or reviewer within 30 days. The reviewer prepares the final report incorporating the grantee's action plan and comments, submitting it to FTA within 14 days. All work papers supporting the final report are filed with the FTA regional office.

Guidance – If a PSR has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), a review of the procurement area is not necessary and a finding of “Not Reviewed” (NR) should be made.

Disadvantaged Business Enterprise (DBE) Compliance Review

Description – DBE Compliance Reviews assess grantee compliance with the DBE regulations. The review covers each agency's policies, procedures, and record keeping. DBE compliance reviews last two to three days and assess implementation of the DBE program in 12 areas: Policy Statement, DBE Liaison Officer, Financial Institution, DBE Directory, Over-Concentration, Business Development Programs, Determining/Meeting Goals, Required Contract Provisions, Certification Standards, Certification Procedures, Record Keeping and Enforcements, and Public Participation and Outreach.

After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to the grantee within 30 days of the site visit. A letter and final report is issued to the grantee within 60 days of the site visit. The grantee then has 90 days to take corrective actions and provide appropriate documentation to the Civil Rights Officer (CRO). The CRO issues a closeout letter once the grantee is fully in compliance.

Guidance – If a DBE Compliance Review site visit has been conducted within the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was

performed. If findings from the DBE Compliance Review are still being monitored, or if the review is pending, the triennial review will not include this area and a finding of “Not Reviewed” (NR) should be made. If the DBE Compliance Review is closed, the reviewer should seek guidance from the Regional Civil Rights Officer and the Office of Civil Rights on whether or not to include the DBE area in the review.

Planning Certification Review

Description – The Planning Certification Review (PCR) is statutorily required once every three to four years in all Transportation Management Areas, those metropolitan areas having a population of 200,000 or more. Conducted jointly by FTA and the Federal Highway Administration (FHWA), the PCR is one of the tools used to enhance the effectiveness of federal oversight of the Metropolitan Planning Process. The PCR is the basis for the federal certification that planning processes are being carried out in accordance with the joint planning requirements of 23 USC 134 and 49 USC 5303.

The PCR process includes a desk review, on-site interviews with all participants in the planning process, such as the Metropolitan Planning Organization, state and local government officials, public transportation providers, and input from the public, and concludes with a final report of findings and recommendations.

Guidance – The reviewer should determine when the last PCR was conducted and should review the PCR report during the desk review. The report typically includes a number of findings and recommendations, but only those issues that affect the grantee's participation in the metropolitan planning process are relevant to the triennial review. The reviewer should verify the status of those findings and determine if corrective actions have been implemented on schedule. Reviewers should ask all of the questions in the planning area.

Title VI Compliance Review

Description – The Title VI Compliance Review assesses grantee compliance with the Title VI regulations. The review covers each agency's policies, procedures, and record keeping. Title VI Compliance Reviews last two to three days and assess implementation of the Title VI program. After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to the grantee within 30 days of the site visit. A letter and final report is issued within 60 days of the site visit. The grantee then has 90 days to take corrective actions and provide appropriate documentation to the CRO.

Guidance – If a Title VI Compliance Review has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was performed. If findings from the Title VI review are still being monitored, or if the Title VI review is pending, the triennial review will not include this area and a finding of “Not Reviewed” (NR) should be made. If the Title VI review is closed, the reviewer should seek guidance on whether or not to conduct the review from the Regional Civil Rights Officer and the Office of Civil Rights.

Americans with Disabilities Act Compliance Reviews

Description – Consistent with FTA’s oversight responsibilities, FTA has initiated a program of on-site assessments of grantee compliance with ADA requirements. The assessments target a particular area of the ADA and the implementing regulations, such as ADA complementary paratransit, key stations, fixed route stop announcements, and fixed route bus lift and maintenance reliability. The assessment process includes collection of data prior to the site visit, an opening conference, observation and data collection on site, and an exit conference. The FTA staff provides the grantee a written report documenting the findings and necessary corrective actions. The grantee then is responsible for correcting deficiencies and providing appropriate documentation to the CRO.

Guidance – If the ADA Compliance Review of the grantee has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), the reviewer should note on the worksheet when the compliance review occurred. If findings from the ADA Compliance Review are still being monitored, or if the review is pending, the triennial review will not include those questions covered by the compliance review. If the ADA Compliance Review is closed, the reviewer should seek guidance from the Regional Civil Rights Officer and the Office of Civil Rights on whether or not to include those questions in the triennial review. The triennial review will include the other ADA questions not addressed in the ADA Compliance review.

Drug and Alcohol Program Audit

Description – Drug and Alcohol Program Audits assess grantee compliance with the drug and alcohol regulations. The audit is comprehensive in nature, including a review of each agency’s policies, procedures, and recordkeeping. The vendors, including collection sites, Medical Review Officers,

and Substance Abuse Professionals also are interviewed and a mock collection is performed.

After the audit is complete, the audit team conducts an exit interview presenting the findings, if any, to the grantee. A letter and final report documenting the deficiencies and necessary corrective actions is provided to the grantee during the exit interview. The grantee then has 90 days to take corrective actions and provide appropriate documentation to the audit team. The Office of Safety and Security issues a closeout letter once the grantee is fully in compliance.

Guidance – If a Drug and Alcohol Program compliance audit has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), a review of the Drug and Alcohol Program area is not necessary and a finding of “Not Reviewed” (NR) should be made.

Equal Employment Opportunity (EEO) Compliance Review

Description – FTA has initiated a program to assess grantee compliance with the EEO regulations. The review addresses the grantee’s policies, procedures, and record keeping. The EEO compliance review assesses the implementation of the EEO program in seven areas: policy statement, dissemination of the policy, designation of personnel responsibility, utilization analysis to identify any underutilization and/or an overconcentration of minorities and women, goals and timetables to correct underutilization or over concentration, and a monitoring and reporting system to assess EEO accomplishments.

After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to the grantee within 30 days of the site visit. A letter and final report is issued within 60 days of the site visit. The grantee has 90 days to take corrective actions and provide appropriate documentation to the CRO. The CRO issues a closeout letter once the grantee is fully in compliance.

Guidance – If an EEO Compliance Review has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was performed. If findings from the EEO review are still being monitored, or if the EEO review is pending, the triennial review will not include this area and a finding of “Not Reviewed” should be made. If the EEO review is closed, the reviewer should seek guidance on whether or not to conduct the review from the Regional Civil Rights Officer and the Office of Civil Rights.

TRIENNIAL REVIEW WORKSHOPS WORKBOOK UPDATES

The contractors' guide is updated annually, to coincide with the beginning of the triennial review cycle at the start of the federal fiscal year. The information in the contractors' guide is kept up to date during the fiscal year by publishing addenda as needed. If changes to an area are extensive, the guidance for that area will be revised completely and shared with the recipients of the contractors' guide.

The Workshops Workbook is also available on-line in HTML format on the FTA's public website at: www.fta.dot.gov/FY2008TriReview/contents.htm. A

PDF version is included on the Triennial Review Toolkit CD, which is distributed at the workshops. The Toolkit CD can also be obtained by contacting your FTA Regional Office.

FTA AND CONTRACTOR CONTACTS

A list of contacts for the triennial review program is included at the end of this section. The list includes contacts for FTA headquarters, regional offices and metropolitan offices as well as the names of key personnel for the triennial review contractors.

A. File Contents
FY2008 Triennial Review Files
<grantee name>

| Area | Paper Files (a) | Electronic Files on CD (a) |
|---|-----------------|----------------------------|
| A. File Contents | | |
| B. Final Report | | |
| C. Worksheets | | |
| D. Administration | | |
| 1. Legal | | |
| 2. Financial | | |
| 3. Technical | | |
| 4. Satisfactory Continuing Control | | |
| 5. Maintenance | | |
| 6. Procurement | | |
| 7. Disadvantage Business Enterprise | | |
| 8. Buy America | | |
| 9. Suspension/Debarment | | |
| 10. Lobbying | | |
| 11. Planning/Program of Projects | | |
| 12. Title VI | | |
| 13. Public Comment Process for Fare and Service Changes | | |
| 14. Half-Fare | | |
| 15. ADA | | |
| 16. Charter Bus | | |
| 17. School Bus | | |
| 18. National Transit Database | | |
| 19. Safety and Security | | |
| 20. Drug-Free Workplace | | |
| 21. Drug and Alcohol Program | | |
| 22. Equal Employment Opportunity | | |
| 23. ITS Architecture | | |

(a) Indicate if files are included: Yes or No

FY2008 Triennial Review Program List of Contacts

| FTA Office/ Organization | First Name | Last Name | Title/Area | Street Address | City | State | Zip Code | Phone | E-mail |
|-----------------------------|------------|-----------|--|---|--------------|-------|------------|--------------|--|
| FTA Headquarters | Khuong | Luu | COTR | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-1898 | Khuong.Luu@dot.gov |
| FTA Headquarters | Elizabeth | Martineau | Charter Bus | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-1936 | Elizabeth.Martineau@dot.gov |
| FTA Headquarters | David | Knight | Civil Rights | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-0805 | David.Knight@dot.gov |
| FTA Headquarters | Gerald | Powers | Drug & Alcohol Program | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-2395 | Gerald.Powers@dot.gov |
| FTA Headquarters | Linda | Barnes | Financial Management | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-1632 | Linda.Barnes@dot.gov |
| FTA Headquarters | Jim | Muir | Procurement Management | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-2507 | Jim.Muir@dot.gov |
| FTA Headquarters | Michael | Taborn | Safety & Security | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-3526 | Michael.Taborn@dot.gov |
| FTA Headquarters | Levern | McElveen | Safety Team Leader | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-1651 | Levern.McElveen@dot.gov |
| FTA Headquarters | Richard | Gerhart | Security Team Leader | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-8970 | Richard.Gerhart@dot.gov |
| FTA Headquarters | Timothy | Braxton | Security Data | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-1646 | Timothy.Braxton@dot.gov |
| FTA Headquarters | Michael | Baltes | ITS Architecture | 1200 New Jersey Ave., S.E. 4th Floor East Building | Washington | DC | 20590 | 202-366-2182 | Michael.Baltes@dot.gov |
| Region 1 | Matthew | Keamy | Director, Office of Program Management & Oversight | Transportation Systems Center Kendall Square 55 Broadway, Suite 920 | Cambridge | MA | 02142-1093 | 617-494-2055 | Matthew.Keamy@dot.gov |
| Region 1 | Buck | Marks | Triennial Review Coordinator | Transportation Systems Center Kendall Square 55 Broadway, Suite 920 | Cambridge | MA | 02142-1093 | 617-494-2396 | Buck.Marks@dot.gov |
| Region 2 | Larry | Penner | Director, Office of Program Management & Oversight | One Bowling Green Room 429 | New York | NY | 10004-1415 | 212-668-2176 | Larry.Penner@dot.gov |
| Region 3 | Janet | Kampf | Triennial Review Coordinator | 1760 Market Street Suite 500 | Philadelphia | PA | 19103-4124 | 215-656-7254 | Janet.Kampf@dot.gov |
| Region 4 | Dudley | Whyte | Director, Office of Program Management & Oversight | 230 Peachtree, NW Suite 800 | Atlanta | GA | 30303 | 404-562-3526 | Dudley.Whyte@dot.gov |
| Region 4 | Derethia | Johnson | Triennial Review Coordinator | 230 Peachtree, NW Suite 800 | Atlanta | GA | 30303 | 404-562-3527 | Derethia.Johnson@dot.gov |
| Region 5 | Dominick | Gatto | Director, Office of Program Management & Oversight | 200 W. Adams Street Suite 320 | Chicago | IL | 60606 | 312-353-1653 | Dominick.Gatto@dot.gov |
| Region 5 | Lisa | Joiner | Triennial Review Coordinator | 200 W. Adams Street Suite 320 | Chicago | IL | 60606 | 312-353-2791 | Lisa.Joiner@dot.gov |
| Region 6 | Gail | Lyssy | Director, Office of Program Management & Oversight | 819 Taylor Street Room 8A36 | Fort Worth | TX | 76102 | 817-978-0550 | Gail.Lyssy@dot.gov |
| Region 6 | Linda | Kemp | Triennial Review Coordinator | 819 Taylor Street Room 8A36 | Fort Worth | TX | 76102 | 817-978-0563 | Linda.Kemp@dot.gov |

FY2008 Triennial Review Program List of Contacts

| FTA Office/ Organization | First Name | Last Name | Title/Area | Street Address | City | State | Zip Code | Phone | E-mail |
|-----------------------------|------------|------------|--|---|---------------|-------|------------|--------------|--|
| Region 7 | William | Kalt | Regional Engineer | 901 Locust Street Suite 404 | Kansas City | MO | 64106 | 816-329-3920 | William.Kalt@dot.gov |
| Region 8 | Charmaine | Knighon | Deputy Regional Administrator | 12300 W. Dakota Avenue Suite 310 | Lakewood | CO | 80228-2583 | 720-963-3300 | Charmaine.Knighon@dot.gov |
| Region 8 | Debi | Duggan | Triennial Review Coordinator | 12300 W. Dakota Avenue Suite 310 | Lakewood | CO | 80228-2583 | 720-963-3300 | Debi.Duggan@dot.gov |
| Region 9 | Nadeem | Tahir | Director, Office of Program Management & Oversight | 201 Mission Street Room 1650 | San Francisco | CA | 94105-1839 | 415-744-3133 | Nadeem.Tahir@dot.gov |
| Region 9 | John | Hunt | Triennial Review Coordinator | 201 Mission Street Room 1650 | San Francisco | CA | 94105-1839 | 415-744-2597 | John.Hunt@dot.gov |
| Region 10 | Kenneth | Feldman | Director, Office of Program Management & Oversight | Jackson Federal Building 915 Second Avenue, Suite 3142 | Seattle | WA | 98174-1002 | 206-220-7521 | Kenneth.Feldman@dot.gov |
| New York Metro | Brian | Sterman | General Engineer | One Bowling Green Room 436 | New York | NY | 10004-1415 | 212-668-2201 | Brian.Sterman@dot.gov |
| Philadelphia Metro | Janet | Kampf | Transportation Program Specialist | 1760 Market Street Suite 510 | Philadelphia | PA | 19103 | 215-656-7254 | Janet.Kampf@dot.gov |
| Washington, DC Metro | Brian | Glenn | Director, Washington, DC Metro Office | 1990 K Street, NW Suite 510 | Washington | DC | 20006 | 202-219-3562 | Brian.Glenn@dot.gov |
| Chicago Metro | Melody | Hopson | General Engineer | 200 W. Adams Street Suite 320 | Chicago | IL | 60606 | 312-886-1611 | Melody.Hopson@dot.gov |
| Los Angeles Metro | Ray | Tellis | General Engineer | 888 S. Figueroa Street Suite 1850 | Los Angeles | CA | 90017 | 213-202-3956 | Ray.Tellis@dot.gov |
| AdSTM/Mundle | Yue | Guan | Deputy Project Manager | 1600 Tysons Boulevard 8th Floor | McLean | VA | 22102 | 703-821-2600 | yue_guan@astmnc.com |
| AdSTM/Mundle | Subhash | Mundle | Project Manager | 1520 Locust Street Suite 801 | Philadelphia | PA | 19102 | 215-731-9350 | mundle@aol.com |
| CDI/DCI | David | Norstrom | Project Manager | 787 Oxford Street | Worthington | OH | 43085 | 614-846-0492 | dnorstrom@ee.net |
| Interactive Elements, Inc. | Susan | Gilbert | President | 60 East 42nd Street | New York | NY | 10165 | 212-490-9090 | sbg@ieitransit.com |
| Interactive Elements, Inc. | Laurie | Heinze | Project Manager | 1875 Holly Cove Rd. | Cumming | GA | 30040 | 770-843-6006 | lmh@ieitransit.com |
| Reid/Milligan | Dan | Wagner | Principal | 5528 24th Street, North | Arlington | VA | 22205 | 703-532-7629 | wagner@reidconsult.com |
| Reid/Milligan | Andre | Brickhouse | Principal | 2111 Wilson Boulevard Suite 600 | Arlington | VA | 22201 | 703-351-5056 | brickhouse@reidconsult.com |
| Reid/Milligan | Denise | Bailey | Principal | 105 North 22nd Street | Philadelphia | PA | 19103 | 215-496-9100 | dbailey@milligancpa.com |

1. LEGAL

BASIC REQUIREMENT

The grantee must be eligible and authorized under state and local law to request, receive, and dispense FTA funds and to execute and administer FTA funded projects. The authority to take all necessary action and responsibility on behalf of the grantee must be properly delegated and executed.

AREAS TO BE EXAMINED

1. Designation of Recipient

By law, funding for the urbanized area formula program, in contrast with other FTA programs, is provided to the "Designated Recipient" as defined by 49 U.S.C. 5307(a)(2).

- a. In urbanized areas with 200,000 or more population, joint designation is made by the Governor, responsible local officials, and publicly owned operators of mass transportation services of a single recipient (to the extent possible) and any statewide or regional agency or instrumentality responsible under state law for the provision of service.
- b. For urbanized areas with less than 200,000 population, the Governor or the Governor's designee(s) is (are) the designated recipient(s).
- c. The designations remain in effect until amended or rescinded.

2. Source of Authority

Officials acting on behalf of the grantee must have appropriate authority. This is usually documented in an authorizing resolution passed by the grantee's governing body.

3. Annual List of Certifications and Assurances

The certifications and assurances required of FTA grantees are compiled in a single record published annually in the *Federal Register*, either before or in conjunction with the publication of FTA's annual apportionment notice. Once each year, a grant applicant must provide all certifications and assurances that can be expected to apply to any active grant of the applicant in the fiscal year. FTA expects the grant applicant to record its certifications and assurances in FTA's Transportation Electronic Award Management web-based system (TEAM-Web) and provide the appropriate electronic signatures. Should it become necessary for the grant applicant to provide "paper" certifications and assurances, the *Federal Register* notice includes a signature page that may be signed by the grant applicant's authorized official and its attorney and submitted to the appropriate regional office. Opinions of Counsel accompanying Certifications and Assurances must also be reviewed.

4. Changes in Law and Litigation

The Master Agreement requires grantee to notify FTA of changes in local or state law and pending litigation in a timely manner.

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws, Section 5307.
2. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."
3. [FTA Master Agreement](#).

QUESTIONS FOR THE REVIEW

1. *Is the grantee a Designated Recipient? If not, is there a signed supplemental agreement?*

EXPLANATION

The grantee must be a Designated Recipient or have a supplemental agreement with a Designated Recipient. If the grantee is a statewide or regional agency responsible for providing transit, it must be a Designated Recipient. This type of grantee would not need a supplemental agreement in order to receive funds directly.

REASON FOR THE QUESTION

49 USC 5307(a)(2)
FTA C 9030.1C, Ch. II

SOURCES OF INFORMATION

The document confirming the selection of the Designated Recipient should be in the regional office, usually in a one-time submissions file. A supplemental agreement should be part of each grant to an agency other than a Designated Recipient.

Documents designating recipients that are dated after September 19, 1987, must include:

- For areas with 200,000 or more population – The designation must include concurrence by the Governor or agent with authority delegated by the Governor; concurrence of publicly owned operators of mass transportation in the area; certified resolution of the officials authorized to establish policy for the MPO concurring in the designation; and an Opinion of Counsel.
- For areas with less than 200,000 population – The Governor may delegate “Designated Recipient” status to either a state agency or directly to local recipients. A letter from the Governor to FTA must document selections of Designated Recipients. An Opinion of Counsel also is required.

DETERMINATION

In most cases, the examination in this area is to determine if the proper documentation exists. If it does, the grantee is not deficient. If documentation does not exist in the regional office, it should be obtained from the grantee.

A rare problem in this area has been when a regional entity in an area with a population of 200,000 or more exists, but is not a designated recipient and the designated recipient has not entered into a supplemental agreement with the grantee and FTA.

Unless the designated recipient for that area is an entity other than the grantee, and the designated recipient continues to be responsible under the laws of that state for a capital project and for financing and directly providing mass transportation services, there must be a finding of deficient.

SUGGESTED CORRECTIVE ACTION

The appropriate parties should select a designated recipient, which ideally would be the grantee.

2. *What is the definition and source of the authority of officials acting on behalf of the grantee (e.g., authorizing resolution or by-laws)? Is the authority properly delegated and executed?*

EXPLANATION

Officials acting on behalf of the grantee must have appropriate authority as required by state or local law or by the governing body of the grantee. The authority must be delegated properly to other individuals in the agency, if necessary.

REASON FOR THE QUESTION

49 USC 5307 (a)(2)
FTA C 9030.1C, Ch. VI and Appendix F

SOURCES OF INFORMATION

During the desk review, a list of individuals who signed FTA documents on behalf of the grantee, in hard copy form and/or electronically, should be assembled. Documents to review include, at a minimum, grant applications, grant agreements, and the Annual List of Certifications and Assurances for the past three years. The grantee should be asked to identify the individuals authorized to act on its behalf. The reviewer needs to assure that the person signing or using an electronic PIN on behalf of the grantee has been authorized properly to do so.

DETERMINATION

If the person(s) who signed the documents is the authorized individual, the grantee is not deficient. If the grantee cannot demonstrate that this person has the authority to act on behalf of the grantee, the grantee is deficient. If someone other than the authorized individual(s) has signed on behalf of the grantee, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide sufficient authority for the appropriate individual(s) to take official actions on its behalf. If necessary, the authority must be delegated properly.

3. *Has the grantee submitted a properly completed [Annual List of Certifications and Assurances](#)? Was it submitted on time? Was it signed (or PINned) by an authorized official and attorney with the proper authority?*

EXPLANATION

The grantee is required to make the requisite certifications and assurances by: 1) selecting, from a list provided, those certifications and assurances that will apply to all grants for the fiscal year; 2) submitting appropriate electronic signatures in TEAM or the signature page signed by the authorized representative and by the legal counsel; and 3) submitting properly signed certifications and assurances on time. Certifications and assurances are due with the first grant application in the fiscal year or within 90 days from the date of the publication of the notice in the *Federal Register*, whichever comes first.

The certifications and assurances change from year to year. Review the certifications and assurances in the TEAM system. These certifications show "Yes" for selected and "N/A" for not applicable.

The certifications and assurances require two signatures or electronic PINs: one from an authorized official and another from an attorney. Make sure the certifications have been PINned. As discussed in the previous question, make sure the individuals signing or PINning the certifications and assurances have the authority to do so. If the attorney does not PIN in the TEAM system, he or she must sign a hard copy of the affirmation and maintain the hard copy in the file.

An Affirmation of Applicant's Attorney affirming the legal authority of the grantee and indicating whether any pending legislation or litigation may affect the legal status of the grantee is part of the signature page for the certifications and assurances. Requirements for this affirmation also have varied since the inception of the annual certification process. Check the fiscal year requirements as applicable.

REASON FOR THE QUESTION

[49 USC 5307\(d\)\(1\)](#)

[FTA C 9030.1C](#), Ch. V and Appendix G

SOURCES OF INFORMATION

The [Annual List of Certifications and Assurances](#) should be entered in the TEAM system so they are easily accessible for all grants to be made in the fiscal year. The TEAM system will only accept certifications and assurances that have been PINned by the grantee's authorized official and attorney. If, for some reason, the grantee is unable to use the TEAM system, the certifications and assurances signature page is filed separately in the regional office, and not with the grant files, since it is applicable for all grants and cooperative agreements for that fiscal year.

DETERMINATION

The grantee is not deficient if it has properly selected all the certifications and assurances that will apply to all grants and cooperative agreements; properly entered its selections in the TEAM system, or completed the signature page; and submitted it on time. If any of these conditions do not apply, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should submit a corrected Annual List of Certifications and Assurances.

4. *Has the grantee notified FTA of any change in local or state laws and/or litigation that has impact on the grantee's FTA program?*

EXPLANATION

The grantee needs to notify the Regional Council of any change in local or state law and/or pending litigation that may significantly affect the grantee's ability to perform the projects in accordance with the terms of the Master Agreement.

REASON FOR THE QUESTION

[FTA Master Agreement](#) for FY 2007, Sections 2.g. and 52.a.

SOURCES OF INFORMATION

During the desk review, determine if the grantee has notified the Regional Council of any changes in local or state laws and/or litigation in a timely manner. This type of notification may be in the form of a letter or an e-mail correspondence. If no information is available during the site visit regarding these items, ask the grantee if there were any changes in local or state laws and/or pending litigation since the last triennial review.

DETERMINATION

The grantee is not deficient if it has notified the Legal Counsel in the FTA Regional Office of any changes in local or state laws and litigation in a timely manner. The grantee is deficient if it has not notified FTA of changes in local or state laws or of pending litigation.

SUGGESTED CORRECTIVE ACTION

The grantee should submit the applicable information in writing to the Regional Counsel.

2. FINANCIAL

BASIC REQUIREMENT

The grantee must demonstrate the ability to match and manage FTA grant funds, cover cost increases, cover operating deficits through long-term stable and reliable sources of revenue, maintain and operate federally funded facilities and equipment, and conduct an annual independent organization-wide audit in accordance with the provisions of OMB Circular A-133.

AREAS TO BE EXAMINED

1. *Financial Capacity*

The certification of financial capacity is included in the Annual List of Certifications and Assurances (Category 1 and 15).

- a. Documentation of Financial Condition
- b. Documentation of Financial Capacity
- c. Financial Plan in TIP
- d. Multi-year financial plan (three to five years), including income statements
- e. Current year's operating and capital budget

2. *Funds Management*

- a. ECHO Documentation
- b. Financial Status Reports
- c. Cost Allocation Plan
- d. Operating Budgets

3. *Audits/Oversight Reports*

- a. Annual Single Audit Reports (where applicable)
- b. Internal/State/Local Audits
- c. OIG/GAO Audits
- d. FMO Reports

Selection of ECHO Drawdowns for Review During the Site Visit – The reviewer will use the following systematic approach when selecting drawdowns (i.e., disbursement transactions) to examine. Using this approach the reviewer will prepare a list of disbursement transactions to examine during the site visit. The steps described below are illustrated on pp. 2-3 through 2-9 of this section for a site visit beginning on November 1, 2007.

1. Data Source – Prior to the site visit, the reviewer will prepare a summary of disbursements for the 36 months

preceding the site visit using TEAM data. These data can be downloaded using the Data Queries function as follows:

- a. Select “Disbursements and Refunds” from the Dynamic Query>>Data Query menu
 - b. Select the Recipient ID from the Drop-down list under Additional Search Criteria
 - c. Click the “Submit” button
 - d. Click the “Disbursements and Refunds” link on the Disbursement and Refunds frame
 - e. Click the “Open” button (you can also click “Save” and save the data directly to a file).
 - f. Copy the data and Paste it into an Excel spreadsheet (or Open your saved data file).
 - g. Sort and clean spreadsheet data.
2. Sample Size – The reviewer will select a sample of transactions based upon the total number of disbursement transactions during the 36 months (three 12 month periods) preceding the site visit as follows:
 - a. Five (5) transactions for each 12-month period in which there were 50 or more disbursements.
 - b. Four (4) transactions for each 12-month period in which there were between 25 and 49 disbursements.
 - c. Three (3) transactions for each 12-month period in which there were less than 25 disbursements.
 3. Sample Selection – The reviewer will select the sample according to the following procedure.
 - a. Divide the total number of disbursements in each 12-month period by the sample size (e.g., 50 disbursements divided by 5 sample

transactions equals 10) to obtain the selection interval.

- b. Use the last digit of the grantee's Vendor ID as a random starting point (e.g., ABC Transit's Vendor ID is 1234, the random starting point is the 4th transaction in each fiscal year).
- c. Beginning at the random starting point, select every transaction that falls at the selection interval (e.g., beginning at the 4th transaction, select every 10th transaction).
- d. For each "Account Class" transaction that is selected, the reviewer should add up all "Account Class" transactions for the corresponding grant number on that date and use this figure for examining the drawdown.

- e. The results are entered onto Exhibit 2.1 of the Triennial Review Worksheets and this information is transmitted to the grantee with the final site visit schedule.

Note: if the last digit of the grantee's Vendor ID is zero, use the next digit to the left as the random starting point (e.g., for a Vendor ID of 1230, the random starting point would be the 3rd transaction).

The list of sample transactions including grant number, transaction date, and amount should be sent to the grantee prior to the site visit. The grantee should be asked to have all supporting documentation for these transactions available for examination.

Step 1a through 1c:

Disbursements And Refunds

Data is available for disbursement and refund data, as imported from DELPHI, FTA's accounting system.

* Please note there is a lag between system data feeds and for up to the minute disbursement and refund information, it is better to go directly to DELPHI.

Data Fields

| | |
|---------------------------|-----------------------|
| 1. Recipient ID | 2. Project Number |
| 3. Cost Center | 4. Account Class Code |
| 5. Financial Purpose Code | 6. Transaction Type |
| 7. Transaction Date | 8. Transaction Amount |

Additional Search Criteria

Recipient ID: 1833

Cost Center: Not Selected

Financial Purpose Code: Not Selected

Status: Any

Project Number: []

Acct Class Code: [][][][][]

Data Format

Format Type: Excel

Column Delimiter: Comma

Column Headings: Yes

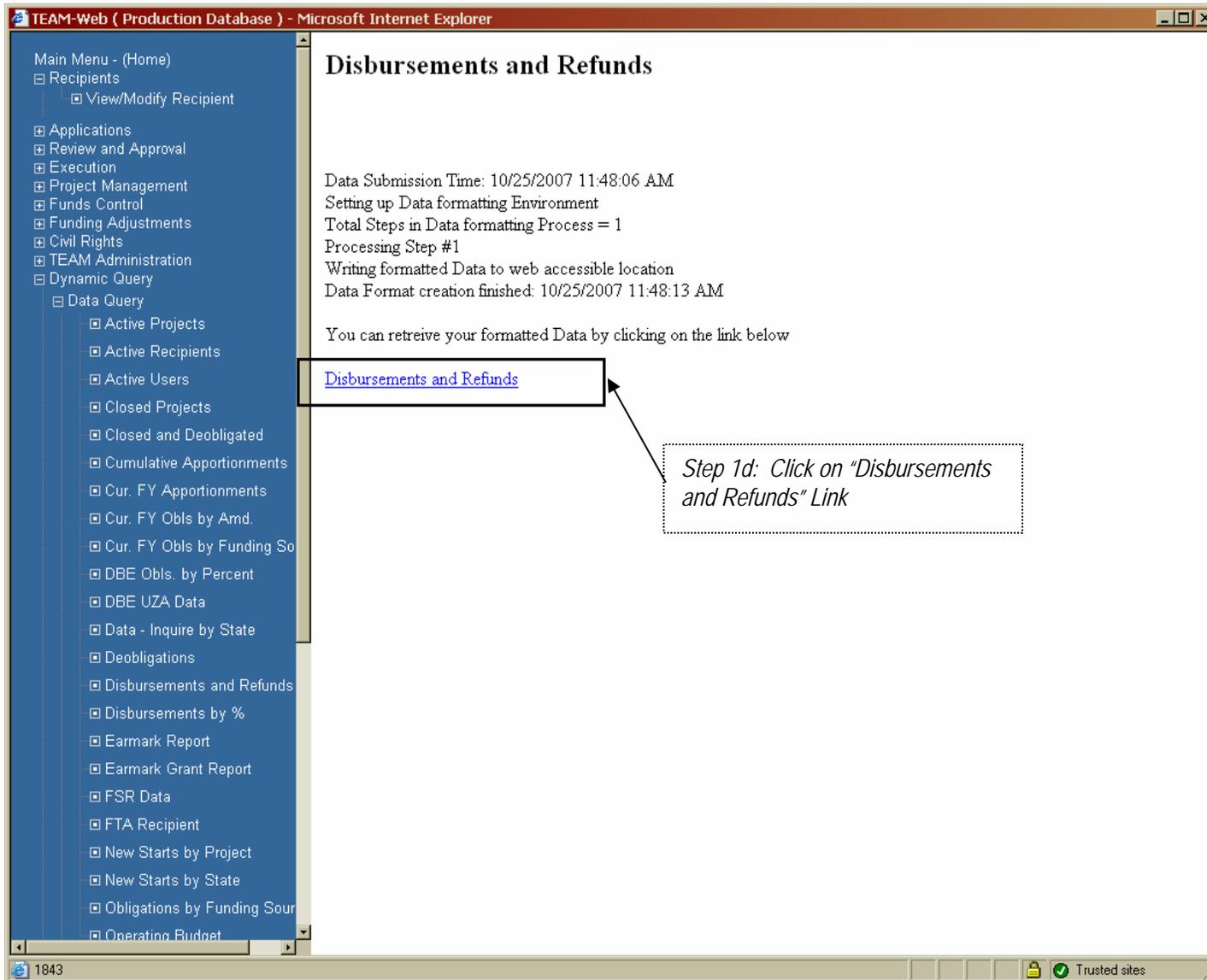
Submit

Step 1a: Click on "Disbursements and Refunds"

Step 1b: Enter a Recipient ID

Step 1c: Click "Submit" button

Step 1d:



Step 1e:

The screenshot shows a Microsoft Internet Explorer window titled "TEAM-Web (Production Database)". The left sidebar contains a navigation menu with categories like "Recipients", "Applications", "Data Query", and "Disbursements and Refunds". The main content area displays "Disbursements and Refunds" with a progress indicator for "Processing Step #1". A "File Download" dialog box is overlaid on the page, displaying the file name "PIERLOTTG00C_2007104810_100.xls" and its type "Microsoft Excel Worksheet, 13.3 KB". The dialog has three buttons: "Open", "Save", and "Cancel". The "Open" button is highlighted with a black box. Below the buttons, there is a checkbox labeled "Always ask before opening this type of file" which is checked. At the bottom of the dialog, there is a warning icon and text: "While files from the Internet can be useful, some files can potentially harm your computer. If you do not trust the source, do not open or save this file. [What's the risk?](#)". A callout box with a dashed border points to the "Open" button and contains the text "Step 1e: Click on 'Open' button".

Step 1f:

TEAM-Web (Production Database) - Microsoft Internet Explorer

| | A1 | recipient id | | | | | | | | | | |
|----|--------------|--------------|-------|------------|-------|---------|-----------|-----------|----|-------------|-------------|--------|
| | A | B | C | D | E | F | G | H | I | J | K | |
| 1 | recipient id | project | nur | cost | cente | account | cl | financial | pt | transaction | transaction | amount |
| 2 | 1833 | IA-03-0080 | 65000 | 1997.37.03 | 0 | DISB | 6/22/1998 | 4442 | | | | |
| 3 | 1833 | IA-03-0080 | 65000 | 1997.37.03 | 0 | DISB | 8/26/1997 | 733415 | | | | |
| 4 | 1833 | IA-03-0080 | 65000 | 1997.37.03 | 0 | DISB | 9/30/1998 | 111485 | | | | |
| 5 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 3/10/2005 | 781763 | | | | |
| 6 | 1833 | IA-03-0086 | 65000 | 2000.47.03 | 0 | DISB | 10/3/2001 | 109104 | | | | |
| 7 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 9/22/2003 | 34807 | | | | |
| 8 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | 7/28/2003 | 59 | | | | |
| 9 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 7/21/2004 | 376991 | | | | |
| 10 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 8/25/2004 | 423429 | | | | |
| 11 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | ##### | 137057 | | | | |
| 12 | 1833 | IA-03-0086 | 65000 | 2000.47.03 | 0 | DISB | ##### | 154650 | | | | |
| 13 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 2/11/2005 | 12505 | | | | |
| 14 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | -24454 | | | | |
| 15 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | 2098 | | | | |
| 16 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 4/20/2004 | 502781 | | | | |
| 17 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 1/21/2005 | 730630 | | | | |
| 18 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | -3246 | | | | |
| 19 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 2/23/2004 | 219462 | | | | |
| 20 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 9/21/2004 | 459778 | | | | |
| 21 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | 3246 | | | | |
| 22 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | 24454 | | | | |
| 23 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | 8/28/2003 | 38532 | | | | |
| 24 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 1/27/2004 | 214974 | | | | |
| 25 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 6/16/2005 | 620 | | | | |
| 26 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 5/24/2004 | 247291 | | | | |
| 27 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 4/14/2005 | 419063 | | | | |
| 28 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | 10832 | | | | |
| 29 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | -10832 | | | | |
| 30 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | ##### | 581639 | | | | |
| 31 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | ##### | 3246 | | | | |
| 32 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | ##### | 210589 | | | | |
| 33 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | ##### | 602 | | | | |
| 34 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 6/22/2004 | 11681 | | | | |
| 35 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | 6/3/2002 | 7287 | | | | |
| 36 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | 4/15/2002 | 324682 | | | | |
| 37 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | ##### | 419859 | | | | |
| 38 | 1833 | IA-03-0086 | 65000 | 2000.47.03 | 0 | DISB | 3/5/2002 | 142304 | | | | |
| 39 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 3/11/2004 | 10568 | | | | |
| 40 | 1833 | IA-03-0086 | 65000 | 2001.47.03 | 0 | DISB | 5/17/2002 | 800015 | | | | |
| 41 | 1833 | IA-03-0086 | 65000 | 2000.47.03 | 0 | DISB | 1/23/2002 | 56396 | | | | |
| 42 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 5/16/2005 | 210 | | | | |
| 43 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | ##### | 24454 | | | | |
| 44 | 1833 | IA-03-0086 | 65000 | 2003.47.03 | 0 | DISB | 8/28/2003 | 67843 | | | | |

1843 PIERLOTTG00C_2007104810_100

Trusted sites

Step 1f: Copy and Paste data into an Excel spreadsheet

Step 1g:

| recipient id | project number | cost center | account class code | purpc | transaction type | transaction date | transaction amount |
|--------------|----------------|-------------|--------------------|-------|------------------|------------------|--------------------|
| 1833 | IA-90-X309 | 65000 | 2005.21.90.91.1 | 4 | DISB | 7/18/2007 | 184418 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 4 | DISB | 6/25/2007 | 15200 |
| 1833 | IA-90-X322 | 65000 | 2007.25.90.91.2 | 4 | DISB | 6/25/2007 | 737291 |
| 1833 | IA-90-X265 | 65000 | 2003.21.90.91.1 | 4 | DISB | 4/11/2007 | 23663 |
| 1833 | IA-90-X293 | 65000 | 2005.21.90.91.1 | 4 | DISB | 4/11/2007 | 40094 |
| 1833 | IA-90-X293 | 65000 | 2005.21.90.91.1 | 4 | DISB | 4/9/2007 | 39906 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 0 | DISB | 1/18/2007 | 16058 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 0 | DISB | 10/17/2006 | 35066 |
| 1833 | IA-15-X001 | 78700 | 2005.61.15.FH.2 | 0 | DISB | 6/12/2006 | 10807 |
| 1833 | IA-15-X001 | 78700 | 2005.61.15.FH.2 | 0 | DISB | 5/23/2006 | 43407 |
| 1833 | IA-90-X258 | 65000 | 2002.21.90.91.1 | 0 | DISB | 5/11/2006 | 4309 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 0 | DISB | 5/11/2006 | 3091 |
| 1833 | IA-90-X309 | 65000 | 2005.21.90.91.1 | 4 | DISB | 5/11/2006 | 467800 |
| 1833 | IA-90-X309 | 65000 | 2004.21.90.91.1 | 4 | DISB | 5/11/2006 | 5209 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 0 | DISB | 4/13/2006 | 7400 |
| 1833 | IA-15-X001 | 78700 | 2005.61.15.FH.2 | 0 | DISB | 4/13/2006 | 40 |
| 1833 | IA-15-X001 | 78700 | 2005.61.15.FH.2 | 0 | DISB | 4/4/2006 | 16099 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 0 | DISB | 3/23/2006 | 117940 |
| 1833 | IA-15-X001 | 78700 | 2005.61.15.FH.2 | 0 | DISB | 11/22/2005 | 50801 |
| 1833 | IA-15-X001 | 78700 | 2004.61.15.FH.2 | 0 | DISB | 11/22/2005 | 24765 |
| 1833 | IA-15-X001 | 78700 | 2004.61.15.FH.2 | 0 | DISB | 10/13/2005 | 6992 |
| 1833 | IA-15-X001 | 78700 | 2004.61.15.FH.2 | 0 | DISB | 8/2/2005 | 389836 |
| 1833 | IA-90-X242 | 65000 | 2001.21.90.91.1 | 0 | DISB | 7/20/2005 | 6611 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 6/16/2005 | 620 |
| 1833 | IA-15-X001 | 78700 | 2004.61.15.FH.2 | 0 | DISB | 6/16/2005 | 532594 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 5/16/2005 | 210 |
| 1833 | IA-90-X293 | 65000 | 2004.21.90.91.1 | 4 | DISB | 5/16/2005 | 444955 |
| 1833 | IA-15-X001 | 78700 | 2004.61.15.FH.2 | 0 | DISB | 5/16/2005 | 692824 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 4/14/2005 | 419063 |
| 1833 | IA-90-X289 | 65000 | 2004.21.90.91.1 | 0 | DISB | 4/14/2005 | 7185 |
| 1833 | IA-15-X001 | 78700 | 2004.61.15.FH.2 | 0 | DISB | 4/14/2005 | 331835 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 3/10/2005 | 781763 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 2/11/2005 | 12505 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 1/21/2005 | 730630 |
| 1833 | IA-90-X258 | 65000 | 2002.21.90.91.1 | 0 | DISB | 1/21/2005 | 24058 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 12/23/2004 | 419859 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 11/29/2004 | 137057 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 11/29/2004 | 581639 |
| 1833 | IA-90-X265 | 65000 | 2003.21.90.91.1 | 0 | DISB | 11/29/2004 | 8337 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 9/21/2004 | 459778 |
| 1833 | IA-90-X258 | 65000 | 2002.21.90.91.1 | 0 | DISB | 9/21/2004 | 22560 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 8/25/2004 | 423429 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 7/21/2004 | 376991 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 6/22/2004 | 11681 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 5/24/2004 | 247291 |
| 1833 | IA-90-X242 | 65000 | 2001.21.90.91.1 | 0 | DISB | 5/24/2004 | 225 |
| 1833 | IA-90-X258 | 65000 | 2002.21.90.91.1 | 0 | DISB | 5/24/2004 | 161 |
| 1833 | IA-03-0086 | 65000 | 2003.47.03.31.1 | 0 | DISB | 4/20/2004 | 502781 |

Step 1g

Steps for Sorting Data in Excel

a) Select entire range of data
 b) Select Data-Sort from the menu
 c) Sort by "transaction date" in ascending order

Delete rows of data that are outside the 36 month examination period.

Steps 2a through 3d:

| <u>No.</u> | <u>recipient id</u> | <u>project number</u> | <u>account class code</u> | <u>transaction type</u> | <u>transaction date</u> | <u>transaction amount</u> |
|------------|---------------------|-----------------------|---------------------------|-------------------------|-------------------------|---------------------------|
| 1 | 1833 | IA-90-X309 | 2005.21.90.91.1 | DISB | 7/18/2007 | 184418 |
| 2 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 6/25/2007 | 15200 |
| 3 | 1833 | IA-90-X322 | 2007.25.90.91.2 | DISB | 6/25/2007 | 737291 |
| 4 | 1833 | IA-90-X265 | 2003.21.90.91.1 | DISB | 4/11/2007 | 23663 |
| 5 | 1833 | IA-90-X293 | 2005.21.90.91.1 | DISB | 4/11/2007 | 40094 |
| 6 | 1833 | IA-90-X293 | 2005.21.90.91.1 | DISB | 4/9/2007 | 39906 |
| 7 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 1/18/2007 | 16058 |
| 1 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 10/17/2006 | 35066 |
| 2 | 1833 | IA-15-X001 | 2005.61.15.FH.2 | DISB | 6/12/2006 | 10807 |
| 3 | 1833 | IA-15-X001 | 2005.61.15.FH.2 | DISB | 5/23/2006 | 43407 |
| 4 | 1833 | IA-90-X258 | 2002.21.90.91.1 | DISB | 5/11/2006 | 4309 |
| 5 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 5/11/2006 | 3091 |
| 6 | 1833 | IA-90-X309 | 2005.21.90.91.1 | DISB | 5/11/2006 | 467800 |
| 7 | 1833 | IA-90-X309 | 2004.21.90.91.1 | DISB | 5/11/2006 | 5209 |
| 8 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 4/13/2006 | 7400 |
| 9 | 1833 | IA-15-X001 | 2005.61.15.FH.2 | DISB | 4/13/2006 | 40 |
| 10 | 1833 | IA-15-X001 | 2005.61.15.FH.2 | DISB | 4/4/2006 | 16099 |
| 11 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 3/23/2006 | 117940 |
| 12 | 1833 | IA-15-X001 | 2005.61.15.FH.2 | DISB | 11/22/2005 | 50801 |
| 13 | 1833 | IA-15-X001 | 2004.61.15.FH.2 | DISB | 11/22/2005 | 24765 |
| 1 | 1833 | IA-15-X001 | 2004.61.15.FH.2 | DISB | 10/13/2005 | 6992 |
| 2 | 1833 | IA-15-X001 | 2004.61.15.FH.2 | DISB | 8/2/2005 | 389836 |
| 3 | 1833 | IA-90-X242 | 2001.21.90.91.1 | DISB | 7/20/2005 | 6611 |
| 4 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 6/16/2005 | 620 |
| 5 | 1833 | IA-15-X001 | 2004.61.15.FH.2 | DISB | 6/16/2005 | 532594 |
| 6 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 5/16/2005 | 210 |
| 7 | 1833 | IA-90-X293 | 2004.21.90.91.1 | DISB | 5/16/2005 | 444955 |
| 8 | 1833 | IA-15-X001 | 2004.61.15.FH.2 | DISB | 5/16/2005 | 692824 |
| 9 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 4/14/2005 | 419063 |
| 10 | 1833 | IA-90-X289 | 2004.21.90.91.1 | DISB | 4/14/2005 | 7185 |
| 11 | 1833 | IA-15-X001 | 2004.61.15.FH.2 | DISB | 4/14/2005 | 331835 |
| 12 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 3/10/2005 | 781763 |
| 13 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 2/11/2005 | 12505 |
| 14 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 1/21/2005 | 730630 |
| 15 | 1833 | IA-90-X258 | 2002.21.90.91.1 | DISB | 1/21/2005 | 24058 |
| 16 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 12/23/2004 | 419859 |
| 17 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 11/29/2004 | 137057 |
| 18 | 1833 | IA-03-0086 | 2003.47.03.31.1 | DISB | 11/29/2004 | 581639 |
| 19 | 1833 | IA-90-X265 | 2003.21.90.91.1 | DISB | 11/29/2004 | 8337 |

No. Transactions 7
Sample Size 3
Interval 2

Step 2a through 2c

Step 3a

Steps 3b and 3c
Procedure resulted in selecting Nos. 3, 5, & 7 Transactions shaded should be examined during the site visit

No. Transactions 13
Sample Size 3
Interval 4

Step 3d
 473009 = sum of IA-90-X309 on 5/11/06

No. Transactions 19
Sample Size 3
Interval 6

Step 3e:

**EXHIBIT 2.1
EXAMINATION OF ECHO DRAWDOWNS**

| Transaction Date | Project Number | Transaction Amount | Remarks (a) |
|-------------------------|-----------------------|---------------------------|--------------------|
| 6/25/2007 | IA-90-X322 | \$737,291 | |
| 4/11/2007 | IA-90-X293 | \$40,094 | |
| 1/18/2007 | IA-90-X289 | \$16,058 | |
| 5/23/3006 | IA-15-X001 | \$43,407 | |
| 5/11/2006 | IA-90-X309 | \$473,009 | |
| 3/23/3006 | IA-90-X289 | \$117,940 | |
| 7/20/2005 | IA-90-X242 | \$66,11 | |
| 4/14/2005 | IA-03-0086 | \$419,063 | |
| 1/21/2005 | IA-90-X258 | \$24,058 | |

(a) Record information such as ECHO drawdown number, type of expense (i.e., capital, operating, preventive maintenance, etc.), and check/wire transfer number and date

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws.
2. [49 CFR Part 18](#), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
3. [FTA Circular 5010.1C](#), "Grant Management Guidelines."
4. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."
5. [FTA Circular 9300.1A](#), "Capital Program: Grant Application Instructions."
6. [OMB Circular A-87](#), "Cost Principles for State, Local, and Indian Tribal Governments."
7. [OMB Circular A-133](#) "Audits of States, Local Governments, and Non-Profit Organizations."
8. [FTA Master Agreement](#).
9. Single Audit Act Amendment of 1996.

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a Financial Management Oversight (FMO) review or a Financial Capacity (FC) Analysis during the past two fiscal years? If yes, when was the site visit? Is a review scheduled for the current fiscal year?*

EXPLANATION

FMO reviews and FC analyses are oversight mechanisms of FTA.

If an FMO review has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), triennial reviewers should eliminate the questions under *Part B: Funds Management* and *Part C: Audits* in the Financial area.

If an FCA has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year (FYs 2006, 2007, and 2008), the questions in *Part A – Financial Capacity* in the Financial area of the triennial review can be eliminated.

FTA also performs Follow-up FMO reviews to ensure that recommendations resulting from full scope reviews were implemented and working properly. If a Follow-up FMO review has been conducted in the past two fiscal years, or if one is scheduled for the current fiscal year, triennial reviewers should still ask the questions in the Financial area. Note: Follow-up reviews are only conducted if the original Full Scope FMO review was done within the previous 18 months, otherwise a Full Scope review is performed due to the time lapse.

REASON FOR THE QUESTION

Input to triennial review

SOURCES OF INFORMATION

The regional office staff will have information on completed and scheduled FMO reviews and FC analyses.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

Part A. Financial Capacity

2. *What are the grantee's sources of non-FTA funding for operating and capital expenses?*
3. *Is there any pending legislation or "sunset" provision in existing legislation that could affect the grantee's sources of state or local funding or financial capacity?*
4. *In the next few years, does the grantee anticipate any significant changes in the levels of local funding for transit, the sources of local funding for transit, or the current transit service levels?*
5. *What is the grantee's current financial status? Please provide a multi-year financial plan.*
6. *Has the grantee had unfunded operating or capital deficits or liabilities? If so, what are the amounts, nature, and forecast of these deficits/liabilities?*
7. *Based on the responses from above questions, does the grantee have the financial capacity to match and manage FTA grant funds?*

EXPLANATION

Grantees generally have three basic sources of local funding: a perpetual or permanent local tax (e.g., a sales tax, income tax, or property tax); a limited or "sunset" source of funding that expires at some future date; and/or annual appropriations from local, regional, and state governments. Information on the sources of local funding assists in making determinations concerning both the existing financial condition and the future financial capacity of the grantee. A grantee's financial condition, future financial capacity, and ability to match FTA funds could be affected greatly if one of its sources of non-FTA funding is impacted by pending legislation or "sunset" provisions in current legislation.

Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves, and the present status of depreciation accounts. Grantees should have multi-year financial plans (three to five years) that project operating and capital revenues and expenses. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual Program of Projects. Revenue sources must be stable and reliable enough to meet future capital, and operating costs. Any sign of major decreases in service levels or operations must be explained.

Financial capacity considers the nature of funds matched to support operating deficiencies and capital programs, along with forecasted changes in fare and non-fare revenues. If a grantee is forecasting new funding sources, strategies for ensuring their availability must be identified. Unfunded capital or operating deficits could indicate a grantee's lack of financial capacity to fund the projects programmed in the TIP, and/or adequately maintain and operate FTA-funded assets at the current level of service.

REASON FOR THE QUESTION

[49 USC 5307\(d\)\(1\)\(a\)](#)

[FTA Master Agreement](#) for FY 2007, Section. 5

SOURCES OF INFORMATION

Information on local funding sources can be found in annual audits, budgets, local or state legislation, multi-year financial plans, National Transit Database reports, and the TIP. The current year's budget, including capital and operating expenses and multi-year financial projections are sources of information for financial condition and capacity. The grantee should be asked about pending legislation or "sunset" provisions in current legislation.

DETERMINATION

The grantee is not deficient if the current year's budget and the multi-year financial plan demonstrate: stable transit revenues, an ability to maintain current operations, and the ability to complete the forecasted Program of Projects; and there is no pending legislation or sunset provision in the current legislation that will impact local funding negatively. If the grantee has a limited period of funding or relies on annual allocations, the funding should be examined to determine that financial capacity exists to maintain the transit system.

If the grantee does not have a multi-year financial plan, it requires corrective action to produce one. Corrective action may be warranted if major service reductions are projected, cost projections appear unreasonable, or annual local funding is not secure. If there is pending legislation that could impact local funding sources negatively, the grantee may be deficient, depending on its ability to continue to

provide local match for federal funding. If the local sources of revenue are not sufficient, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If a grantee does not have a multi-year financial plan, it should develop one and forward it to the FTA regional office.

If the grantee has a "sunset" provision in current local funding legislation or if there is pending legislation that will affect local funding negatively, the grantee needs to show that local funding will be received to replace current funding or that actions will be made to compensate for the lack of local funding. Where the source of local funding is dependent upon an election, action by local governmental body, or other event, a determination may need to await such an event.

If the local sources of funding are not sufficient to meet expected operating or capital costs, the grantee should provide a plan for reducing expenditures, increasing revenues, or a combination of both to compensate for a budget shortfall.

For any corrective actions, the grantee needs to provide documentation of the anticipated sources of local funding, revenue increases, and/or planned service reductions.

Part B. Funds Management

8. *Do records support the ECHO system requests for and disbursement of funds? Are drawdown requests signed by an authorized official other than the individual who requests the payment?*

EXPLANATION

General financial management capabilities need to be reviewed to ensure that the grantee is requesting and matching federal funds properly. Grantees request federal funds through the Electronic Clearinghouse (ECHO) system. Federal funds that have been requested are to be disbursed promptly. In many cases, grantees will request funds after expenses have been incurred and paid. In certain cases (e.g., large bus procurements), the federal funds may be requested prior to issuing a check. This procedure is acceptable as long as the monies are disbursed promptly (within three business days). Note that disbursement means that the grantee no longer controls the money (e.g., a check has been sent to a vendor). If the funds are not disbursed promptly, FTA can charge interest beginning on day four.

A grantee must maintain effective control and accountability for all grant and subgrant cash. Internal control includes having the drawdown requests signed by a person other than the person requesting payment to ensure segregation of duties.

REASON FOR THE QUESTION

[49 CFR 18.20](#)

[FTA Master Agreement](#) for FY 2007, Section 9.b.

SOURCES OF INFORMATION

A sample of disbursement transactions will be examined. The sample will be selected according to the process identified under the "Areas to be Examined" section on page 2-1 of this document. The ECHO system documentation should support each request for disbursement. The information should track back to an invoice for goods or services, and be supported by information from the grantee's accounting system. The review should identify when checks that used the federal funds were issued to ensure that funds were not held longer than three business days, particularly in cases where federal funds were requested in advance of payment to a vendor or contractor. Another source of information is to compare disbursements with the quarterly Financial Status Reports, Line C. The annual financial audit should be checked to see if any audit findings exist in this area.

DETERMINATION

If the grantee requests funds after incurring the expenses and has supporting documentation, it is not deficient. If supporting documentation generally is good but problems are found or if the system appears to be in place but is not being followed, the grantee is deficient. If a system is lacking, the grantee is deficient. Note that findings in this area can result in interest being paid to FTA when excessive funds have been requested or funds have been held for more than three days.

If the grantee is holding federal funds for an excessive period of time (four or more days after federal funds have been deposited into the grantee's bank account), the grantee is deficient. If such situations have occurred but corrective actions took place, the grantee is not deficient. If the grantee has repeated instances of requesting incorrect amounts through the ECHO system, it is deficient and must take corrective action to repay any over-requested amounts.

If the grantee has different people signing the drawdown request and making the drawdown, the grantee is not deficient. When the person requesting funds is the same person making the drawdown, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Documentation must be improved and procedures must be in place to disburse federal monies promptly.

The grantee may have to reimburse the Federal Treasury for interest owed.

Procedures must be revised to separate the duties in terms of the person requesting the drawdown and the person making the drawdown.

9. *Are grantees in areas with populations under 200,000 calculating the amount eligible for operating assistance funding appropriately?*

EXPLANATION

FTA operating assistance is available to grantees in urbanized areas with populations under 200,000. It is the responsibility of the grantee to calculate net eligible operating costs properly. The grantee should demonstrate that the amount of funds being requested for operating assistance is no more than half the operating expenses, after fare and other system-generated revenues (such as advertising or contract revenues) are used to reduce the operating costs to a net operating project cost and ineligible costs (such as costs for charter, school bus, sightseeing service, and lobbying activities) are eliminated. The federal share of any operating assistance project shall not exceed the lesser of: a) the local match, b) the currently available apportionment to the urbanized area plus any carryover funds available from past years, or c) 50 percent of the net project cost incurred in the provision of transit services during the period.

These grantees also may use FTA funding at the 80/20-match level for ADA paratransit, maintenance, and capital cost of contracting. These funds could increase the total amount of FTA funds the grantee could be eligible to request, but would reduce the net project cost eligible for 50/50 operating assistance.

REASON FOR THE QUESTION

[FTA C 9030.1C](#), Appendix D

SOURCES OF INFORMATION

Detailed operating budgets showing operating expenses eligible for FTA urbanized area operating assistance funding should be reviewed for the past three years. [FTA C 9030.1C](#) Appendix D provides grantees with a worksheet to determine the amounts of available Urbanized Area Formula Program funds that may be requested. The grantee is not required to submit this worksheet as part of its grant application. However, the grantee must maintain records to support charges to a grant.

DETERMINATION

If the grantee can provide documentation showing that operating assistance amounts are based on net

eligible project costs in accordance with 9030.1C, it is not deficient. If the documentation is lacking or shows ineligible project costs included in the calculation of operating expenses, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must improve its documentation and must ensure that procedures are in place to calculate net eligible project costs for operating assistance funds properly. If an inappropriate payment or an overpayment of operating assistance has occurred, the grantee should be directed to reimburse FTA.

- 10.** *Is the grantee properly completing the unliquidated obligations line (Line D) of the Financial Status Report (FSR)? If no, should the grantee be reporting amounts? If yes, describe the methodology for arriving at amounts recorded.*

EXPLANATION

Unliquidated obligations are funding commitments that have been incurred, but for which outlays have not yet been recorded because goods and services have not been received. Examples of these are: a signed contract for bus purchases for which delivery of vehicles has not yet occurred, a contract for construction services not rendered, open purchase orders, and contract retentions. These unliquidated obligations should be accounted for on Line D of the FSR. The purpose of this question is not necessarily to ascertain the accuracy of the information on Line D, but to determine if the grantee is reporting unliquidated obligations at all. If the grantee is reporting unliquidated obligations, ask for an explanation of the methodology for arriving at the amounts recorded.

REASON FOR THE QUESTION

[FTA C 5010.1C](#), Ch. I, Section 5
[49 CFR 18.41](#)

SOURCES OF INFORMATION

Milestone/Progress Reports and FSRs should be reviewed to determine if Line D should be completed. If there are awarded contracts for which deliverables have yet to occur, the dollar amount associated with the undelivered portion of those contracts should be represented as unliquidated obligations.

DETERMINATION

If a grantee is reporting unliquidated obligations properly, or has no commitments that should be classified as unliquidated obligations, the grantee is not deficient. If a grantee is not completing the

unliquidated obligations portion of the FSR properly, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should develop and submit to FTA procedures to track and report unliquidated obligations correctly on the FSR. The next quarter's FSR must be submitted properly.

- 11.** *Are indirect costs being charged to grants? If yes, does the grantee have a cost allocation plan to support indirect administrative costs related to a grant program? If yes, what agency approved the plan? Has the grantee been following the plan?*

EXPLANATION

Under federally funded grant programs, recipients may incur both direct and indirect costs. A cost allocation plan is required to support the distribution of indirect costs related to the grant program, and it must be approved by FTA or by the cognizant federal agency. Cost allocations often are found in municipal systems where overhead/administrative charges are allocated to the transit system. Any and all such charges need to be addressed in the cost allocation plan. In addition to the initial approval by its cognizant agency, a grantee must resubmit the plan for approval in any of the following circumstances:

- The grantee has made a change in its accounting system, thereby affecting the previously approved cost allocation plan/indirect cost rate and its basis of application, or
- The grantee's proposed cost allocation plan/indirect cost rate exceeds the amounts approved previously by more than 10 percent.

REASON FOR THE QUESTION

[49 CFR 18.3](#)
[OMB C A-87](#)
[FTA C 5010.1C](#), Ch. III, Section 3

SOURCES OF INFORMATION

Grant files and correspondence will provide information at the desk review. On-site discussions with a PMO contractor and grantee staff can provide information. The A-133 annual audit also is a source of information regarding the proper implementation of a cost allocation plan. The FSR also has a section where grantees indicate whether they are charging indirect costs to the grant.

DETERMINATION

If a grantee has implemented a cost allocation plan correctly and obtained any necessary approvals, it is not deficient. If the PMO staff, annual audit, or triennial review identifies problems with the administration of the cost allocation plan, the grantee may be deficient. If the grantee has not taken action with regard to an audit finding or if the grantee has not obtained FTA or cognizant agency approval for an implemented or changed cost allocation plan, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will need to change the administration of its program to correct any deficiencies. It will need to obtain cognizant agency approval of the cost allocation plan.

12. *Is the grantee using FTA capital funds to support ADA paratransit operating costs? If yes, is the grantee classifying no more than 10 percent of its annual formula apportionment of Section 5307 funds as operating expenses for ADA paratransit operating costs?*

EXPLANATION

TEA-21 expanded the definition of an eligible capital project to include the operating cost of ADA complementary paratransit service, under certain limitations. The 80/20 federal/local funding ratio is applicable for such projects as long as the grantee is in compliance with ADA requirements. Capital projects can include the provision of non-fixed-route paratransit transportation services in accordance with Section 223 of the ADA Act of 1990 for amounts not to exceed 10 percent of a grantee's annual formula apportionment in Section 5307. Costs associated with non-ADA paratransit are not eligible for this funding option. For urbanized areas with more than one grantee, the MPO is responsible for working with operators to allocate the 10 percent of the area's apportionment that may be used for ADA paratransit purposes.

Note: grantees are not limited to 10 percent of their apportionment if they choose to use another mechanism (e.g., capital cost of contracting) to pay for their ADA services. Grantees may use a combination of funding mechanisms (e.g., ADA operating, preventive maintenance, and/or capital cost of contracting) provided that they do not double count their costs.

REASON FOR THE QUESTION

[FTA C 9030.1C](#), Ch. III, Section 4.d

SOURCES OF INFORMATION

Information on paratransit expenditures should be included in the current budget or in grant applications.

DETERMINATION

If the expenditures from grant funds for paratransit operating costs are within 10 percent of the total annual apportionment in Section 5307, the grantee is not deficient. If the grantee is classifying more than 10 percent of these funds as paratransit service expenditures, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should be directed to revise its classification of expenditures for the use of Section 5307 funds and advise FTA of the actions it has taken.

Part C. Audits

13. *Have annual single audits been conducted?*

EXPLANATION

Non-federal entities that expend \$500,000 or more in federal awards in a year are required to have annual audits in accordance with [OMB Circular A-133](#). In the case of independent transit authorities, the audit will cover all aspects of that authority. Where the transit provider is a municipal department or part of a larger governmental organization, the audit may cover the entire organization, including the federal funds used for transit. In either case, the audit(s) should be reviewed to determine if the grantee is in compliance with the OMB Circular and if any unresolved audit issues exist.

Depending upon the results of their single audit, grantees are required to take one of the following actions:

- If the single audit contained FTA program findings, a copy of the entire audit report must be submitted to the Regional Office. If the grantee received funding from more than one DOT agency and FTA is the grantee's point-of-contact for all DBE program issues, then the grantee must submit the entire audit report if it contains any findings related to any DOT program.
- If the annual single audit report contains no FTA program findings or other DOT program findings, a copy of only the Federal Clearinghouse transmittal sheet must be submitted to the Regional Office.

REASON FOR THE QUESTION

49 CFR 18.26

Dear Colleague Letter, C-05-04, June 17, 2004

Single Audit Act Amendment of 1996

SOURCES OF INFORMATION

Beginning in FY2004, audit reports or copies of the clearinghouse transmittal sheets should be available at the regional office during the desk review. If the reports are not available at the desk review, they, and any management letters, should be requested and reviewed prior to the site visit. Audit reports are to be issued within the earlier of 30 days after receipt of the auditor's reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant agency.

The Federal Audit Clearinghouse can be accessed at <http://harvester.census.gov/sac/>. This site provides links to single audit reference information and allows the user to retrieve single audit data.

DETERMINATION

If the grantee has had audits conducted in accordance with [OMB C A-133](#) and submitted these reports or the clearinghouse transmittal sheets as required, it is not deficient. If the grantee has not been conducting annual single audits in accordance with [OMB C A-133](#), it is deficient. If the grantee has not submitted its audit reports or clearinghouse transmittal sheets to the regional office as required, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to conduct annual single audits in accordance with [OMB C A-133](#).

14. *Are there any unresolved compliance issues in the single audits conducted in the past three years? If yes, what is the status of these issues?*

EXPLANATION

Audit findings related to the FTA program not only could impact financial areas of the grantee, but can serve as information for other sections of the triennial review. Resolution to audit findings should be discussed in this section.

REASON FOR THE QUESTION

49 CFR 18.26

SOURCES OF INFORMATION

A-133 audit reports and management letters should be reviewed for this information.

DETERMINATION

If there are no outstanding issues from the annual audit, the grantee is not deficient. If the grantee has not taken appropriate action to resolve audit issues promptly, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to resolve outstanding audit issues.

15. *Have any Government Accountability Office (GAO) or Office of Inspector General (OIG) audit reports completed during the triennial review period had findings related to FTA program requirements? If yes, have these findings been resolved?*

EXPLANATION

The GAO and OIG periodically conduct independent audits. Audits may be of a grantee, but often are programmatic audits addressing a national issue (e.g., spare ratios, extended warranties, etc.) where the grantee may have had a specific part of its operation audited. The audit findings, for which agreement has been reached with the OIG or the GAO, should be noted and investigated to determine if proper follow-up actions have been taken to resolve the findings. Audit findings should be resolved within one year.

REASON FOR THE QUESTION

Input into triennial review

SOURCES OF INFORMATION

GAO and OIG audits may be available at the desk review. If the documents are not available in the regional offices, copies should be provided prior to the site visit. All audits should be reviewed, and findings should be discussed at the site visit.

DETERMINATION

If there are no open GAO or OIG audit findings, the grantee is not deficient. If the grantee has not taken appropriate action to resolve audit issues promptly, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to resolve outstanding audit issues.

16. *Have any internal, state, or local governmental audit reports had findings related to FTA program requirements?*

EXPLANATION

In addition to the external audits, some transit organizations and other forms of local or state government have internal auditors. A listing of internal audit reports should be reviewed at the site visit. The internal audit function and specific findings of reports should be discussed with the internal auditor at the site visit. Also, internal audit reports of interest should be reviewed. Likewise, state or local government audits, if applicable, should be reviewed.

REASON FOR THE QUESTION

Input into triennial review

SOURCES OF INFORMATION

State, local, and internal audit information will be obtained during the site visit.

DETERMINATION

If the grantee has no unresolved findings from internal, state, or local audits, it is not deficient. If the grantee has not taken appropriate action to resolve audit issues promptly, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to resolve open audit issues.

3. TECHNICAL

BASIC REQUIREMENT

The grantee must be able to implement the Urbanized Area Formula Grant Program of Projects in accordance with the grant application, Master Agreement, and all applicable laws and regulations, using sound management practices.

AREAS TO BE EXAMINED

1. **Grant Administration**—Procedures for managing grants and submitting timely and complete reports.
2. **Review of Open Grants**—Grant implementation and closeout, including deobligation of federal funds, if warranted.
3. **Force Account Activities**—Force account plan and justification for grant activities performed by the grantee's workforce.
4. **Capital Leasing**—Cost-effectiveness evaluation for leased capital assets.

5. Project Management

- a. Project Management Plans for major capital projects
- b. Procedures for technical oversight of capital projects
- c. Capacity to monitor subrecipients, contractors, and lessees

REFERENCES

1. [49 USC Chapter 53](#) as amended by the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*, Section 5327, "Project Management Oversight."
2. [49 CFR Part 18](#), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
3. [49 CFR Part 639](#), "Capital Leases."
4. [FTA Circular 5010.1C](#), "Grant Management Guidelines."
5. [FTA Circular 5800.1](#), "Safety and Security Management Guidance for Major Capital Projects."
6. [FTA Master Agreement](#).

QUESTIONS FOR THE REVIEW

1. *What are the grantee's procedures for grant administration and management?*
2. *Are Milestone/Progress Reports (MPR) and Financial Status Reports (FSR) submitted on time?*
3. *Do MPRs contain narrative information including:*
 - a. *A discussion of budget or schedule changes*
 - b. *Status of milestones*
 - c. *Reasons why milestones were not met*
 - d. *A list of outstanding claims exceeding \$100,000 and all claims settled in the subject quarter*
 - e. *A list of all change order amounts exceeding \$100,000 pending or settled during the quarter*
 - f. *A discussion of unforeseen events that have affected project schedule, cost, or purpose*
 - g. *Progress and schedule of force account activities*
 - h. *An annual transit enhancements report (4th quarter only) for designated recipients in urbanized areas of 200,000 or more.*

EXPLANATION

The grantee is responsible for administration and management of the grant in compliance with the grant agreement and other incorporated documents, including statutes, regulations, the Master Agreement, and FTA circulars. The grantee must have a mechanism to ensure continuous administration and management of the grant projects. There should be clear lines of authority and responsibility for grant administration and for preparing required reports to FTA.

The Milestone/Progress Report (MPR) is the primary written communication between the grantee and FTA, with regular progress reported up to four times a year. Public transportation providers in small urbanized areas (i.e., populations less than 200,000) are required to submit these reports annually. Public transportation providers in large urbanized areas (i.e.,

populations of 200,000 or more) are required to submit these reports 30 days after the end of each quarter. Quarters are based on the federal fiscal year, beginning October 1. These reports should be provided electronically using the TEAM system.

The Common Rule ([49 CFR Part 18](#)) and [FTA C 5010.1C](#) detail the information that, at a minimum, must be included in these reports. For each milestone, the report should include the original estimated, revised, and actual completion dates; the dates of expected or actual requests for bid, delivery, etc.; and a narrative description of project status. Completion and acceptance of equipment and construction projects should be discussed, with a breakout of costs incurred and those costs required to complete the project. MPRs are required for all grants covered by the circular (including capital, planning, and formula program grants). If a grant includes only operating assistance, the reporting requirement is limited to the estimated and actual date when funding has been expended.

The designated recipient in an urbanized area with a population of at least 200,000 must submit a certification that it 1) will expend not less than one percent of the amount the recipient receives each fiscal year under Section 5307 for transit enhancements, and 2) will submit with its 4th quarter MPR an annual report listing projects carried out in the preceding fiscal year with those funds. Effective with [SAFETEA-LU](#), only the designated recipient is responsible to certify and report (not each grantee that applies for a grant that contains a transit enhancement project subject to the one percent requirement). The report must include: a) name of grantee(s) expending the enhancement funds, b) UZA name and number, c) FTA project number(s), d) transit enhancement category or categories for which enhancement funds were obligated, e) brief description of enhancement by Federal fiscal year of funding and progress towards project implementation, f) activity line item codes from the approved budget(s), and g) amount awarded by FTA for the enhancement.

Financial Status Reports (FSRs) should accompany the MPRs. The FSR is a specific form (SF-269) used to monitor project funds. These reports also should be submitted electronically. The content of the FSR is addressed in the Financial Capacity section of the triennial review.

REASON FOR THE QUESTION

[49 CFR 18.40](#)

[FTA C 5010.1C](#), Ch. I, Sections 3 and 5

SOURCES OF INFORMATION

The grantee's procedures for grant administration and reporting should be discussed during the site visit. Most larger grantees will have written procedures that can be reviewed. Those grantees that do not have written procedures should be able to describe how the staff performs these responsibilities.

The MPRs and FSRs should be available through TEAM. The reviewer should determine if the reports are filed on time and if the MPR includes all required information.

DETERMINATION

A reviewer typically will make a finding about the grantee's procedures for grant administration and management in concert with findings related to submission of reports, inactive grants, untimely grant closeouts, or delays in project implementation (see Question 4 below). Together, these issues may indicate that the grantee is deficient with respect to requirements for technical capacity.

When the grantee has submitted the MPR and FSR on time with the appropriate information, the grantee is not deficient. If the grantee's reports are consistently late, the grantee is deficient. A grantee is deficient if it submits the reports on time but does not include sufficient detail about schedule delays or omits other required information.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have procedures in place to manage the grant program, as indicated by late or incomplete reports or other grant implementation problems, the grantee must implement management procedures to correct the deficiencies.

If MPRs or FSRs have not been submitted, the corrective action is to submit the delinquent report(s). If the reports have been late, the reports due following the issuance of the triennial review report must be on time. If reports are consistently late, the grantee may be asked to demonstrate to FTA that it has implemented improvements to its grants management and reporting procedures.

Where narrative information is lacking in the MPR, the corrective action is to include such information in future reports. The grantee must submit the next Milestone/Progress Report with all of the appropriate narrative information.

4. *What is the schedule for closing out all open grants? Are projects on schedule? Are any open grants inactive? Should these or any other*

grants be closed? Should any grant funds be deobligated?

EXPLANATION

These questions help the reviewer determine if the grantee has taken the appropriate steps to carry out projects on schedule, spend obligated funds, and close grants. FTA requires that closeout documents be submitted after all funds have been expended or within 90 days after project activities are completed. It is not necessary to wait for the single audit before closing out a grant.

Grants that have been inactive for a substantial length of time (more than six months) also should be closed out unless the grantee has a good explanation, and activity is likely to resume soon. Grant inactivity may be a result of delays in project implementation. Determine the reasons for the delay. If project delays are the result of inadequate actions by the grantee or failure in performance by a contractor, there may be deficiencies in the grantee's technical capacity. When delays are due to poor performance by contractors, examine how the grantee managed the delay and tried to obtain performance by the contractor. It should be noted that delays are not unusual in major construction projects, especially when land acquisition, zoning changes, environmental studies, weather, and other factors not under the complete control of the grantee must be considered. If a grant has been delayed for a substantial period of time and the grantee does not have a reasonable explanation, FTA may determine that the grant should be closed and the funds deobligated. Occasionally, a project may be delayed indefinitely because of factors beyond the grantee's control (e.g., political issues). If there is no realistic chance of a project's going forward, FTA will deobligate the grant funds and make them available for other projects that are ready to proceed.

REASON FOR THE QUESTION

[49 CFR 18.50.](#)

[FTA C 5010.1C](#), Ch. I, Section 15

SOURCES OF INFORMATION

The TEAM system will show both the initial grant implementation schedule and amendments. MPRs will provide information on what projects remain open within a grant. The TEAM system shows grant activity for previous quarters and unobligated balances in grants. With the regional staff, identify any grants that are potential candidates for closeout. Additional information, including a current schedule for the closeout of all open grants and reasons for any delays, should be obtained from the grantee.

DETERMINATION

The grantee is not deficient if projects are on schedule and grants are closed out on time or if

delays are reasonable and are documented in progress reports. In some instances, major problems may have arisen during the triennial review period that the grantee has corrected. If the appropriate corrective action has been taken, the grantee is not deficient.

If a grantee has inactive grants, determine if the grants should be closed or are temporarily delayed. If there are open grants that should be closed, the grantee is deficient. Often, grants can be closed between the desk review and the site visit.

Where continuing problems, delays, or overruns are evident, the grantee is deficient. This is especially true if the organizational structure of the grantee contributes to the problem (i.e., clear lines of authority and delegation of responsibility are lacking).

SUGGESTED CORRECTIVE ACTION

When the grantee is found to be deficient because of delays in project implementation, the grantee should develop a closeout schedule for all open grants. If the problem is due to organizational structure or the effectiveness of grant or project administration, the corrective action is for the grantee to devise and implement necessary administrative procedures.

5. *Is the grantee's work force used in the execution of capital grant projects? If yes:*
 - a. *If the force account work equals \$10,000,000 or more, was a force account plan and justification submitted to FTA?*
 - b. *Is a plan on file for force account work of \$100,000 or more but less than \$10,000,000?*

EXPLANATION

Work performed by the grantee's work force, other than grant administration, that is included in an approved grant is "force account" work. Force account work typically is found in rail systems, where the grantee's workforce is used to rehabilitate rolling stock or perform track and signal work. Reimbursement of force account work is subject to a grantee's providing the force account plan and justification, including documentation equivalent to a sole source justification, stating the basis for a determination that no private sector contractor has the expertise to perform the work. Reimbursement of such expenses is subject to FTA's prior review of the grantee's force account plan and justification when the total estimated cost of force account work under the grant equals \$10,000,000 or more. Justification may be on the basis of cost, exclusive expertise,

safety and efficiency of operations, or union agreement. Force account reimbursement for projects below this threshold must be supported by a force account plan and justification, which are to be retained in the grantee's files. No plan or justification is required if the force account work is less than \$100,000.

REASON FOR THE QUESTION

[FTA Master Agreement](#) for FY 2007, Section 15.h
[FTA C 5010.1C](#), Ch. I, Section 9.e

SOURCES OF INFORMATION

Individual grant files at the regional office should contain force account plans for work that equals \$10,000,000 or more. Justification for work below this threshold but equal to or exceeding \$100,000 should be available from the grantee.

DETERMINATION

If the grantee does not have a force account plan included in a grant, but seeks FTA funds for force account costs on projects that exceed the above-referenced threshold, the grantee is deficient. The grantee is also deficient if force account costs between \$100,000 and \$10,000,000 are not supported by the proper force account plan and justifications.

SUGGESTED CORRECTIVE ACTION

The grantee must develop a force account plan and justification as detailed in FTA Circular 5010.1C for use of its own workforce on capital improvement projects. The force account plan and justification should be submitted to FTA to demonstrate compliance.

6. *During the review period, did the grantee use FTA capital assistance to finance the lease of any transit facilities or equipment costing \$100,000 or more annually or \$250,000 over the life of the lease?*

If yes, did the grantee make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it? Is the written comparison on file?

If the grantee did not make a written cost comparison, did the grantee obtain FTA approval for an alternative form of cost-effectiveness evaluation?

Were any such leases terminated or substantially modified before the end of period used in the cost-effectiveness evaluation?

EXPLANATION

Transit facilities and equipment that are eligible for capital assistance, including associated capital maintenance items, may be acquired by lease, purchase, or construction. When a grantee leases capital assets, the leasing costs are eligible for capital assistance if the lease is more cost effective than purchase or construction. The grantee must make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it, following the method provided in 49 CFR 639.23 through 639.27. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset. Before entering into the lease or before receiving a capital grant for the asset, the grantee certifies to FTA that it has performed this comparison. The written comparison is not submitted with the grant. The grantee should keep the comparison on file to provide at the triennial review. Only leases with annual costs of \$100,000 or more or \$250,000 over the life of the lease should be examined during the review.

A lease entered into before grant approval (a pre-existing lease) may qualify for capital assistance later if recipients conduct a cost comparison effective as of the date the lease was entered into and certify the cost-effectiveness to FTA.

If a grantee is unable to perform the required cost-effectiveness comparison, it may ask FTA to approve an alternative form of cost-effectiveness evaluation. This documentation also should be kept on file.

If a grantee terminates a lease or modifies the terms of the lease before the end of the period used in the evaluation, the grantee must reimburse any federal funds paid for the portion of the lease term remaining and/or pay any penalties due.

REASON FOR THE QUESTION

[49 CFR 639](#)

SOURCES OF INFORMATION

The Annual Certifications and Assurances include the grantee's assurance that obtaining the capital asset by lease is more cost effective than purchase or construction. The regional office should have copies of any correspondence documenting FTA approval of an alternative cost-effectiveness evaluation. The written cost comparison or approved alternative evaluation should be available in the grantee's files.

DETERMINATION

The grantee is not deficient if it has used FTA capital funds to lease transit facilities or equipment and performed the required cost comparison. If the grantee did not perform the cost-effectiveness comparison, but obtained FTA approval for an alternative type of evaluation, it is not deficient. The grantee is deficient if it used FTA capital assistance to lease transit facilities or equipment costing \$100,000 or more per year or \$250,000 or more over the life of the lease and did not perform and/or does not have on file the cost comparison or other approved documentation. The grantee is not deficient if a lease was terminated early or modified, but the FTA share was reimbursed or the grantee paid any penalties. If the grantee used FTA funds to pay any penalties or if a lease was terminated or modified and the FTA share was not reimbursed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Consult the regional office for deficiencies related to capital leasing. The grantee may be required to conduct a cost-effectiveness comparison if one is not on file, but FTA will determine if corrective action is possible or if federal participation in the project must be withdrawn. If the grantee has terminated or modified a lease, FTA may require reimbursement of federal funds or payment of penalties.

7. *Does the grantee have a Project Management Plan for major capital projects? If yes, is the plan followed? Does the Plan include a Safety and Security Management Plan, if required?*
8. *How does the grantee ensure adequate technical oversight of other capital projects (those not monitored by Project Management Oversight (PMO) consultants or that do not exceed \$100 million) including inspection and acceptance of rolling stock?*

EXPLANATION

Grantees are required to have a formal Project Management Plan (PMP) for all major capital projects. The plan must provide for a detailed project management strategy to control the project budget, schedule, and quality. The plan must address change orders, document control, and materials testing policies and procedures.

A major capital project is defined as a project that involves the construction, extension, rehabilitation, or

modernization of a fixed guideway or New Starts project with a total project cost in excess of \$100 million; or the Administrator determines it to be a major capital project based on criteria in [49 CFR Part 633](#).

Effective August 1, 2007, all new major capital projects and fixed-guideway construction and extension projects that are in preliminary engineering or earlier phases must prepare and carry out a Safety and Security Management Plan (SSMP) as part of the PMP. The preparation and implementation of the SSMP is a condition of award. The grantee's SSMP must explain how the following activities will be performed:

- Prepare Policy Statement;
- Identify Safety and Security Interfaces;
- Establish Safety and Security Organization;
- Identify Safety and Security Activities by Project Phase;
- Ensure Construction Safety and Security; and
- Ensure Coordination with External Agencies.

In nearly all cases where a grantee has a major capital project, FTA will assign a Project Management Oversight (PMO) contractor to monitor the work. If a PMO contractor is assigned, the triennial review site visit may be scheduled concurrently with the PMO quarterly review meetings. Problems in project implementation typically are discussed at these meetings. The PMO contractor can provide the triennial review team with a thorough summary of the grantee's project management program. The triennial reviewer should contact the PMO project manager prior to the site visit to determine if there are any particular concerns. The triennial review team may find it unnecessary to spend a great deal of time reviewing the grantee's project management strategy if the PMO contractors are monitoring this function. Any major issues raised in the PMO's quarterly reports to the regional office should be addressed during the site visit.

Grantees with smaller capital projects, including rolling stock procurements, should have a mechanism for technical oversight of the project. Regular meetings between the project manager and contractor(s) should be held to review project status. Many grantees that do not have the technical expertise or internal resources to manage large projects hire an architectural/engineering (A/E) consultant to serve as project manager. The transit system's own maintenance and operations directors typically oversee the inspection and acceptance of rolling stock, sometimes with consultant support.

REASON FOR THE QUESTION

[49 USC Section 5327](#)

[49 CFR 633](#)

[FTA C 5010.1C](#), Ch. I, Sections 9.c and 13.a

[FTA C 5800.1](#)

SOURCES OF INFORMATION

If a PMO is assigned, quarterly reports should be on file in the regional office. For smaller projects, the grantee should report on its project management and technical oversight in the Milestone/Progress Reports. Ask the grantee during the site visit to describe its quality control procedures, including its procedures for acceptance and inspection of rolling stock. If the grantee contracts for such services, review the scope of services of these contracts along with progress reports from the contractors. Additional items related to rolling stock purchases will be addressed in more detail during the Buy America portion of the review.

DETERMINATION

The grantee is not deficient if the required oversight procedures are in place and such procedures are followed. The grantee is deficient if there is evidence that rolling stock procurements or other capital projects have proceeded without proper quality control responsibilities. The grantee also is deficient in cases where procedures are in place but have not been properly implemented or if PMO contractors have identified problems with major projects that the grantee has not resolved.

SUGGESTED CORRECTIVE ACTION

If the grantee has not followed the required project management procedures, the corrective action is to implement such procedures for existing or future procurements and construction activities.

9. *How does the grantee monitor subrecipients, third-party contractors, and/or lessees to ensure compliance with FTA requirements?*

EXPLANATION

Grantees can be involved in a variety of relationships with other parties where FTA funds, equipment, or facilities are used in providing public transit. In any circumstances where other entities play a role, the grantee is responsible for ensuring compliance with FTA requirements. These entities can include other governmental agencies, consultants, contractors, subcontractors, and lessees working under approved third-party contracts or interagency agreements. The grantee must have the capacity to fulfill its oversight responsibilities. There must be staff with knowledge of FTA requirements and mechanisms in place for monitoring. The mechanism can be as simple as a letter of agreement, contract, or lease supplemented by periodic meetings, inspections, or required reports. The mechanism may also be as complex as an audit of third-party contracts conducted by the grantee or an independent party. For example, a grantee may

conduct an audit of overhead rates for engineering and consulting firms, or conduct audits of payments made to third-party contractors to ensure that these are in compliance with FTA regulations, as well as the terms of the agreement.

Many of these FTA requirements are addressed in other areas of the triennial review, but for this area, you should establish that the grantee staff has sufficient knowledge of FTA compliance requirements. For example, if the grantee leases FTA funded vehicles to a subrecipient, the grantee must inspect the vehicles and the vehicle records periodically in order to ensure compliance with maintenance, charter, and school bus requirements. The grantee should have procedures in place to ensure that all FTA funded property is used in transit service. Transit service must be provided in compliance with ADA regulations. Procedures should be in place to collect National Transit Database information and provide for drug and alcohol testing, if required. The grantee should demonstrate an awareness of these responsibilities in any case where FTA funds are passed through to a contractor or another operating entity.

REASON FOR THE QUESTION

49 CFR 18.36

FTA C 5010.1C, Ch. I, Section 3; Ch. III, Section 7

SOURCES OF INFORMATION

Discuss this issue with the grantee at the site visit. Large grantees may have written procedures for oversight of subrecipients, contractors, or lessees. Smaller grantees may have informal oversight mechanisms, such as periodic meetings.

DETERMINATION

If the grantee is adequately staffed and demonstrates an awareness of its responsibilities, and oversight occurs, it is not deficient. Corrective action may be required if the grantee is not staffed to ensure compliance by subrecipients or contractors. A finding in this area typically will result in conjunction with a finding in another area of the triennial review. For example, a grantee may be found deficient in maintenance if FTA funded equipment is leased to a service provider and the grantee takes no responsibility for ensuring that preventive maintenance occurs as required.

SUGGESTED CORRECTIVE ACTION

The grantee must develop procedures and assign staff to monitor other entities with responsibility for meeting FTA requirements.

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 5010.1C 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 5010.1C](#), "Grant Management Guidelines."
4. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."
5. [FTA Circular 9300.1A](#), "Capital Program: Grant 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 and personal property acquired with FTA funds for purposes other than the provision of transit service. Such use must be compatible with the approved purposes of the project and not interfere with intended 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 funded real property that is not needed to support the grantee's mass transit program is excess real property (see Question 2). Regardless of whether such property is being used incidentally, the grantee must prepare an excess real property inventory and utilization plan. An example of such a situation would include an FTA funded maintenance facility that exceeds the grantee's transit capacity, but is being used on an "incidental basis" by another agency or city department. In such cases, the portion of the facility that is excess (i.e., not needed for transit) must be included in an excess real property inventory and utilization plan.

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.

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 must be applied to transit expenses.

REASON FOR THE QUESTION

[49 CFR 18.31](#)

[FTA C 5010.1C](#), Ch. II, Section 2.b

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 purposes specified in approved grants, 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 5010.1C](#) 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. An example of such a situation would include an FTA funded maintenance facility that exceeds the grantee's transit capacity, but is being used on an "incidental basis" by another agency or city department. In such cases, the portion of the facility that is excess (i.e., not needed for transit) must be included in an excess real property inventory and utilization plan.

REASON FOR THE QUESTION

[49 CFR 18.31](#)

[FTA C 5010.1C](#), Ch. II, Section 2.c(1)

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 5010.1C](#), 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 5010.1C](#) 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.

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.

If the grantee maintains a written record system, all the above information should be 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.

REASON FOR THE QUESTION

[49 CFR 18.32](#)

[FTA C 5010.1C](#), Ch. II, Section 3.e(2)

SOURCES OF INFORMATION

The information will be found in the grantee's written or computerized property records.

DETERMINATION

If the grantee's records are missing some of the required information, or if some information is not current, it is deficient.

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 Circular 5010.1C](#) 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 5010.1C](#), Ch. II, Sections 3.d and 3.e(3)-(4)

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 real property or equipment*

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 real property or equipment 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 Circular 5010.1C](#), 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, the proceeds from the sale of real property can be put back into the real property line item. In all cases of real property disposal, the grantee should use competitive sales procedures to ensure the highest possible return on the property.

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 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 straight line depreciated value, regardless of the value or sale amount. The grantee must be able to document how fair market value was determined for all equipment removed from service.

FTA must be notified of any equipment removed prematurely from service, and FTA will establish or approve the item's useful life for purposes of calculating the 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 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.

| Vehicle | 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 | 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 |

REASON FOR THE QUESTION

49 USC 5334 (g) (4), as amended by SAFETEA-LU. 49 CFR 18.31-18.32
 FTA C 5010.1C, Ch. I, Sections 8.c and 8.d; Ch. II, Section 3.f
 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 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 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 what is a 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, Section 9.a(5)-(6)
[FTA C 9300.1A](#), Ch. III, Section 8.a(5)

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 9300.1A](#), Ch. IV, Section 6.d(4)

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.

5. MAINTENANCE

BASIC REQUIREMENT

The grantee must keep federally funded equipment and facilities in good operating order.

AREAS TO BE EXAMINED

1. **Maintenance Plans and Procedures**
 - a. Written procedures for maintaining vehicles, equipment, and facilities
 - b. Maintenance goals and objectives
 - c. Provisions for current fleet and facilities
 - d. Adherence to manufacturers' minimum requirements for vehicles under warranty
2. **Maintenance Procedures for Wheelchair Lifts and Other Accessibility Equipment**
3. **Vehicle/Facility Inspection**
 - a. Review of maintenance records
 - b. Assessment of the general condition of vehicles, facilities, and equipment
4. **Warranty Tracking System**
5. **Maintenance Standards for Vehicles and Equipment Leased to Providers or Maintained Under Contract**

Organization of the Review Area – The review of the maintenance area is divided into three distinct activities:

- 1) Discussions with the grantee based on the maintenance questions,
- 2) Review of preventive maintenance records for a selected sample of vehicles, facilities and equipment, and
- 3) Physical inspection of the grantee's vehicles and facilities.

Many of the questions have two components. The reviewer should ask the questions about the grantee's maintenance plan and procedures. The reviewer also should examine the grantee's vehicles, facilities, and maintenance records to see that the grantee has implemented its plan.

Selection of Vehicle Maintenance Records for Review During the Site Visit – The reviewer should ask the grantee to prepare a list of federally funded vehicles by mode and

select a sample of these for examination during the site visit.

For grantees that use a combination of Directly Operated (DO) and Purchased Transportation (PT) for motorbus and demand response service, the DO and PT portions should be treated as separate modes. Modes are classified according to NTD definitions as follows:

| <u>Non-Rail Modes</u> | <u>Rail Modes</u> |
|-----------------------|-------------------|
| Motorbus - DO | Light Rail |
| Motorbus - PT | Heavy Rail |
| Demand Response - DO | Commuter Rail |
| Demand Response - PT | Cable Car |
| Trolleybus | Automated |
| Ferryboat | Guideway |
| Vanpool | Monorail |
| Jitney | Inclined Plane |
| Público | |
| Aerial Tramway | |

The reviewer should select a minimum of three vehicles up to a total of one percent of the FTA funded fleet for each mode. For grantees that operate several modes, the reviewer should consult with the regional office in selecting the mode samples. To the extent practical, the reviewer should distribute the sample of vehicles selected by age and subfleet in each mode.

The following example illustrates this process for a grantee that operates the following:

| <u>Mode</u> | <u>Fleet Size</u> | <u>Sample Size</u> |
|----------------|-------------------|--------------------|
| Motorbus-DO | 400 | 4 vehicles |
| Motorbus-PT | 250 | 3 vehicles |
| Paratransit-PT | 120 | 3 vehicles |
| Light Rail | 55 | 3 vehicles |

In this example, the reviewer will examine the preventive maintenance records for 13 vehicles distributed across the modes as shown above. The reviewer should keep each sample group separate by mode.

If the grantee has more than one maintenance facility, the reviewer should distribute the sample of vehicles over each facility inspected during the review. For example, if a sample includes eight buses and two facilities are visited, the reviewer should check records for four vehicles at each location. Vehicles assigned to facilities that are not inspected as part of the triennial review need not be included in the sample.

Selection of Facility and Equipment Maintenance Records for Review During the Site Visit – The reviewer should request a copy of the latest inventory of FTA funded facilities and equipment from the grantee. If the grantee operates a railroad, the grantee should be asked to identify those FTA funded items that are not under the control of the FRA. The reviewer should select a sample of three facility and equipment items each to examine during the site visit.

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws.
2. [FTA Circular 5010.1C](#), “Grant Management Guidelines.”
3. [FTA Circular 9030.1C](#), “Urbanized Area Formula Program: Grant Application Instructions.”

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a current written vehicle maintenance plan for its federally funded rolling stock?*
2. *Does the grantee's vehicle maintenance plan include maintenance goals and objectives?*
3. *Are the grantee's written maintenance plan and preventive maintenance checklists consistent with the grantee's current operating fleet?*
4. *Are the grantee's maintenance plan and checklists consistent with manufacturers' minimum maintenance requirements for vehicles under warranty? How does the grantee track the manufacturer's recommendations and updates on requirements?*

EXPLANATION

A transit system may have a diverse mix of vehicles, machinery/equipment and facilities. Properly maintaining all elements is essential to protect the federal investment. These questions deal with vehicle maintenance. Facility and equipment maintenance is addressed beginning with Question 10.

An effective vehicle maintenance program incorporates actions to maintain each vehicle type and model on a specific cycle. These actions should be designed to ensure the proper care and maximum vehicle longevity. The vehicle maintenance plan should include the goals and objectives of the maintenance program, such as extending vehicle life, reducing the frequency of road calls, and tracking maintenance costs compared to total operating costs. The maintenance program should define how such goals and objectives are achieved. The maintenance plan needs to be updated as often as the mix of rolling stock, equipment/machinery, and facilities change to account for new technology and/or new manufacturer's recommended maintenance intervals and programs.

For vehicles under warranty, the grantee typically must perform a series of preventive maintenance actions if the warranty is to remain valid. The reviewer should compare the interval for the change of engine oil and filters in the grantee's maintenance plan and checklists with the maximum interval specified in the engine manufacturer's maintenance manual. If the grantee

either does not perform these required maintenance routines, or performs them at greater intervals than the manufacturer's maximum intervals, the grantee runs the risk of invalidating the vehicle's warranty provisions.

FTA requires that rail operators purchasing vehicles with federal funds have a fleet management plan that has been reviewed by FTA. Recently, FTA has extended this requirement to "new start" bus operations. These plans make brief mention of maintenance procedures. Normally, rail operators rely on more extensive written maintenance policies and procedures than those included in the fleet management plan.

When performing a review of a commuter rail operation, the reviewer should determine whether the grantee is complying with the requirements of the Federal Railroad Administration (FRA) and examine the work plans for the FRA inspections.

When performing a review of a light rail or rapid transit system, the reviewer should determine whether the grantee has a written maintenance plan for the rail vehicles. Check that the plan prescribes a scheduled series of maintenance actions to be performed at predetermined intervals.

When performing a review of an FTA funded ferry operation, the reviewer should determine whether the grantee has a written maintenance plan for the vessels and machinery and if the plan prescribes a preventive maintenance program. Ask when the U.S. Coast Guard last inspected the vessels for seaworthiness and request a copy of that inspection report.

REASON FOR THE QUESTION

[FTA C 5010.1C](#), Ch. II, Section 3.e(5)

[FTA C 9030.1C](#), Ch. V, Section 5.e

SOURCES OF INFORMATION

Examine the grantee's vehicle maintenance plan and/or program, the maintenance checklists, and the recommended maintenance procedures and updates of the manufacturer.

DETERMINATION

If the grantee has a written vehicle maintenance plan and the plan addresses the current mix of rolling stock, the grantee is not deficient. At a minimum, the plan must define maintenance goals and objectives and preventive maintenance inspections. If the grantee does not have a plan, the grantee is deficient. Note: Findings related to facility maintenance plans and practices are addressed beginning with Question 10.

If the grantee's plan omits some requirements (e.g., goals and objectives) or does not include the latest additions to the fleet, the grantee is deficient.

For vehicles under warranty, if the maintenance interval for oil changes is equal to or less than the manufacturer's maximum interval defined for "urban transit service," the grantee is not deficient. If the interval is longer, then the grantee is deficient. Some operators of express service in the warmer areas of the country have relied on oil analysis to extend the interval between oil changes beyond the engine manufacturer's recommended interval. This is acceptable provided the grantee has a letter from the manufacturer of the vehicles' engines stating that this practice will not void the engine warranty.

SUGGESTED CORRECTIVE ACTION

The grantee must submit either a new or revised maintenance plan.

5. *What is the grantee's schedule for vehicle preventive maintenance (PM) inspections: a) in its maintenance plan? b) in practice?*
6. *Are vehicle PM inspections completed on time?*

EXPLANATION

The actual maintenance practices should be consistent with the written plan. If the grantee performs preventive maintenance (PM) inspections as planned, the grantee's entire maintenance program probably is effective. A sound preventive maintenance program will reduce the incidence of unscheduled repairs and extend the vehicles' useful life. If preventive maintenance inspections are not being scheduled according to the plan, or not being performed as scheduled, it is probable that other aspects of the maintenance program are lacking as well. If the grantee is not performing preventive maintenance inspections as scheduled, the grantee is jeopardizing the validity of its vehicle warranties and putting FTA's investment at risk.

REASON FOR THE QUESTION

FTA C 5010.1C, Ch. II, Section 3.e(5)
FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION

The maintenance plan should define the interval (miles/hours) between preventive maintenance inspections. The reviewer should determine what this interval is for each mode operated by the grantee. In some cases, intervals also may vary by subfleet. Examine preventive maintenance records to determine whether the grantee is performing inspections according to its maintenance plan.

The reviewer should check preventive maintenance inspection intervals by reviewing management reports used by the grantee for monitoring preventive maintenance inspections and by reviewing a selected sample of FTA funded vehicles, which are still within their useful life cycle, for each mode operated by the grantee and/or its contractor(s).

For each vehicle chosen, examine the preventive maintenance history for the preceding 12 months. Note the date when each inspection was accomplished and record the vehicle mileage (or hours) at the time of each inspection. Inspections that are no later than 10 percent of schedule are considered on time. For example, a scheduled 6,000-mile inspection would be considered "on time" if it was performed any time before 6,600 miles. However, the grantee may use a different definition of an "on time" inspection. In such cases, the reviewer may use the grantee's definition if it is deemed appropriate.

Most grantees schedule PM inspections based on relative miles (e.g., 6,000 miles since the last inspection). Others may choose absolute scheduling, based on the total lifetime miles. Grantees may choose whichever method they prefer. The reviewer will focus on whether the inspections are conducted when due. Also, note that some grantees have separate schedules for the "A" inspections and subsequent inspections. The 6,000 mile inspections may be completed on time but a 36,000 or 48,000 mile inspection may not be concurrent with the 6,000 mile inspection and may not be completed on time. When reviewing PM records check to see what the procedures are for conducting inspections and ensure that all schedules are being met.

The reviewer should note that maintenance plans for commuter rail systems should follow Federal Railroad Administration (FRA) guidelines for locomotives and rail cars. Similarly, maintenance of ferryboats should follow U.S. Coast Guard (USCG) requirements.

DETERMINATION

The determination of compliance is based on whether the inspections are performed on time. If 80 percent or more of the inspections for any mode sampled were performed on time (no more than 20 percent late), the grantee is not deficient. If less than 80 percent of the inspections for any mode occurred on time (more than 20 percent late), the grantee is deficient. Grantees are not penalized for early inspections, only late ones. If inspection of the maintenance records reveals that a subfleet or particular vehicle is being neglected or no preventive maintenance is being performed, it should be noted as a finding.

SUGGESTED CORRECTIVE ACTION

Fleet deterioration takes a long time to occur and an equally long time to correct after the deterioration has

taken place. Both take a toll on the grantee's resources and put FTA's investment at risk. The grantee should be directed to address the occurrence of late PMs and develop a remediation plan that will satisfy itself and FTA that the capital investment is not being jeopardized. The grantee should implement this program immediately. The grantee can be asked to report on its results each month for the next three months to demonstrate it has conducted at least 80 percent of its PM inspections on time.

7. *Are maintenance procedures for wheelchair lifts and other accessibility equipment included in the grantee's maintenance plan and preventive maintenance checklists?*
8. *Do maintenance records indicate regular and periodic maintenance checks for lifts? For other accessibility features (e.g., kneelers, ramps, public address systems, voice announcement systems, station elevators, etc.)?*
9. *Do maintenance records indicate that lifts and accessibility features are repaired promptly as required by the DOT ADA regulations?*

EXPLANATION

The DOT ADA regulations require all vehicle and facility accessibility features, such as the wheelchair lift, ramps, securement devices, signs, and communication equipment for persons with disabilities, as well as escalators and elevators in the grantee's facilities, be maintained and operational. The accessibility features must be repaired within the time frames specified in the regulations if they are damaged or out of order. When the equipment is not working, the grantee must take reasonable steps to accommodate persons with disabilities who would otherwise be using it. The ADA maintenance elements may be incorporated into the regular maintenance plan or addressed separately with specific checklists. At a minimum, the grantee must show that accessibility features are checked regularly for proper operation and receive periodic maintenance.

REASON FOR THE QUESTION

[49 CFR 37.161-163](#)

SOURCES OF INFORMATION

Review the grantee's maintenance plan and the maintenance checklists. When sampling vehicle maintenance records, ensure that accessibility features are maintained regularly and repaired promptly if out of order. If you are in the maintenance facility when

operators are beginning a shift, observe if they cycle the lifts as required. The person responsible for the grantee's maintenance activities should be interviewed.

DETERMINATION

The grantee is not deficient if it includes accessibility equipment as part of the regular preventive maintenance program. The grantee is not deficient if it has a regular preventive maintenance program for off-vehicle accessibility features (e.g., elevators) in its facility maintenance program. If the grantee has not established a system of regular and periodic maintenance checks of lifts and other accessibility equipment, it is deficient. If records show that the grantee either does not follow the system or does not maintain the accessibility equipment properly, then the grantee is deficient. If the grantee appears to disregard lift failures, and operates vehicles with inoperable lifts when it shouldn't, it is deficient. The reviewer should cross-reference this finding in the ADA section.

SUGGESTED CORRECTIVE ACTION

If the grantee has not shown that accessibility features are maintained regularly and properly, a preventive maintenance program for those items must be developed, implemented, and submitted to FTA. A grantee failing to follow its system of lift/ramp maintenance checks must revise and/or fully implement the system. Procedures to correct a lift failure on a vehicle in-service must be implemented promptly and submitted to FTA.

10. *Does the grantee have a current written maintenance plan for its federally funded facilities and equipment?*
11. *Does the grantee's facility maintenance plan include a program of inspections and preventive maintenance activities to ensure that assets are protected from deterioration and reach their maximum useful life?*
12. *Does the facility maintenance plan prescribe a record keeping system so that the maintenance history of facilities and equipment is permanently recorded?*

EXPLANATION

Public transit requires a considerable investment in buildings, equipment, and machinery. As with the vehicle maintenance, the proper maintenance of facilities, machinery, and equipment is the key to

protecting the federal investment and prolonging the useful life of the asset.

The reviewer should determine if the grantee has an effective maintenance plan that ensures that FTA's investment in facilities and equipment is protected adequately. The maintenance plan should be written and include an organization and assignment of responsibility for facility and equipment maintenance, a series of inspections and routine maintenance actions designed to ensure the proper care and maximum useful service life of facilities and equipment, and a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment.

In the case of rail systems, FTA's investment often involves the construction of passenger stations, right-of-way, signals, and other related facilities and equipment. The Federal Railway Administration (FRA) regulates commuter rail systems and has detailed maintenance requirements for rolling stock, signals, and rights-of-way that the FRA enforces with a frequent inspection program. However, proper maintenance is needed by grantees for those components of the rail system not subject to FRA maintenance requirements, such as passenger stations, maintenance facilities, buildings, and equipment. Also, some rail systems are not subject to FRA standards and inspections at all. Proper maintenance of all FTA funded facilities and equipment is necessary to protect the federal investment and ensure that maximum service longevity is achieved.

REASON FOR THE QUESTION

[FTA C 5010.1C](#), Ch. II, Section 3.e(5)
[FTA C 9030.1C](#), Ch. V, Section 5.e

SOURCES OF INFORMATION

Examine the grantee's facility and equipment maintenance plan and/or program, the maintenance checklists, and preventive maintenance program.

DETERMINATION

If the grantee has a written facility and equipment maintenance plan and the plan addresses the current mix of FTA funded assets, the grantee is not deficient. If the grantee does not have a plan, the grantee is deficient. At a minimum, the plan should identify the facilities and equipment that are to be maintained, define an organization and assign responsibility for on-going maintenance, and specify a series of maintenance and inspection activities to be performed at appropriate intervals. The plan should prescribe a record-keeping system that maintains a permanent history of maintenance and inspection activity for each building, equipment and/or system. If these elements are not included in the grantee's plan, the grantee is deficient. If the plan is out-of-date, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must develop and submit a new or revised facility/equipment maintenance plan.

13. *What is the grantee's schedule for facility and equipment preventive maintenance (PM) inspections: a) in its maintenance plan? b) in practice?*
14. *Does a spot check of the grantee's facility and equipment maintenance records indicate that the grantee is complying with its maintenance plan?*
15. *Are facility and equipment PM inspections completed on time?*

EXPLANATION

If preventive maintenance inspections of facilities or equipment are not being scheduled as planned, or not being carried out as scheduled, it is probable that other aspects of the facility and maintenance program are lacking as well, and the grantee is putting FTA's investment at risk.

REASON FOR THE QUESTION

[FTA C 5010.1C](#), Ch. II, Section 3.e(5)
[FTA C 9030.1C](#), Ch. V, Section 5.e

SOURCES OF INFORMATION

The facility/equipment maintenance plan should identify specific items, i.e., buildings, elevators, escalators, parking lots, electric distribution and control equipment, plumbing systems, overhead doors, vehicle maintenance lifts, vehicle washers and wash water recycling systems, heating and/or air conditioning units, power substations, etc. The facility/equipment maintenance plan should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Maintenance intervals might be measured in terms of time (daily, monthly, annually), or in terms of usage (hours of use).

The reviewer should check preventive maintenance inspection intervals by reviewing a sample of facility and equipment maintenance records or management reports used by the grantee for monitoring preventive maintenance inspections. For each item in the sample, examine the equipment/building maintenance history for the preceding 12 months. Note the date when each inspection was accomplished and record the interval from the previous inspection. Compare the interval with the grantee's definition of an "on-time" inspection to determine if the inspection was in accordance with the grantee's facility and equipment maintenance plan.

DETERMINATION

The determination of compliance is based on whether the inspections are performed on time. If 80 percent or more of the inspections sampled were performed on time (no more than 20 percent late), the grantee is not deficient. If less than 80 percent of the inspections occurred on time (more than 20 percent late), the grantee is deficient. Grantees are not penalized for early inspections, only late ones.

SUGGESTED CORRECTIVE ACTION

The grantee should be directed to address the occurrence of late PMs and develop a remediation plan that will satisfy itself and FTA that the capital investment is not being jeopardized. The grantee should implement a program immediately. The grantee can be asked to report on its results each month for three months to demonstrate it has conducted at least 80 percent of its preventive maintenance on time for this period.

16. *Does the general condition of the revenue vehicles, support vehicles, facilities, and equipment show that the grantee is maintaining its federally funded vehicles, facilities, and equipment adequately?*

EXPLANATION

Well-maintained and orderly facilities are good signs of a well-managed and efficient maintenance program. If parts are strewn around, floors are covered with grease and oil, lights are out, facilities and vehicles are dirty, and the entire area in a general state of disrepair, the reviewer has good reason to surmise that the maintenance program is not receiving sufficient attention.

REASON FOR THE QUESTION

49 USC 5307(d)(1)(C)

FTA C 5010.1C, Ch. II, Section 3.e(5)

FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION

During the review, perform a general walk-around inspection of the facility. Ask the grantee to provide a knowledgeable person to accompany the reviewer to answer questions about maintenance of the vehicles and facilities. The grantee's representative should explain the purpose of each facility inspected, describe the flow of work, and explain what type of work is carried out in each location.

During the inspection, the reviewer should look for apparently inoperable or damaged vehicles and equipment. Pay particular attention to vehicles that appear to be permanently parked and are being cannibalized for parts. Question the grantee's representative about the cause of the inoperative

vehicles and what plans the grantee has to return them to full operational capability. The grantee is required to notify FTA if a vehicle is removed from transit service prior to the end of its useful life. Adjustments in useful life also need to be made for vehicles returned to service after an extended period of time. This is a Satisfactory Continuing Control issue, but will be observed during the visit to the maintenance facilities.

Look for any old and obviously unused equipment such as engines and transmissions that are lying about and deteriorating. Make note of the general condition of the buildings, parking areas, fences, work areas, and pavements. Ask the grantee to explain anything that seems inconsistent with a judgment that the facility is well managed and well maintained.

DETERMINATION

The inspection should give the reviewer a sense of the complete maintenance program and should focus the reviewer on the general condition of the grantee's facilities and equipment.

If the grantee's facilities, vehicles, and equipment generally are well maintained, and there is no evidence of vehicles and equipment being abandoned and allowed to deteriorate, then the grantee is not deficient. If the situation is other than this, the grantee is deficient. If the grantee has one or more vehicles that are within FTA's definition of useful life and appear to be permanently parked in an inoperable condition, then the grantee is deficient. If the grantee has retired these vehicles early, and not notified FTA, this is a deficiency in Satisfactory Continuing Control.

SUGGESTED CORRECTIVE ACTION

The grantee will need to submit a report to FTA acknowledging the observations made by the review team and a providing a specific plan to bring the condition of the facilities, vehicles, and equipment back to an acceptable level of maintenance.

17. *Is any equipment under warranty? If yes, what is the grantee's system for recovering warranty claims? Are claims pursued satisfactorily?*

EXPLANATION

If the grantee has equipment under warranty, FTA requires that the grantee have a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the grantee and FTA.

REASON FOR THE QUESTION

FTA C 5010.1C, Ch. II, Section 3.e(5)

SOURCES OF INFORMATION

Identify if there are any vehicles or equipment currently under warranty and which they are. Ask the grantee to explain how the preventive maintenance program meets or exceeds the manufacturer's recommended program.

Ask the grantee for a copy of its Warranty Recovery Program, or, if the program is not in writing, to describe the warranty recovery system. There should be clear procedures to identify warranty repairs, record the warranty claim, submit the claim to the manufacturer, and follow-up on unpaid claims. Review the records and files for the Warranty Recovery Program to learn how timely and aggressive the grantee has been in pursuing and collecting warranty claims. Compare the records of claims submitted with claims settled.

DETERMINATION

If the grantee has no vehicles or equipment under warranty, these questions are not applicable. The grantee is not deficient if there is a warranty recovery program and the records indicate that claims are pursued satisfactorily. If the grantee does not have a warranty recovery system in place, or if the records of the program are not available, the grantee is deficient. If the grantee has a written program but is not pursuing warranty claims diligently, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit to FTA a written system for managing warranty claims and a written assurance that the system will be followed in the future.

18. *Does the grantee have FTA funded vehicles that are either leased to service providers or maintained under contract by other than the grantee's employees? If yes, does the grantee have written maintenance standards for the contractor's maintenance of FTA funded vehicles? How does the grantee ensure that contractors follow the required maintenance standards?*

EXPLANATION

Federally funded vehicles and equipment need to be maintained regardless of who operates and maintains them. If the grantee uses a third-party contractor to operate all or part of its service, and the contractor is responsible for vehicle maintenance, the contractor "stands in the shoes" of the grantee as far as FTA maintenance requirements are concerned. The reviewer must determine if the grantee has required the contractor to follow acceptable maintenance standards.

When a contractor is responsible for maintaining the grantee's vehicles, the grantee should require a maintenance plan, maintenance standards, or maintenance performance indicators in the contract. The grantee may have its own maintenance plan for the vehicles and equipment that the contractor is required to follow. These plans should be requested of the grantee and examined.

The grantee must have an effective mechanism to monitor the contractor's maintenance activities. An acceptable program would consist of periodic written reports on maintenance activities submitted by the contractor to the grantee, supplemented by periodic inspections of the contractor's facility and FTA funded vehicles by the grantee's representative. The reviewer should probe how often inspections take place and determine who is responsible for reviewing and monitoring the contractor's written reports. Determine whether the grantee has assigned an employee with a maintenance background to assess the contractor's performance and judge how the contractor deals with maintenance issues.

If there is a question regarding the effectiveness of the grantee's contract oversight program or if the contractor is responsible for maintaining several FTA funded vehicles, the reviewer should include the contractor's facilities as part of the field inspections and examine maintenance records for a sample of vehicles. The previous questions regarding the inspection of a grantee's facilities would be appropriate for a contractor maintenance operation.

REASON FOR THE QUESTION

FTA C 5010.1C, Ch. II, Section 3.e(5)
FTA C 9030.1C, Ch. V, Section 5.e
FTA Master Agreement, Section 19.c

SOURCES OF INFORMATION

The grantee should identify any federally funded vehicles and/or facilities leased to providers or maintained under contract. In addition, the most recent NTD report describes contractual relationships and identifies services that are operated by purchased service. When the grantee identifies a service that is operated by a contractor, the reviewer should determine if the contractor is responsible for the maintenance of the vehicles and if federally funded vehicles and/or facilities are involved.

Contracts for service should include maintenance-related requirements. Often the maintenance plan is found either in the Request for Proposals or in the contractor's proposal. This situation is acceptable if there is contract language making the RFP or the proposal part of the contract. Consider checking the maintenance records for several randomly selected vehicles of the contractor-maintained fleet.

DETERMINATION

If a grantee requires a maintenance plan and/or has maintenance requirements or standards in the contract, and there is evidence of proper oversight, the grantee is not deficient. If maintenance standards or a maintenance plan are not required specifically, the determination must be based on performance. For example, a contractor might have and be following its own maintenance plan, though it is not contractually required. If a check of vehicle records shows that preventive maintenance inspections are being carried out as scheduled, then the grantee is not deficient. If neither the contract nor the contractor has a written

maintenance plan and maintenance is being performed haphazardly, then the grantee is deficient. Similarly, if the grantee does not oversee the contractor's maintenance activities through periodic reports and inspections of facilities and vehicles, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should amend the contract to include a maintenance plan and maintenance standards compatible with FTA requirements. The grantee must develop and report to FTA on how it will oversee the contractor's maintenance of FTA funded vehicles.

6. PROCUREMENT

BASIC REQUIREMENT

FTA grantees will use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and that the procedures conform to applicable federal law including [49 CFR Part 18](#), specifically [Section 18.36](#) and [FTA Circular 4220.1E](#), "Third Party Contracting Requirements." Grantees will maintain a contract administration system that ensures that contractors perform in accordance with terms, conditions, and specifications of their contracts or purchase orders.

AREAS TO BE EXAMINED

1. Certification

- a. Certification of procurement system by all grantees
- b. Submission of an assurance by states to FTA that they will include in contracts any clauses required by federal statutes and Executive Orders and their implementing regulations
- c. Inclusion of these certifications in the Annual List of Certifications and Assurances

2. Procurement Standards

- a. Procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law
- b. Contract administration that ensures contractor performance in accordance with terms, conditions, and specifications of their contracts or purchase orders
- c. Written code of standards of conduct
- d. Review procedures that avoid purchase of unnecessary or duplicative items
- e. Written record of procurement history
- f. Written procedures to handle and resolve protests
- g. Written procurement selection procedures
- h. Where possible, the use of intergovernmental agreements, federal excess and surplus property, and value engineering

- i. No contracts for rolling stock and replacement parts exceeding five years inclusive of options
- j. Cost or price analysis for every procurement action

3. Competition

- a. Full and open competition for all procurements
- b. No in-State or local geographical preferences
- c. Justification for sole source and single bid awards
- d. No "brand name" only specifications

4. Sole Source Procurements

- a. May be used only when award is infeasible under conventional procurement methods
- b. Cost analysis required

5. Bonding

- a. For all construction or facility improvement contracts exceeding \$100,000

6. Options

- a. Must be evaluated during the initial competition
- b. Must be exercised in accordance with terms and conditions in the original contract
- c. Option price must be better than the market price or the more advantageous offer

7. Advance Payments and Progress Payments

- a. No participation by FTA in funding advance payments made to a contractor without prior FTA approval
- b. Progress payments based on costs incurred
- c. Grantee must obtain title to property or take alternative measures to protect its interests

8. Liquidated Damages

- a. Reasonable expectation of damages to the grantee from late delivery or performance
- b. Rate must be specified in the solicitation and eventual contract

9. **Bus Testing**

- a. Certification for Interim Bus Testing for any new model bus or any bus model with a major change in configuration or components acquired with funds obligated after September 30, 1989 (Part of the Annual List of Certifications and Assurances)
- b. A model of a bus has been tested
- c. The grantee has received a copy of the test report on the bus model

Applicability of Requirements – For grantees in urbanized areas with populations of 200,000 or more, procurements funded through the grantee’s operating budget (e.g., legal services) may no longer be subject to [FTA C 4220.1E](#) as a result of the elimination of operating assistance to these grantees. However, if these grantees receive capital funding for preventive maintenance and/or ADA operating costs, then contracts funded with these monies (e.g., maintenance contracts and/or contracts with ADA paratransit service providers) are subject to [FTA C 4220.1E](#). Grantees can apply for preventive maintenance capital funds in one of two ways. Grantees can submit an application that identifies specific maintenance contracts to be funded, in which case the requirements of [FTA C 4220.1E](#) apply only to those contracts identified in the grant. Grantees also can submit an application for preventive maintenance funds as a percentage of total maintenance costs, in which case the requirements of [FTA C 4220.1E](#) apply across the board to all maintenance contracts.

Grantees in urbanized areas with populations less than 200,000 that receive FTA operating assistance must adhere to the requirements of [FTA C 4220.1E](#) for procurements funded with these monies. That is, all procurements funded through the grantee’s operating budget (e.g., legal, audit, and/or management services) are subject to the requirements of [FTA C 4220.1E](#).

The reviewer needs to be aware of how the grantee is using FTA funds, facilities, and assets. As a general rule, where FTA funds are used in procurements for services or supplies, or where FTA funded facilities or assets are used in revenue contracts, [FTA C 4220.1E](#) applies. Furthermore, contracts funded from other FTA sources (i.e., CMAQ, Job Access, etc.) also are subject to [FTA C 4220.1E](#).

A grantee that is a state agency may follow its own procurement procedures, but at a minimum must comply with the following requirements:

- Provide full and open competition
- Comply with Buy America provisions
- Include all applicable FTA clauses
- Comply with the Brooks Act

- Prohibit geographic preferences
- Comply with five-year term limitation.

Regional transit authorities are not state agencies for the purposes of [FTA C 4220.1E](#).

Organization of the Review Area – The questions in this area are presented in three parts: A. Policies and Procedures, B. Third-Party Contracts, and C. Altoona Bus Testing. The review of the procurement area consists of two distinct activities: 1) discussions based on the procurement questions, and 2) examination of the procurement files. As such, many of the questions have two components. For example, the reviewer should ask the questions in Part A about the grantee’s policies and procedures and then examine the grantee’s procurement files to see that the grantee has implemented its policies and procedures. Although the reviewer’s focus in Part B should be on seeking the answers to these questions by examining third-party procurement files, the reviewer may ask these questions or conduct a general discussion of the issues related to these questions with the grantee’s staff.

Selection of Procurements for Review During the Site Visit – The reviewer should request that the grantee provide a list of FTA-assisted procurements carried out during the review period. In consultation with the Regional Office, the reviewer should select a sample of these for examination during the site visit. The sample should include up to three small purchases and three procurements that exceed the simplified acquisition threshold (currently set at \$100,000).

- *Small Purchases* – These include procurements that are more than \$2,500, but not more than \$100,000. These procurements must be awarded competitively and must include applicable FTA clauses (see Exhibit 6.2).
- *Procurements Over \$100,000* – When possible these should include a rolling stock purchase (i.e., rail cars, buses, paratransit vehicles, service vehicles), an operations/management services contract, a professional services contract, an architectural & engineering contract, a construction contract, and a materials and supplies contract. In the event that the grantee has not conducted a procurement of each type, the choice of procurement files is left to the reviewer’s discretion.

As part of the review of procurement files, the reviewer also will examine the applicable requirements for four other review areas: 7. Disadvantaged Business Enterprise, 8. Buy America, 9. Suspension/Debarment, and 10. Lobbying.

Note on the Best Practices Procurement Manual – The [Best Practices Procurement Manual](#) (BPPM) is a good resource for grantees to use in conducting FTA-

assisted procurements. However, it is only a guidance document and is not the source of any FTA requirements. As such, reviewers should NOT refer to the BPPM when describing FTA requirements. Grantees may be referred to the BPPM as a tool to guide them in their procurement process, but should be cautioned that relying solely on the BPPM does not ensure that FTA requirements will be met. FTA requirements are found in the following sources: U.S. Code and Public Laws, Code of Federal Regulations, FTA Circulars, Dear Colleague Letters, and the [Master Agreement](#).

Other FTA Resources – In addition to the BPPM, FTA also provides procurement assistance through its Third Party Contracting Helpline at <http://www.fta.dot.gov/ftahelpline/index.htm>

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ([SAFETEA-LU](#)).
2. [Transportation Equity Act for the 21st Century](#), Public Law No. 105-178.
3. [49 CFR Section 18.36](#), "Procurement."
4. [FTA Circular 4220.1E](#), "Third-Party Contracting Requirements."
5. [FTA Circular 5010.1C](#), "Grant Management Guidelines."
6. [FTA Circular 9030.1C](#), Urbanized Area Formula Program: Grant Application Instructions."

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a Procurement System Review during the past two fiscal years? If yes, when was the site visit? Is there a Procurement System Review scheduled for the current fiscal year?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts third-party Procurement System Reviews (PSRs) of selected grantees.

If a PSR site visit has been conducted within the past two fiscal years or if one is scheduled for the current fiscal year, (FYs 2006, 2007, and 2008), the triennial review will not review the procurement area at all.

REASON FOR THE QUESTION

49 CFR 18.36 (g)

SOURCES OF INFORMATION

The project oversight staff at the regional office will have information on PSR activities. Reports may be available at the regional office or from headquarters. Information should be available at the desk review.

DETERMINATION

If a PSR has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year, a review of the procurement area is not necessary and a finding of "Not Reviewed" (NR) should be made.

SUGGESTED CORRECTIVE ACTION

None

Part A: Policies and Procedures

2. *Does the grantee have procurement policies and procedures that conform to applicable federal laws?*

EXPLANATION

Grantees and subgrantees are required to use their own procurement policies and procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law. These policies and procedures must be followed when procuring materials and/or services using FTA funds.

REASON FOR THE QUESTION

49 CFR 18.36 (b)(1)
FTA C 4220.1E, Section 7.a

SOURCES OF INFORMATION

The site visit provides an opportunity to review the grantee's and/or subgrantee's procurement policies and procedures to ensure adherence to this requirement. The procurement policies and procedures are not required to be part of a single document. As such, the reviewer should request from the grantee all materials that may be relevant to the procurement area (e.g., municipal ordinances, operations manuals, employee handbooks, etc.). Procurement procedures may be included in general operating procedures. Reviewers should note the specific sections that address procurements.

DETERMINATION

If the grantee has procurement policies and/or procedures that conform to federal laws and regulations, the grantee is not deficient. If the grantee does not have procurement policies and/or procedures that conform to federal laws and regulations, the grantee is deficient. If the grantee has policies and procedures, but has not followed them for FTA-assisted procurements, the grantee is deficient. If the grantee's policies do not include required items, or have not been updated to reflect changes in regulations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide procurement policies and procedures that conform to federal laws and regulations. The grantee must cease immediately any practices that do not conform to applicable laws and regulations.

3. *Do the procedures provide for and/or address the following:*

- a. *Contract administration system?*

EXPLANATION

Grantees are required to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders.

REASON FOR THE QUESTION

49 CFR 18.36 (b)(2)
FTA C 4220.1E, Section 7.b

SOURCES OF INFORMATION

At the site visit, review procurement policies and procedures and performance monitoring systems to determine if there is an adequate contract administration system. Although a grantee may not have written procedures addressing contract administration specifically, overall procurement procedures combined with a grantee's business practices may ensure adequate contract administration. During the review of specific procurement files note any correspondence between the grantee and its contractors for evidence of on-going contract administration.

DETERMINATION

The grantee is not deficient if it can provide evidence of an adequate contract administration system. If contractors have not performed according to the terms and conditions of their contracts, the grantee may be deficient depending on the extent to which it has taken remedial action. If non-performance of contractors is a persistent problem, or the grantee cannot provide any evidence of a contract administration system, the grantee is deficient. Note: if contract administration appears to be an organizational problem (i.e., deficiencies in a contractor's performance with respect to maintenance, procurement, ADA, drug and alcohol, etc.), a deficiency in the technical area also may be warranted.

SUGGESTED CORRECTIVE ACTION

The grantee must provide documentation of an adequate contract administration system and/or evidence of remedial actions taken against contractors that have not performed in accordance with the terms and conditions of their contracts.

b. *Written standards of conduct?*

EXPLANATION

Grantees and subgrantees are required to maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by federal funds. The code of standards must preclude any employee, officer, or agent of the grantee or subgrantee from participating in the selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved (e.g., accepting or soliciting gratuities, favors, or anything of monetary value from contractors, vendors, etc.). To the extent permitted by state or local law or regulations, such standards must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's/subgrantee's officers, employees, or agents, or by contractors or their agents.

REASON FOR THE QUESTION

49 CFR 18.36 (b)(3)
FTA C 4220.1E, Section 7.c

SOURCES OF INFORMATION

At the site visit, review the procurement policies and procedures and any other documents relevant to the procurement area to determine if standards of conduct are addressed. Standards of conduct may be in a separate policy adopted by the grantee's policy board or by state statute or local ordinance.

DETERMINATION

If the grantee has a written policy addressing standards of conduct in the award and administration of a contract, the grantee is not deficient. If the grantee does not have a written policy that addresses standards of conduct in the award and administration of a contract, the grantee is deficient. If any required item of such a policy is missing, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide a written code of standards of conduct, which includes all the required elements.

c. *Review of procurement requests to avoid duplicative or unnecessary purchases?*

EXPLANATION

Grantees' and subgrantees' procedures must provide for a review of procurements to avoid purchasing unnecessary or duplicative items. During such a review, consideration should be given to consolidating or breaking out procurements or any other appropriate means to obtain a more economical purchase.

The reviewer should look for definite lines of responsibility in the grantee's procurement process. An adequate system usually restricts the authority to initiate purchases to relatively few individuals. Also, all purchase requests typically would be reviewed and/or approved by one person, designated as the purchasing agent for a given department in the case of large grantees, or for the entire organization, in the case of small grantees. The value of a purchase may determine the procedures that the grantee follows. The level of scrutiny would be expected to increase with the dollar value of the purchase.

REASON FOR THE QUESTION

49 CFR 18.36 (b)(4)
FTA C 4220.1E, Section 7.d

SOURCES OF INFORMATION

During the site visit, the grantee's or subgrantee's procurement procedures should be discussed and examined in order to determine if an adequate level of review is given each procurement. Procurement files may contain documentation of review by the grantee prior to solicitation. Examples of documentation could include purchase orders, requisitions, phone logs, and inter-office communication.

DETERMINATION

If the grantee or subgrantee can provide evidence of adequate review of purchases prior to solicitation, the grantee is not deficient. If the grantee or subgrantee is lacking procedures for reviewing procurements, the grantee is deficient. If such procedures exist, but are not followed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide procedures that include adequate review of procurements to avoid unnecessary or duplicative purchases. The grantee must provide evidence to FTA that deficiencies in the implementation of such procedures have been corrected.

d. *Written record of procurement history?*

EXPLANATION

Grantees and subgrantees must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

REASON FOR THE QUESTION

[49 CFR 18.36 \(b\)\(9\)](#)
[FTA C 4220.1E](#), Section 7.i

SOURCES OF INFORMATION

At the site visit, the procurement files should be examined for evidence of each of the items mentioned above. For most grantees, the procurement file will be the official record of the procurement history. The reviewer should ensure that all official correspondence related to the procurement is made available by the grantee.

DETERMINATION

If the grantee's procurement files sufficiently detail the significant history of the procurements examined, the grantee is not deficient. If the grantee's procurement records do not contain a significant history of each procurement that was examined, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit evidence that the deficiencies identified in its recordkeeping process have been corrected.

e. *Written protest procedures?*

EXPLANATION

Grantees and subgrantees must have written protest procedures to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding any protest to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies before pursuing a protest with FTA.

REASON FOR THE QUESTION

[49 CFR 18.36 \(b\)\(12\)](#)
[FTA C 4220.1E](#), Section 7.i

SOURCES OF INFORMATION

During the site visit, examine the grantee's procurement policies and procedures to determine if there are written protest procedures. Solicitation documents in the grantee's procurement files also may contain written protest procedures. Ask the grantee staff if there have been any protests during the review period. If so, request copies of all documentation described above (e.g., disclosure to FTA, written protest decisions, etc.).

DETERMINATION

If the grantee has written protest procedures, the grantee is not deficient. If the grantee does not have written protest procedures, the grantee is deficient. If written protest procedures exist, but are not followed, or if the grantee has not disclosed information regarding protests to FTA, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide written protest procedures. The grantee must provide FTA all information related to protests. The grantee must provide FTA evidence that it is following its protest procedures.

f. *Written selection procedures?*

EXPLANATION

Grantees and subgrantees must have written selection procedures for procurement transactions. These procedures must ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Descriptions must not contain features that unduly restrict competition. Detailed product

specifications should be avoided. “Brand name or equal” descriptions should be avoided unless it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

REASON FOR THE QUESTION

49 CFR 18.36 (c)(3)
FTA C 4220.1E, Section 8.c

SOURCES OF INFORMATION

The grantee’s selection procedures typically will be found in its procurement files (i.e., RFPs, IFBs or other solicitations). During the site visit, examine the procurement files to ensure that written selection procedures are included in procurement transactions.

DETERMINATION

The grantee is not deficient if it has included written selection procedures in its procurement transactions. If the grantee has not included written selection procedures, it is deficient. If written selection procedures exist but have not been followed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide evidence to FTA that written selection procedures have been incorporated into its procurement process. The grantee must cease any practice that violates FTA requirements.

g. *Prequalification criteria?*

EXPLANATION

If a grantee requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure maximum full and open competition. Grantees shall not preclude potential bidders from qualifying during the solicitation period.

REASON FOR THE QUESTION

49 CFR 18.36 (c)(4)
FTA C 4220.1E, Section 8.d

SOURCES OF INFORMATION

At the site visit, the grantee’s list of prequalified persons, firms, and products should be reviewed. The prequalification process should be discussed with those who are responsible for it. Solicitations also should be reviewed to ensure that information related to prequalification is made available to potential bidders. Note that grantees are not required to prequalify potential bidders. However, grantees that place such a requirement on potential bidders must adhere to FTA’s requirements.

DETERMINATION

If the grantee’s list of prequalified firms is current and the grantee adheres to FTA’s requirements, the grantee is not deficient. If the grantee’s list of prequalified firms or products is out-of-date, to the extent that full and open competition is impeded, the grantee is deficient. If potential bidders are precluded from qualifying during the solicitation period, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit documentation demonstrating that deficiencies identified in its prequalification process have been corrected.

4. *Do any potential conflicts of interest exist between policy board members/ employees and consultants/vendors/ suppliers or between a management contractor and consultants/vendors/ suppliers?*

EXPLANATION

Conflicts of interest fall into two categories – personal and organizational. Personal conflicts of interest arise when an employee, officer, or agent of the grantee or any member of his/her immediate family, his/her partner, or any organization that employs or is about to employ any of the above has a financial interest in the firm selected for a contract award.

Organizational conflicts of interest occur when a firm has a bias or an unfair competitive advantage. Bias arises when a contractor is placed in a situation in which it is potentially unable to render impartial decisions or advice to the grantee (e.g., a firm is hired to evaluate a bid, proposal, or work of a parent or subsidiary company). An unfair competitive advantage results when a contractor that participated in developing specifications or statements of work is permitted to bid on the same work. Another unfair competitive advantage may result if an incumbent firm has access to information that has not been made public and such information would enhance the incumbent firm’s competitive position. Grantees should ensure that any such information be made publicly available for a reasonable time period before the receipt of bids or proposals.

REASON FOR THE QUESTION

49 CFR 18.36 (b)(3) and (c) (1)
FTA C 4220.1E, Section 7.c and 8.a

SOURCES OF INFORMATION

Ask this question during the site visit. In addition, procurement files should be examined to determine if there are any potential conflicts of interest. The reviewer should keep in mind the potential conflicts

for grantees whose systems are managed or operated by a private firm. For example, a potential conflict may exist if the management contractor or its parent organization is awarded a contract to conduct a planning study.

DETERMINATION

If a conflict of interest appears to exist in the procurement of goods or services, examine how the award was made. If a party involved in the decision could have benefited, a conflict of interest exists and the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide revised procurement procedures that describe how potential conflicts of interest will be avoided. If a potential major conflict of interest is identified, contact the regional counsel for further guidance.

5. How does the grantee allow for full and open competition for all transactions under the following methods of procurement?

- a. *Micro-Purchases (\$2,500 or less)*
- b. *Small Purchases (more than \$2,500 but not more than \$100,000)*
- c. *Sealed Bids/Invitation for Bid (IFB)*
- d. *Competitive Proposals/Request for Proposals (RFP)*
- e. *Architectural and Engineering Services (A&E)*
- f. *Revenue Contracts*

EXPLANATION

Grantees must conduct procurement transactions in a manner providing full and open competition. Grantees are prohibited from restricting competition in federally supported procurement transactions. Some situations that restrict competition include, but are not limited to: unreasonable qualification requirements, unnecessary experience requirements, excessive bonding, noncompetitive pricing practices between firms, noncompetitive awards to firms on retainer, organizational conflicts of interest, "brand name" only specifications, or any arbitrary action in the procurement process.

Micro-purchases may be made without obtaining competitive quotations if the grantee determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be

split to avoid the requirements for competition above the micro-purchase threshold.

Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written.

Revenue contracts involving FTA funded facilities or assets (e.g., advertising on buses, at bus shelters, or at transit centers) must be awarded on a competitive basis. Income derived from such contracts must be used to offset program costs.

For items exceeding the federal simplified acquisition threshold, currently fixed at \$100,000, sealed bids or competitive proposals generally are required.

- **Sealed Bids/IFB** – Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.
- **Competitive Proposals/RFP** – Proposals are publicly solicited from an adequate number of sources and the award is made to the firm whose offer is most advantageous to the grantee. Grantees must identify their evaluation factors and indicate the relative importance that each has towards the award.

Architectural and Engineering services (including Design-Build procurements) must be procured using a qualifications-based process. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement can not be reached, then the grantee may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the grantee determines is fair and reasonable.

REASON FOR THE QUESTION

[49 CFR 18.36 \(c\)\(1\)](#)
[49 CFR 18.36 \(d\)\(1\)\(2\)\(3\)](#)
[FTA C 4220.1E](#), Section 8.a
[FTA C 4220.1E](#), Sections 9.a-g

SOURCES OF INFORMATION

During the site visit, the procurement files, particularly legal notices and solicitation documents, should be reviewed to determine whether procurements have been conducted competitively. Particular attention should be paid to product specifications to ensure that "brand name" only specifications have been used appropriately (i.e., the grantee also must describe the product's salient characteristics in the specification). While the review of procurement files should concentrate on awards that exceed the simplified

acquisition threshold of \$100,000, the reviewer should discuss procurement actions for micro- and small purchases with the grantee to ensure that these also have been conducted competitively. Records for phone solicitations may be examined when appropriate.

DETERMINATION

If the grantee has provided full and open competition in all procurement transactions, the grantee is not deficient. If the grantee has not provided for full and open competition (has placed restrictive requirements on prospective bidders), the grantee is deficient. If the grantee has used “brand name” only specifications inappropriately, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide revised procurement procedures that ensure full and open competition in all procurement transactions. The grantee must cease immediately any practice that is in violation of FTA regulations.

6. *Has the grantee improperly imposed geographic preferences, except when contracting for A&E services based on the Brooks Act?*

EXPLANATION

Grantees are prohibited from the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals. The only exceptions are where applicable federal statutes expressly mandate or encourage geographic preference or in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms to compete for the contract.

REASON FOR THE QUESTION

[49 CFR 18.36](#) (c)(1)(2)

[FTA C 4220.1E](#), Sections 8.a-b

SOURCES OF INFORMATION

During the site visit, the procurement policies and procedures should be reviewed to see if there are requirements for geographic preferences. Also, procurement files including solicitation documents should be reviewed to determine if the procurement contains geographic preferences. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use did not restrict competition (i.e., the use of geographic preference left only one or two qualified firms to bid on the contract).

DETERMINATION

If the grantee has not used geographic preferences in the evaluation of bids and/or proposals, the grantee is not deficient. If the grantee has used geographic preferences in any procurement for other than A&E services, except when mandated or encouraged by federal statute, the grantee is deficient. If the use of geographic preferences in A&E procurements restricted competition, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide documentation of a revised procurement process, which prohibits the use of geographic preferences in non-A&E procurements. The grantee must cease any practice that violates FTA regulations.

Part B: Third-Party Contracts

7. *Have applicable FTA clauses been included in federally funded capital and/or operating procurements exceeding the micro-purchase limit (except construction contracts over \$2,000)? In intergovernmental agreements, if applicable?*

EXPLANATION

Grantees are required to include specific FTA-required clauses in FTA funded procurements, including intergovernmental agreements (e.g., those involving States and other public entities). The [Master Agreement](#) identifies certain clauses that apply to third-party contracts. Clauses addressing lobbying, suspension/debarment, Title VI, and Buy America provisions are addressed in other sections of the triennial review. If a grantee is missing any of these certifications or clauses, it should be documented as a deficiency only in the applicable area of the review. It should not be a double finding in the procurement area.

FTA's [Best Practices Procurement Manual \(BPPM\)](#), Appendix A, also includes a discussion of federally required and other model contract clauses. However, reviewers must NOT refer to the contents of the BPPM as FTA requirements. The BPPM is a guidance document only.

REASON FOR THE QUESTION

[49 CFR 18.36](#) (i)(1-13)

[49 CFR 18.36](#) (j-o)

[FTA C 4220.1E](#), Section 5.e

SOURCES OF INFORMATION

Procurement files should be examined during the site visit to determine if the required clauses have been

included and to ensure that procurement policies and procedures are followed. A separate checklist of required clauses is provided on the following pages in Exhibit 6.1, Part A. The checklist provides a citation from the [Master Agreement](#) for each required clause. For the convenience of reviewers, Part B of Exhibit 6.1 lists certifications, reports, and forms that are required for DBE, Buy America, and Lobbying. Part C lists other required items to assist reviewers in determining whether the grantee's policies and procedures are actually being followed.

Reviewers should be aware that not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract before reviewing the procurement files, the reviewer should determine which clauses apply to the procurements being examined.

- *Small Purchases* – These are purchases that are more than \$2,500 (or more than \$2,000 if a construction project), but not more than \$100,000. Small purchases must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA regulations is not sufficient to meet this requirement.
- *Procurements Over \$100,000* – These procurements must include all clauses applicable to the particular type of procurement (e.g., professional services, A&E, construction, rolling stock purchase, etc.).

The applicability of FTA clauses to different types of procurements is shown in Exhibit 6.2.

DETERMINATION

The grantee is not deficient if it has referenced FTA requirements and/or has included FTA clauses that the grantee has determined are applicable to the contracts examined. If the grantee missed clauses that should have been included, the grantee is not deficient. However, the reviewer should refer the grantee to the matrix in Exhibit 6.2 and any other resource that may assist the grantee in determining the applicability of clauses in the future. If the grantee has not included any reference to FTA requirements or any FTA clauses, the grantee is deficient. If the grantee is missing some of the required elements, use the deficiency code for that particular element.

SUGGESTED CORRECTIVE ACTION

The grantee must provide revised procurement procedures that include all FTA-required third-party contract clauses.

8. *Do solicitations for ITS related projects include a specific requirement for conformance with the National ITS Architecture?*

EXPLANATION

In response to TEA-21, FTA developed a National Intelligent Transportation System (ITS) Architecture that defines the framework for ensuring compatibility of information exchange and interface of ITS applications. Examples of ITS applications include integrated traffic signal systems, automatic vehicle location systems, traveler information systems, traffic management systems, etc. More detail is provided in Section 23 – ITS. FTA-assisted projects that include ITS applications must conform to the National ITS Architecture.

REASON FOR THE QUESTION

[TEA-21](#), Section 5206(e)
[P.L. 105-178](#), 112 Stat.547
[Master Agreement](#), Section15.m

SOURCES OF INFORMATION

Determine if the grantee has had any procurements for ITS applications. If so, include those projects in the files to be reviewed. Procurement files should be examined during the site visit to determine if solicitations for FTA-assisted projects involving ITS applications include a requirement that these conform to the National ITS Architecture.

DETERMINATION

The grantee is not deficient if it has included a requirement for conformity with the National ITS Architecture in applicable solicitations and contracts. If the requirement has not been included, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide revised procurement procedures that ensure that future, applicable procurements include the provision for conformity with the National ITS Architecture.

EXHIBIT 6.1

A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCE | 1 | 2 | 3 |
|---|--|----------------------------|---|---|---|
| All FTA-Assisted Third-Party Contracts and Subcontracts | | | | | |
| No federal government obligations to third-parties by use of a disclaimer | | §2.f | | | |
| Program fraud and false or fraudulent statements and related acts | | §3.f | | | |
| Access to Records | | §15.t | | | |
| Federal changes | | §2.c(1) | | | |
| Civil Rights (EEO, Title VI & ADA) | | §12 | | | |
| Termination provisions | Contracts >\$10,000 (49 CFR §18) | §11 | | | |
| Disadvantaged Business Enterprises (DBEs) | Contracts awarded on the basis of a bid or proposal offering to use DBEs | §12.d | | | |
| Incorporation of FTA Terms | Per FTA C 4220.1E | §15.a | | | |
| Suspension and Debarment | Contracts >\$25,000 | §3.b | | | |
| Awards Exceeding the Simplified Acquisition Threshold (\$100,000) | | | | | |
| Buy America | When tangible property or construction will be acquired | §14.a | | | |
| Provisions for resolution of disputes, breaches, or other litigation | | §53 | | | |
| Awards Exceeding \$100,000 by Statute | | | | | |
| Lobbying | | §3.d | | | |
| Clean Air | | §25.b | | | |
| Clean Water | | §25.c | | | |
| <u>Procurements Examined</u> | | | | | |
| 1. _____ | | | | | |
| 2. _____ | | | | | |
| 3. _____ | | | | | |
| <p><i>LEGEND: X - included</i> <i>O - not included</i> <i>NA - does not apply</i></p> | | | | | |

EXHIBIT 6.1

A. REQUIRED THIRD-PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over \$2,000)

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCE | 1 | 2 | 3 |
|---|---|----------------------------|---|---|---|
| Transport of Property or Persons | | | | | |
| Cargo Preference | When acquiring property suitable for shipment by ocean vessel | §14.b | | | |
| Fly America | When property or persons transported by air between U.S. and foreign destinations, or between foreign locations | §14.c | | | |
| Construction Activities | | | | | |
| Construction Employee Protection - Davis Bacon Act - Copeland Anti-Kickback Act | Except for contracts <\$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market | §24.a | | | |
| Contract Work Hours & Safety Standards Act | Contracts >\$100,000 | | | | |
| Bonding for construction activities exceeding \$100,000 | 5% bid guarantee; 100% performance bond; and Payment bond equal to: • 50% for contracts < \$1 M • 40% for contracts > \$1 M, but < \$5 M • \$2.5 M for contracts > \$5 M | §15.o(1) | | | |
| Seismic Safety | Contracts for construction of new buildings or additions to existing buildings | §23.e | | | |
| Nonconstruction Activities | | | | | |
| Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act) | Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500. | §24.b | | | |
| Transit Operations | | | | | |
| Transit Employee Protective Arrangements | | §24.d | | | |
| Charter Service Operations | | §28 | | | |
| School Bus Operations | | §29 | | | |
| Drug Use and Testing | Safety sensitive functions | §32.b | | | |
| Alcohol Misuse and Testing | Safety sensitive functions | §32.b | | | |

EXHIBIT 6.1

A. REQUIRED THIRD-PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over \$2,000)

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCE | 1 | 2 | 3 |
|--|---|----------------------------|---|---|---|
| Planning, Research, Development, and Documentation Projects | | | | | |
| Patent Rights | | §17 | | | |
| Rights in Data and Copyrights | | §18 | | | |
| Miscellaneous Special Requirements | | | | | |
| Energy Conservation | | §26 | | | |
| Recycled Products | Contracts for items designated by EPA, when procuring \$10,000 or more per year | §15.k | | | |
| Conformance with National ITS Architecture | Contracts and solicitations for ITS projects | §15.m | | | |
| ADA Access | Contracts for rolling stock or facilities construction/ renovation | §12.g | | | |
| Assignability Clause | Piggyback procurements | §15.a | | | |
| Special Notification Requirements for States | | | | | |
| Special Notification Requirements for States | | §38 | | | |

B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCES | 1 | 2 | 3 |
|---|--|-----------------------------|---|---|---|
| Bus Testing Certification and Report | Procurements of buses and modified mass produced vans | §15.n(4) | | | |
| TVM Certifications | All rolling stock procurements | §12.d(1) | | | |
| Buy America Certification | Procurements of steel, iron or manufactured products exceeding \$100,000 | §14.a | | | |
| Pre-Award Audit | Rolling stock procurements exceeding \$100,000 | §15.n(3) | | | |
| Pre-Award Buy America Certification | Rolling stock procurements exceeding \$100,000 | §15.n(3) | | | |
| Pre-Award Purchaser's Requirement | Rolling stock procurements exceeding \$100,000 | §15.n(3) | | | |
| Post-Delivery Audit | Rolling stock procurements exceeding \$100,000 | §15.n(3) | | | |
| Post-Delivery Buy America Certification | Rolling stock procurements exceeding \$100,000 | §15.n(3) | | | |
| Post-Delivery Purchaser's Requirement | Rolling stock procurements exceeding \$100,000 | §15.n(3) | | | |

EXHIBIT 6.1

B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCES | 1 | 2 | 3 |
|---|--|------------------------------------|----------|----------|----------|
| On-Site Inspector's Report | Rolling stock procurements for more than 10 vehicles | §15.n(3) | | | |
| Federal Motor Vehicles Safety Standards (Pre-Award and Post-Delivery) | Motor vehicle procurements (49 CFR §571) | §15.n(3) | | | |
| Lobbying Certification | Procurements exceeding \$100,000 | §3.d(1) | | | |
| Standard Form LLL and Quarterly Updates (when required) | Procurements exceeding \$100,000 where contractor engages in lobbying activities | §3.d(1) | | | |

C. OTHER REQUIRED ITEMS

| REQUIREMENT | COMMENTS | FTA C 4220.1E REFERENCES | 1 | 2 | 3 |
|---|-------------------------|---------------------------------|----------|----------|----------|
| Contract Administration System | | §7b | | | |
| Record of Procurement History | | §7i | | | |
| Protest Procedures | | §7l | | | |
| Selection Procedures | | §8c | | | |
| Cost/Price Analysis | | §10a-b | | | |
| Justification for Noncompetitive Awards | If applicable | §9h | | | |
| No excessive bonding requirements | | §8a | | | |
| No exclusionary specifications | | §8a | | | |
| No geographic preferences | Except for A&E services | §8b | | | |
| Evaluation of Options | If applicable | §9i | | | |

EXHIBIT 6.2

APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

| CLAUSE | TYPE OF PROCUREMENT | | | | |
|---|--|--|--|--|--|
| | Professional Services/A&E | Operations/ Management | Rolling Stock Purchase | Construction | Materials & Supplies |
| No federal government obligations to third-parties by use of a disclaimer | All | All | All | All | All |
| Program fraud and false or fraudulent statements and related acts | All | All | All | All | All |
| Access to Records | All | All | All | All | All |
| Federal changes | All | All | All | All | All |
| Civil Rights (EEO, Title VI & ADA) | All | All | All | All | All |
| Termination Provisions | >\$10,000 | >\$10,000 | >\$10,000 | >\$10,000 | >\$10,000 |
| Disadvantaged Business Enterprises (DBEs) | All | All | All | All | All |
| Incorporation of FTA Terms | All | All | All | All | All |
| Suspension and Debarment | >\$25,000 | >\$25,000 | >\$25,000 | >\$25,000 | >\$25,000 |
| Buy America | | | >\$100,000 | >\$100,000 | >\$100,000 (for steel, iron, manufactured products) |
| Provisions for resolution of disputes, breaches, or other litigation | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Lobbying | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Air | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Water | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Cargo Preference | | | Involving property that may be transported by ocean vessel | Involving property that may be transported by ocean vessel | Involving property that may be transported by ocean vessel |
| Fly America | Involving foreign transport or travel by air | Involving foreign transport or travel by air | Involving foreign transport or travel by air | Involving foreign transport or travel by air | Involving foreign transport or travel by air |
| Davis Bacon Act | | | | >\$2,000 (including ferry vessels) | |
| Copeland Anti-Kickback Act | | | | >\$2,000 (including ferry vessels) | |

EXHIBIT 6.2

APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

| CLAUSE | TYPE OF PROCUREMENT | | | | |
|--|-----------------------------------|---|------------------------|---|---|
| | Professional Services/A&E | Operations/ Management | Rolling Stock Purchase | Construction | Materials & Supplies |
| Contract Work Hours & Safety Standards Act | | >\$100,000 (except transportation services) | >\$100,000 | >\$100,000 (including ferry vessels) | |
| Bonding | | | | >\$100,000 | |
| Seismic Safety | A&E for New Buildings & Additions | | | New Buildings & Additions | |
| Transit Employee Protective Arrangements | | Transit Operations | | | |
| Charter Service Operations | | All | | | |
| School Bus Operations | | All | | | |
| Drug Use and Testing | | Transit Operations | | | |
| Alcohol Misuse and Testing | | Transit Operations | | | |
| Patent Rights | Research & Development | | | | |
| Rights in Data and Copyrights requirements | Research & Development | | | | |
| Energy Conservation | All | All | All | All | All |
| Recycled Products | | Contracts for items designated by EPA, when procuring \$10,000 or more per year | | Contracts for items designated by EPA, when procuring \$10,000 or more per year | Contracts for items designated by EPA, when procuring \$10,000 or more per year |
| Conformance with ITS National Architecture | ITS Projects | ITS Projects | ITS Projects | ITS Projects | ITS Projects |
| ADA Access | Architectural & Engineering | All | All | All | |
| Special Notification Requirements for States | Limited to States | Limited to States | Limited to States | Limited to States | Limited to States |

9. *For a grantee that contracts for services funded with federal monies or has passed through funding to a subrecipient, has the grantee included competitive procurement requirements in its contract? How does the grantee monitor the procurement process of a private contractor and/or subrecipient to ensure that federal requirements are met?*

EXPLANATION

When a grantee has contracted out a portion of its federally funded operation or has passed through funding to a subrecipient, competitive procurement requirements may apply to the contractor and/or subrecipient operations. In such circumstances, the procurement process of the contractor/subrecipient should meet federal requirements contained in the [Master Agreement](#), including Buy America, suspension/debarment, and lobbying requirements, which are in other areas of the review. Furthermore, a grantee needs to have a mechanism to ensure contractor/subrecipient compliance. Requiring written procurement procedures, overseeing selected procurement processes, and auditing the contractor/subrecipient annually are measures that a grantee could use.

REASON FOR THE QUESTION

[Master Agreement](#), Sections 2.d-e

SOURCES OF INFORMATION

Typically, this requirement would apply to any third-party agreement or subagreement in which the contractor or subgrantee performs primary project activities normally performed by the grantee directly. In such cases, the reviewer should examine these contracts and identify procurement-related requirements. Determine how these contract clauses are implemented and who on the grantee staff monitors the contractor/subrecipient operations, including procurement. Determine how the grantee monitors adherence to the requirements. Ask how the grantee monitors the procurement process of a contractor/subrecipient and examine written reports or audit reports of the process.

DETERMINATION

If the contractor/subrecipient performs primary project activities including procurement related functions and the grantee is monitoring the contractor/subrecipient to ensure compliance with requirements, the grantee is not deficient.

If the contractor or subrecipient is not following procurement standards and is not being monitored, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must change contract language to include procurement requirements when services are rebid or when a new subrecipient agreement is executed. The grantee must implement a procurement monitoring program. Evidence of the grantee's corrective actions must be provided to FTA.

10. *Does the grantee have any contracts for rolling stock and replacement parts that exceed five years in total length including base and options? If yes, identify.*

EXPLANATION

Grantees must not enter into contracts for rolling stock and replacement parts with a period of performance exceeding five years inclusive of options, extensions, or renewals. A maximum of five years' requirements may be acquired under a single contract without prior FTA approval, even though delivery may occur beyond a five-year term. However, the maximum quantity specified in such multi-year contracts must represent the grantee's reasonably foreseeable need. Typically, grantees use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

Grantees may seek a waiver from the five-year requirement from FTA Headquarters. A copy of the written approval for this waiver must be in the applicable contract file.

REASON FOR THE QUESTION

[49 USC 5307 \(d\)\(1\)\(E\)\(i\)](#)

[FTA C 42](#)

[20.1E](#), Section 7.m

SOURCES OF INFORMATION

Examine procurement files for rolling stock and replacement part contracts during the site visit to ensure that these meet the five-year contract term restriction.

DETERMINATION

If the period of performance for the grantee's rolling stock and replacement part contracts does not exceed five years in length, the grantee is not deficient. If delivery of rolling stock and replacement parts occurs beyond five years of the contract award (e.g, a multiple year bus procurement), but such contract reflects five years' requirements, the grantee is not deficient. If a contract represents more than five years' requirements, the grantee is deficient. If the grantee has a rolling stock and replacement parts contract with a period of performance exceeding five

years and has not obtained prior FTA written approval, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide revised procurement procedures that include the five-year restriction on the period of performance for rolling stock and replacement part contracts supported with FTA funds. If there are unexecuted options on an existing contract that exceed the five-year restriction, the grantee must provide FTA with an assurance that such options will not be executed.

- 11.** *Does the grantee perform cost or price analysis in connection with every procurement action, including contract modification?*

EXPLANATION

Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. The methods of analysis include cost analysis and price analysis. Cost analysis must be performed for procurements requiring the offeror to submit estimates for labor hours, overhead, and materials; procurements where adequate price competition is lacking; and sole source procurements unless price reasonableness can be established based on market prices. Price analysis (i.e., catalog or market prices) may be performed for all other procurements.

REASON FOR THE QUESTION

[49 CFR 18.36 \(f\)\(1\)](#)
[FTA C 4220.1E](#), Sections 10.a-b

SOURCES OF INFORMATION

Procurement files should be examined during the site visit to determine the extent to which the grantee conducts cost and/or price analysis. Particular attention is warranted in cases where the grantee has had a recent sole source procurement.

DETERMINATION

The grantee is not deficient if it has conducted the appropriate cost or price analysis for every procurement action. If the grantee has not conducted cost or price analyses for every procurement action, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide evidence that it has updated its procurement process to include cost and

price analysis for every procurement action including contract modifications.

- 12.** *During the review period, were there any change orders to federally funded contracts? If yes, describe in terms of numbers of change orders and dollars. Were all change orders approved by authorized officials?*

EXPLANATION

This question is intended to examine how contracts are administered following procurement. Of special interest are approval levels and procedures for change orders. Change orders must be approved by authorized grantee officials and supported by cost justification. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

REASON FOR THE QUESTION

[FTA C 5010.1C](#), Ch. I, 7b(1)(e)
[FTA C 4220.1E](#), Section 10.a

SOURCES OF INFORMATION

The grantee should provide this information during the site visit. The grantee may have written procedures for change orders. A larger grantee may have this information in a procedures manual or a procurement manual. Small grantees that have few procurements are less likely to have formal, written change order procedures, but should treat change orders like procurements. Even if formal procedures are lacking, individual project files should include approvals and justifications for any change orders.

DETERMINATION

The grantee is not deficient if it had no change orders or if the grantee has appropriate change order procedures and appears to follow such procedures. Where change orders occurred, the grantee is not deficient if the number is reasonable, it followed its procedures, and has documentation of appropriate approvals and cost justification for the change orders. If change orders occurred, and there is not supporting documentation, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If the grantee has a history of change orders without any apparent change order procedures, a process should be developed. If required approvals and justifications are missing from the files, the grantee should prepare the documentation and develop a process to ensure that files are complete.

13. *Has the grantee entered into any time and materials type contracts using FTA funds? If yes, identify.*

EXPLANATION

Time and materials (T&M) type contracts are those in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a T&M contract is an indeterminate amount. As such, grantees are not permitted to use FTA funds for time and materials type contracts unless it determines that no other type of contract is suitable for the procurement. If time and materials type contracts are used, grantees must specify a ceiling price that the contractor shall not exceed except at its own risk.

REASON FOR THE QUESTION

49 CFR 18.36 (b)(10)
FTA C 4220.1E, Section 7.j

SOURCES OF INFORMATION

If the grantee indicates that it has used time and materials contracts involving FTA funds, examine the procurement files for these contracts. The files should include documentation supporting the grantee's decision to use a time and materials contract. The contract must specify a ceiling price.

DETERMINATION

If the grantee has not used FTA funds in time and materials contracts, the grantee is not deficient. If FTA funds were used in time and materials contracts and the files support the grantee's decision and ceiling prices were specified, the grantee is not deficient. If FTA funds were used in a time and materials contract and the files do not support the grantee's decision or if there is no ceiling price specified in the contract, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide evidence that it has updated its procurement process to include procedures for the proper use of FTA-assisted time and materials contracts.

14. *Has the grantee had any sole-source, single bid, or brand name or equal awards during the past three years? If yes, identify. Do the files contain the appropriate justification and/or documentation for such awards?*

EXPLANATION

FTA requires full and open competition in procurements for goods and services and encourages grantees to award contracts to the lowest responsive

and responsible bidder. However, sole-source, single-bid, and brand-name or equal awards can be used. In such situations, the grantee should have appropriate documentation for the award. In the case of a sole-source award, the documentation should be a sole-source justification, which includes a cost analysis. With a single-bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. For brand-name or equal awards, the procurement specification should list the product's salient characteristics and allow an equal product to be offered.

A recurring problem has been the procurement of professional services. Often these services are procured with little or no competition. While such services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for all professional services and the grantee needs to follow the requirements of FTA C 4220.1E when federal funds are used to pay for these services. Note that grantees cannot consider such expenses ineligible and, therefore, not subject to FTA requirements.

REASON FOR THE QUESTION

49 CFR 18.36 (d)(4)
FTA C 4220.1E, Section 9.h

SOURCES OF INFORMATION

The information to answer all of these questions will be found at the site visit in the procurement files. An examination should be made of RFPs, IFBs, and other solicitation documents, bid evaluation files, and contracts. Additionally, policy board minutes may provide additional detail on these and other types of procurements. Although the grantee is not required to obtain prior FTA approval for a non-competitive award, the grantee's files must contain an appropriate level of justification for such awards.

DETERMINATION

The grantee is not deficient if there is adequate justification for non-competitive awards in the files. If the grantee does not have the appropriate documentation in the files to support the basis for the award, the grantee is deficient. In cases where professional services have not been bid competitively, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

When an award already has been made and a contract signed, the grantee must provide FTA a written assurance that it understands the requirements and will follow them in the future. FTA also may require a refund of federal funds. Where a procurement is in process, the grantee must provide revised procedures that address the requirements for a noncompetitive procurement and continue the process in accordance with federal regulations. Where contracts are ongoing, the grantee should be

required not to exercise any options, possibly terminate the existing contract for convenience, and rebid for the required goods and services in accordance with federal requirements. When major procurements (e.g., exceeding \$100,000) have violated federal requirements, the regional counsel should be advised.

15. *Has the grantee conducted any piggyback procurements? If yes, identify. Is the appropriate documentation on file?*

EXPLANATION

It has become increasingly popular for grantees to acquire vehicles through the assignment of options on another grantee's procurement. This is commonly referred to as "piggybacking." Piggybacking is defined as the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies or equipment through the original document/process. Piggybacking is permissible when the solicitation document and the resultant contract contain an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated, and awarded. This includes the base and option quantities.

Vehicles added to the base or option amounts that were originally specified are called "tag-ons." Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

Regardless of the terminology used by the grantee, the reviewer should examine purchases conducted in this manner to ensure that FTA requirements have been met. For example, the reviewer should determine that the quantity of vehicles purchased by the grantee is less than or equal to the quantity that the original purchaser has remaining in its contract. Otherwise, the purchase is a "tag-on" and is considered an improper sole source procurement. The reviewer also should determine that any changes in the vehicle were within the original scope (i.e., no major changes in configuration or design).

REASON FOR THE QUESTION

49 CFR 18.36 (d)(4)
FTA C 4220.1E, Section 7.e

SOURCES OF INFORMATION

The reviewer should look for a contract and correspondence between the two agencies involved

in the piggyback arrangement. In addition, the grantee must have a copy of the original solicitation and resultant contract to ensure that the original procurement contains an assignability clause and meets FTA requirements (e.g., competitive award, includes required clauses, required certifications filed, cost/price analysis conducted, five year contract term, etc.). Also, the reviewer should ask the grantee if any changes to the vehicle were required and determine if these were within the original scope.

DETERMINATION

The grantee is not deficient if it can document that the original procurement contained an assignability clause and met FTA requirements. If the grantee can not document that the original award contains an assignability clause or that FTA requirements were met, then the grantee is deficient. If the grantee conducted a "tag-on" purchase, the grantee is deficient. If the grantee's required changes were beyond the original scope, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If an improper piggyback purchase has been made, the grantee must provide FTA a written assurance that it understands the requirements and will follow them in the future. FTA also may require a refund of federal funds. Where an improper piggyback procurement is in process, the grantee must provide revised procedures that address the requirements for a piggyback procurement and continue the process in accordance with federal regulations or possibly terminate the agreement for convenience. When major procurements (i.e., exceeding \$100,000) have violated federal requirements, the regional counsel should be advised.

16. *Has the grantee procured any equipment or materials using option clauses? If yes, identify. Were options evaluated at the time of the initial bid? If yes, were option prices established?*

EXPLANATION

Grantees may include options in contracts. If a grantee chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price or as a percentage increase of the base price. If the options have not been evaluated as part of the award, the exercise of the options is considered a sole source procurement. A grantee also must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award, and the grantee must determine that the option price is

better than prices available in the market or the option is the more advantageous offer at the time it is exercised.

Note: If the option quantities on a rolling stock or replacement parts purchase appear to exceed the grantee's reasonably foreseeable needs, the grantee may be in violation of the five-year limitation (see Question 10).

REASON FOR THE QUESTION

49 USC 5307 (d)(1)(E)
FTA C 4220.1E, Section 9.i

SOURCES OF INFORMATION

Grant files and correspondence at the desk review may indicate requests for exceptions to the general requirements. At the site visit, a review of contracts and other procurement documents will indicate whether options and period of contract exceed the limits and whether options were priced, evaluated and are exercisable. In some cases, the grantee may have assigned options on a vehicle procurement to another party (i.e., "piggy-backing"). In these cases, the reviewer should ensure that the options available to the grantee have been reduced by the number assigned to the other party.

DETERMINATION

If the options were not evaluated with the initial bid and were exercised, the grantee is deficient. If options were assigned improperly to another grantee, the grantee is deficient. If options are unpriced, the grantee is deficient. If the options were established appropriately but were exercised without the requisite price analysis, the grantee is deficient. If options were assigned improperly to another party, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Where options that violate the requirements have not been exercised, the grantee must provide a written assurance that it will not exercise the options unless FTA approval is granted. If the grantee has exercised options that were not evaluated and priced initially, or were assigned improperly to another grantee, the grantee must provide FTA a written explanation of the procurement and a written acknowledgment that it understands the regulations and will include them in all future procurements. FTA may require refund of federal funds.

17. *Has the grantee used advance payments? If yes, identify. Was prior, written approval obtained from FTA headquarters?*

18. *Were progress payments used? If yes, identify. Has the grantee obtained title of the property or taken alternative measures to protect FTA's interest?*

EXPLANATION

FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from FTA headquarters by either the FTA Administrator or the Associate Administrator of Administration. There is no prohibition on a grantee's using local funds for advance payments. However, advance payments made with local funds before a grant has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement. FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. When progress payments are used, the grantee must obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect the grantee's interests in the progress payments may be used in lieu of obtaining title.

REASON FOR THE QUESTION

FTA C 4220.1E, Sections 12.a-b

SOURCES OF INFORMATION

This question should be asked of the grantee. In addition, procurement files, especially contracts and annual audit reports, may provide additional information.

DETERMINATION

The grantee is not deficient if it has obtained prior approval from FTA headquarters for using advance payments. If progress payments have been used and the grantee has obtained title to property as required, the grantee is not deficient. If the grantee has used advance payments without prior FTA approval, it is deficient. Where progress payments have been used, but do not meet one of the requirements outlined above, the grantee is deficient. If the grantee has made progress payments but has not taken title to property or adequately protected FTA's interests, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must report immediately to the regional office any improper advance or progress payments with an explanation of the circumstances surrounding the payments and a description of how these funds will be reimbursed. The grantee must cease any practice that violates FTA regulations.

19. *Has the grantee used liquidated damage clauses in any of its procurements? If yes, is the damage rate specified in the contract?*

EXPLANATION

Grantees are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages should be at a specific rate per day for each day of overrun in the contract time, and the rate must be specified in the contract. Any liquidated damages recovered should be credited to the project account involved unless FTA permits otherwise. Liquidated damage clauses may not be used to impose a penalty, limit or restrict competition, or in situations where delayed performance will not affect the grantee adversely.

REASON FOR THE QUESTION

49 USC 5307 (d)(1)(E)
FTA C 4220.1E, Section 13

SOURCES OF INFORMATION

The grantee should be asked this question. Also, procurement files (both solicitations and contract documents) may contain liquidated damage clauses. These types of clauses typically are found in large procurements of vehicles and equipment or in construction contracts. Note that a contract can contain language whereby the grantee and the contractor agree that liquidated damages are very difficult to assess, but mutually agree to a level. In such cases, grantees should have documentation of the factors considered in reaching this level.

DETERMINATION

The grantee is not deficient if the liquidated damage rate is specified in the contract and the grantee can provide a reasonable explanation regarding the adverse impacts that would be caused by late completion. If the damage rate is not specified in the contract or the grantee cannot provide a reasonable explanation regarding expected damages as a result of late completion, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide a written assurance indicating that it understands the use of liquidated damage clauses. If clauses are in existing contracts improperly, the grantee may modify the contract to eliminate the clause or provide a justification for the use and level of liquidated damages.

Part C: Altoona Bus Testing

20. *Have buses been purchased or leased with FTA funds? If yes: Do the bus models require Altoona testing? How was this determination made? If models require testing: Was a model tested? If yes, identify model. Was a test report issued? Was the report received prior to expenditure of FTA funds? If models do not require testing: Does the grantee have certification(s) from the manufacturer that the bus does not need to be tested?*

EXPLANATION

A grantee purchasing buses with funds obligated after September 30, 1989 must certify to FTA that any new bus model has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania. A new bus model is a bus design or variation of a bus design (usually designated by a manufacturer by a specific name and/or model number) that has not been in use in U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date but is being procured with a major change in configuration or components. Bus testing requirements apply to different mass transit vehicles including vans, other small vehicles, medium, and light-duty mid-size buses, and heavy-duty small and large buses. Bus testing does not apply to unmodified mass produced vans, bus prototypes, electric buses, or trolley buses (meaning genuine trolleys, not replica trolleys popularly in use today).

REASON FOR THE QUESTION

49 CFR Part 665
FTA C 9030.1C, Ch. V, Section 9.b(4)

SOURCES OF INFORMATION

If the grantee has conducted a recent bus purchase, the reviewer should determine if the bus model was tested. A list of buses tested as of July 2007 is included in Exhibit 6.3. A copy of the most recent list of models tested is available at the following web site: <http://www.vss.psu.edu/BTRC/Reports/allbusses.pdf>.

The procurement files for a bus purchase should contain information from the manufacturer regarding the particular vehicle's testing status. If the vehicle has been tested, the grantee should have a copy of the report in their files, regardless of whether or not the agency was the lead agency for the purchase, "piggy-backed" with another agency, or bought the vehicle off the state list.

DETERMINATION

The grantee is not deficient if it has included a certification for qualified buses, required bus testing, and received a test report prior to the expenditure of FTA funds. If a grantee has not included a certification for qualified buses, has not required bus testing, or has not received a test report, it is deficient. If buses were accepted or federal funds expended prior to the receipt of the report, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit a certification, change its procurement procedures, and/or change its bus acceptance procedures and submit evidence of such to FTA. Where federal monies have been expended before a test report has been received, the grantee will, at a minimum, provide written assurance of its understanding of the testing requirements. The grantee may be required to reimburse FTA.

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|-------------------------------|------------------------------|--------------------|------------------------------|-----------------------------|----------------------------|-------------|-----------------|--------------------|
| Advanced Bus Industries | MSV | 26 | 7 | GM Vortec 6.6L | GM Hydramatic | GAS | 9907-14-99 | Aug-99 |
| Advanced Bus Industries | TSV-30 | 30/8 | 12 | Cummins ISB 240 | Allison B300 | DSL | 2015-02-01 | Feb-01 |
| Advanced Vehicle Systems | AVS 22-102 | 22/7 | 7 | Solectria AC55 Drive Motors | PEI Electronics IBSM 23100 | ELE/ LNG | 0102 | Aug-01 |
| Advanced Vehicle Systems | AVS22-102H Series 5 | 22/7 | 7 | Capstone Turbine Corp./330 | Solectra / AV55-A | LNG | 0124-P | Feb-02 |
| Alexander Dennis | Enviro 500 | 39/6 | 12 | Cummins ISM 330 | Voith 864-E3 | DSL | 0504 | Aug-05 |
| Allen/Ashley | Pioneer | 20 | 4 | International A185F | Ford E40D | DSL | 9413-11 | Aug-94 |
| American Transportation Corp. | International RE Commercial | 40 | 10 | International I6DT466E 7.6L | Allison B300 | DSL | 2008-17-00 | Nov-00 |
| AVS | AVS-22 Electric | 22 | 7 | Fulmen XWCFO5C 156 V | Solectria UMOC440 | BATT/ ELEC | 9906-11-99 | Jun-99 |
| Blue Bird | CSFE 3802 | 38/1 | 10 | Cummins ISB 215 | Allison MT643 | DSL | 2022-04-01 | Apr-01 |
| Blue Bird | CSRE | 38 | 10 | Cummins 8.3L | Allison MT643 | DSL | 9409-14 | Oct-94 |
| Blue Bird | CSTS | 25 | 10 | Cummins 6BTAA5.9 | Allison AT545 | DSL | 9616-02-97 | Feb-97 |
| Blue Bird | LTC 40 | 41 | 12 | Detroit Series 60 | Allison 8500 | DSL | 9917-08-00 | Oct-00 |
| Blue Bird | Q Bus | 29/8 | 10 | John Deere Power Tech 6.8L | Allison B300 | CNG | 2019-15-00-P | Nov-00 |
| Blue Bird | QBRE | 30 | 10 | Deere 8.1L | Allison B300 | CNG | 9612-16-96 | Jan-97 |
| Blue Bird | QBRE 2903 | 30 | 10 | Cummins 403B | Allison MT643 | DSL | 9321-94 | Feb-94 |
| Blue Bird | TC 2000 | 39 | 10 | Cummins 5.9L | Allison MT643 | DSL | 9318 | Sep-93 |
| Blue Bird Body Company | XCEL 102 | 30/3 | 12 | Cummins ISC 260 | Allison B300 | DSL | 0320-P | Sep-03 |
| Blue Bird Corporation | All American | 35/5 | 10 | Caterpillar 3126/7.2L | Allison MD3060 | DSL | 0317 | Dec-03 |
| Blue Bird Corporation | Excel 102 | 36/3 | 12 | John Deere Powertech 8.1L | Allison B400R | CNG | 0218 | Apr-03 |
| Blue Bird Corporation | Express 4500 | 44/4 | 12 | Caterpillar Inc. C-12 | Allison B500 | DSL | 0404 | Nov-04 |
| Blue Bird Corporation | Ultra LF | 35/11 | 12 | Cummins ISB 230 | Allison B300 | DSL | 0309 | Mar-04 |
| Blue Bird Corporation | Ultra LF | 36 | 12 | Cummins BG 230 | Allison B300 | CNG | 0507 | May-06 |
| Blue Bird Corporation | Ultra LMB | 28/3 | 10 | Cummins ISB170 | Allison Series 2000 | DSL | 0325 | Jun-04 |
| Braun | 2002 | 16 | 4 | General Motors 3400 SFI | General Motors OEM | GAS | 0206 | May-02 |
| Braun | 96 Chrysler Ener Van II | 17 | 4 | Chrysler 3.3L | Chrysler 4762876 | GAS | 9607-07-96 | Jul-96 |
| Braun Corporation | 2005 Chevy Uplander Entervan | 15/5 | 4 | GM 3.5L | General Motors OEM | GAS | 0510 | Sep-05 |
| Breda | 350 | 61 | 12 | Detroit 6V92TA | ZF 4HP590 | DSL | 9103 | Feb-91 |
| Cable Car Classics, Inc. | Golden Gate Trolley | 34/7 | 10 | Cummins ISB 245 | Allison B300 | DSL | 2024-13-01 | Jun-01 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|---------------------|--------------------------------|--------------------|------------------------------|----------------------------|----------------------|-------------|-----------------|--------------------|
| Cable Car Concepts | 208" WB Maxi Duel Fuel | 32/9 | 7 | Duel-fueled, GM 8.1 | Allison 1000 Series | CNG/GAS | 0205 | May-02 |
| Cable Car Concepts | Maxi-FE | 33 | 5 | Cummins ISB210 5.9L | Allison AT545 | DSL | 9920-20-99-P | Dec-99 |
| Cable Car Concepts | Midi | 26 | 4 | GM L29 V8 | GM Hydramatic MT-1 | GAS/CNG | 9809-07-98 | Sep-98 |
| Cable Car Concepts | Model 208" WB Maxi Dsl Trolley | 32/9 | 7 | Cummins ISB 205 | Allison 2400 Series | DSL | 0306-P | May-03 |
| Care Concepts | 96 Grand Caravan | 17 | 4 | Chrysler 3.3L | Chrysler OEM | GAS | 9610-11-96 | Aug-96 |
| Champion | 96 Dart D241FL | 25 | 4 | GM 454 | GM Turbo Hydramatic | CNG | 9611-12-96-P | Sep-96 |
| Champion | CD-291 | 29 | 5 | GM 454 7.4L | GM 4L80E | GAS | 9423-04 | Jan-95 |
| Champion | Centurion | 31 | 7 | GM 427 Mark 5 | Allison AT545 | GAS | 9204 | Jun-92 |
| Champion | Centurion | 31 | 7 | Catepillar 3116 | Allison AT545 | DSL | 9210 | Aug-92 |
| Champion | Challenger CH-241 | 25 | 4 | Ford 460 | Ford E40D | GAS | 9214 | Nov-92 |
| Champion | Contender TB | 32 | 12 | Cummins ISB250 5.9L | Allison 300R | DSL | 9812-07-99-P | Feb-99 |
| Champion | Contender TB-2242 | 31 | 10 | Cummins B5.9-210 | Allison MT643 | DSL | 9604-14-96 | Nov-96 |
| Champion | CTS | 31 | 7 | Cummins 5.9L | Allison AT545 | DSL | 9811-02-99 | Feb-99 |
| Champion | CTS | 33 | 7 | Cummins ISB 205 5.9L | Allison 2400 Series | DSL | 2018-20-00 | Dec-00 |
| Champion | Defender | 29 | 7 | Navistar Int. Elect T 444E | Allison AT545 | DSL | 9817-06-99 | Mar-99 |
| Champion | SO304T2 | 32 | 12 | Cummins B195-AA2-006 | Allison B300R | PRO-PANE | 9903-03-99-P | Apr-99 |
| Champion | Solo TB-2242 (low floor) | 31 | 10 | Cummins B5.9 | Allison AT643 | DSL | 9603-13-96 | Nov-96 |
| Champion Bus Inc. | ABC/FB65 | 34/9 | 10 | Cummins Engine ISB225 | Allison 2400 Series | DSL | 0212 | Apr-03 |
| Champion Bus Inc. | Challenger | 33/7 | 7 | Isuzu 8GF1XS | Allison Series 2200 | DSL | 0407 | Aug-04 |
| Champion Bus Inc. | Challenger | 25/8.25 | 7 | International A235 | Ford Motor Co. 4R100 | DSL | 0617 | Apr-07 |
| Champion Bus Inc. | CTS | 33/5 | 10 | Cummins ISB 260 | Allison 2400 Series | DSL | 0303 | Jul-04 |
| Champion Bus Inc. | CTS RE | 39/6 | 10 | Cummins ISB 245 | Allison B300 | DSL | 0415 | May-05 |
| Champion Bus Inc. | E Z Trans | 28/9 | 7 | Isuzu 8GF1XS | Allison Series 2200 | DSL | 0402 | Sep-04 |
| Champion Bus Inc. | EZ Trans | 36 | 10 | Navistar A215 | Allison 2200 PTS | DSL | 0512 | Jan-06 |
| Chance Coach | AH-28 | 29 | 12 | Cummins ISB 5.9 | Allison B300R | DSL | 2004-10-00 | Oct-00 |
| Chance Coach | AH-28 CNG | 31 | 7 | Cummins 5.9L | Allison MT643 | CNG | 9503-11-P | Apr-95 |
| Chance Coach | Opus LFB-29 | 29/8 | 12 | Cummins ISB 5.9-225 | Allison B300R | DSL | 2021-08-01 | May-01 |
| Chance Coach | RT-52 | 26 | 7 | Cummins 6BTA5.9 | Allison MT643 | DSL | 9106 | Apr-91 |
| Chance Coach | Trolley | 28 | 7 | Cummins 6BTA | Allison MTB643 | DSL | 9307 | Apr-93 |
| Chance Coach | VS-24 | 28 | 7 | Cummins 6BTA | Allison MTB643 | DSL | 9105 | Apr-91 |
| Chance Rides | Tramstar LFT | 21 | 5 | Ford Power Stroke 7.3L | Cushman & Ass.300 | DSL | 2026-14-01 | Sep-01 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|-------------------------------|---------------------|--------------------|------------------------------|-----------------------------|-----------------------------|-------------|-----------------|--------------------|
| Coach & Equipment | Condor | 29 | 7 | Navistar B190 | Allison AT545 | DSL | 9803-10-98 | Oct-98 |
| Coach & Equipment | Condor | 29 | 10 | Navistar B190 | Allison AT545 | DSL | 9803-A-10-98 | Oct-98 |
| Coach & Equipment | Phoenix | 25 | 4 | International 7.3L | Ford E40D | DSL | 9426-01 | Jan-95 |
| Coach & Equipment | Phoenix | 25/4.5 | 7 | Ford Power Stroke 6.0L | Ford Motor Co. Torq Shift | DSL | 0514 | Nov-05 |
| Coach & Equipment Mfg. Co. | CMD-55 | 27/4 | 7 | GMC Duramax 6.6L | Allison 1000 Series | DSL | 0315 | Oct-03 |
| Collins | Diplomat | 24/1 | 4 | Ford 7.5L EFI V-8 | Ford E40D | GAS | 9427-12 | May-95 |
| Collins | RE 185D | 26 | 7 | Cummins 6BT | Allison AT545 | DSL | 9420-16 | Dec-94 |
| Creative Carriage | ITV | 17 | 4 | Chrysler 3.3L | Chrysler OEM | GAS | 9711-13-97 | Nov-97 |
| Cummings | 99 Dodge RAM 2500 | 18 | 5 | Chrysler 5.2L | Chrysler 46RE | GAS | 9915-17-99 | Nov-99 |
| Daimler Chry.Commercial Buses | 229 SLF | 30 | 12 | Mercedes-Benz OM-904-LA | Allison 2000 Series | DSL | 0409-P | May-04 |
| Daimler Chry.Commercial Buses | CL 100 | 25 | 7 | Ford / 7.3L | Ford / 4R100 | DSL | 0202 | Mar-02 |
| Daimler Chry.Commercial Buses | SLF 200 | 32 | 12 | Cummins/B5.9 230G | Allison /B300 | CNG | 0118 | Mar-02 |
| Diamond | 2500 VIP | 26 | 4 | Navistar 7.3L | Ford E40D | DSL | 9425-16-P | Nov-94 |
| Diamond | TC18FD | 31 | 5 | Cummins 5.9L | Allison AT545 | DSL | 9414-15 | Nov-94 |
| Diamond Coach Corp | MB-45 | 27 | 7 | Cummins B5.9 G | Allison AT545 | PRO-PANE | 0112-P | Oct-01 |
| Double K., Inc. | Hometown Villager | 29/3.5 | 7 | Duramax 8.1L | Allison 1000 PTS | GAS | 0416 | Jul-05 |
| Dupont Service Center Ltd. | CT 181 | 33/1 | 12 | Cummins ISB 215 | Allison World B300 | DSL | 2017-05-01 | Apr-01 |
| Dupont Service Center Ltd. | CT 238 Trolley | 39 | 7 | Cummins 6BTA190 | Allison MT643 | DSL | 9421-06-P | Feb-95 |
| Dupont Service Center Ltd. | M 2000 | 28/5 | 12 | EFISB 190 | Allison AT545 | DSL | 2023-10-01 | May-01 |
| Ebus | Vintage Trolley | 22/6 | 7 | Capstone Turbine Corp./330 | Reliance Electric Generator | DSL | 0121 | Feb-02 |
| E-Bus | 22 T | 22/1 | 7 | Fulmen Type XTHF075 80 Volt | EMS 75KW Traction Inverter | BATT/ELEC | 2025-09-01 | May-01 |
| Eclipse Specialty Vehicles | Dodge Grand Caravan | 16/8 | 4 | Daimler Chrysler 3.3L - V6 | Daimler Chrysler OEM | GAS | 0311 | Jun-03 |
| Eldorado | 200-Aerotech | 21 | 5 | Ford 5.8L | Ford E40D | CNG | 9509-19 | Oct-95 |
| Eldorado | 240-Aerotech | 25 | 5 | Navistar A185 | Ford E40D | DSL | 9405-04 | May-94 |
| Eldorado | 240-Aerotech | 24 | 5 | GM 7.4L | GM Turbo Hydramatic 4L80E | GAS | 9802-04-98 | Jul-98 |
| Eldorado | 290 Aero Access | 28 | 10 | Cummins ISB 190 | Allison AT545 | DSL | 0110 | Sep-01 |
| Eldorado | 30' MST II CNG | 30/5 | 10 | Cummins B5.9 195G | Allison AT545 | CNG | 2020-07-01 | Apr-01 |
| Eldorado | Aero Elite 320 | 32 | 7 | Navistar A190C T444E | Allison AT545N | DSL | 9620-07-97 | May-97 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|-------------------------------------|---------------------|--------------------|------------------------------|---------------------------|---------------------------------|-------------|-----------------|--------------------|
| Eldorado | Elf 125 HD | 26 | 7 | Ford 7.3L | Ford E40D | DSL | 9512-02-96-P | Feb-96 |
| Eldorado | Elf 125 HD | 26 | 7 | Ford 7.3L | Ford E40D 4 HP 590 | DSL | 9606-06-96-P | May-96 |
| Eldorado | Escort FE-25 | 24 | 7 | GM 7.4L | GM 4180E | CNG | 9506-18 | Oct-95 |
| Eldorado | Escort RE | 29 | 7 | Hercules GTA 5.6 | Allison AT545 | CNG | 9309 | Apr-93 |
| Eldorado | E-Z Rider | 30 | 12 | Cummins 8.3L G6CTA | Allison B300 | CNG | 9706-12-97 | Nov-97 |
| Eldorado | TM-RE-29 | 29 | 10 | Cummins C8.3L | Allison MTB643 | DSL | 9601-03-96-P | Feb-96 |
| Eldorado | Transmark RE | 33 | 10 | Hercules X075 GTA 5.9L | Allison MT643 | CNG | 9419-05 | Feb-95 |
| Eldorado | Transmark RE | 29 | 10 | Cummins 5.9L | Allison MT643 | DSL | 9507-15-P | Jul-95 |
| Eldorado National | 240 Aerotech | 24/7 | 7 | Ford Power Stroke 7.3L | Ford 4R100E | DSL | 2014-13-00 | Oct-00 |
| Eldorado National | 240 Aerotech | 24/6 | 5 | Ford 5.4L | Ford 4R100E | CNG | 0219 | Sep-02 |
| Eldorado National | 300 Aero Elite | 30/5 | 7 | Cummins ISB 190 | Allison Series 2400 | DSL | 0208 | Aug-02 |
| Eldorado National | 320 Aero Elite Ford | 30/7 | 7 | Ford 7.3L Power Stroke | Ford Motor Co. 4R100 | DSL | 0223 | Feb-03 |
| Eldorado National | EZ Rider II | 36 | 12 | Cummins ISC 250 | Allison World B300R | DSL | 0215-P | Jun-02 |
| Eldorado National | E-Z Rider II | 30 | 12 | Cummins 8.3 250G | Allison B300R | CNG | 0107 | Oct-01 |
| Eldorado National | Versa Shuttle | 19/3 | 4 | Ford Motor Co. 5.4L | Ford Metric | GAS | 0216 | Sep-02 |
| Eldorado National (CA) Inc. | AXESS | 40/8 | 12 | Cummins CG 280 | Allison B400R | CNG | 0312 | Nov-03 |
| Eldorado National (CA) Inc. | XHF-32 | 33/5 | 12 | Cummins C8.3 - 250G | Allison B300 | CNG | 0310 | Sep-03 |
| Eldorado National (KS), Inc. | 240 Transtech | 24/4.5 | 7 | Ford A235C | Ford 4R100 | DSL | 0506 | Jun-05 |
| Eldorado National (KS), Inc. | Aero Elite | 31/1 | 7 | GM Duramax Diesel 6.6 L | Allison 2200 Series | DSL | 0326 | Jun-04 |
| Eldorado National (KS), Inc. | Amerivan | 17 | 4 | 3.5L General Motors Corp. | General Motors Corp. 5VA | GAS | 0503 | Mar-05 |
| Eldorado National, Inc. | E-Z Rider II | 31/9 | 12 | John Deere 8.1 L | Allison B300R | CNG | 0209-P | Apr-02 |
| Eldorado National, Kansas | 320 Aero Elite | 32 | 7 | International CL 215 | Allison 2000 | DSL | 0201-P | Jan-02 |
| Eldorado National, Kansas | Transtech | 24/4.5 | 7 | Ford 6L Power Stroke | Ford 5R110 | DSL | 0615-P | Oct-06 |
| Elkhart Coach (Div. of Forest River | ECII 186/313 | 26/3 | 7 | Ford 6.0 L Power Stroke | Ford 5 Speed Auto OD-Torq-Shift | DSL | 0516 | Dec-05 |
| Federal | Ford Shuttle 24' | 24 | 7 | Ford 7.3L | Ford E40D | DSL | 9710-15-97 | Dec-97 |
| Flxible | 40102 | 40 | 12 | Detroit Series 50 | Voith 863 | DSL | 9312-P | Jun-93 |
| Flxible | 40102 | 40 | 12 | Detroit Series 50 | Allison VR731RH | DSL | 9314-P | Jun-93 |
| Flxible | 103829 | 40 | 12 | Cummins 8.3L | Voith D863 | DSL | 9303-P | Feb-93 |
| Flxible | 40102/S50 | 40 | 12 | Detroit Series 50 | ZF 4HP590 | DSL | 9305-P | Mar-93 |
| Flxible | Metro | 40 | 12 | Cummins L10 240 | ZF 4HP500 | CNG | 9212 | Dec-92 |
| Flxible | Metro | 40 | 12 | Detroit Series 50G | Allison VR731RH | CNG | 9415-06-P | Jul-94 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|-----------------------------------|--------------------|--------------------|------------------------------|------------------------|-----------------------------|-------------|-----------------|--------------------|
| Fixible | Metro | 30 | 12 | Cummins L10 | Voith A4N18W7 | CNG | 9504-16 | Aug-95 |
| Freedom Motors USA, Inc. | 2004 Ford Freestar | 16/6 | 4 | Ford 3.9L OHV EFI | Ford AX4N transaxle | GAS | 0517 | Feb-06 |
| Freedom Motors USA, Inc. | Kneel Van | 16/6 | 4 | Chrysler V6 3.3L | Chrysler OEN | GAS | 0103 | Jun-01 |
| Freedom Motors USA, Inc. | Model 2005 | 16/9 | 4 | Daimler Chrysler 3.8L | Daimler Chrysler OEM | GAS | 0602 | Mar-06 |
| Freedom One | Low Floor Mini Van | 17 | 4 | Chrysler 3L(V6) | Chrysler OEM | GAS | 9715-05-98 | Aug-98 |
| Freedom One | Low Floor Mini Van | 17 | 4 | GM 3.4L | GM OEM | GAS | 9804-09-98 | Oct-98 |
| Freightliner Custom Chassis | MB55 Chassis | 31/10 | 10 | Cummins B 5.9L NG | Allison 2200 PTS | CNG | 0515-P | Mar-06 |
| General | Elf 128 T | 28 | 7 | Ford 7.5L | Ford E40D | GAS/CNG | 9418-02 | Jan-95 |
| General | Elf I | 25 | 7 | Navistar A166 | Borg-Warner 13-60 | DSL | 9311 | May-93 |
| Gillig | 29' Low Floor | 31 | 12 | DDC S40 267HP | Allison B300 | DSL | 9922-06-00 | Jun-00 |
| Gillig | 40/102T | 40 | 12 | Detroit Series 50 | Voith D863 | DSL | 9306 | Apr-93 |
| Gillig | 40/102TB M11 | 41 | 12 | Cummins M11 280E+ | Allison B400R | DSL | 9708-16-97 | Dec-97 |
| Gillig | 40TB102 | 40 | 12 | Detroit 6V92T | Allison HTB748 | DSL | 9213 | Nov-92 |
| Gillig | Spirit | 28 | 7 | Caterpillar 3208 | Allison MTB643 | DSL | 9101 | May-90 |
| Gillig Corporation | G21D102N4 | 40/9 | 12 | Cummins ISM 280 | Allison B-400 | DSL | 0101 | Aug-01 |
| Gillig Corporation | Lowfloor | 40/1 | 12 | Cummins ISM 280 | Voith A4VTOR2-8.5 | DSL | 0410 | Dec-04 |
| Gillig Corporation | LowFloor/Hybrid | 40/9 | 12 | Cummins Inc ISB 260 H | Allison Electric Drive EV40 | DSL | 0405 | Oct-04 |
| Girardin | Futura | 20 | 4 | International ADVHP | Ford E40D | DSL | 9301 | Jan-93 |
| Girardin | MB Series | 25 | 5 | Navistar Stroke 7.3L | Ford E40D | DSL | 2007-09-00 | Sep-00 |
| Glaval | Concord | 33/2 | 7 | Caterpillar 3126-7.2L | Allison 2400 Series | DSL | 2005-14-00 | Sep-00 |
| Glaval | Universal | 25 | 5 | Ford Power Stroke 7.3L | Ford E40D | DSL | 9910-13-99 | Aug-99 |
| Glaval (Div. of Forest River) | Titan II | 24/6.5 | 7 | Duramax 6600 V8 | GM Hydra-Matic w/Tow Haul | DSL | 0614 | Feb-07 |
| Glaval / Forest River Inc. | Titan | 33/9 | 10 | GMC 8.1L | Allison Series 2200 | GAS | 0318 | May-04 |
| Glaval Bus (Div. of Forest River) | Easyon - LF72 | 30/5 | 10 | Duramax 6.6L | Allison 1000 PTS | DSL | 0501 | Jul-05 |
| Glaval Bus (Div. of Forest River) | GMC 5500 | 32/10 | 10 | GM Duramax 6.6L | Allison 1000 PTS | DSL | 0508-P | Sep-05 |
| Glaval Bus Corporation | Apollo | 32 | 10 | Cummins ISB 190 | Allison AT 545 | DSL | 0114 | Dec-01 |
| Glaval Bus Corporation | Universal | 26 | 7 | Ford 7.3L Power Stroke | Ford 4R100 | DSL | 0122-P | Jan-02 |
| Goshen Coach | 1135 | 32.8 | 10 | Cummins ISB-205 5.9L | Allison 2400 Series | DSL | 2011-19-00 | Dec-00 |
| Goshen Coach | 884 CNG | 25/2 | 7 | Ford 5.4 L | Ford 4R100 | CNG | 0119 | Jan-02 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|--------------------------------|---------------------------------|--------------------|------------------------------|---------------------------|--------------------------|-------------|-----------------|--------------------|
| Goshen Coach | BUS/BA | 21 | 4 | Ford Power Stroke 7.3L | Ford 4R100 | DSL | 9923-03-00 | Mar-00 |
| Goshen Coach | GCC 2202-1292-0 | 30 | 5 | Cummins 6BTA5.9 | Allison AT545 | DSL | 9316 | Sep-93 |
| Goshen Coach | GCC 2793-1093-F | 26 | 4 | International A185 | Ford C6 | DSL | 9322-94 | Mar-94 |
| Goshen Coach | GCI 6552 | 31/1 | 10 | GMC 8.1L | Allison 2200 Series | GAS | 0411 | Feb-05 |
| Goshen Coach | GCI 8551 | 27/6 | 10 | Ford Power Stroke 7.3L | Ford 4R100 | DSL | 0226 | Jun-03 |
| Goshen Coach | Sentinel | 31 | 7 | Navistar Int. B210 | Allison AT545 | DSL | 9905-12-99 | Jul-99 |
| Goshen Coach | Sentry | 26 | 5 | Cummins 5.9L | Allison AT545 | CNG | 9707-11-97 | Sep-97 |
| Goshen Coach | Sentry 1350-4565 | 35 | 7 | Cummins B5.9 | Allison MT643 | DSL | 9614-17-96 | Dec-96 |
| Ikarus | 416 | 40 | 12 | Catepillar 3176 | ZF 4HP500 | DSL | 9001-P | Sep-90 |
| Ikarus | 416 | 40 | 12 | Detroit 6V92TAC | Allison HTB748 | DSL | 9002 | Jul-90 |
| Ikarus | 416.03 | 40 | 12 | Detroit 6V92 | Allison HTB748 | LNG/DSL | 9211 | Oct-92 |
| Ikarus | 436.04 | 60 | 12 | Cummins M11 | ZF 4HP600 | DSL | 9422-10-P | Aug-94 |
| Ikarus | Artic 436 | 60 | 12 | Detroit 6V92TAC | Allison HTB748 | DSL | 9108 | Jun-91 |
| Independent Mobility Systems | MVP | 16 | 4 | Chrysler 3.3L | Chrysler KO A604 | GAS | 9323-94 | Sep-94 |
| Independent Mobility Systems | Rampvan PT | 16 | 4 | Chrysler 3.3 L V6 SMPI | Chrysler 41TE/41AE | GAS | 0120 | Jan-02 |
| Les Entreprises Michel Corbeil | Kidette | 18/7 | 7 | General Motors 4.8L | General Motors 4L60-E | GAS | 0322 | Feb-04 |
| Liberty Motor Company Inc. | Liberty Freestar | 16/7 | 4 | Ford 4.2L | Ford 4X4N transaxle | GAS | 0604 | Oct-06 |
| Metrotrans | Classic | 23 | 4 | Ford 7.5L | Ford E40D | GAS | 9404-02-P | Apr-94 |
| Metrotrans | Classic 20', Raised Roof | 22 | 4 | Ford 6.8L | Ford E40D | GAS | 9805-03-98-P | Jul-98 |
| Metrotrans | Classic 24', Raised Roof | 26 | 5 | Ford Power Stroke 7.3L | Ford E40D | DSL | 9806-06-98 | Sep-98 |
| Metrotrans | Eurotrans | 30 | 7 | Cummins B5.9 | Allison AT545 | DSL | 9408-09 | Jul-94 |
| Mid Bus | TCD 9679629-I | 25 | 7 | Navistar A175F | Allison AT545 | DSL | 9609-10-96 | Aug-96 |
| Mid Bus Inc. | 3200 IH AT | 32/2 | 7 | International VT 365 | Allison World 200 Series | DSL | 0225-P | Nov-02 |
| Molly Corp. | 3600 | 27 | 5 | Navistar DT466 | Allison MT643 | DSL | 9511-04-96 | Mar-96 |
| Molly Corp. | F-53 | 31 | 7 | Ford 6.8L | Ford 4R100 | GAS | 9902-10-99 | Jun-99 |
| Molly Corp. | P31432 | 23/5 | 7 | General Motors 8.1L - V-8 | GM HydraMatic 4L80-E | GAS | 0105 | Aug-01 |
| Molly Corp. | P32022 | 32/5 | 10 | General Motors 8.1L | Allison 1000 Series | GAS | 0106 | Jul-01 |
| Molly Corp. | Trolley | 36 | 7 | Cummins ISB190 5.9 | Allison AT545 | DSL | 9912-18-99 | Nov-99 |
| Molly Corporation | MB55 | 30/9 | 12 | Cummins ISB 205 | Allison Series 2400 | DSL | 0210 | Aug-02 |
| Molly Corporation | MB55 Freightliner Molly Trolley | 30/9 | 10 | Cummins B 5.9 | Allison B220 | PRO-PANE | 0613 | Aug-06 |
| Motor Coach Industries | 102-D3 | 41 | 12 | Detroit Series 60 | Allison B500R | DSL | 9501-14 | Jun-95 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|------------------------------|--------------|--------------------|------------------------------|--------------------------|------------------------------|-------------|-----------------|--------------------|
| Motor Coach Industries | 102-D3 | 41 | 12 | Detroit 6067TKG8 | Allison B500R | CNG | 9807-12-98 | Dec-98 |
| Motor Coach Industries | 102-DL3 | 45 | 12 | Detroit Series 60 | Allison HT741 | DSL | 9403-13 | Oct-94 |
| Motor Coach Industries | D4500 | 45 | 12 | Detroit Diesel Series 60 | Allison B500 | DSL | 0115 | Jan-02 |
| Motor Coach Industries | D4500 | 45/7 | 12 | Caterpillar Inc. C-13 | Allison B500 | DSL | 0414-P | Nov-04 |
| Motor Coach Industries | D4500 | 45/9 | 12 | Caterpillar C13 ACERT | Allison B500 | DSL | 0610 | Dec-06 |
| Motor Coach Industries | Renaissance | 46 | 12 | Detroit Series 60 | Allison B500 | DSL | 9918-04-00 | May-00 |
| Motor Coach Industries, Inc. | D4000 | 40/1 | 12 | Detroit Diesel Series 60 | Allison B500 | DSL | 0221 | Mar-03 |
| NABI, Inc. / Optare Group | 30-LFN | 31/2 | 12 | Cummins ISB 185 | Allison 2000 Series | DSL | 0323 | Apr-04 |
| National Mobility System | MPV | 14 | 4 | Chrysler 2.5L | Chrysler 4567-055 | GAS | 9505-10-P | Apr-95 |
| Neoplan | AN 340-3 | 40 | 12 | Detroit Series 60 | Allison HT748 | DSL | 9417-07-P | Jul-94 |
| Neoplan | AN 440 | 40 | 12 | Detroit Series 50 | Allison B400R | DSL | 9416-03-P | Jan-95 |
| Neoplan | AN 440L | 40 | 12 | Detroit Series C50 | ZF 5HP590 | DSL | 9411-13 | May-95 |
| Neoplan | AN 440L | 40/1 | 12 | Detroit Diesel Series 50 | Allison B500 | DSL | 2016-03-01-P | Mar-01 |
| Neoplan | AN340 | 45 | 12 | Detroit 6V92 | Allison HTB748 | LNG/DSL | 9310 | May-93 |
| Neoplan | AN440 | 40 | 12 | Detroit 6V92TA | Allison V731 | DSL/CNG | 9315 | Jun-93 |
| Neoplan | AN-460 | 61 | 12 | Detroit Diesel Series 60 | Allison B500 | DSL | 0108-P | Sep-01 |
| Neoplan | Artic | 60 | 12 | Detroit 6V92 | Allison HTB748 | LNG/DSL | 9308 | Apr-93 |
| Neoplan USA Corporation | AN 460L | 60/9 | 12 | Detroit Diesel Series 60 | Allison B500R | CNG | 0214 | Jan-03 |
| Neoplan USA Corporation | AN460-RC | 58/11 | 12 | Caterpillar C9 | ZF Economat 2 5HP6027 | DSL | 0314 | Dec-03 |
| Neoplan USA Corporation | Dual Mode | 60/1 | 12 | Detroit Diesel 60 Series | DD DRS Elec. Power Generator | DSL | 0413 | Jun-05 |
| New Flyer | C 40 LF | 40 | 12 | Detroit Series 50G | ZF Ecomat | CNG | 9602-05-96-P | Apr-96 |
| New Flyer | D30LF | 30 | 12 | Detroit Series 40 | Allison B300R | DSL | 9703-03-97-P | Mar-97 |
| New Flyer | D-35 | 35 | 12 | Cummins L10TA | ZF 4HP590 | DSL | 9102 | Feb-91 |
| New Flyer | D-40 | 40 | 12 | Detroit 6V92 | Allison VR731 | DSL | 9208 | Jul-92 |
| New Flyer | D-40 | 41 | 12 | Detroit Series 50 | Allison B400R | CNG | 9410-07 | Mar-95 |
| New Flyer | D40 LF | 40 | 12 | Cummins C8.3-275 | Allison B400R | DSL | 9401-08 | Jul-94 |
| New Flyer | D40 LF | 40 | 12 | Detroit Series 50 | ZF Ecomat 4HP590 | DSL | 9508-20 | Dec-95 |
| New Flyer | D40LF | 41/3 | 12 | Cummins ISL 280 | Allison B400R | DSL | 0704-P | May-07 |
| New Flyer | D40LFS | 40 | 12 | Detroit 6V92TA | ZF 4HP500 | DSL | 9201 | Apr-92 |
| New Flyer | D45 HF | 46 | 12 | Detroit Series 60 | Allison B500R | DSL | 9815-05-99 | Mar-99 |
| New Flyer | D-60 | 60 | 12 | Detroit 6V92 | Allison HTB748 | DSL | 9319 | Nov-93 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|-------------------------------------|------------------|--------------------|------------------------------|----------------------------|-------------------------------|-------------|-----------------|--------------------|
| New Flyer | D-60 | 60 | 12 | Detroit Series 50 | Allison B500R | DSL | 9412-05-P | Jun-94 |
| New Flyer | D60LF | 61 | 12 | Detroit Series 50 | Allison B500R | DSL | 9714-11-98 | Nov-98 |
| New Flyer | DE 60 LFA | 62/9 | 12 | Caterpillar C9 | Allison Electric Drive EV50 | DSL | 0603 | Jan-07 |
| New Flyer | DE60LF | 60/8 | 12 | Cummins ISL 330 | Allison Electric Drive EV40 | DSL | 0408 | Apr-05 |
| New Flyer Industries | C40LF | 40/11 | 12 | John Deere Power Tech 8.1L | Allison B400 | CNG | 0227-P | Jan-03 |
| New Flyer Industries | C40LF | 40/1 | 12 | Detroit Diesel Series 50 | Allison B400 | CNG | 0403 | Oct-04 |
| New Flyer Industries | DE40LF | 40/9 | 12 | Cummins 8.3L ISL 280 | Allison EV40 | DSL | 0511-P | Aug-05 |
| New Flyer Industries | DE60LF | 60/8 | 12 | Cummins ISL330 | Allison EV 50 DV Hybrid Elec. | DSL | 0305 | Oct-03 |
| New Flyer Industries, Ltd. | D40 Invero | 40/9 | 12 | Detroit Diesel Series 50 | Allison B400 | DSL | 0203 | Jul-02 |
| New Flyer Industries, Ltd. | D60LF | 61/1 | 12 | Cummins ISL 330 | Allison B500R | DSL | 0220-P | Aug-02 |
| New Flyer Industries, Ltd. | GE40LF | 40/12 | 12 | Ford Motor Co. 6.8L V-10 | Siemens Electric Generator | GAS | 0401 | Sep-04 |
| New Flyer of America | D40i | 41 | 12 | Cummins ISL 280 | Allison B400 | DSL | 0406-P | May-04 |
| New Flyer of America | D40i Invero | 41/2 | 12 | Detroit Diesel Series 50 | Allison B400 | DSL | 0316 | Mar-04 |
| New Flyer of America | D40LF | 42/6 | 12 | Cummins ISM 280 | ZF Ecomat 2 | DSL | 0607 | May-06 |
| New Flyer of America | DE40LF | 40/8 | 12 | Cummins ISL 330 | Allison EV500V | DSL | 0313-P | May-03 |
| New Flyer of America | DE40LF | 42/6 | 12 | Cummins ISB 260H | ISE Thunder Volt Hybrid Drive | DSL | 0611 | Jul-06 |
| North American Bus Industries | 40 C LFW CNG | 40/5 | 12 | Cummins C 8.3-275F | ZF 5HP-500 | CNG | 2001-16-00 | Nov-00 |
| North American Bus Industries | 40 LFW | 41 | 12 | Cummins C8.3-250G | Allison B400R | LNG | 9712-02-98 | Jun-98 |
| North American Bus Industries | 40 LFW-CNG | 40/8 | 12 | Cummins CG-280 | Allison B400 | CNG | 0321-P | Oct-03 |
| North American Bus Industries | 40LFW CNG | 41 | 12 | Cummins C8.3-250G | Allison B400R | CNG | 9908-01-00 | Feb-00 |
| North American Bus Industries | 436.10 | 60/3 | 12 | Cummins ISL 330 | Allison B500R | DSL | 0224-P | Oct-02 |
| North American Bus Industries | 60 LFW K-1 | 60/11 | 12 | Detroit Diesel Series 50 | ZF Ecomat 5HP 602C | DSL | 0217 | Jun-03 |
| North American Bus Industries | CLFW-CNG (Compo) | 45/11 | 12 | Detroit Diesel S-50G | Allison B400R | CNG | 0308 | Sep-03 |
| North American Bus Industries, Inc. | 60 BRT | 61/1 | 12 | Cummins LG-320 8.9L | Allison B500 | CNG | 0412 | Apr-05 |
| North American Transit | UDTV-29 | 30 | 7 | Hercules GTA 5.6L | Allison AT545 | CNG | 9424-08 | Mar-95 |
| Northrop Grumman | ATTB | 41 | 12 | Detroit Series 30 | Generator-Kaman | CNG | 9713-04-99 | Feb-99 |
| Nova | LFS L 055-02 | 40/7 | 12 | Cummins ISC 250 | ZF 5HP552 C | DSL | 2006-11-00-P | Sep-00 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|--------------------------------------|--------------------|--------------------|------------------------------|---------------------------|-------------------------------|-------------|-----------------|--------------------|
| Nova | LFS-TC4010 2 N | 41 | 12 | Cummins C8.3-275 | Allison B400R | DSL | 9617-10-97 | Aug-97 |
| Nova | RTS,LNG | 41 | 12 | Cummins L10 280G | ZF 5HP590 | LNG | 9913-05-00-P | Jun-00 |
| Nova | T80206 | 41 | 12 | Cummins ISC280 8.3L | ZF 5HP592C | DSL | 9916-15-99-P | Aug-99 |
| Nova | TC 40102N | 40 | 12 | Detroit Series 50 | Allison B400R | DSL | 9502-17 | Oct-95 |
| Nova Bus | 82 VW RTS | 40/8 | 12 | Detroit Diesel Series 50G | ZF Ecomat 2 | LNG | 0204-P | Jul-02 |
| Nova Bus Incorporated | RTS T-Drive | 40/9 | 12 | Detroit Diesel Series 50 | Allison B400 | CNG | 9921-11-01 | Jun-01 |
| Optima Bus Corporation | Opus Under 32' LFB | 31/11 | 12 | Cummins ISB 245 | ZF Ecomat 2 | DSL | 0612-P | Aug-06 |
| Orion | VI | 40/8 | 12 | Detroit Diesel Series 50 | Allison B400R | DSL | 2002-06-01-P | Apr-01 |
| Orion Bus Ind. | Orion VII | 40 | 12 | Det.DSL 50 | Allison B400 | CNG | 0113 | Dec-01 |
| Orion Bus Industries | 6.501 | 41 | 12 | Cummins L10 280G | Allison B400R | CNG | 9613-08-97 | May-97 |
| Orion Bus Industries | 05.501 | 32 | 12 | Cummins L10 | ZF 5HP590 | CNG | 9402-01-P | Mar-94 |
| Orion Bus Industries | Orion II | 26 | 12 | GM 427 | Allison AT545 | GAS/CNG | 9406-12 | Aug-94 |
| Orion Bus Industries | Orion II | 27 | 12 | Cummins 5.9L | Allison AT545 | CNG | 9816-02-00-P | Feb-00 |
| Orion Bus Industries | Orion VII | 40/11 | 12 | Detroit Diesel Series 50 | Allison B400 | DSL | 0304-P | Feb-03 |
| Orion Bus Industries | VI Hybrid | 40/8 | | Cummins ISB 260 | Locked Martin Control System | ELE | 2012-12-01-P | Jun-01 |
| Orion Bus Industries (as BIA) | 05-502 | 36 | 12 | Detroit 6V92 | Allison MD3060 | DSL | 9209 | Aug-92 |
| Orion Bus Industries (as BIA) | Orion II | 26 | 7 | Navistar A170 | Allison AT545 | DSL | 9202 | May-92 |
| Orion Bus Industries (as BIA) | Orion V | 40 | 12 | Detroit 6V92TA | Allison HTB748 | DSL | 9001 | May-90 |
| Orion Bus Industries (as BIA) | Orion V | 40 | 12 | Cummins L10TA | Voith D863 | DSL | 9003-P | Jul-90 |
| Orion Bus Industries (as BIA) | Orion V | 40 | 12 | Cummins L10 | ZF 5HP500 | CNG | 9302 | Jan-93 |
| Orion Bus Industries LTD. | Orion VII | 41 | 12 | Cummins ISC 280 | Voith A3VTOR2-8.5E | DSL | 0327-P | Dec-03 |
| Ricon | Activan | 17 | 4 | Chrysler 3.3L | Chrysler OEM | GAS | 9619-04-97 | Mar-97 |
| Ricon | Activan | 17 | 4 | GM 3.4L | GM Specific | GAS | 9914-16-99 | Sep-99 |
| Specialty Vehicles | 300T/Trolley | 31 | 7 | Cummins B5.9 | Allison MT643 | DSL | 9206 | Jul-92 |
| Starcraft | 2001 | 16/8 | 4 | General Motors 3400 SFI | General Motors OEM | GAS | 0211 | Jun-02 |
| Starcraft | Allstar | 26 | 5 | Ford Power Stroke 7.3L | Ford 340D | DSL | 9814-01-99 | Jan-99 |
| Starcraft | Starcruiser | 34/3 | 10 | Caterpillar Inc. 3126 | Allison 2400 Series | DSL | 0207 | Nov-02 |
| Starcraft Bus & Mobility | Dodge Caravan | 16/8 | 4 | Daimler Chrysler 3.3L | Daimler Chrysler OEM | GAS | 0213 | Aug-02 |
| Starcraft Bus (Div. of Forest River) | Allstar - 25 | 25/11 | 7 | Ford 6.8L EFI V10 | Ford Motor Co. Elec 5-spd AOD | GAS | 0518 | Feb-06 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|--------------------------|-------------------|--------------------|------------------------------|-------------------------|-----------------------------|-------------|-----------------|--------------------|
| Startrans | BSSN25 | 24/7 | 7 | Ford Power Stroke 7.3L | Ford 4R100E | DSL | 2013-12-00 | Oct-00 |
| Stewart & Stevenson | Gemini | 30 | 10 | GM UI-8 2T | Allison 648 | DSL | 9205 | Jun-92 |
| Supreme | 28' Bus | 29 | 4 | GM 6.5L | GM Hydramatic 4L80E/4L80EHD | DSL | 9808-08-98 | Oct-98 |
| Supreme | 31' Trolley | 32 | 7 | Cummins ISB210 5.9L | Allison AT545 | DSL | 9901-08-99 | May-99 |
| Supreme | BSGP 25' S09101 | 26 | 4 | GM 7.4L | GM 4L80E MTI | LNG | 9701-06-97 | Apr-97 |
| Supreme | Low Floor Van | 17 | 4 | Ford 3.8L | Ford AXOD | GAS | 9608-08-96 | Jul-96 |
| Supreme | PS-31 | 31 | 7 | Cummins 6B5.9 | Allison AT545 | DSL | 9801-01-98 | Jun-98 |
| Supreme | Senator IHC 3400 | 31 | 7 | Navistar Int. B190F | Allison AT545 | DSL | 2003-07-00 | Jul-00 |
| Supreme | Startrans | 25 | 4 | International A185 | Ford C6 | DSL | 9320 | Nov-93 |
| Supreme Corporation | 34' HD Chevy | 23/5 | 10 | Duramax Diesel 6.6L V8 | Allison 2200 Series | DSL | 0513-P | Dec-05 |
| Supreme Corporation | BST36F | 36.1 | 10 | Cummins ISB 230 | Allison B300 | DSL | 2009-18-00 | Nov-00 |
| Supreme Corporation | President | 27/1 | 7 | Cummins BG230 5.9L | Allison 2400 Series | CNG | 0319-P | Mar-04 |
| Supreme Corporation | Senator S II | 24/2.5 | 7 | Ford 6.0 L Power Stroke | Ford Motor Co. 4R100 | DSL | 0502 | Mar-05 |
| Supreme Corporation | Startrans 31' RAI | 31 | 10 | Cummins Cum-02 B 5.9 G | Allison 2400 Series | CNG | 0324 | May-04 |
| Supreme Corporation | Trolley TR 31 | 32/1 | 7 | Ford 6.8L | Ford Motor Co. E40D | GAS | 0302-P | Mar-03 |
| Supreme Corporation | Trolley TR35-84 | 37 | 10 | Caterpillar/31260 | Allison /B300 | DSL/CNG | 0123 | Dec-01 |
| Terra Transit | 94187 | 23/5 | 7 | Ford 6.8L | Ford 4R100 | GAS | 0109 | Aug-01 |
| Thomas | Citiliner | 32 | 10 | Catepillar 3116TA-215 | Allison MT643 | DSL | 9317-P | Sep-93 |
| Thomas | SLF 200/35' | 35 | 12 | Cummins ISB 260 | Allison B-300 | DSL | 0117-P | Sep-01 |
| Thomas | Transitlin | 36 | 10 | Catepillar 3116 | Allison MT643 | DSL | 9304 | Feb-93 |
| Thomas Built | BB365 | 22 | 7 | International T444E | Allison AT545 | DSL | 9428-09 | Apr-95 |
| Thomas Built | Citiliner | 35 | 10 | Cummins C8.3 ER6CTA-250 | Allison B400R | DSL | 9702-01-97-P | Jan-97 |
| Thomas Built | Citiliner | 33 | 10 | Cummins ERB6G-195 | Allison MT643 | CNG | 9704-05-97-P | Apr-97 |
| Thomas Built | MVP-EF | 32 | 10 | Cummins B5.9 EFISB230 | Allison B300 | DSL | 9813-09-99 | May-99 |
| Thomas Built | SLF230 | 30/1 | 12 | Cummins ISB 185 5.9L | Allison AT545 | DSL | 2010-01-01 | Jan-01 |
| Thomas Built | TL-960 | 33 | 10 | Catepillar ER3116TA215 | Allison B300 | DSL | 9618-15-96-P | Dec-96 |
| Thomas Built | Vista | 31 | 7 | Navistar T444 A 175F | Allison AT545 | DSL | 9510-01-96-P | Jan-96 |
| Thomas Built Buses, Inc. | 1108N | 32/3 | 10 | Cummins Motors ISB 230 | Allison AD2500 | DSL | 0601 | Mar-06 |

EXHIBIT 6.3

LIST OF BUSES TESTED (AS OF JULY 14, 2007)

| Manufacturer | Model | Size (Feet) | Service Year Category | Engine | Transmission | Fuel | Report # | Report Date |
|---------------------------|-----------------|--------------------|------------------------------|--------------------------|--|-------------|-----------------|--------------------|
| Thomas Dennis Co., LLC. | SLF 200/35' | 36/1 | 12 | Mercedes Benz 0MJ906 | Allison B300 | DSL | 0301-P | Feb-03 |
| TMC Group Inc. | Ameritrans | 35/3 | 10 | International A200 | Allison 2200 PTS | DSL | 0606 | Jul-06 |
| Transportation Mfg. Corp. | T80206 | 40 | 12 | Detroit 6V92TA | Allison V731 | METH | 9207 | Jul-92 |
| Transportation Mfg. Corp. | T80208 | 40 | 12 | Detroit 6V92TA | Allison VR731 | DSL | 9104 | Mar-91 |
| Transportation Mfg. Corp. | T80208 | 40 | 12 | Cummins L10 240G | ZF 4HP590 | CNG | 9313 | Jun-93 |
| Transportation Techniques | Ecomark Shuttle | 45 | 12 | Ford LRG425 2.5L | Electric Drive System | CNG/ELEC | 9919-19-99 | Dec-99 |
| Trolley Enterprises | Hybrid Electric | 31 | 10 | Volkswagen 1.9 L | Reliance Elec. Generator XEX EEE-45 ABS | DSL | 0307 | Feb-04 |
| Trolley Enterprises | MB55FD | 31/1 | 10 | Cummins ISB 210 | Allison AT545 | DSL | 0104 | Jul-01 |
| Trolley Enterprises | XB20RD | 35 | 7 | Cummins B5.9 | Allison AT545 | DSL | 9605-09-96 | Jul-96 |
| Trolley Enterprises | XB-27 | 36 | 7 | Cummins 5.9L190 | Allison AT545 | DSL | 9705-09-97-P | Jun-97 |
| Turtle Top | C26.34-D-WD-RLD | 26 | 4 | GM 454 V8 | GM MT-1THM | GAS | 9407-03 | May-94 |
| Turtle Top | Van Terra | 20/6 | 5 | Ford Motor Co. 5.4L | Ford OEM | GAS | 0222 | Nov-02 |
| Turtle Top (Div. of IPC) | Odyssey XL | 33/5 | 10 | Isuzu Duramax 6.6L | Allison 1000 | DSL | 0605 | Jan-07 |
| View Point Mobility, LLC | Vision | 16/6.5 | 4 | Daimler Chrysler 3.3L V6 | Chrysler OEM | GAS | 0509 | Aug-05 |
| World Trans | 3000 | 26 | 7 | Cummins B5.9 | Allison AT545 | CNG | 9709-14-97 | Dec-97 |

7. DISADVANTAGED BUSINESS ENTERPRISE

BASIC REQUIREMENT

The grantee must comply with the policy of DOT that DBEs, as defined in [49 CFR Part 26](#), are ensured nondiscrimination in the award and administration of DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs; help remove barriers to the participation of DBEs; and assist the development of firms that can compete successfully in the marketplace outside the DBE program.

AREAS TO BE EXAMINED

1. ***Designated DBE Officer***
2. ***DBE Program***
 - a. Thresholds
 - b. Program Submittal
 - c. Use of DBE Financial Institutions
 - d. Prompt Payment

3. DBE Goals

- a. Annual Goal Submittals
- b. Uniform Report of DBE Awards or Commitments and Payments
- c. Monitoring
- d. Good Faith Efforts

4. Certification Process

- a. Unified Certification Program
- b. DBE certifications
- c. TVM compliance

5. DBE Complaints

- a. Complaint handling procedures
- b. Complaint evaluation/resolution

REFERENCES

1. [49 CFR Part 26](#), "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."
2. www.fta.dot.gov/dbe, FTA's DBE website.

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a DBE Compliance Review during the past two fiscal years? If yes, when was the site visit? Is a Review scheduled for the current fiscal year?*

EXPLANATION

Consistent with FTA's oversight responsibilities, FTA has a program of grantee reviews assessing compliance with the DBE regulations. DBE compliance reviews typically last two to three days and assess implementation of the DBE program in 12 areas: Policy Statement; DBE Liaison Officer; Financial Institution; DBE Directory; Over-concentration; Business Development Programs; Determining/Meeting Goals; Required Contract Provisions; Certification Standards; Certification Procedures; Record Keeping and Enforcements; and Public Participation and Outreach.

After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to FTA within 30 days of the site visit and is then forwarded to the grantee. A letter and final report is issued to the grantee within approximately 60 days of the site visit. The grantee then will typically have 90 days to take corrective actions and provide appropriate documentation to the Civil Rights Officer (CRO). The CRO will issue a closeout letter once the grantee is fully in compliance.

If a DBE Compliance Review site visit has been conducted within the past two fiscal years, or if one is scheduled for the current fiscal year, (FYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was performed. If findings from the DBE Compliance Review are still being monitored, or if the review is pending, the triennial review will not include this area. If the DBE Compliance Review is closed, the reviewer should seek guidance from the Regional Civil Rights Officer and the Office of Civil Rights on whether to include the DBE area in the review.

REASON FOR THE QUESTION

Input to triennial review

SOURCES OF INFORMATION

During the desk review and immediately prior to the site visit, the reviewer should contact the CRO to determine if a DBE Compliance Review is scheduled or has been conducted during the review period. The Regional Oversight Resource Plan also may contain a schedule of DBE reviews to be held during the year.

DETERMINATION

If the DBE area is not included in the review, use the finding of Not Reviewed (NR).

SUGGESTED CORRECTIVE ACTION

None

2. *Who is responsible for ensuring that Disadvantaged Business Enterprises (DBEs) are not discriminated against in the award and administration of FTA funded contracts and subcontracts? To whom does this individual report for DBE matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

EXPLANATION

For grantees that meet the threshold requiring that they have a DBE program, the grantee's Chief Executive Officer (CEO) must designate a DBE Officer and adequate staff to administer the DBE program. The DBE Officer must have direct and independent access to the CEO concerning DBE matters. Care should be taken to avoid conflicts when assigning responsibility for administering the DBE program as a collateral duty assignment. The DBE Officer performs an oversight function. Therefore, if, for example, the procurement director is made the DBE Officer on a collateral duty basis, there may be a potential conflict of interest.

REASON FOR THE QUESTION

49 CFR [26.25](#)

SOURCES OF INFORMATION

The DBE program submissions to the CRO may include the name and reporting relationship of the DBE Officer. This information should be updated at the site visit. The CRO should be consulted for any indications of past problems with staffing. Current staff assignments should be confirmed in discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the DBE Officer can confirm responsibilities and reporting relationships.

DETERMINATION

If the grantee has designated a DBE Officer and adequate staff to administer the DBE program and there are no potential conflicts of interest with this

assignment, the grantee is not deficient. A temporary staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. If the DBE Officer does not have direct and independent access to the CEO, the grantee is deficient. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to designate DBE responsibilities properly. If the deficiency is related to the reporting relationship of the DBE Officer, the grantee may need to change reporting relationships or assignment of responsibilities. Provide evidence of corrective actions to the CRO.

3. *If the grantee projects awarding more than \$250,000 of FTA funds in prime contracts in a federal fiscal year, exclusive of transit vehicle purchases, did the grantee submit a DBE program to FTA? If not, provide an explanation. Has the grantee's DBE program been approved by FTA?*
4. *Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

EXPLANATION

Written DBE programs are required of FTA recipients receiving planning, capital, and/or operating assistance who will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a federal fiscal year. Contracting opportunities are counted in the aggregate, and can include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects and contracting activities of subrecipients. The DBE program plan is not an annual submission and grantees do not have to submit regular updates of their DBE programs. However, significant changes to the program must be submitted for approval. Grantees (particularly new grantees) that do not meet the threshold are not required to develop a written DBE program.

Grantees required to have a written program that are part of a municipal government may be allowed to submit a single plan to FHWA if the municipality receives more funding from FHWA than from FTA. If this situation occurs, the CRO should be contacted to confirm that a separate FTA program is not required.

The grantee still must submit transit-specific goals to FTA on an annual basis (see Question 7).

Grantees are required to follow their approved DBE programs, and such programs need to be updated if significant changes have occurred. FTA has found in its DBE reviews that organizational changes have occurred and grantees have not updated their programs. Such changes may reflect the reporting relationships of the DBE Officer and the Chief Executive Officer.

REASON FOR THE QUESTION

49 CFR [26.21](#)

SOURCES OF INFORMATION

The DBE files should include the grantee's DBE program and correspondence regarding the status of program approval. A current organization chart and job description for the DBE Officer will show if the DBE program on file with FTA is correct. For grantees that do not have approved programs, examine the total grant amounts and evaluate on site contracting opportunities. Purchases of fuel, spare parts, and other FTA funded operating expenses, as well as capital procurements, may exceed \$250,000 when combined.

DETERMINATION

If the grantee has an approved DBE program, the grantee is not deficient. If the grantee has submitted its program to FTA along with any additional information requested, and is awaiting a response, the grantee is not deficient.

A grantee is deficient if:

- A program has not been submitted and the grantee has \$250,000 of FTA funds in contracting opportunities or the grantee has not responded to FTA's request for additional information.
- Organizational changes that affect the DBE program have occurred and the DBE program on file with FTA has not been updated or approved by FTA.

SUGGESTED CORRECTIVE ACTION

The grantee needs to submit its DBE Program.

5. *What efforts has the grantee made concerning DBE financial institutions?*

EXPLANATION

Grantees that meet the threshold requiring that they have a DBE program are required to thoroughly investigate the full extent of services offered by financial institutions in the community owned and

controlled by socially and economically disadvantaged individuals (DBE Financial Institutions) and make reasonable efforts to use these institutions. Grantees are also required to encourage prime contractors to use such institutions.

REASON FOR THE QUESTION

49 CFR 26.27

SOURCES OF INFORMATION

Documentation of the efforts to find and use DBE financial institutions can be obtained at the site visit. Current progress and any outstanding issues should be discussed at the site visit.

DETERMINATION

A grantee is deficient if it has not made efforts to use DBE financial institutions.

SUGGESTED CORRECTIVE ACTION

The grantee needs to submit documentation of efforts to utilize DBE financial institutions.

6. *What efforts has the grantee made to ensure prompt payment of DBE subcontractors?*

EXPLANATION

Grantees that meet the threshold for having a DBE program have the responsibility to ensure that contractors are properly using and managing DBE subcontractors, including the prompt payment of such subcontractors. Recipients must have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the grantee. Additionally, grantees must ensure prompt and full payment of retainage from the prime contractor to subcontractors within 30 days after the subcontractors' work is satisfactorily complete.

REASON FOR THE QUESTION

49 CFR 26.29

SOURCES OF INFORMATION

Review of procurement files should provide information on the inclusion of appropriate prompt payment and return of retainage clauses and policies. A review of contract administration or contract compliance mechanisms should provide information on a grantee's means of enforcing these requirements.

DETERMINATION

A grantee is not deficient if it has included prompt payment and return of retainage clauses in its

contracts and has demonstrated appropriate means to enforce these requirements. A grantee is deficient if it has not included prompt payment and return of retainage clauses in its contracts, or if it cannot demonstrate that it has appropriate mechanisms to enforce these requirements.

SUGGESTED CORRECTIVE ACTION

The grantee needs to submit documentation of efforts to ensure DBE contractors are paid promptly.

7. *Did the grantee develop overall annual DBE goals based on the relative availability of DBEs in the area? Did the grantee conduct a consultive process in setting these goals? Did the grantee publish their goals for 45 days prior to submission to FTA? Did the grantee submit annual goals timely to FTA for review?*
8. *Has the grantee been submitting the Uniform Report of DBE Awards or Commitments and Payments semi-annually?*

EXPLANATION

Grantees that anticipate having (excluding transit vehicle purchases) \$250,000 or more in FTA funds for contracting opportunities in a federal fiscal year are required to develop overall goals for that fiscal year. Overall goals should be calculated as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles) that the grantee will expend in FTA-assisted contracts in the forthcoming fiscal year. Grantees also may be permitted to express an overall goal as a percentage of funds for a particular grant and/or project with prior FTA approval.

Overall DBE goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FTA-assisted contracts ("relative availability of DBEs"). The goal must reflect the grantee's determination of the level of DBE participation the grantee would expect absent the effects of discrimination. Grantees cannot rely on either the 10 percent aspirational goal at the national level, or the previous goal, or past DBE participation rates without reference to the relative availability of DBEs in the market.

In establishing an overall goal, grantees must provide for public participation. This public participation must include:

- Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
- A published notice announcing proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice must include addresses to which comments may be sent. The notice must be published in general circulation media and be available in minority-focused media and trade association publications.

Overall goals for the upcoming federal fiscal year must be submitted to FTA for review by August 1 of each year. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. FTA will review the submittals and advise the grantee if the overall goal has not been calculated correctly or if the method used for calculating the goal is inadequate. If so, FTA may, after consulting with the grantee, adjust the overall goal or require the grantee to make the adjustment.

Note: For grantees in the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington the 9th Circuit Court has issued a decision that affects DBE programs [*Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F. 3d 983 (9th Cir. 2005)]. For grantees in these states a disparity analysis must be completed before goals can be established. Consult with the Regional Civil Rights Officer to determine the appropriate questions for grantees in these states.

Each grantee that meets the threshold requiring them to have a DBE program also is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually. This report is available at www.fta.dot.gov/dbe. Reports are due by June 1st (for the period covering October 1 – March 31) and by December 1st (for the period covering April 1 – September 30)

REASON FOR THE QUESTION

49 CFR 26.45 and 26.11

SOURCES OF INFORMATION

The DBE files should include correspondence regarding annual overall DBE goal and semi-annual

report submittals. Any outstanding materials (e.g., submission of current year goals) can be obtained at the site visit. Also, an on site evaluation of the contracting opportunities should be made to determine if grantee has properly calculated contracting opportunities. Current progress, semi-annual reports, and any outstanding issues should be discussed at the site visit.

DETERMINATION

If the grantee has submitted annual DBE goals by the August 1 deadline, has responded to any request by FTA for additional information on the goal setting methodology, or requested and received a formal extension for filing that was met, the grantee is not deficient. A grantee is deficient if:

- Overall annual DBE goals were not submitted to FTA by August 1.
- Goals were not calculated in accordance with the regulations.
- The goals setting process did not include a public participation process with consultation and a public notice.

If a grantee has been submitting the report on awards, commitments, and payments semi-annually, it is not deficient. If the grantee has not been submitting the reports semi-annually, has not been submitting them timely, or is not using the current form, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to submit its annual overall DBE goal or adjusted goal to the CRO or certify that future goals will be submitted by August 1. The grantee must develop a public participation process and provide FTA documentation of the implementation of the process. The grantee needs to submit the Uniform Report of DBE Awards or Commitments and Payments semi-annually to the CRO.

9. *How does the grantee monitor subrecipients, contractors, and subcontractors to ensure that DBE obligations are fulfilled?*
10. *How frequently does the grantee conduct site visits to observe that DBEs are actually performing the work on contracts? Does the grantee check payroll records to ensure that the employees working on the job are actually employees of the DBE and not the prime contractor? Does the*

grantee look at the title to heavy equipment used on the project to ensure that the equipment is owned or leased by the DBE?

EXPLANATION

Grantees that meet the funding thresholds for a DBE program must have a process to monitor subrecipients, contractors, and subcontractors for compliance with applicable DBE requirements. Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (e.g., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Recent investigations by the U.S. DOT Office of the Inspector General have raised concerns about the administration of DBE programs. Specifically, it has been found that DBE certified firms are serving as "fronts" for ineligible firms. A grantee's responsibility for monitoring DBE participation does not end with the certification process. On large capital projects, the DBE Officer or the Project Manager should document periodic efforts to monitor on-site DBE activities, as described in the question above. On smaller projects, grantees should at minimum require the submittal of evidence that DBEs have been paid by the prime contractor in a timely manner for the work described in the bid or proposal.

REASON FOR THE QUESTION

[49 CFR 26.37](#)

SOURCES OF INFORMATION

The grantee's DBE program should be reviewed to identify the methods that the grantee says it will use to monitor subrecipients, contractors, and subcontractors. At the site visit, the grantee should provide examples of actual monitoring activities/reports during the past three years.

DETERMINATION

If the grantee is monitoring its subrecipients, contractors, and subcontractors, the grantee is not deficient. If the grantee cannot describe how it is monitoring its subrecipients, contractors, and subcontractors satisfactorily, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to begin monitoring subrecipients, contractors, and subcontractors and provide documentation of corrective actions to the CRO.

11. *Did the grantee award a contract to a firm that did not meet a specific DBE contract goal? If yes, how did the grantee determine if "good faith efforts" by the firm were sufficient? Does the grantee require contractors to obtain approval from its DBE Officer prior to substituting a DBE firm after contract award?*

EXPLANATION

For grantees that meet the threshold in Question 3, the grantee's DBE Officer should play a key role in procurement decisions to ensure that the DBE program is implemented properly. This series of questions should be asked during the review of procurement files to help the reviewer determine compliance. Prior to awarding a contract to a firm that did not meet a specific DBE contract goal, the grantee must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goals. Examples of efforts the grantee may consider include: whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to [49 CFR Part 26](#).

The grantee's DBE Officer also must approve and retain documentation of any requests by contractors to substitute DBEs after a contract is awarded. The contractor must have a bona fide reason for the request to substitute the firm and must make good faith efforts to retain another certified DBE firm for the same amount of work.

REASON FOR THE QUESTION

[49 CFR 26.53](#) and [Appendix A](#)

SOURCES OF INFORMATION

At the site visit, the grantee should explain its methods for determining "good faith efforts." The grantee's procurement files should document its consideration of "good faith efforts," where applicable.

DETERMINATION

If the grantee has a method for determining "good faith efforts" and procurement files document the consideration of "good faith efforts," the grantee is not deficient. If the grantee cannot describe the methods, or applicable procurement files do not include documentation of the consideration of "good faith efforts," the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should develop a method for determining “good faith efforts” and/or include documentation in applicable procurement files and provide evidence of any actions to the CRO.

12. *Is the grantee participating in a Unified Certification Program (UCP)?*
13. *Does the grantee certify DBEs itself? If so, is the grantee’s DBE certification process consistent with the standards of Subpart D of 49 CFR Part 26? Does the grantee follow the certification procedures of Subpart E of 49 CFR Part 26, including conducting site visits prior to certification and obtaining annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation?*

EXPLANATION

The regulations require that all DOT grantees participate in a UCP within their state. Even if a grantee does not certify DBEs, they are required to be signatory to its state’s UCP agreement.

The certification procedures help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. Any grantee that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs consistent with the standards of Subpart D participate as DBEs in the program. The regulations give specific guidance on determining eligibility based on group membership or individual disadvantage, business size, ownership, and control. The application form to be used for certification of DBEs was issued in a Federal Register Notice of June 16, 2003 and is Appendix F of [49 CFR Part 26](#).

The regulations also require that the certifying agency either conduct site visits, or, if the DBE is located out-of-state, the certifying agency must obtain evidence that a certification site visit was conducted prior to the initial certification. Further, the regulations require that annual affidavits must be obtained from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulations.

REASON FOR THE QUESTION

[49 CFR Part 26.61-26.91](#)

SOURCES OF INFORMATION

The grantee should provide information regarding its participation in a UCP. Grantees should have copies of the agreements they have signed to participate in the UCP.

If a grantee certifies DBEs, it should provide a copy of its DBE application and instructions to demonstrate compliance with these requirements. At the site visit, the grantee should also make available DBE certification files (if it certifies DBEs) for a random sample of two or three DBE firms to demonstrate that the certification procedures are in place. The application should address the group membership or individual disadvantage, business size, ownership, and control. Certification files should show evidence of a site visit prior to certification and annual affidavits of continued DBE eligibility. The reviewer should examine a sample of annual affidavits for DBE firms that have performed work during the past three years and record the dates that these were submitted. (Note: the grantee may not be doing its own certification but may be relying upon the UCP. In such case files would not be available.)

DETERMINATION

If the grantee is not participating (through at least being signatory to the state’s agreement) in the UCP, the grantee is deficient. If the grantee’s certification application and/or files contain the criteria and documentation to determine DBE initial and continued eligibility in accordance with the Certification Standards and Procedures, the grantee is not deficient. If the grantee is not using the criteria or has not followed the procedures, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit a description of how it will participate in the UCP. Direct the grantee to implement standards and procedures to determine initial and continued DBE eligibility in accordance with [49 CFR Part 26.61-26.91](#) and provide evidence of the corrective action to the CRO.

14. *For procurements of transit vehicles (e.g., buses, railcars, vans) during the past three years, did the grantee obtain DBE certifications from the transit vehicle manufacturers (TVM) with the bids/proposals submitted?*

EXPLANATION

All grantees must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of [49 CFR 26.49](#). The certification should reference [49 CFR Part 26](#) (not Part 23). The grantee is required to include a

provision in its bid specifications requiring the certification from TVMs, distributors, or dealers as a condition of permission to bid. More information is available at the FTA website: www.fta.dot.gov/dbe.

REASON FOR THE QUESTION

49 CFR [26.49](#)

SOURCES OF INFORMATION

At the site visit, grantee procurement files for transit vehicles should include TVM certifications.

DETERMINATION

If the grantee includes a provision in its bid specifications requiring TVM certifications and the grantee has obtained the TVM certifications from successful bidders, the grantee is not deficient. If the grantee does not include a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders, or if the TVM certification is out-of-date (references Part 23 instead of Part 26) the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to include a provision in applicable bid specifications requiring current TVM certifications; and/or obtain TVM certifications from successful bidders; and provide the CRO with evidence of its corrective action.

15. *Did the grantee receive any complaints alleging that it did not comply with the DBE regulations in the past three years? What is the grantee's process for handling and*

resolving such complaints? Do the complaints indicate any problems with the DBE program?

EXPLANATION

Any person who believes that the DBE regulations have been violated may file a written complaint.

REASON FOR THE QUESTION

49 CFR [26.103](#)

SOURCES OF INFORMATION

Information regarding complaints may be obtained from headquarters, CROs, or the grantee. A listing of all complaints during the past three years and the disposition of such complaints should be made available at the site visit. Individual complaint files can be reviewed. Discussions with responsible officials and employees may be necessary.

DETERMINATION

If the grantee has documentation indicating that any complaints received are being addressed, the grantee is not deficient. If no complaints have been received but the grantee provides a satisfactory explanation of how complaints would be processed, the grantee is not deficient. (There is no specific requirement that there be a written complaint handling process.) If complaints indicate that the grantee is violating DBE program regulations or if the complaints do not receive a response, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to resolve any outstanding complaints and/or develop and implement procedures for handling DBE complaints and submit these procedures to the CRO.

8. BUY AMERICA

BASIC REQUIREMENT

Per “Buy America” law, federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless FTA has granted a waiver, or the product is subject to a general waiver. Rolling stock must have sixty percent domestic content and final assembly must take place in the United States.

AREAS TO BE EXAMINED

1. *Buy America Provisions and Certifications*

For all procurements of steel, iron, and manufactured products (including rolling stock) over \$100,000, the grantee is required to obtain and retain a [Buy America](#) certification of compliance from the successful bidder. The only exception is for an item subject to a [Buy America](#) waiver. If the procurement is not subject to a permanent waiver and the successful bidder/responder certified non-compliance with Buy America, then the grantee must have a waiver from FTA on file.

Grantees may request and FTA can grant a specific Buy America waiver when it is in the public interest, domestically produced goods are not available, or when there is a price differential of at least 25 percent between domestic and foreign bids. More detailed information on Buy America waivers is on FTA's web site. Grantees should be cautioned that waivers are issued on a case-by-case basis and typically apply only to the particular grantee. A grantee may not

apply a ruling from another grantee's procurement to its particular situation.

A review of procurement files will be conducted for review area 6. Procurement. As part of that effort, the reviewer also will check for the Buy America provisions. The selection of procurements to be reviewed should include purchases made over the past three years for rolling stock and other steel, iron, or manufactured products, when the grantee has made such purchases.

2. *Pre-Award and Post-Delivery of Rolling Stock*

Grantees must conduct a pre-award and post-delivery audit for all purchases of rolling stock in order to verify that the 60 percent domestic content and final assembly requirements were met. The process followed and the documentation maintained by the grantee will be reviewed to determine if these requirements were met.

REFERENCES

1. [49 CFR Part 661](#), “Buy America Requirements.”
2. [49 CFR Part 663](#), “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.”
3. [FTA “Dear Colleague” Letter, March 18, 1997.](#)
4. [Federal Register Vol. 71, No. 54, pp. 14112-14118](#), Buy America Requirements; Amendments to Definitions.

QUESTIONS FOR THE REVIEW

1. *Has the grantee included a [Buy America](#) provision for all procurements of steel, iron, and manufactured products, except products with a waiver or small purchases of \$100,000 or less?*
2. *Has the grantee obtained and retained [Buy America](#) certifications from successful vendors for purchases of more than \$100,000?*

EXPLANATION

[Buy America](#) regulations require that all procurements for steel, iron, and manufactured products contain the Buy America provisions. The only exception is for items subject to a waiver. General waivers are listed in Appendix A to 49 CFR [661.7](#). The general waiver for final assembly in the United States of 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation was repealed as a result of SAFETEA-LU. Small purchases were added to the general waiver effective July 24, 1995, and include all purchases with capital, planning, or operating assistance costing \$100,000 or less. The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four vans that totals \$120,000, even though each van costs \$30,000, must follow the Buy America procedures.

Buy America provisions apply to all purchases of steel, iron, and manufactured goods exceeding \$100,000, regardless of whether they involve capital, operating, or planning funds. The requirements apply to subcontractors, regardless of the size of their contract, if the prime contract is more than \$100,000. The requirements apply when a grantee uses an intergovernmental agreement or otherwise jointly purchases manufactured products. Grantees are required to pass the requirements down to management or service contractors when the contractor is making FTA funded procurements on the grantee's behalf.

The grantee needs to include a clause citing the Buy America requirement in its Invitations for Bids (IFB) and Requests for Proposals (RFP). A Buy America certification also should be included. There are different certifications required for procurements of rolling stock than for procurements of other steel, iron, or manufactured products. The specific text for each is contained in the FTA [Best Practices Procurement Manual](#).

The grantee must obtain a signed certification from each successful bidder providing steel, iron, or manufactured products when the total purchase price exceeds \$100,000. The contractor is required to certify that the materials provided either comply or do not comply with Buy America requirements. The grantee is required to retain these certifications in the contract file and make them available for inspection upon request. If the contractor certifies that it does not comply with the Buy America requirements, then the grantee must request, receive, and retain a waiver from FTA.

REASON FOR THE QUESTION

49 CFR [661.6](#) and 49 CFR [661.13](#)

Federal Register Vol. 71, No. 54, pp. 14112-14118

SOURCES OF INFORMATION

Grantee procurement procedures and procurement files will provide this information. The reviewer should check the grantee's written purchasing procedures and determine if the Buy America provisions have been included. While not specifically required, FTA recommends that grantees include the Buy America requirements in purchasing procedures. Grantee purchase solicitations, i.e., IFBs and RFPs, as well as responses from vendors, should be examined to determine if Buy America provisions have been included (clauses and certifications) and proper certifications have been executed by bidders and proposers and submitted to the grantee.

DETERMINATION

If the grantee is applying Buy America requirements to all applicable procurements, and obtaining the proper certifications, it is not deficient. If it failed to include the requirement in its procurement contracts for steel, iron, or manufactured products not subject to a waiver, the grantee is deficient. If the grantee cannot provide original, signed Buy America certifications, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must revise its procurement procedures to include the Buy America provisions, including the requirement to obtain signed Buy America certifications from vendors when purchasing covered items. The grantee should submit a copy of the revised procedures to FTA. For purchases in progress, the grantee may need to obtain signed Buy America certifications from the contractors and provide a copy to the FTA regional office.

3. *Did the grantee conduct pre-award and post-delivery audits for its purchases of rolling stock over \$100,000? Does the grantee have properly completed pre-award and post-delivery certifications in its contract files?*

EXPLANATION

Any grantee that purchases revenue service rolling stock with a procurement contract that exceeds \$100,000, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits verifying compliance with [Buy America](#) provisions. Besides the certification that must be filed with FTA as part of the Annual List of Certifications and Assurances, the grantee is required to keep records including pre-award and post-delivery audit certifications that show that the regulations have been followed.

If a grantee is using another grantee's procurement contract to purchasing revenue vehicles (i.e., "piggybacking"), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the grantee must review the audit and prepare its own signed certifications.

The grantee's contract files should contain the following documents and supporting papers for each procurement of rolling stock:

[Pre-Award Buy America Certification of Compliance](#) – The grantee has reviewed (either by itself or with an audit prepared by someone other than the manufacturer) that the manufacturer intends to build vehicles that meet the Buy America content and final assembly requirements.

[Pre-Award Purchaser's Requirements Certification](#) – The vehicles are consistent with the grantee's specifications and the proposed manufacturer is responsible and capable of producing the vehicles.

The grantee purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit is completed before entering into a formal contract with the manufacturer. The grantee uses the pre-award audit as a basis for the Pre-Award Buy America Certification. The Pre-Award Buy America Certification and the Pre-Award Purchaser's Requirements Certification must be prepared and retained by the grantee.

[Post-Delivery Buy America Certification of Compliance](#) – The vehicle either meets Buy America domestic content and final assembly requirements or FTA has granted a Buy America waiver for the vehicle.

[Post-Delivery Purchaser's Requirements Certification](#)

– For vehicle orders of more than ten buses or rail vehicles for urbanized areas over 200,000 in population and more than 20 buses for urbanized areas 200,000 or less in population, the grantee must certify that an on-site inspector was present throughout the manufacturing period and the grantee has received an inspector's report that accurately records the construction process and explains how construction and operation of the vehicle meets specifications.

For all other vehicle orders, the grantee must certify that it has visually inspected and road tested the delivered vehicles and determined that the vehicles meet contract specifications.

Following construction of the vehicles, the grantee must complete a post-delivery audit before title to the rolling stock can be transferred to ensure that the manufacturer has complied with the Buy America requirements. The grantee shall use the post-delivery audit as a basis for completing the Post-Delivery Certification. The Post-Delivery Certification and the Post-Delivery Purchaser's Requirements Certifications must be completed and retained on file by the grantee.

[Certification of Compliance with the Federal Motor Vehicle Safety Standards](#)

– The grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stage a certification that the vehicles comply with the Federal Motor Vehicle Safety Standards (FMVSS) issued by the National Highway Traffic Safety Administration ([49 CFR Part 571](#)).

If the vehicle purchased is subject to FMVSS, the grantee shall obtain a copy of the manufacturer's self-certification at the pre-award and post-delivery stage. Both the pre-award and post-delivery audits must include the grantee's review of the manufacturer's FMVSS self-certification information. The grantee should keep on file the certification that it received at both the pre-award and post-delivery stages, and a copy of the manufacturer's self-certification information that the vehicle complies with relevant FMVSS. While it is suggested that the grantee complete separate certifications of FMVSS compliance at both the pre-award and post-delivery stages, it is acceptable for the grantee to use one certification of FMVSS compliance as long as the certification covers both audits.

All of these certifications are to be completed by the grantee.

FTA has published two guidance manuals to assist grantees conducting pre-award and post-delivery audits.

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements, FTA T-90-7713-93-1, Rev. B.

Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements, FTA DC-90-7713-94-1, Rev. B.

REASON FOR THE QUESTION

49 CFR 661.11, Appendices B and C

49 CFR 663.21 and 663.31

Dear Colleague letter of March 30, 2001

Federal Register Vol. 71, No. 54, pp. 14112-14118

SOURCES OF INFORMATION

The grantee should provide the documents to show that it has complied with the pre-award and post-delivery requirements.

DETERMINATION

The grantee is not deficient if the required pre-award and post-delivery audits have been conducted, have been documented, and all of the required certifications have been completed and are on file. If the grantee did not conduct all of the required reviews and audits for any rolling stock procurement, the grantee is deficient. If the grantee has conducted the required pre-award and post-delivery audits and documented the procedures, but does not have all required certifications, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to execute all required certifications. Direct the grantee to conduct after-the-fact pre-award and post-delivery audits to prove that the vehicles comply with the domestic content and final assembly requirements.

4. *If the grantee purchases rolling stock with multiple delivery dates using either options or multi-year procurements, has the grantee performed and certified a pre-award and post-delivery audit for each group of vehicles before placing them into service?*

EXPLANATION

Grantees may be purchasing vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, must have a valid pre-award and post-delivery audit before it is placed into service. One pre-award audit may suffice provided that there is no change in vehicle configuration between successive deliveries of vehicles.

REASON FOR THE QUESTION

49 CFR 663.21 and 663.31

FTA Dear Colleague Letter, March 18, 1997

SOURCES OF INFORMATION

Examine contract files, invoices, and other procurement documentation available at the site visit to identify delivery dates and obtain information on options.

DETERMINATION

This question applies only to grantees executing options or multi-year procurements of rolling stock. The grantee is not deficient if it has completed these requirements for each group of vehicles prior to the vehicles being placed in service. If the grantee has placed a group of vehicles into service before the pre-award and post-delivery audits were completed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide FTA with an explanation and complete the required audits without delay. FTA should be furnished with copies of the audit documentation and work papers. The grantee should ensure that changes in procedures have been made so that future procurements will comply with this requirement.

5. *What process did the grantee use to verify the domestic content of the vehicle, its components, and its subcomponents prior to awarding the contract?*

EXPLANATION

The purpose of the pre-award audit process is to substantiate that the manufacturer intends to construct a vehicle that meets the domestic content limitations of the Buy America requirement. The manufacturer is required to provide the grantee with a listing of the components and subcomponents in the vehicle. The list must contain either the cost of each component or the percentage that each contributes to the total cost of the materials required to build the vehicle, as well as the country of origin of each component. The percentages of those components identified as manufactured in the United States must total a minimum of 60 percent. The grantee is required to review this information and verify that it is accurate. Per the Dear Colleague letter of March 30, 2001, the domestic content requirements should comply with 49 CFR 661.11, Appendices B and C, by designating those items listed as components.

FTA allows grantees flexibility in meeting these requirements, reflecting the size of and resources available to the grantee and the number of vehicles in

the procurement. A grantee with a large order of many vehicles costing several million dollars would be expected to perform an actual audit of the vehicle manufacturer. Component costs would be determined from the manufacturer's bill of materials and domestic component percentages would be independently verified. Buy America auditors usually require a separate Buy America certification from each component manufacturer identified as domestic. Often an accountant or consultant is retained to complete this audit, although it is equally acceptable for the grantee to use its own personnel if they are qualified.

Conversely, a smaller grantee purchasing one or two vehicles can satisfy these requirements by reviewing the material supplied by the manufacturer, attesting that the percentages seem reasonable, and noting that the component manufacturers identified as domestic are recognized as American manufacturers.

REASON FOR THE QUESTION

49 CFR [661.11](#), Appendices B and C
49 CFR [663.9](#), and [663.25](#)
[Dear Colleague letter of March 30, 2001](#)

SOURCES OF INFORMATION

The grantee's representative should be interviewed to determine the process used to verify the manufacturer's assertion of the domestic content of the vehicles. The manufacturer's listings of components, audit reports, and work papers substantiate the process used.

DETERMINATION

If the grantee has conducted an independent review of the manufacturer's documents and verified that the manufacturer intends to comply with the Buy America requirements, the grantee is not deficient. If the extent of the review appears insufficient, given the grantee's resources, the number of the vehicles in the order, or the value of the contract, the grantee is deficient. If the manufacturer has not provided a listing of the components, percentages, and component origins, or if the grantee has done nothing beyond accepting and retaining the manufacturer's documents, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must take whatever actions are necessary to obtain appropriate certifications. The grantee might be directed to conduct an after-the-fact pre-award audit to prove that the vehicles comply with the domestic content requirements. For vehicle purchases that have been completed, the grantee must provide FTA with a written explanation for not complying with the regulations. The grantee also needs to revise its procedures and assure adherence to these requirements in future procurements.

6. *If required, did the grantee use in-plant inspectors during the manufacturing process?*

EXPLANATION

Grantees are required to have an in-plant inspector throughout the manufacturing process if it meets the following criteria:

- Grantees purchasing any number of rail vehicles;
- Grantees in urbanized areas with populations of more than 200,000 that purchase more than 10 buses; and
- Grantees in urbanized areas with populations of 200,000 or less that purchase more than 20 buses.

Bus purchases that do not meet the aforementioned criteria, or purchases of any number of standard production and unmodified vans, require only a visual inspection and road test upon delivery. The grantee still must complete the proper post-delivery purchaser's requirements certifications showing that the vehicles met contract specifications.

REASON FOR THE QUESTION

49 CFR [663.37](#) (a) and (c)
[Federal Register Vol. 71, No. 54, pp. 14112-14118](#)

SOURCES OF INFORMATION

The post-award purchaser's requirement certification must include a certification that an on-site inspector was present throughout the manufacturing period. It also must state that the grantee received a report that accurately recorded the construction process and described that the vehicle met the grantee's specifications.

DETERMINATION

If the size of the grantee's purchase required an in-plant inspector and the grantee did use an in-plant inspector who provided reports throughout the manufacturing process, the grantee is not deficient. If the grantee did not use in-plant inspectors, but was required to do so, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If an in-plant inspector was lacking, the grantee must provide FTA with a complete explanation for not complying with the regulations, change its procedures, and assure that future procurements will be done properly.

7. *Does the grantee have a description of the manufacturing activities taking*

place during the final assembly of the vehicles and, for vehicles that were partially manufactured outside the United States, did the final assembly meet FTA requirements?

EXPLANATION

The final assembly of rolling stock must take place in the United States.

The Buy America Requirements, [49 CFR Part 661.11\(r\)](#), define final assembly as “the creation of the end product from different elements brought together for that purpose and through the application of manufacturing processes.”

In the case of a new, remanufacture, or overhauled bus, final assembly would typically include, at a minimum, the installation and interconnection of the typical Bus Components listed in 49 CFR 661.11, Appendix B, including but not limited to the following items: car bodies or shells, the engine and transmission (drive train), axles, energy management and storage devices, articulation equipment, propulsion control system, chassis, and wheels, cooling system, and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic system and the electrical system, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts or ramps and other equipment required to make the vehicle accessible to persons with disabilities, and road testing. Final assembly activities also include final inspection, repairs and preparation of the vehicles for delivery. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

*In the case of the manufacture of a new, remanufactured, or overhauled rail car, final assembly would typically include, as a minimum, installation and interconnection of the typical Rail Car Components listed in 49 CFR 661.11, Appendix C, including but not limited to the following items: car bodies or shells, chassis, car body wiring, car-borne power plants or power pick-up equipment, energy management and storage devices, articulation equipment, propulsion control equipment, propulsion cooling equipment, friction brake equipment and coupler control system, communications equipment, pneumatic systems,

electrical systems, door and door control systems, passenger seats, passenger interiors, cab interiors, destination signs, wheelchair lifts (or other equipment required to make the vehicle accessible to persons with disabilities), motors, wheels, axles, gear boxes or integrated motor/gear units, suspensions, truck frames and chassis. Final Assembly activities shall also include the inspection and verification of all installation and interconnection work; and the in-plant testing of the rail car to verify all functions. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

These requirements are addressed in the FTA Dear Colleague letter dated March 18, 1997. Dear Colleague letters are available on FTA's web site at www.fta.dot.gov/. Buy America information can be found at www.fta.dot.gov/laws/leg_reg_557.html.

REASON FOR THE QUESTION

49 CFR 661.11

[FTA Dear Colleague Letter, March 18, 1997](#)

SOURCES OF INFORMATION

The manufacturer is required to provide the grantee with the location of the final assembly for the vehicles and a listing of the manufacturing tasks that took place during final assembly. If in-plant inspectors were required, the inspector reports will confirm that the activities identified as final assembly by the manufacturer did take place.

DETERMINATION

If the location of the final assembly was in the United States and the manufacturer's final assembly activities met the minimum requirements described above, the grantee is not deficient. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If the vehicles were constructed partially outside the United States, and final assembly did not meet FTA's standards, the grantee must provide FTA with a complete explanation for not complying with the regulations. The grantee also must assure that future vehicle procurements will be conducted in accordance with the requirements.

9. SUSPENSION/DEBARMENT

BASIC REQUIREMENT

To protect the public interest and prevent fraud, waste, and abuse in federal transactions, persons or entities, which by defined events or behavior, potentially threaten the integrity of federally administered programs, are excluded from participating in FTA assisted programs. Federal agencies use the government-wide nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible. Grantees are required to ensure to the best of their knowledge and belief that none of the grantee's "principals" (as defined in the governing regulation [49 CFR Part 29](#)), subrecipients, and third-party contractors and subcontractors is debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. Grantees are required to review the [Excluded Parties Listing System](#) (<http://epls.arnet.gov/>) before entering into any third party contracts.

AREAS TO BE EXAMINED

1. **Disclosure**
Disclosure to FTA if at any time a grantee or other covered entity learns that the circumstances have changed (new personnel, indictments, convictions, etc.).
2. **Lower-tiered Transactions**
The clause with this requirement must be included in third-party contracts and subcontracts exceeding \$25,000.

REFERENCES

1. [49 CFR Part 29](#), "Government-wide Debarment and Suspension (Non-Procurement)."
2. [FTA Master Agreement](#).

QUESTIONS FOR THE REVIEW

1. *Are excluded parties participating in covered transactions?*

EXPLANATION

Each grantee is required to ensure to the best of their knowledge and belief that none of the grantee's principals, affiliates, third-party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements.

REASON FOR THE QUESTION

[49 CFR Part 29](#)

SOURCES OF INFORMATION

This question needs to be answered at the site visit. Information may be available in the regional office if written notice has been made. Contract files should be reviewed to determine if grantees are reviewing the [Excluded Parties Listing System](#) (<http://epls.arnet.gov/>) before entering into any third party contracts. If the grantee has written procurement procedures, check that the requirement to review the EPLS has been included.

DETERMINATION

The grantee is not deficient if it has ensured to the best of their knowledge and belief that excluded parties are not participating in a covered transaction. If excluded parties are participating in covered transaction, the grantee is deficient. If the grantee has not verified contractors' status before entering into contracts, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Ensure to the best of their knowledge and belief that excluded parties are not allowed to participate in covered transactions.

2. *Has the grantee included a term or condition requiring compliance with the Suspension and Debarment requirement in subgrants, procurement solicitations exceeding \$25,000, and lower tiered covered transactions?*

EXPLANATION

Any subgrantee, third-party contractor, and sub-contractor whose contract exceeds \$25,000 must agree to comply with the Debarment and Suspension requirements. The prime contractor makes this

agreement by submitting a bid that includes the clause/certification found in the Appendix of the *Best Practices Procurement Manual: Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Lower Tier Covered Transaction*. The grantee also must require that proposed subcontractors with subcontracts expected to exceed \$25,000 similarly agree. It is not necessary to include a separate certification for this requirement.

REASON FOR THE QUESTION

[49 CFR Part 29](#)

SOURCES OF INFORMATION

Solicitation documents and contract files are the primary source of this information. If the grantee has written procurement procedures, check that this requirement has been included. Be sure that the grantee is using the correct certification language.

DETERMINATION

The grantee is not deficient if the suspension/debarment clause is included in procurement solicitation documents as required. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must certify to FTA the intent to comply with the suspension/debarment requirements. If the grantee has written procurement procedures, they should be updated to include the requirement and submitted to FTA.

3. *Has the grantee become aware of any new information, following the award of a contract or subgrant, that an excluded party is involved in any covered transactions? If yes, has the grantee promptly informed FTA in writing of this information?*

EXPLANATION

In the event that a grantee becomes aware, after the award of a contract, that an excluded party is participating in a covered transaction, the grantee must promptly inform FTA in writing of this information.

REASON FOR THE QUESTION

[49 CFR Part 29](#)

SOURCES OF INFORMATION

Ask the grantee if they have become aware of a situation after the award of a contract or subgrant in which an excluded party is participating in a covered transaction. If so, obtain a copy of the grantee's written notification to FTA.

DETERMINATION

The grantee is not deficient if it has promptly informed FTA in writing after becoming aware that an excluded party is participating in a covered transaction. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must promptly notify FTA in writing of the excluded party's participation. A grantee may continue any covered transactions in existence at the time the party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. However, the grantee may not renew or extend the covered transaction with the excluded party.

10. LOBBYING

BASIC REQUIREMENT

Recipients of federal grants and contracts exceeding \$100,000 must certify compliance with Restrictions on Lobbying before they can receive funds. In addition, grantees are required to impose the lobbying restriction provisions on their contractors.

AREAS TO BE EXAMINED

1. Certification

Certifications are required for all federal grant recipient and subrecipient agreements, and contracts and subcontracts exceeding \$100,000. This certification is part of the Annual List of Certifications and Assurances. The clause with this requirement also needs

to be included in third-party contracts over the required threshold.

2. Standard Form LLL

If non-federal funds have been used to support lobbying activities, submission of [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," is required. Each grantee shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.

REFERENCES

1. [49 CFR Part 20](#), "New Restrictions on Lobbying."

QUESTIONS FOR THE REVIEW

1. *Has the grantee included the lobbying clause in all agreements and procurement solicitations exceeding \$100,000? Have subgrantees, contractors, and subcontractors signed certifications?*

EXPLANATION

Grantees are required to include the lobbying clause in agreements, contracts, and subcontracts exceeding \$100,000. Signed Certifications Regarding Lobbying must be obtained by the grantee from subgrantees and contractors. The contractor retains its subcontractors' certifications.

REASON FOR THE QUESTION

[49 CFR Part 20](#)

SOURCES OF INFORMATION

Solicitation documents and contract files are the primary source of this information.

DETERMINATION

If the grantee has included the lobbying clause in its agreements and procurement solicitations, it is not deficient. If not, the grantee is deficient. If the grantee has obtained the proper certifications from subgrantees and contractors, the grantee is not deficient. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must certify to FTA that it will have subgrantees, contractors, and subcontractors comply with the lobbying requirement. The grantee's written procurement procedures should be updated to include the requirement. The grantee should retain the original certifications of subgrantees and contractors in its files.

2. *Has the grantee used non-federal funds for lobbying activities? If yes, have proper disclosures been made and filed with FTA on [Standard Form LLL](#)? Have all disclosures been updated quarterly, if needed, and so reported?*

EXPLANATION

The use of federal funds for lobbying is prohibited. If lobbying services are procured with non-federal funds, the grantee is required to submit the disclosure form, [Standard Form LLL](#). Updates to Standard Form LLL are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include: a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a "covered federal action"; a change in the person(s) attempting to influence such action; or a change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action.

REASON FOR THE QUESTION

[49 CFR Part 20](#)

SOURCES OF INFORMATION

[Standard Form-LLL](#) and quarterly reports should be in the regional office files. The original forms and other reports are forwarded to the Regional Counsel quarterly, as required. This question should be asked at the site visit. Discuss with the grantee the process for receiving and forwarding the disclosure statements.

DETERMINATION

If the grantee did not engage in any lobbying using non-federal funds, the grantee is not deficient. The grantee is not deficient if lobbying activities have occurred (using non-federal funds) or if there has been a material change in the status of the previous disclosure and the grantee has submitted [Standard Form LLL](#) and/or quarterly reports. If any event occurred that should have been reported, and the grantee did not file [Standard Form LLL](#) and a quarterly report, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit the documentation to FTA as required.

3. *Have subgrantees, contractors, and subcontractors that filed certifications used non-federal funds for lobbying activities? If yes, have proper disclosures been made and filed with the grantee on [Standard Form LLL](#)? Have all disclosures been updated quarterly if needed and so reported?*

EXPLANATION

Any subgrantee, contractor, and subcontractor in receipt of a grant/contract exceeding \$100,000 is subject to the same disclosure and updating requirements as the grantee. All certifying entities must ensure that any quarterly disclosure forms are forwarded to the grantee, which must report to FTA.

REASON FOR THE QUESTION

[49 CFR Part 20](#)

SOURCES OF INFORMATION

[Standard Form-LLL](#) and quarterly reports for the grantee's subgrantees, contractors, and sub-contractors should be in the regional office files. The original forms and other reports are forwarded to the Regional Counsel quarterly, as required. This question should be asked at the site visit. Discuss with the grantee the process for receiving and forwarding the disclosure statements.

DETERMINATION

If the grantee's subgrantees, contractors, and subcontractors did not engage in any lobbying using non-federal funds, the grantee is not deficient. The grantee is not deficient if lobbying activities have occurred or if there has been a material change in the status of the previous disclosure and the grantee has submitted the [Standard Form-LLL](#) and/or quarterly report. If any event occurred that should have been reported, and the grantee did not file Standard Form LLL and quarterly report, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit the documentation to FTA as required.

4. *Does the grantee have an appropriate process for receiving and filing the certifications and disclosure statements ([Standard Form LLL](#) and quarterly update)?*

EXPLANATION

The grantee should have a process for receiving and filing the certifications and disclosure forms. This process can be included in procurement procedures.

REASON FOR THE QUESTION

[49 CFR Part 20](#)

SOURCES OF INFORMATION

The grantee's written procurement procedures may include this requirement. Or, there may be separate procedures established for receiving and filing lobbying certifications and disclosure statements.

DETERMINATION

If the grantee has a process to ensure the receipt of certifications and disclosure statements and filing them with FTA, it is not deficient. If it does not have such a process, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should develop and/or document the process for receiving and filing lobbying certifications and disclosure statements.

11. PLANNING/PROGRAM OF PROJECTS

BASIC REQUIREMENT (PLANNING)

The grantee must participate in the transportation planning process in accordance with FTA requirements, SAFETEA-LU, and the Metropolitan and Statewide Planning Regulations.

BASIC REQUIREMENT (POP)

Each recipient of a grant shall have complied with the public participation requirements of Section 5307(c)(1) through (7). Each recipient is required to develop, publish, afford an opportunity for a public hearing on, and submit for approval a Program of Projects (POP).

Note: [FTA C 9030.1C](#) Chapter V, Section 6f states: FHWA and FTA have decided that when a grant applicant follows the procedures of the public involvement process outlined in the FHWA/FTA planning regulations, the grant applicant satisfies the public participation requirements associated with the program of projects that grant applicants for Urbanized Area Formula Program funds must meet. Grantees that choose to integrate the two should coordinate with the Metropolitan Planning Organization (MPO) and ensure that the public is aware that the Transportation Improvement Plan (TIP) development process is being used to satisfy the public hearing requirements of Section 5307. The grant applicant must explicitly state that public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the program-of-projects requirements of the Urbanized Area Formula Program. In addition, the TIP, as well as other appropriate planning documents, must state that the public involvement procedures associated with TIP development were used to satisfy the program-of-projects requirements of Section 5307.

BASIC REQUIREMENT (JARC AND NEW FREEDOM)

Grantees must develop and or participate in a locally developed, coordinated public transit-human services transportation plan ("coordinated plan") that identifies the transportation needs of individuals with disabilities, older adults, and people with low

incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

Designated recipients for JARC and/or New Freedom funds are responsible for program administration in the nine (9) cited elements in [FTA C 9045.1](#) and [FTA C 9050.1](#), Chapter II and III.

Note To Reviewers: The designated recipient for both 5316 and 5317 funds is responsible for conducting the competitive selection process. However, the designated recipient may establish alternative arrangements to administer and conduct the competitive process. For example, the MPO could be the lead agency for the competitive selection, even if it is not the designated recipient. Alternatively, the designated recipient may, through interagency agreement or third party contracts, provide for the administrative management and oversight of the competitive selection process.

Funds are obligated based on the annual program of projects included in a grant application. FTA does not conduct project-by-project review and approval of each project. The recipient must ensure that local applicants and project activities are eligible and in compliance with Federal requirements and that the program provides for maximum feasible coordination of transportation services assisted under JARC and New Freedom with transportation services assisted by other Federal sources. In addition, the recipient monitors local projects; ensures that all program activities are included in a Statewide Transportation Improvement Program (STIP); and oversees project audits and closeouts. The recipient must certify to FTA annually that the recipient and subrecipients have met or will meet all Federal requirements, including all metropolitan and statewide planning requirements. Once FTA has approved the application, funds are available for administration and for allocation to individual subrecipients.

AREAS TO BE EXAMINED

1. **Background Information**

These questions provide information on the last Planning Certification Review and Metropolitan and Statewide Planning findings.

2. **Planning Process**

These questions

- a. review how the grantee participates in the metropolitan transportation planning process, and
- b. assess the grantee's role in 5316 (JARC), and 5317 (New Freedom) funding activities.

3. **Public Participation Requirements**

The grantee must meet the public participation requirements specified in the regulations and [SAFETEA-LU](#). This can be done in one of two ways.

- a. The grantee may rely on the MPO's public participation requirements and at the same time satisfy the separate requirements for the Program of Projects (POP). Under this approach, the POP typically is part of the public participation process for the TIP for the region. If the grantee chooses to rely on the MPO, the MPO's Participation Plan must meet the requirements for public participation in the planning regulations. Further, the public notice must state explicitly that this will satisfy the POP requirements. The TIP, as well as other appropriate planning documents, must state that the public involvement procedures associated with TIP development were used to satisfy the program-of-projects requirements of Section 5307
- b. The grantee may publish a separate POP. When the grantee does this, the publication of the POP must be done in accordance with FTA requirements for POP public participation. The POP

requirements only are checked when the grantee is not relying on the MPO procedures. They are not checked if the grantee's notice is over and above the basic requirements, which the MPO is satisfying.

Note to Reviewers: Grantees subject to triennial reviews typically are public transit operators, not MPOs. The planning regulations are oriented to the MPO. The transit operator is expected to be a participant in the metropolitan transportation planning process, but usually will not have primary responsibility for planning activities. Reviewers should be cautious in wording corrective actions since the grantee may not have the ability to change activities performed by the MPO. The grantee may only be able to request that a change be made. Nonetheless, the triennial review is an opportunity to review the grantee's participation in and the effectiveness of the regional process from the grantee's perspective.

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws, as amended by the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*.
2. [23 USC Section 134](#), Federal Aid Highways, "Metropolitan Planning."
3. [23 CFR Part 450](#), "Planning Assistance and Standards."
4. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."
5. [FTA Circular 9050.1](#), "The Job Access and Reverse Commute (JARC) Program."
6. [FTA Circular 9045.1](#), "New Freedom Program Guidance and Application Instructions."

QUESTIONS FOR THE REVIEW

Part A. Background Information

1. *Is the grantee located in a designated Transportation Management Area (TMA) (i.e., population 200,000 or more)? If yes, when was the last Planning Certification Review (PCR) completed by FHWA/FTA? Did the grantee participate in the review and have an adequate opportunity for input? Are there any outstanding corrective actions and/or recommendations from the PCR that pertain to the grantee?*

If the grantee is not in a TMA (population under 200,000), are there any outstanding corrective actions and/or recommendations from the Metropolitan Planning or Statewide Planning findings that pertain to the grantee?

2. *What is the name of the designated MPO for this area?*

EXPLANATION

The reviewer should determine if the grantee is located in an area with a population of 200,000 or more persons, which is a designated Transportation Management Area (TMA) for planning purposes. In TMAs, FTA and FHWA will have conducted a Planning Certification Review (PCR) in the past three to four years. The PCR process includes input from participants in the planning process, including the grantee.

As with other oversight reviews, the triennial review process verifies the status of corrective actions and/or recommendations from the PCR. In this case, however, it is important to distinguish between all open corrective actions and/or recommendations and those that pertain to the grantee. The triennial review focuses on the latter only.

In areas with a population of less than 200,000, FTA/FHWA assess the metropolitan planning processes and make a Metropolitan Planning Finding. This mechanism is the principal venue of FTA/FHWA planning oversight in smaller urbanized areas. Grantees in non-TMAs self-certify compliance with the planning requirements. Furthermore, all States must

make a Statewide Planning Finding as the basis for approving the Statewide TIP, and this Statewide Finding should list all concerns with the performance of planning processes in all urbanized (and non-urbanized) areas throughout the State.

REASON FOR THE QUESTION

Input to triennial review.

SOURCES OF INFORMATION

During the desk review, look for this information in the planning files in the regional office and from discussions with the planners on the regional staff. Files from the PCR should include a copy of the final report and documentation of follow-up actions. Note when the review was completed and what the corrective actions and/or recommendations were if they impact the grantee. Also in the planning files for the state in which the grantee is located should be information on any Metropolitan Planning Findings for grantees in areas with population less than 200,000. Review this information along with the Statewide Planning Finding for anything pertinent to the grantee.

At the site visit, ask the grantee about its participation in the PCR.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

Part B. Planning Process - MPO

3. *Does the grantee have an agreement with the MPO that specifies cooperative procedures for carrying out transportation planning and programming? What is the nature of the agreement? What is the date of the agreement/document? Has it been updated or reaffirmed since the passage of TEA-21 in 1997? Since the passage of SAFETEA-LU in 2005?*
4. *How does the grantee participate in the MPO planning process and in development of the Long Range (20-year) Plan? Are transit projects*

included in the Long Range Plan? Are there any New Starts projects?

5. *Who develops the financial and travel demand forecasts that are used in preparing the TIP and the Long Range Plan? Does the grantee participate cooperatively with the MPO in developing these forecasts?*

EXPLANATION

The planning regulations state “The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process.” This includes routine planning products as well as corridor and sub-area studies.

The regulations require a written agreement that identifies these planning responsibilities and that includes specific provisions for development of financial plans to support the metropolitan transportation plan, the metropolitan TIP, and the annual listing of obligated projects. This specific requirement, originally from ISTEA, is included in the new planning regulations along with an expanded list of parties that have to be included in the planning process. Grantees and MPOs were expected to review any existing agreements to ensure they continued to meet the requirements. If existing agreements did not meet the requirements, grantees and MPOs were to adopt new agreements that did.

The MPO typically will comprise a policy committee of local elected officials and a technical committee of the senior transportation planning staff of the participating agencies. As the provider of public transportation, the grantee should have a meaningful role in the planning process. It is not required that the transit operator have a major role in the planning process, although it is strongly encouraged. What is required is that the region follows whatever role is defined for the grantee in the agreement.

The Federal Transit Laws (the Law) spell out additional requirements including the Annual Listing of Projects. Although the responsibility to publish the list of obligated projects is the MPO's, the agreement should address how the transit agency will provide this information. The Law also requires that the MPO, public transit agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation. This is a necessary step for development of the TIP and should be addressed in the Agreement. Finally, the Law requires that before approving a long-range transportation plan, each MPO must provide interested parties including “representatives of transportation agency employees

and representatives of users of public transit,” and other interested parties with a reasonable opportunity to comment on the long-range transportation plan. The agreement should describe how this will be accomplished.

Any financial or travel demand forecasts related to transit services, that appear in the TIP and the long-range plan, need to be developed cooperatively by the MPO and the transit operator. It is important to check that the MPO is not preparing this information without the input of the transit operator.

REASON FOR THE QUESTION

23 USC 134 (f)(1); (g)(2)(B); (g)(4); (h)(4); (h)(7)(B)
49 USC 5303 (a); (f)
49 USC 5304 (a); (b)
23 CFR 450.310, 314, and 316

SOURCES OF INFORMATION

At the desk review, check the planning files for a copy of a current agreement or similar documentation (e.g., the most recent Unified Planning Work Program - UPWP). Obtain this information from the grantee on site if it is not available in the regional office. Review the information in the planning files in the regional office for a list of policy and technical committee members.

DETERMINATION

If the grantee has an agreement with the MPO that meets the requirements, the grantee is not deficient. If there is an agreement, but it does not meet all of the requirements, or if there is no current agreement with the MPO, the grantee is deficient.

If the grantee is participating fully, it is not deficient. If the grantee is included in the process but some decisions and/or financial/travel demand forecasts regarding transit services have been made without the transit operator's full participation, if transit employees and users are not afforded an opportunity to comment on the long-range plan and TIP, or if the grantee is not participating in the process at all, the process is deficient and the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to be party to an agreement that meets the requirements. Executing this agreement will require the interaction of several parties, and will be led by the MPO. The grantee will need to work with the MPO to complete this process. The grantee should provide FTA with a schedule for providing a fully executed agreement. The grantee, working with the MPO, should provide an action plan for improving its participation.

Part C. Planning Process – JARC and New Freedom

6. *Is the grantee a designated recipient or subrecipient of 5316 JARC and/or 5317 New Freedom funds?*
7. *If yes, how does the grantee:*
 - a. *Notify eligible local entities of funding availability?*
 - b. *Develop project selection criteria?*
 - c. *Determine applicant eligibility?*
 - d. *Conduct the competitive selection process?*
 - e. *Ensure that all subrecipients comply with Federal requirements?*
 - f. *Document the designated recipient's procedures in a Program Management Plan as appropriate?*
 - g. *Allocate grants to subrecipients on a fair and equitable basis?*
 - h. *Derive projects from a locally developed, coordinated public transit-human services transportation plan developed through a process that consists of representatives of public, private, and non-profit transportation and human services providers, with participation by the public?*
8. *If the grantee is a sub-recipient, what role does the grantee play in the coordinated planning process?*

EXPLANATION

Federal transit law, as amended by SAFETEA-LU, requires that projects funded from the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute, (Section 5316), and New Freedom (Section 5317) programs be derived from a locally developed, coordinated public transit-human service transportation plan ("coordinated plan"). A coordinated plan should maximize the programs' collective coverage by minimizing duplication of services. Further, a

coordinated plan should be developed through a process that includes representatives of public, private and non-profit transportation and human services providers, and participation by the public. A coordinated plan may incorporate activities offered under other programs sponsored by Federal, State, and local agencies to greatly strengthen its impact. FTA also encourages participation in coordinated service delivery as long as the coordinated services will continue to meet the purposes of all programs.

In particular, it is important for the designated recipient of these funds to provide evidence of outreach for participation to local entities in the planning process.

REASON FOR THE QUESTION

[Federal Transit Laws, Title 49, United States Code, Chapter 53](#)

[Federal Register](#) notice published March 29, 2007 (72 FR 14851)

[FTA C 9045.1, Ch. II, Section 4.a-i](#)

[FTA C 9050.1, Ch. II, Section 4.a-i](#)

SOURCES OF INFORMATION

Information provided by the regional office and the grantee prior to and during the site visit will give the reviewer information on the coordination, outreach and projects funded by JARC or New Freedom grants. At the site visit, discuss how the grantee handles relevant grant management requirements and review documentation of implementation of the elements noted above.

DETERMINATION

If the grantee is the designated recipient or subrecipient of funds and has included each of the above elements in its management of JARC and New Freedom grants, it is not deficient. If any of the elements are missing, and grant-funded projects are being implemented, it is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide evidence to the regional office demonstrating that any missing elements have been included in the JARC and New Freedom process.

9. *If the grantee is not the designated recipient or subrecipient for JARC and New Freedom funds, is the grantee participating in the coordinated planning process for JARC and New Freedom?*

EXPLANATION

FTA's JARC and New Freedom Circulars note that recipients of Section 5307 and Section 5311 assistance are the "public transit" in the public transit-human services transportation plan and their participation is assumed and expected. Further, Section 5307(c)(5) requires that, "Each recipient of a grant shall ensure that the proposed program of projects (POP) provides for the coordination of public transportation services ... with transportation services assisted from other United States Government sources."

REASON FOR THE QUESTION

[FTA C 9045.1, Ch. V, Section 4.d](#)
[FTA C 9050.1, Ch. V, Section 4.d](#)

SOURCES OF INFORMATION

During the site visit, request information that demonstrates how the grantee is participating in the coordinated planning process, even if they are not the designated recipient for JARC and New Freedom funds. This can include attendance at meetings, and provision of information to the designated recipient of JARC and New Freedom funds or the MPO.

DETERMINATION

If the grantee has participated in the coordinated planning process, it is not deficient. If the grantee has not participated in, or does not have plans to participate in the coordinated transportation planning process, it is deficient.

SUGGESTED CORRECTIVE ACTION

Develop a participation plan and submit to the regional office.

Part D. Public Participation Requirements

10. *Does the grantee rely on the MPO's public participation process to satisfy its public participation requirements for the Program of Projects?*
11. *If yes, does the MPO have an adopted participation plan? What is the date of the document? Does the plan include private transportation providers? Does the plan include users of public transit? Has there been a periodic review of the effectiveness of the public involvement process? If yes, when?*

12. *If the grantee relies on the MPO's participation plan, how does the grantee coordinate with the MPO to ensure that the public is aware that the TIP development process satisfies the POP public participation requirements? Is this stated explicitly in the public notice?*
13. *If the grantee does not rely on the MPO, does the grantee publish its own Program of Projects? Has the grantee followed all of the POP Public Participation Requirements?*
 - a. *Has the grantee made available to the public information on amounts available to the recipient under Section 5307 and the program of projects it proposes to undertake?*
 - b. *Did the grantee develop a proposed POP in consultation with interested parties, including private transportation providers?*
 - c. *How did the grantee ensure that the proposed POP provided for coordination of mass transportation services assisted by other federal sources?*
 - d. *Was the proposed POP published in a manner that afforded citizens, private transportation providers, and local elected officials an opportunity to examine its content and to submit comments on the proposed program and the performance of the recipient?*
 - e. *Was an opportunity for a public hearing provided?*
 - f. *Were comments or complaints filed as a result of the publication of the POP? How were such comments considered in preparing the final POP?*
 - g. *Was the final POP made available to the public?*

EXPLANATION

There are two separate public participation requirements. The planning regulations require that the metropolitan transportation planning process include a proactive participation plan that provides complete information, timely public notice, reasonable public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs. (The grantee's projects must be programmed in the TIP to be eligible for funding.) Such procedures shall include opportunities for interested parties including citizens, affected public agencies, representatives of transportation agency employees, and private providers of transportation to be included in the early stages of the plan development/update process. [TEA-21](#) added a provision that representatives of users of public transportation be provided a reasonable opportunity to comment on proposed plans and programs. [TEA-21](#) also added the requirement for a periodic review of the effectiveness of the public involvement process. In air quality non-attainment areas classified as serious and above, the comment period for planning documents and TIPs must be at least 30 days. [SAFETEA-LU](#) expanded the named planning participants to include representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of persons with disabilities, and other interested parties in order to provide them with a reasonable opportunity to comment on the transportation plan.

Grantees also have specific requirements for public participation related to the Program of Projects (POP). [FTA C 9030.1C](#) (Section V.6.f) allows a grantee to rely on the locally adopted public participation requirements of the overall metropolitan planning process in lieu of the process required in the development of the POP, provided that the transit operator explicitly states this in the locally adopted public participation process.

When the grantee is relying on the MPO's participation plan in lieu of a separate POP process, the reviewer should determine if the MPO's process meets the requirements in the planning regulations. These requirements include provisions of Title VI, such as communication with a significant minority of non-English speaking individuals. The grantee should be coordinating with the MPO and ensuring that the public is aware that the TIP development process is being used to satisfy the public hearing requirements of Section 5307. The public notice must have an explicit statement that public notice of public involvement activities and time established for public review and comments on the TIP will satisfy the Program of Projects requirements.

The MPO should assess the effectiveness of its public participation procedures on a regular basis to assure that the desired level of public input is being received

and that the required participants are receiving information prior to decisions being made.

Review the MPO's procedures if the grantee is relying on the MPO to satisfy public participation requirements on the POP. Check the PCR for corrective actions and recommendations that needed to be made in the public participation program. In all other situations, review whether the grantee meets the specific POP public participation requirements. If the agreement assigns this responsibility to the transit operator, the operator must comply with the specific requirements for POP public participation. If there is no current agreement assigning responsibility to the MPO, the grantee remains responsible for POP public participation. In some cases, the MPO procedures may be adequate but the grantee will supplement this with a separate notice to provide more transit-specific public information. In this case, the specific POP public participation requirements are not applicable.

The specific public participation requirements for the POP are defined below.

- *Availability of Public Information on the POP, Public Notice on the POP, Opportunity for Public Hearing, and Consideration of Comments and Availability of the Final POP:* The grantee must inform the public of the amount of funds available under Section 5307 and the capital, operating, and planning projects proposed to be undertaken. The public announcement that summarizes the POP also needs to indicate where citizens can examine the proposed program and budget in detail and submit comments on the proposed program and the performance of the recipient.

This notice is published in the general circulation newspaper in the service area of the grantee. If the community has a large minority of non-English speaking persons, the notice also should be published in a non-English publication.

Most grantees combine this notice with an announcement that the proposed POP is available for review and that, if requested, a public hearing will be held. Some local laws or grantee policies make the public hearing mandatory.

The grantee is required to consider comments from the public in preparing the final POP. In addition to the proposed POP, the grantee must make the final POP available to the public.

- *Consultative Process:* The grantee is to develop the POP in consultation with interested parties, including private transportation providers. The grantee may rely on the MPO to assist in this process. A Transportation Advisory Committee of the MPO may be informed or used as a

reviewer of the POP. Private providers should be involved throughout this process. Grantees sometimes rely on the general publication in the newspaper and on the public hearing process as a means for consulting with interested parties, including private providers. The requirement is that a consultative process be used to develop the proposed POP. Relying on the public hearing process, which occurs after a proposed POP has been developed, is not sufficient.

- *Coordination:* The grantee is required to ensure that the POP provides for coordination of federally assisted mass transportation services. This assurance is included in the Annual List of Certifications and Assurances. Coordination may occur at many levels, from simple information sharing to total consolidation of services.

REASON FOR THE QUESTION

23 CFR 450.316 and 324

FTA C 9030.1C, Ch. V, Section 6

SOURCES OF INFORMATION

At the site visit, discuss how the grantee handles the public participation requirements. If the grantee is relying on the MPO, obtain a copy of the participation plan. Verify that it includes consultation with interested parties, including private providers of transportation, outreach to users and other affected groups, and ongoing public involvement. Confirm that the procedures have been reviewed regularly for their effectiveness. Review the PCR for any relevant findings. Review the public notices for the TIP and documentation for recent publications to confirm that these procedures are being followed. If the grantee is relying on the MPO for these activities, the TIP notice should state explicitly that this includes the grantee's POP. The grantee may need to obtain the documentation from the MPO in preparation for the site visit.

If the grantee is publishing a separate notice of its POP, the reviewer will need to determine why. If the grantee is doing so as its primary public participation approach, rather than relying on the MPO procedures, all POP-related information must be obtained.

The grantee should provide public notices for the past three years. The grantee should be asked to describe the consultative process (e.g., membership of a transportation advisory committee). The grantee should explain how coordination was ensured as the POP was developed.

The publication of the proposed and final POP can show how the POP was made available to the public. Written comments received by the grantee and transcripts of public hearings will document the grantee's process. Where comments have been

received, internal reports that address the comments should exist and be provided to the reviewer.

DETERMINATION

Review the public participation procedures that the entities participating in the planning process have defined. If they contain all required elements as described above, the grantee is not deficient. If elements are missing (e.g., the procedures do not include transit users), the grantee is deficient. If the public notices have not provided adequate information, or adequate review time in non-attainment areas, or do not have an explicit statement that public notice for the TIP will satisfy the Program of Projects requirements, the grantee is deficient. If the MPO carries out these activities and is not involving the grantee, contrary to the agreement, the process is deficient. The grantee should be an active participant in this process. Any other inadequacies in the public participation process, such as inadequate consultation with key parties for a particular project, could result in a deficiency finding. Similarly, lack of documentation to support the adequacy of the process should result in a finding of deficient.

If there is an agreement that clearly defines POP public participation responsibilities, procedures have been defined that meet the public participation requirements, and actual practices are consistent with the agreement, the grantee is not deficient with the POP public participation requirements. Further determinations should be made only if the grantee is carrying out the POP procedures directly rather than relying on the MPO's public participation procedures.

When the grantee is responsible for publishing the POP, the following determinations should be made: If the grantee has failed to publish a POP in an appropriate local publication, has failed to provide sufficient detail in the announcement, or has failed to offer an opportunity for a public hearing, the grantee is deficient. If the grantee has published in a newspaper of general circulation, but has failed to communicate to a significant minority of non-English speaking individuals, the grantee should be found deficient.

If the grantee has a consultative process for the POP, which can include the MPO, it is not deficient. If the grantee does not have a consultative process (e.g., does not attempt to solicit opinions of others, does not mail a notice of its plans for developing the POP to private providers, does not have an ongoing public participation process, etc.), the grantee is deficient. The grantee is deficient if there is no evidence that a good faith effort toward service coordination was made as the POP was being developed.

If an opportunity for a public hearing was given, the grantee is not deficient. If due consideration was given to public comments, the grantee is not deficient.

If the proposed POP contains a statement that the proposed program also will be the final program unless amended, this will meet the requirements regarding the final POP. If the statement is missing from the proposed POP publication and a final publication is not made, or if the POP is changed without a second notification, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must develop and implement a public participation process that complies with the regulatory requirements and must maintain documentation to demonstrate that the process has been followed. Where the grantee is relying on the MPO for these activities, the two entities need to work together to address these deficiencies. Where the MPO is responsible for public participation, the grantee needs to submit an action plan and schedule showing how this will be resolved.

If the grantee publishes a separate POP, and this process is deficient, the grantee will need to make appropriate changes. For example, the wording of the announcement may need to be changed to indicate where the POP is available for review or to ensure there is sufficient detail describing the POP.

Since the publication of the POP is an annual event, the timetable of the corrective action will depend upon the next publication date. If the publication date is imminent, the grantee should make the appropriate changes and forward a copy of the public notice to the regional office. If the publication of the POP is more than three months in the future, the grantee should be required to provide generic language and/or a statement that it has implemented the appropriate procedures (e.g., publication in a second newspaper) in its POP process or indicate it will do so with its next publication.

14. *Since the last Triennial Review, has the grantee had any complaints or lawsuits with respect to:*

- a. *Public involvement?*
- b. *Environmental justice?*
- c. *Air quality conformity?*
- d. *Other metropolitan and statewide planning requirements?*

If yes, what was the nature of the complaint/lawsuit? How were these complaints/lawsuits resolved? Are any pending?

EXPLANATION

The existence of complaints and lawsuits can indicate a deficiency in the regional transportation planning process. This question delves into the effectiveness of the existing procedures for public involvement, environmental justice, air quality conformity, and other aspects of the planning requirements.

REASON FOR THE QUESTION

Input to risk assessment and the review.

SOURCES OF INFORMATION

This information may be available during the desk review from FTA staff that works with the grantee. The Regional Counsel also may be aware of any complaints and lawsuits. Additional information will be provided by the grantee at the site visit.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

12. TITLE VI

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participating in, or denied the benefits of, or be subject to discrimination under any program, or activity receiving federal financial assistance. The grantee must ensure that federally supported transit services and related benefits are distributed in an equitable manner.

AREAS TO BE EXAMINED

1. ***Responsibility for Title VI Coordination***
 - a. Certification of non-discrimination (Annual Certifications and Assurances)
 - b. Implementation of Title VI provisions
2. ***Approved Title VI Program***
 - a. General reporting requirements (all grantees)
 - b. Program-specific reporting (areas with population 200,000 and over)
3. ***Title VI Public Information and Complaints***
 - a. Public Notification of Rights
 - b. Complaint Procedures
 - c. List of Title VI complaints
 - d. List of Title VI lawsuits

4. Title VI Monitoring Procedures

- a. Limited English Proficiency (LEP)
- b. Environmental Justice Assessment
- c. Level and quality of service

REFERENCES

1. [FTA C 4702.1A](#), "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients."
2. [49 CFR Part 21](#), "Nondiscrimination in Federally-assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964."
3. [Federal Register: April 15, 1997](#) (Volume 62, Number 72, pp. 18377-18381) "Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations."
4. [Executive Order 13166](#): "Improving Access to Services for Persons with Limited English Proficiency."
5. [Federal Register: December 14, 2005](#) (Volume 70, Number 239, pp. 74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons."

QUESTIONS FOR THE REVIEW

1. *Has the grantee had, or been informed that it will have, a Title VI Compliance Review by FTA's Office of Civil Rights? If yes, when was/will be the site visit?*

EXPLANATION

The U.S. Department of Transportation's Title VI Regulations at 49 CFR §21.11(a) state that "the Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part."

Consistent with this provision, FTA conducts periodic post-award Title VI compliance reviews as described in Chapter VIII of FTA C 4702.1A. These reviews may be in addition to the Triennial Review and may be conducted either as a desk audit or at an on-site visit. They may cover all or a portion of the recipient's compliance with the requirements of FTA C 4702.1A. Such reviews will be conducted at the discretion of FTA and their scope is defined on a case-by-case basis.

In general, compliance reviews assess the recipient or subrecipient's efforts to meet the requirements under the "general requirements and guidelines" (Chapter IV) and program specific requirements and guidelines (Chapters V, VI, and VII) of FTA C 4702.1A. Compliance reviews may cover other information that is necessary and appropriate to make a determination of a grantee's compliance with Title VI.

FTA summarizes the results of the review in a draft report, which includes findings of deficiency, findings of no deficiency, and advisory comments, as appropriate. The recipient or subrecipient has the opportunity to review and respond to the draft report. After FTA has received and reviewed the agency's response, it will publish a final report that will be provided to the recipient and subrecipient and will also be subject to requests from the public under the Freedom of Information Act (FOIA). A list of final Title VI compliance reports can be found at http://www.fta.dot.gov/civilrights/title6/civil_rights_5463.html.

If findings of deficiency remain in the final report, the recipient or subrecipient will be required to take corrective action, develop a timeline for compliance, and report on its progress to FTA on a quarterly basis. Once FTA determines that the recipient or subrecipient has satisfactorily responded to the review's findings, it will inform the agency that the review process has ended and release it from further progress reporting in response to the review.

Compliance reviews may be followed up with additional reviews as necessary.

If a Title VI Compliance Review has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year, triennial reviewers should note on the worksheets when the compliance review was/will be performed. If findings from the Title VI review are still being monitored, or if the Title VI review is pending, the triennial review will not include questions on Title VI.

REASON FOR THE QUESTION

49 CFR 21.11(a)
FTA C 4702.1A, Ch.VIII
Input to triennial review

SOURCES OF INFORMATION

The reviewer should contact FTA's Office of Civil Rights in headquarters and/or the regional civil rights officer (CRO) to determine if a Title VI Compliance Review of the grantee is scheduled or has been conducted during the review period. The Regional Oversight Resource Plan also may have a schedule of Title VI reviews to be held during the year.

DETERMINATION

If the Title VI area is not included in the triennial review, use the finding of Not Reviewed (NR).

SUGGESTED CORRECTIVE ACTION

None

2. *Who is responsible for the coordination of Title VI Program/ Environmental Justice Assessments? Who prepares the Title VI Program submissions and updates for FTA?*

EXPLANATION

While neither the DOT Title VI regulations nor FTA's C 4702.1A require that recipients appoint a person(s) to coordinate Title VI activities, many recipients have a person or group of people to perform this task and these individuals can assist the reviewer in answering the subsequent questions of this section.

REASON FOR THE QUESTION

General information

SOURCES OF INFORMATION

The Title VI Program submissions to the CRO may include the name of the person(s) responsible for

coordinating and implementing the Title VI Program/ Environmental Justice Assessments. This information should be confirmed and/or updated at the site visit.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

- 3. Has the grantee's Title VI Program been approved by FTA? If yes, when does the approval expire? If the program has expired, please provide an explanation.*

EXPLANATION

The U.S. Department of Transportation's Title VI regulations at 49 CFR 21.9(b) state that "each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times and in such form and containing such information as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part."

Consistent with this provision, FTA requires that its direct recipients submit a compliance report (aka a "Title VI Program") to the CRO in their region once every three years, per the instructions in Chapter II section 4 of FTA C 4702.1A. All direct recipients are required to submit a Title VI program that documents their compliance with Chapter IV of FTA C 4702.1A. FTA recipients under Section 5307 of the Federal Transit Laws who provide service to geographic areas of 200,000 persons or greater need to submit a Title VI program that documents their compliance with Chapter IV and Chapter V of FTA C 4702.1A.

REASON FOR THE QUESTION

[49 CFR 21.9\(b\)](#)

[FTA C 4702.1A](#), Ch. II, Section 4; Ch. IV, Section 7; Ch. V, Section 6; Appendices A and B

SOURCES OF INFORMATION

The CRO's files should include a copy of the most recently submitted program. There should be correspondence indicating when it was approved by FTA and when the approval expires.

DETERMINATION

The grantee is not deficient if its current Title VI Program has been submitted and approved or if the grantee has submitted its program to FTA and is awaiting a response. The grantee is deficient if the

Title VI Program has expired and the grantee has not made a submission or requested and received an extension for submitting a new program or program update.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the required Title VI Program to the CRO.

- 4. Has FTA placed any conditions on the Title VI approval? If so, what is the status of the grantee's follow-up on corrective actions?*

EXPLANATION

Consistent with The U.S. Department of Transportation's Title VI regulations at 49 CFR 21.9(b), Chapter II section 4 of FTA C 4702.1A states that "if any of the required information is not included in the recipient's Title VI compliance report, or if the information submitted is not consistent with the guidance provided in the relevant section of this circular, than FTA may determine that the report is deficient and may condition or delay continued Federal financial assistance to the recipient until FTA is satisfied that the recipient has taken corrective action."

REASON FOR THE QUESTION

[FTA C 4702.1A](#), Ch. II, Section 4.a

SOURCES OF INFORMATION

The CRO's files should include documentation of any corrective action or additional submittal that is required of grantee. During the site visit, discuss the status of any outstanding items that require corrective action.

DETERMINATION

The grantee is not deficient if it has had no conditions placed on its Title VI program, or if the grantee has completed all corrective actions or made appropriate submittals to its Title VI program at the time of the review. The grantee is deficient if it has overdue corrective actions at the time of the review.

SUGGESTED CORRECTIVE ACTION

The grantee should submit any overdue clarifications or further corrective actions to the CRO, per the timeline determined by the CRO.

5. *Does the grantee notify its customers of their rights under Title VI? How does the grantee provide such notification to the public?*

EXPLANATION

The U.S. DOT Title VI Regulations at 49 CFR §21.9(d) state that, “each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such a manner as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.”

Consistent with this provision, FTA has advised its grantees to notify beneficiaries of protection under Title VI. Chapter IV section 5 of FTA C 4702.1A states that, “recipients and subrecipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients and subrecipients that provide transit service shall disseminate this information to the public through measures that can include, but shall not be limited to a posting on the agency’s Web site.”

FTA C 4702.1A, Chapter IV section 5a states that the contents of the notice shall include: “(1) a statement that the agency operates programs without regard to race, color, and national origin; (2) a description of the procedures that members of the public should follow in order to request additional information on the recipient’s or subrecipient’s nondiscrimination obligations; and (3) a description of the procedures that members of the public should follow in order to file a discrimination complaint against the recipient or subrecipient.” FTA C 4702.1A, Chapter IV section 5b provides guidance on how to disseminate this notification.

Grantees need not necessarily refer to “Title VI of the Civil Rights Act of 1964” in their notification to the public, since most of the public is not aware of this provision. Rather, grantees can fulfill this requirement by notifying the public that they are committed to providing non-discriminatory service and informing customers how to request more information and how to file a discrimination complaint.

REASON FOR THE QUESTION

[49 CFR 21.9\(d\)](#)

[FTA C 4702.1A](#), Ch. IV, Section 5

SOURCES OF INFORMATION

Grantee staff should be able to provide reviewers with a copy of the materials that the grantee uses to inform beneficiaries of their rights under Title VI and a description of how these materials are disseminated.

DETERMINATION

The grantee is not deficient if it provides the reviewers with the materials that it uses to inform beneficiaries of their rights under Title VI and describes how these materials are disseminated.

The grantee is deficient if it has not developed a notification to the public, or if it has developed but not disseminated this notification, or if its only means of dissemination consists of publishing the notice on the agency’s website.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a plan and timeline for developing and disseminating a notification to the public of their rights under Title VI, as well as a copy of the notification that will be disseminated. Grantees can find examples of brochures published by the U.S. Department of Justice that notify the public of their rights under Title VI at <http://www.usdoj.gov/crt/cor/pubs.htm>.

6. *Does the grantee have procedures for investigating and tracking Title VI complaints filed with the grantee and is this information made available to the public upon request?*

EXPLANATION

FTA requires that its grantees maintain, as part of their records, a description of the process that they use to investigate Title VI complaints filed against the agency. FTA C 4702.1A states that, “recipients and subrecipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to the public upon request.”

Grantees do not need to develop separate procedures for investigating and resolving Title VI complaints beyond what procedures have already been established to respond to complaints of discrimination filed on bases not covered under Title VI, or procedures to respond to non-civil rights related complaints. Most grantees have a well-established process and schedule for receiving and acknowledging complaints, determining whether it is appropriate to investigate the complaint, conducting

investigations, and issuing determinations. This process can be applied to Title VI complaints.

However, the grantee should have a system in place whereby it can identify which, if any, of its complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the recipient. Although the complainant may not refer to Title VI in the complaint to the grantee, the grantee should be able to identify and classify this type of complaint as a Title VI complaint.

REASON FOR THE QUESTION

[49 CFR 21.9\(b\)](#)

[FTA C 4702.1A](#), Ch. IV, Section 2

SOURCES OF INFORMATION

The grantee should be able to provide the reviewer with a written copy of its complaint procedures. The reviewer should ask the grantee whether these procedures would apply to complaints filed under Title VI or whether the grantee has separate Title VI complaint procedures. The reviewer should also ask the grantee if it has a process for classifying complaints of discrimination under Title VI.

DETERMINATION

The grantee is not deficient if it provides information on its procedures for investigating and tracking Title VI complaints.

The grantee is deficient if it cannot provide information on how it investigates Title VI complaints and/or if the grantee cannot demonstrate that it has a process for tracking discrimination complaints on the basis of race, color, or national origin.

SUGGESTED CORRECTIVE ACTION

The grantee should submit a written document that describes its procedures for investigating and tracking Title VI complaints to the CRO.

7. *Does the grantee maintain a record of any Title VI investigations, complaints and lawsuits filed with the agency?*

EXPLANATION

Chapter IV section 3 of FTA C 4702.1A requires that grantees “prepare and maintain a list of any active investigations conducted by entities other than FTA, lawsuits, or complaints naming the recipient and/or subrecipient that allege discrimination on the basis of race, color, or national origin. This list shall include the date that the investigation, complaint, or lawsuit

was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient or subrecipient in response to the investigation, lawsuit, or complaint.”

REASON FOR THE QUESTION

[49 CFR 21.9\(b\)](#)

[FTA C 4702.1A](#), Ch. IV, Section 3

SOURCES OF INFORMATION

The grantee should be able to provide the reviewer with a written record of any active Title VI investigations, lawsuits, or complaints. This list does not need to include those investigations, lawsuits, or complaints that have been filed in the past but have been previously closed. Note that if a grantee is able to track complaints as “Title VI complaints” per the requirement in Chapter IV section 2 of FTA C 4702.1A, it should be able to provide a list of any such complaints that have been filed with the grantee. However, if the grantee has not demonstrated that it can classify those complaints that allege discrimination on the basis of race, color, and national origin as Title VI complaints, then the grantee will not likely be able to provide the reviewer with such a list.

DETERMINATION

The grantee is not deficient if it provides a list of active Title VI investigations, lawsuits, or complaints, or if the grantee indicates that no such items have been filed with the agency.

The grantee is deficient if it cannot track Title VI complaints (and therefore cannot provide a list of any such complaints). The grantee is also deficient if FTA has evidence that an investigation(s), complaint(s), or lawsuit(s) has been filed with the agency but the agency does not list the specific item(s) in its record.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO its procedure for tracking Title VI complaints and/or a list of Title VI complaints, lawsuits, or investigations that were not previously identified.

8. *Has the recipient taken responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (LEP)?*

EXPLANATION

Executive Order 13166, “Improving Access to Services for Persons with Limited English

Proficiency,” reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The Executive Order states that recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

The U.S. DOT published revised guidance for its recipients on December 14, 2005 (Federal Register, vol. 70, no. 239, pp. 74087–74100, December 14, 2005). This document states that Title VI and its implementing regulations require that DOT recipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP) and that recipients should use the DOT LEP Guidance to determine how best to comply.

The DOT LEP Guidance advises grantees to determine what steps are necessary to provide “meaningful access” on the basis of four factors: (1) the number and proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program, activity, or service; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and costs.

The DOT LEP Guidance also recommends that grantees develop an implementation plan to address the identified needs of the population it serves. Such a plan should have five components: (1) identifying LEP individuals who need language assistance; (2) developing language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the plan.

Chapter IV section 4 of FTA C 4702.1A repeats the language in the DOT LEP Guidelines that Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (LEP).

Chapter IV section 4a states that “recipients and subrecipients can ensure that LEP persons have meaningful access to their programs and activities by developing and carrying out a language implementation plan pursuant to the recommendations in Section VII of the DOT LEP Guidance. Certain recipients or subrecipients, such as those serving very few LEP persons or those with very limited resources may choose not to develop a written LEP plan. However the absence of a written

LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient’s program or activities. Recipients or subrecipients electing not to prepare a written language implementation plan should consider other ways to reasonably provide meaningful access.”

REASON FOR THE QUESTION

[Executive Order 13166](#)

[DOT LEP Guidance](#)

[FTA C 4702.1A](#), Ch. IV, Section 4

SOURCES OF INFORMATION

Grantee staff should be able to inform reviewers of whether their agency has analyzed the four factors presented in the DOT LEP Guidance and whether the agency has developed an implementation plan on language assistance. If these steps have been taken, reviewers should ask for supporting documentation. Grantee staff should also be able to provide examples of language assistance measures they have implemented.

DETERMINATION

The grantee is not deficient if it has conducted the four-factor analysis and has developed an implementation plan to address the identified needs of the population it serves.

The grantee is also not deficient if it has analyzed how the four factors in the DOT LEP Guidance apply to its programs and services and has elected not to develop a language implementation plan, but can nonetheless demonstrate that it has taken responsible steps to provide meaningful access to LEP persons on the basis of its four-factor analysis. Such steps can include the following actions:

- training bilingual staff to act as interpreters and translators
- using telephonic and video conferencing interpretation services
- formalizing use of qualified community volunteers
- using centralized interpreter and translator services
- hiring staff interpreters
- using symbolic signs (pictographs)
- translating into languages other than English vital written materials, such as applications or instructions on how to participate in a recipient’s program, signs in bus and train stations, notice of public hearings and other community outreach, and notices advising LEP persons of free language assistance

If a grantee can demonstrate it has taken responsible steps to provide access but has elected not to develop a written implementation plan, reviewers should recommend (although it is not a finding) that they consider developing such a plan in the future, as it is likely to help the recipient improve the quality and

reliability of its existing language assistance measures.

The grantee is deficient if the reviewer determines that it has not conducted an analysis of how the four factors in the DOT LEP Guidance apply to the grantee's programs and activities. Even if the grantee has taken specific actions, such as those listed above, to provide language assistance, FTA and the grantee cannot determine whether or not such actions constitute "meaningful access" without information on the number and proportion of LEP persons in the recipient's service area, which programs and activities are most frequently used by LEP persons, and which programs and activities are most important to LEP persons.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a document that describes its plans for conducting the four-factor analysis and provides a timeline for when the analysis will be completed. Once the analysis has been completed, the grantee should submit the analysis along with a list of language assistance it has provided or intends to provide and a timeline for providing this assistance.

9. *Has the grantee sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities?*

EXPLANATION

One of the principles of environmental justice is to ensure the full and fair participation by all potentially affected communities in the transportation decision-making process. DOT Order 5610.2 states that "...Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures)."

Consistent with this provision, FTA has issued guidance to its grantees on promoting inclusive public participation (see Chapter IV section 9 of FTA C 4702.1A). This guidance states "recipients and subrecipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities. An agency's public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and

environmental impacts of proposed transportation decisions."

Chapter IV section 9a of FTA C 4702.1A discusses some effective practices to promote inclusive public involvement and lists some specific practices, including: (1) coordinating with individuals, institutions, or organizations and implementing community-based public involvement strategies to reach out to members in the affected minority and/or low-income communities; (2) providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments; (3) using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities; (4) using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities, so that communications are tailored to the particular community or population; and (5) implementing DOT's policy guidance concerning recipients' responsibilities to LEP persons to overcome barriers to public participation.

REASON FOR THE QUESTION

[EO 12898, DOT Order 5610.2](#)
[FTA C 4702.1A, Ch. IV, Section 9](#)

SOURCES OF INFORMATION

Grantee staff should be able to provide a summary of public involvement measures taken since the date of the last Triennial Review and a description of the methods used to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting these public outreach and involvement activities.

DETERMINATION

The grantee is not deficient if it can demonstrate that it implemented one or more of the effective practices listed in Chapter IV section 9a of FTA C 4702.1A. The grantee is also not deficient if it can demonstrate that it implemented public involvement strategies other than those listed at Chapter IV section 9a and the reviewer determines that these strategies are consistent with the guidance at Chapter IV section 9.

The grantee is deficient if it indicates that it conducted public outreach since the last Triennial Review but cannot demonstrate that it implemented either any of the public involvement strategies listed in Chapter IV section 9a or any other strategies that the reviewer determines are consistent with Chapter IV section 9.

SUGGESTED CORRECTIVE ACTION

The grantee should provide to the CRO a document that describes the measures it will take to promote inclusive public participation in future public involvement activities, as well as a timeline for implementing the proposed procedures.

10. Has the grantee incorporated an environmental justice analysis into its National Environmental Policy Act (NEPA) documentation of construction projects?

EXPLANATION

The U.S. DOT Title VI Regulations at 49 CFR §21.5(b)(3) state that, “in determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color or national origin....”

The authority of Federal Title VI regulations was reaffirmed in Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which addresses fair treatment of all people regardless of race, color, ethnicity, or income with respect to the benefits and burdens of environmentally related programs, policies, and activities. The Executive Order states that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.

The U.S. Order on Environmental Justice (Order 5610.2) sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into their operations. This Order states that, “It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement.” (Order 5610.2 section 4a).

Order 5610.2 also states, “planning and programming activities that have the potential to have a disproportionately high and adverse effect on human

health or the environment shall include explicit consideration of the effects on minority populations and low-income populations.” (Order 5610.2 section 5(b)(1)).

Consistent with Order 5610.2, FTA's C 4702.1A advises grantees to integrate an environmental justice analysis into NEPA documentation of construction projects (see Chapter IV section 8 of FTA C 4702.1A). This provision states that Environmental Justice information should be included in applications for a documented categorical exclusion (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS).

Chapter IV section 8a recommends that recipients preparing an EA or EIS include:

- a description of the low-income and minority population within the study affected by the project, and a discussion of the method used to identify this population;
- a discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population;
- a discussion of all positive effects that would affect the identified minority and low-income population; a description of all mitigation and environmental enhancement actions incorporated into the project to address the adverse effects;
- a discussion of the remaining effects, if any, and why further mitigation is not proposed; and
- a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority and non-low income areas.

REASON FOR THE QUESTION

[49 CFR 21.5\(b\)\(3\)](#)
[EO 12898, DOT Order 5610.2](#)
[FTA C 4702.1A](#), Ch. IV, Section 8

SOURCES OF INFORMATION

FTA regional staff and grantee staff should be able to provide reviewers with copies of any NEPA documentation submitted by the recipient to FTA since the date of the last Triennial Review.

DETERMINATION

The grantee is not deficient if it has not submitted any NEPA documentation to FTA since the date of the last Triennial Review or if its application for a CE, its EA, or its EIS includes an environmental justice analysis.

If the grantee's environmental justice analysis does not include the information recommended in Chapter IV section 8a of FTA C 4702.1A, the reviewers should that the grantee consider including this information in

the environmental justice analyses of future submissions.

The grantee is deficient if an application for a CE, an EA, or an EIS does not include an environmental justice analysis.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a document that describes how it will incorporate environmental justice considerations into future NEPA documents.

- 11.** *If the grantee operates in a service area of 200,000 or more in population, has it collected and analyzed demographic data showing the extent to which members of minority groups are beneficiaries of programs receiving FTA financial assistance?*

EXPLANATION

The U.S. DOT Regulations at 49 CFR §21.9(b) state that, "...In general, recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance."

Consistent with this provision, Chapter V section 1 of FTA C 4702.1A requires recipients to which this Chapter applies to collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance. This provision of the circular recommends that recipients fulfill this requirement either by preparing demographic and service profile maps and charts (described in Chapter V section 1a), by collecting demographic information as part of agency ridership surveys (described in Chapter V section 1b), or by developing their own procedures to collect and analyze demographic data on their beneficiaries (described in Chapter V section 1c).

REASON FOR THE QUESTION

[49 CFR 21.9\(b\)](#)
[FTA C 4702.1A](#), Ch. V, Section 1

SOURCES OF INFORMATION

Grantee staff should be able to provide the reviewer either with copies of demographic maps and overlays that provide the information as recommended in Chapter V section 1a of FTA C 4702.1A, or with the results of customer surveys that provide information as recommended in Chapter V section 1b of FTA C 4702.1A. If the recipient has elected to develop its own procedure to collect and analyze demographic

data of their beneficiaries, this information should be presented to the reviewer.

DETERMINATION

The grantee is not deficient if it provides the reviewer with either maps and overlays, results of customer surveys, or a locally developed method that is consistent with the provisions in Chapter V section 1 of FTA C 4702.1A.

The grantee is deficient if it cannot provide maps and overlays or the results of customer surveys, or a locally developed method. The grantee is also deficient if it provides the reviewer with maps and overlays that were prepared prior to the date of the last triennial review and the grantee has subsequently made changes to the location of its transit routes and facilities. The grantee is also deficient if it provides the results of passenger survey information and the surveys do not include demographic data on the passengers.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a document that describes its strategy and timeline for collecting demographic information, consistent with one of the options for collecting this information in Chapter V section 1 of FTA C 4702.1A. Once the grantee has collected this information, it should provide a copy of the results to the CRO.

- 12.** *If the grantee operates in a service area of 200,000 or more in population, has it set system-wide service standards and system-wide service policies?*

EXPLANATION

The U.S. DOT Title VI Regulations at 49 CFR §21.5(b)(7) state that, "...even in the absence of prior discriminatory practice or usage, a recipient, in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin."

The appendix to 49 CFR 21 provides examples, without being exhaustive, that illustrate the application of the nondiscrimination provisions of this part under the programs of certain U.S. DOT operating administration. Part (a)(3)(iii) of the appendix states that, "no person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of

routes may not be determined on the basis of race, color, or national origin.”

Consistent with these provisions, FTA requires grantees serving geographic areas with populations of 200,000 or more to set system-wide standards and policies necessary to guard against discriminatory service design or operations decisions (see Chapter V section 2 and section 3 of FTA C 4702.1A).

Chapter V section 2a of FTA C 4702.1A lists some examples of service standards a grantee can adopt. These standards are: (1) vehicle load; (2) vehicle headway; (3) on-time performance; (4) distribution of transit amenities; and (5) service availability. Recipients are free to adopt additional service standards or other standards in lieu of the ones cited in this provision.

Chapter V section 3a of FTA C 4702.1A lists examples of system-wide service policies a grantee can adopt. (Service policies differ from service standards in that they are not necessarily based on a quantitative threshold). These policies are: (1) vehicle assignment; and (2) transit security. Recipients are free to adopt additional service policies or other policies in lieu of those cited in this provision.

REASON FOR THE QUESTION

[49 CFR 21.9\(b\)](#); Appendix C
[FTA C 4702.1A](#), Chapter V, Sections 2 and 3

SOURCES OF INFORMATION

Grantee staff should be able to provide reviewers with a list of service standards and service policies that the agency has adopted and a description of how the agency defines its standards and policies.

DETERMINATION

The grantee is not deficient if it can document that it has adopted the service standards and policies recommended in FTA C 4702.1A Chapters 2a and 2b, and/or that it has adopted other system-wide service standards and policies. The grantee is deficient if it cannot document that it has either adopted any of the service standards and policies recommended in FTA C 4702.1A Chapters 2a and 2b, or adopted other system-wide service standards and policies.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a document that describes its plans for adopting system-wide service standards and policies and provides a timeline for adopting these standards and policies. Once these standards and policies have been adopted, the grantee should forward a copy of the standards and policies to the CRO.

- 13.** *If the grantee operates in a service area of 200,000 or more in population, has it monitored the service it provides to identify any disparities in the level and quality of service provided to different demographic groups? Has the grantee taken corrective action if it determined that disparities exist?*

EXPLANATION

The U.S. DOT Title VI Regulations at 49 CFR §21.5(b)(7) state that, “...even in the absence of prior discriminatory practice or usage, a recipient, in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.”

The appendix to 49 CFR 21 provides examples, without being exhaustive, that illustrate the application of the nondiscrimination provisions of this part under the programs of certain U.S. DOT operating administration. Part (a)(3)(iii) of the appendix states that, “no person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.”

Consistent with these provisions, Chapter V section 5 of FTA C 4702.1A states that, “recipients to which this Chapter applies shall monitor the transit service provided throughout the recipient’s service area. Periodic service monitoring activities shall be undertaken to compare the level and quality of service provided to predominantly minority areas with service provided in other areas to ensure that the end result of policies and decision making is equitable service. Monitoring shall be conducted at minimum once every three years. If a recipient’s monitoring determines that prior decisions have resulted in disparate impacts, agencies shall take corrective action to remedy the disparities.”

FTA recommends that recipients fulfill this requirement by implementing at least one of four service monitoring procedures, which are described in Chapter V sections 5a, 5b, 5c, and 5d of FTA C 4702.1A.

REASON FOR THE QUESTION

[49 CFR 21.9\(b\)](#) and Appendix C
[FTA C 4702.1A](#), Ch. V, Section 5

SOURCES OF INFORMATION

Grantee staff should be able to provide the reviewer with the results of any monitoring of its transit service conducted since the last triennial review.

DETERMINATION

The grantee is not deficient if it has conducted service monitoring consistent with the procedures listed in either section 5a, 5b, 5c, or 5d of FTA C 4702.1A Chapter V.

The grantee is deficient if it has conducted service monitoring but the methodology used in the monitoring did not include a demographic analysis that compared the level and quality of service provided to different demographic groups, including minority persons. The grantee is also deficient if its monitoring identified disparities in the level and quality of service provided to minority and non-minority users but the grantee did not take corrective action.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a document that describes its plans for conducting service monitoring, consistent with the procedures in FTA C 4702.1A, Chapter V section 5 as well as a timeline for conducting this monitoring. Once the monitoring has been conducted, the grantee should provide a copy of the results to the CRO.

14. *If the grantee operates in a service area of 200,000 or more in population, has it conducted an internal evaluation of major service changes or fare changes that have occurred since the last Triennial Review to determine whether proposed changes would have a discriminatory impact?*

EXPLANATION

The appendix to 49 CFR 21 provides examples, without being exhaustive, that illustrate the application of the nondiscrimination provisions of this part under the programs of certain U.S. DOT operating administrations. Part (a)(3)(iii) of the appendix states that, “no person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of transportation service furnished as part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.”

The U.S. DOT Order on Environmental Justice states that, “Planning and programming activities that have

the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations.” (DOT Order 5610.2 section 5b(1)).

This order also states that, “[Title VI] requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination so that positive corrective action can be taken.” (DOT Order 5610.2 section 7b).

The U.S. DOT Order on environmental justice defines “adverse effects” to include social and economic effects, such as, “isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.” (DOT Order 5610.2, Appendix 1f). Under this definition, service and fare changes could have adverse effects if the service reductions result in isolating minority or low-income community. Likewise, if a fare increase means that low-income persons would be unable to afford to continue to take all or a portion of their trips on public transit, they may experience isolation from the broader community, within their own community.

Consistent with these provisions, Chapter V section 4 of FTA C 4702.1A states that, “recipients to which this chapter applies shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact. For service changes, this requirement applies to “major service changes” only. The recipient should have established guidelines or thresholds for what it considers a “major service change” to be. Often, this is defined as a numerical standard, such as a change that affects 25 percent of service hours of a route.” Chapter V section 4a recommends specific procedures for conducting an analysis of service changes and fare changes. Chapter V section 4b states that grantees can conduct an analysis of service and fare changes using a locally modified version of the procedures at Chapter V section 4a or a locally-developed set of procedures.

Note to Reviewers: this requirement is different from the requirement in the Public Comment for Fare Increases and Service Reductions section of the Triennial Review Contractors’ Guide. (See *Triennial Review Section 13, Public Comment*) The Public Comment section is guided by the requirement for a *public comment process* before *raising* a fare or *carrying out* a major *reduction* of transportation. For purposes of Title VI, grantees to which this requirement applies need to perform an internal equity evaluation (not public comment process) for

“major service changes” (both increases and reductions), as locally defined, and fare changes.

REASON FOR THE QUESTION

[49 CFR 21.5\(b\)\(3\); \(b\)\(7\)](#); and Appendix C

[U.S. DOT Order 5610.2](#)

[FTA C 4702.1A](#), Ch. V, Section 4

SOURCES OF INFORMATION

Grantee staff should be able to provide the reviewers with a list of service and fare changes that have occurred since the last review and a description of the nature of the changes. Grantee staff should also be able to provide the reviewers with its threshold for a “major service change” under Title VI.

DETERMINATION

The grantee is not deficient if it has conducted an analysis of the effects of major service changes (as locally defined) and/or fare changes consistent with the procedures recommended in Chapter V section 4a and 4b. The grantee is also not deficient if it has not conducted an analysis of any service changes that do not meet the grantee’s threshold for a “major service change.”

The grantee is deficient if it has not conducted an analysis of the effects of one or more major service changes and/or fare changes that have occurred since the last triennial review. The grantee is also deficient if it has not conducted an analysis of any service changes, under the pretense that none of the changes constituted “major service changes,” but the grantee has not adopted a threshold or guidelines for what it considers a major service change to be.

SUGGESTED CORRECTIVE ACTION

The grantee should submit to the CRO a document that describes how it will analyze the impacts of future fare and major service changes. The grantee shall also submit to the CRO its policies for what it constitutes a major service change to be, for the purposes of this question.

13. PUBLIC COMMENT PROCESS FOR FARE INCREASES AND SERVICE REDUCTIONS

BASIC REQUIREMENT

The grantee is expected to have a written copy of a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation services.

AREAS TO BE EXAMINED

1. ***Existence and Application of Locally Developed Process to Solicit and Consider Public Comment***
 - a. Prior to raising fares
 - b. Prior to implementing a major reduction of service.

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ([SAFETEA-LU](#)).
2. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a locally developed process for soliciting and considering public comment prior to a fare increase or a major service reduction? How are these procedures documented? What does the grantee consider to be a “major” service reduction?*

EXPLANATION

The grantee is required to develop a process for soliciting and considering public comment prior to raising fares or implementing major service reductions. The grantee is expected to have a written policy that describes the public comment process. The process should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction. The policy should describe how such meetings will be conducted and how the results will be considered. The procedures should describe how the grantee will solicit and consider public comments.

A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be given. This requirement only applies when the grantee intends to increase the basic fare structure or decrease service. The law does not require that fare decreases, service increases, or “special fares” be preceded by public comment. In the event no member of the public requests a public meeting, there must be a process by which the grantee solicits public comment (e.g., newspaper/radio advertisements, flyers on buses, etc).

For service decreases, the requirement applies to “major service reductions” only. The grantee should have established guidelines or thresholds for what it considers a “major” change to be. Often, this is defined as a standard, such as:

- elimination of a route;
- reduction of “X” percent of service hours of a route; and/or
- elimination of one or more stops on a route.

Some grantees offer an opportunity for public comment for all service changes; this meets the requirement. Minor service changes do not require a public comment process.

REASON FOR THE QUESTION

49 USC, Section 5307 (d)(1)(I)
FTA C 9030.1C, Ch. V, Section 5.o

SOURCES OF INFORMATION

The grantee should provide its procedures that describe the public participation process and define a major service reduction. These procedures may be a separate stand-alone document or part of a larger set of administrative procedures of the agency or local government.

DETERMINATION

If the grantee has written procedures that reasonably define when public comments will be solicited and how they will be considered, it is not deficient. In cases where a grantee has no written procedures and has carried out a fare increase or major service reduction, the reviewer will need to make a determination based upon the grantee’s actions. If a process has been followed and documented and that process included all of the required elements, the grantee is not deficient. However, if the process did not address all of the required elements, or if documentation is lacking, the grantee is deficient. If the grantee has neither a written procedure nor documentation that a process has been followed, it is deficient. If the grantee has a written process but it does not include all required elements, it is deficient. That is, the grantee has not defined a threshold for what constitutes a major service reduction, has not required fare increases to have a public comment process, or has not specified how comments will be considered. If any of these situations exist, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must modify or prepare written procedures that describe its public participation process for an intended fare increase or major service reduction and send a copy to FTA.

2. *Has the grantee raised a fare and/or carried out a major reduction in service in the past three years? Did the grantee follow its locally developed process for each of these changes? If not, what did the grantee do differently?*

EXPLANATION

Having a written public participation process is not sufficient unless that process is followed. The answers to these questions will help determine whether the process has been followed and how it was implemented in the case of fare increases and/or

major service reductions that have been planned and implemented over the past three years.

Note to Reviewers: this requirement is different than the requirement in the Title VI section of the Triennial Review Contractors' Guide. (See Triennial Review Section 12). The Title VI section is guided by the requirement for grantees in a service area over 200,000 to perform an internal equity evaluation (not public comment process) for "major service changes" (both increases and reductions), as locally defined, and fare changes.

REASON FOR THE QUESTION

49 USC, Section 5307 (d)(1)(I)
FTA C 9030.1C, Ch. V, Section 5.o

SOURCES OF INFORMATION

Ask for a list of any fare increases or service reductions, noting their effective dates, the dates and locations of public notices of proposed changes, and the dates of public meetings, if any, to discuss such changes. Transcripts from public hearings, minutes of board meetings, and staff summaries or other internal memoranda are sources of information to show how a public participation process was followed.

DETERMINATION

If the grantee has not had a fare increase or major service reduction, no additional information is needed in this section. If the grantee has increased fares or reduced service during the past three years and has followed its public participation process, it is not deficient. If the grantee has increased fares or reduced service during the past three years but has not followed its public participation procedures, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should provide FTA with a written assurance that it will implement its written procedures. The grantee also will provide a written explanation of why procedures were not followed.

3. *How were the comments considered in the decision-making process?*

EXPLANATION

In addition to soliciting public comment, the grantee is required to consider these comments as part of its decision-making process. A grantee is not required to change its plans based on the public participation process. However, the grantee – and particularly its policy makers – should give due consideration to comments made by the public.

REASON FOR THE QUESTION

49 USC, Section 5307 (d)(1)(I)
FTA C 9030.1C, Ch. V, Section 5.o

SOURCES OF INFORMATION

Public notices, public hearing transcripts, letters from the public, summaries of public meetings, and board minutes are sources of information to show how the public comment process was followed. Internal working documents also may show the original plans proposed by the grantee compared to the actual plans that were implemented. Changes in these plans can be compared to public hearing transcripts and other sources documenting public participation.

DETERMINATION

If the grantee has evidence that public comments have been considered in its fare increase and service reduction process, the grantee is not deficient. It is not necessary for the grantee to have changed its original plans to be not deficient with this requirement. If public comments have been made, but the grantee does not have evidence that they were considered in the implementation of the final plan, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should change its procedures to incorporate consideration of public comments into the process and document those considerations.

14. HALF FARE

BASIC REQUIREMENT

Grantees must ensure that elderly persons and persons with disabilities, or an individual presenting a Medicare card will be charged, during non-peak hours for transportation using or involving a facility or equipment of a project financed under Section 5307, not more than 50 percent of the peak hour fare.

AREAS TO BE EXAMINED

1. *Half Fare During Non-Peak Hours*

The grantee must offer a non-peak-hour fare for elderly persons and persons with disabilities that is no greater than one-half of the fare generally applicable to others during peak hours.

2. *Half Fare for Persons with a Medicare Card*

The half-fare requirements of the Federal Transit Act apply to any person

presenting a Medicare card duly issued to that person pursuant to Title II or XVIII of the Social Security Act.

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws,, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ([SAFETEA-LU](#)).
2. [49 CFR Part 609](#), "Transportation for Elderly and Handicapped Persons."
3. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."

QUESTIONS FOR THE REVIEW

1. *Does the grantee, during the off-peak hours, allow elderly persons, persons with disabilities, and persons with a Medicare card to pay one-half the fare generally paid during the peak hours? What is the full fare? What is the fare for E&PWD/Medicare? During what hours are half fares available (all hours or off-peak hours only)? Are there any services not included in the half-fare program?*

EXPLANATION

Urbanized Area Formula Program (Section 5307) grantees must allow 1) elderly persons, 2) persons with disabilities, and 3) Medicare cardholders to ride fixed route services during the off-peak hours for a fare that is not more than one-half the base fare charged other persons during the peak hours.

The fares charged to elderly persons, persons with disabilities, and Medicare cardholders cannot exceed one-half the fare that is charged for the same trip during the peak hours. If there are services such as neighborhood circulator and shuttle services with fares that are different from the grantee's fare for its regular local service, separate half fares are needed for each type of service. The reviewer needs to verify that the amount is not higher than fifty percent of the peak hour fare for each type of service.

The reviewer should verify that half fares are available on all required services. The requirement is applicable to:

- all fixed-route services (including route deviation services and service to sporting events) that operate in both peak and off-peak hours and use or involve facilities and equipment financed with Section 5307 funds, whether the services are provided by the grantee directly, by a contractor, or by another entity that leases facilities and/or equipment from the grantee
- any express and commuter routes that operate trips beyond the peak hours.

This requirement is not applicable to:

- demand responsive services that are open to the general public;
- services that operate only during peak hours, such as express and commuter routes;

- services that operate only in the off-peak hours (e.g., lunchtime circulators and weekend routes to sporting events).

If the grantee limits half fares to off-peak hours, the reviewer should verify that the definition of "off-peak" is reasonable. For example, if the grantee has both peak and off-peak fares in its overall fare structure, the off-peak time periods for the general public and the half fare program should be defined consistently. "Elderly" by FTA regulations is to "at a minimum, include all persons 65 year of age or over." Grantees are permitted to use a definition that extends this fare to younger (e.g., 62 and over, or 60 and over) persons. Persons with disabilities are defined by FTA as persons "who by reason of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including any individual who is a wheelchair user or has semi-ambulatory capabilities), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility."

The definition of Medicare cardholder is self-explanatory. This is a distinct half-fare requirement, though many grantees choose to use a Medicare card as proof of eligibility for the elderly and persons with disabilities half fare (see questions and discussion below). Though most Medicare cardholders are elderly (age 65 or older), it is important to recognize that Medicare cards can be issued to non-elderly persons with a disability. A Medicare card can be issued to anyone under 65 years of age who has received Social Security or Railroad Retirement Board disability benefits for 24 months or is a kidney dialysis or kidney transplant patient. The reviewer should make sure the grantee has not limited acceptance of a Medicare card to seniors only.

REASON FOR THE QUESTION

[49 USC 53](#), Section 5307 (d)(1)(D)

[49 CFR 609.23](#)

[FTA C 9030.1C](#), Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

The basic sources of information are the grantee's general public information that presents its fare structure. Common examples are the system map, pocket timetables, and signs within the system (e.g., decals on fareboxes, signs in stations, and car cards on vehicles). Other sources are brochures describing the fare structure and the reduced fare program, and application forms for the reduced fare program or special ID cards. Documents such as fare policies/tariffs and internal policy memoranda may describe

the program. The grantee's web site also may have fare information.

DETERMINATION

If the grantee offers half fares during off-peak hours on all required services, offers half fares during the off-peak that are equal to or less than one-half the full fare during the peak hours, has a program that defines elderly and persons with disabilities consistent with the minimums established by FTA, and offers half fares to Medicare cardholders, the grantee is not deficient. Many grantees extend the program to all hours of service, which exceeds the requirement and is not deficient.

If the grantee is charging more than one-half the peak hour fare during off-peak hours, it is deficient. If the grantee has not provided a half fare for a service that should be included, it is deficient.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have a half-fare program during non-peak hours on all of its applicable services, the corrective action is to implement such a program immediately. If the fare is more than one-half the full fare, the grantee must determine how it will come into compliance. FTA will not tell a grantee how to revise its fares. Since changing fares will require a public hearing and possible Board action, the grantee will be asked to provide a plan and schedule for correcting its half fare program.

- 2. Is an identification card required at time of boarding in order to obtain the half fare? If yes, what type of card is accepted onboard? What are the procedures to obtain the special ID card? Does the grantee require any additional information from a Medicare cardholder?*

EXPLANATION

The half fare program, as applied, may require passengers to show proof of eligibility when they pay their fare in order to receive the half fare. The reviewer should identify the types of identification that are accepted (e.g., Medicare card, special identification card, ADA eligibility card). All are permissible. The grantee may require more than one piece of identification for determining age or disability-related qualifications.

A grantee may require passengers to obtain a special identification card as the sole basis for paying the half fare. A valid Medicare card must be considered sufficient proof of eligibility for obtaining such a reduced fare card.

In order to ensure that the person presenting a Medicare card is the authorized individual, there may be a request for additional proof of identity (i.e., another card with a photograph). There is no specific prohibition against this, provided the grantee is not asking for further proof of eligibility from the Medicare cardholder but is only checking the validity of the Medicare card.

Obtaining a special half fare card must be relatively easy. For example, requiring individuals to travel to a single office, which may be inconveniently located, is not consistent with the intent of this requirement, though not strictly prohibited. The reviewer should discuss these procedures with the grantee staff to ascertain if the program is implemented properly.

REASON FOR THE QUESTION

[49 USC 53](#), Section 5307 (d)(1)(D)

[49 CFR 609.23](#)

[FTA C 9030.1C](#), Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

Public informational materials (described above) and application materials for special identification cards should be reviewed for a description of the process and the identification necessary to qualify for half fare.

DETERMINATION

If the location(s) for obtaining a special card are not accessible by transit, open during convenient hours, and publicized, the grantee's program is deficient.

If the Medicare card is accepted as the basis for payment of half fare or as a means to obtain a special identification card, the grantee is not deficient. If the Medicare card is not acceptable in this way, the grantee is deficient. If the grantee requires more than a Medicare card as proof of eligibility for half fares, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should take steps to ensure passengers are aware of any need for a special identification card, and make sure that the identification cards can be easily obtained. A Medicare card must be accepted as proof of eligibility for the half fare program.

- 3. How has the grantee informed its employees, the employees of any contractors and lessees, and the public that these half fares are available? Do the grantee's internal and external materials describing fares show: an E&PWD Half Fare? that Medicare cardholders are eligible for half fares?*

EXPLANATION

A policy is not effective unless it is communicated to those who can take advantage of it and to those who will carry it out. These questions verify that the program is publicized properly. The reviewer should look at both external and internal materials. Internal materials include training documents and communication with drivers and others responsible for implementing the fare. These should demonstrate that the grantee has notified the staff of the program and included the correct information. External materials refer to readily available public information. Half-fare information, including Medicare eligibility, should be included in these materials, if they contain fare information. For example, if a brochure says the fare to ride the bus is \$1.00, it also should say that the fare for elderly persons, persons with disabilities, and Medicare cardholders is \$0.50 during off-peak hours.

A grantee is expected to have a fare structure that offers half fares to 1) elderly persons, 2) persons with disabilities, and 3) Medicare cardholders. The grantee's public information should include half-fare information if it includes full-fare information. The half-fare information should include evidence of a Medicare card half-fare program and evidence of a half-fare program for elderly persons and persons with disabilities. Though it is not necessary to have a separate fare category for Medicare cardholders, the grantee's readily available public information should be clear that Medicare cards are accepted as proof of eligibility for the half fare program.

REASON FOR THE QUESTION

[49 USC 53](#), Section 5307(d)(1)(D)

[49 CFR 609.23](#)

[FTA C 9030.1C](#), Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

System maps, route timetables, general system fare brochures, communication with the drivers (e.g., driver bulletins), and communication with other employees provide the basic sources of information. The reviewer should check common public information items, such as the system map, timetables, brochures, web site, station signs and farebox decals to see that they include the proper information (the existence of a half-fare program for elderly persons, persons with disabilities, and Medicare cardholders).

DETERMINATION

If the grantee publicizes the half-fare requirements along with full fare information and has informed drivers and other responsible individuals of the policy, it is not deficient. Half fare information needs to be readily available to passengers.

The grantee is not required to publish fare information. But, if the grantee publishes fare information, it must include half-fare information. For example, if schedules contain fare information but have incomplete or no half-fare information, the grantee is deficient. If some half-fare information is included, but Medicare eligibility is not mentioned, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must make complete information on the half-fare program available where fare information is presented. Information must be provided on the fares for elderly persons and persons with disabilities and on the availability of those fares to Medicare cardholders. If any of this information has been omitted from the grantee's readily available public information items (e.g., maps and timetables, or web site), the grantee must revise the text the next time these materials are reprinted/updated. If materials for drivers and other operating personnel do not convey the current program requirements, the materials must be updated.

Discuss with the grantee if it is planning to republish the item that needs correcting and arrive at a schedule for completing the corrective action. Grantees can be given up to 365 days to complete these changes. In the interim, an assurance that the changes will be made and sample text can be requested.

15. ADA

BASIC REQUIREMENT

Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

AREAS TO BE EXAMINED

1. ***Fixed Route Provision of Service***
 - a. Stop Announcements on Vehicles
 - b. Route Identification
 - c. Service Animals
 - d. Lift and Securement Use
 - e. Use of Accessibility Features
 - f. Public Information/Communications
 - g. Lift Deployment at Any Designated Stop
 - h. Service to Persons Using Respirators or Portable Oxygen
 - i. Adequate Time for Vehicle Boarding/Disembarking
 - j. Training
 - k. Monitoring

2. ***Paratransit as a Complement to Fixed-Route Service***
 - a. Eligibility Process
 - b. Provision of Service
 - c. Meeting Demand
3. ***Fixed-route and Paratransit Vehicle Accessibility & Facility Accessibility***
4. ***Rail Station & Rail Car Requirements***
5. ***Maintenance of Accessibility Features & Lift Availability***
6. ***Complaints/Lawsuits***

REFERENCES

1. [49 CFR Part 27](#), "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance."
2. [49 CFR Part 37](#), "Transportation Services for Individuals with Disabilities."
3. [49 CFR Part 38](#), "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles."
4. [DOT Disability Law Guidance \(http://www.fta.dot.gov/civilrights/ada/civil_rights_3886.html\)](http://www.fta.dot.gov/civilrights/ada/civil_rights_3886.html).

QUESTIONS FOR THE REVIEW

1. *Has the grantee had an ADA Compliance Review by the FTA Office of Civil Rights? If yes, what was the scope of the review? When was the site visit? Is the review closed? If the review is not closed, what is the status of open findings?*

EXPLANATION

Consistent with FTA's oversight responsibilities, FTA has a program of ADA Compliance Reviews. The reviews target a particular area of the ADA and the implementing regulations, such as ADA complementary paratransit, key, new, and renovated rail stations; fixed-route stop announcements and route identification; and fixed-route bus lift and maintenance reliability. The review process includes collection of data prior to the site visit, an opening conference, observation and data collection on site, and an exit conference. FTA staff provides the grantee a written report documenting the findings and necessary corrective actions. The grantee then is responsible for correcting deficiencies and providing appropriate documentation to the Regional Civil Rights Officer (CRO).

If the review is pending, the triennial review will not include those questions covered by the Compliance Review. If the ADA Compliance Review is closed or if findings are open and still being monitored, the reviewer should seek guidance from the CRO and the Office of Civil Rights on whether or not to include those questions in the triennial review. The triennial review will include the other ADA questions not addressed in the ADA Compliance Review.

Note: The Office of Civil Rights is interested in identifying candidates for ADA compliance reviews. If the review of this area indicates that the grantee has an unusual number of complaints, is not enforcing ADA requirements, has significant capacity constraints, fails to properly maintain accessible features, or for any other reason appears to be a candidate for a more in-depth examination, the CRO and the Office of Civil Rights ADA Team at Headquarters need to be informed. For example, in the area of ADA complementary paratransit capacity constraints, if sufficient data are not collected or reviewed for each parameter of performance, how does the agency assure compliance with these requirements? Lack of proper monitoring might give rise to a recommendation for additional oversight by FTA.

REASON FOR THE QUESTION

Input to triennial review

SOURCES OF INFORMATION

Prior to the site visit, the reviewer should contact the CRO to determine if an ADA Compliance Review of the grantee has been conducted during the review period.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

2. *Has the grantee implemented the following service provisions required by the ADA?*

- *Stop announcements on fixed-route vehicles (bus and rail)?*
- *Means of route identification at multi-route stops?*
- *Service animals permitted in vehicles and facilities? Are there any policies or practices that may have the effect of limiting service animal use? Are animals other than dogs recognized as service animals in the grantee's procedures? Are persons with disabilities other than visual impairments allowed to use service animals? May a passenger board a fixed-route vehicle at any time, with no prior arrangements, with a service animal?*
- *Use of lifts and securement systems by persons who use mobility devices?*
- *Use of lifts by ambulatory persons?*
- *Use of accessibility-related equipment and features, such as*

automatic enunciators, stop request buttons, etc.?

- *Public information/communications made available in accessible formats? In what formats is information regarding transportation services available?*
 - *Lift deployment at all stops?*
 - *Service to persons using respirators or portable oxygens?*
 - *Adequate time provided to allow persons with disabilities to board/disembark from a vehicle (bus and rail)?*
3. *How are the above requirements communicated to employees and contractors?*
4. *How does the grantee monitor adherence to these requirements or otherwise enforce their implementation?*

EXPLANATION

The DOT ADA regulations (49 CFR 37.161-167) detail specific service requirements listed above. For bus stop announcements, if the grantee indicates that a union agreement prevents the grantee from calling stops, reviewers should note the ADA is a federal law that supersedes any union agreement.

The DOT ADA regulations define service animal as any animal individually trained to work or perform tasks for an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. It is discriminatory to require a person with a disability to certify or register a service animal.

The key to ensuring compliance with these policies is ensuring that all employees and contractors are aware of them. This might be done through initial and refresher training. It might even be beneficial for these policies to be communicated to riders, giving them an even knowledge base with the employees serving them.

Having policies is not sufficient. The grantee should monitor compliance with the policies. Many grantees

find it necessary to monitor compliance with these service provisions, especially the stop announcement requirement (i.e., secret riders, progressive discipline, etc.). Documentation of this monitoring should be provided by the grantee.

REASON FOR THE QUESTION

49 CFR 37.161-167

SOURCES OF INFORMATION

Discussions and facility inspections at the site visit are sources of information. Review operating, training, and maintenance manuals, and internal bulletins for information or procedures pertinent to the regulations. Examine if procedures include monitoring of compliance with requirements related to ADA provisions. Examine public information materials for details on communications in alternative formats. The regulations do not require that grantees have written policies detailing how they comply with these service provisions, but the grantee should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and how the grantee enforces their implementation.

DETERMINATION

The grantee is not deficient if the required procedures are in effect and it can be demonstrated that the grantee enforces their implementation. If any requirements are lacking, or if there is no evidence that the grantee monitors and enforces these requirements, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must implement all required service provisions, and submit documentation to FTA and/or provide evidence of monitoring the implementation of these provisions.

5. *Are personnel, contractors, and subcontractors trained to proficiency so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*

EXPLANATION

The ADA requires that each fixed-route or demand responsive service operator ensure that personnel are trained to proficiency, as appropriate for their duties. This training is required so that personnel operate vehicles and equipment safely, properly assist passengers, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities.

The DOT ADA regulations do not specify an acceptable course or frequency of training. The grantee must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is proficient at all times. The training must be appropriate to the duties of each employee, and must address both technical requirements and human relations. The reviewers should assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, and subcontractors are "proficient," and what, if any, consequences result if these standards are not met.

REASON FOR THE QUESTION

49 CFR 37.173

SOURCES OF INFORMATION

Training materials and handbooks should be reviewed along with bulletins and other material provided to personnel. Note that training is required not only for vehicle operators and those who maintain and repair vehicles and equipment, but for other personnel who interact with passengers as appropriate. Complaint records may indicate problem areas.

DETERMINATION

If the grantee has incorporated sensitivity training on interacting with persons with disabilities into its various equipment operation and safety training programs, the grantee is not deficient. If such training is lacking, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Revise training program, begin retraining, and report to FTA on progress. Continue to report quarterly to FTA on retraining until all personnel have been trained as appropriate for their duties.

6. *If the grantee provides ADA complementary paratransit, are eligibility decisions made within 21 days of receipt of a complete application? If no, is presumptive eligibility granted?*
7. *Are eligibility decisions based solely on a note from a physician? What percent of applicants are approved?*
8. *Are persons who are denied eligibility or given conditional eligibility given a written statement of the reason and notice of their right to appeal?*

9. *Does the appeals process adhere to the DOT ADA regulations (opportunity to be heard, separation of function, decision within 30 days, and written notification of decision, with reason for it)?*

EXPLANATION

The DOT ADA regulations require that all public entities operating fixed-route transit (except for commuter bus/rail or intercity rail) must provide complementary paratransit to persons with disabilities who are unable to use the regular fixed-route system.

Note: Route deviation and point deviation systems are defined as demand responsive systems, and are not subject to the complementary paratransit requirement. One key factor to consider in determining if a transit system is fixed-route or demand responsive is if an individual must request the service in some way, typically by making a phone call in advance. With fixed-route service, no action is needed to access the service. If a person is at the bus stop at the time the bus is scheduled to appear, then the person can use the service. With demand responsive service, the individual typically must make a phone call in order to ride the bus. A system that permits user-initiated deviations from routes or schedules generally fits the definition of demand responsive service.

Each grantee is required to establish a process for determining ADA paratransit eligibility. Eligibility is to be strictly limited to certain categories of individuals:

- 1) Any person with a disability who is unable to board, ride, or disembark from an accessible vehicle without the assistance of another person (except for the operator of a lift or other boarding device).
- 2) Any person with a disability who could ride an accessible vehicle but the route is not accessible or the lift does not meet ADA standards.
- 3) Any person with a disability who has a specific impairment-related condition that prevents the person from traveling to or from a boarding/disembarking location.

There are many ways that the grantee can determine eligibility. The process may include functional evaluation or testing of applicants. Evaluation by a physician or health professional may be part of the process, but a diagnosis of a disability does not establish eligibility. What is needed is a determination of whether, as a practical matter, the individual can use fixed-route transit under given circumstances. The goal of the process is to ensure that only persons

who meet the regulatory criteria are regarded as ADA eligible. If decisions are based solely on a note from a physician, and 100 percent of applicants are approved, the grantee may not have an appropriate process. The grantee is not prohibited from providing service to other persons; however, the eligibility process must distinguish whether someone is ADA eligible or is provided service on some other basis. Information on the eligibility process is particularly important if the grantee is failing to meet the demand for service. This information from this question should also be an input for the capacity determination questions asked in Questions 11 through 20.

The grantee must process a completed application within 21 days of submittal. If after 21 days, the grantee has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the grantee later denies the application.

The grantee is required to establish an appeals process for persons denied eligibility or granted conditional eligibility. The applicant must be given written reason for the determination and notice of the right to an appeal. Applicants should be required only to state their intent to appeal, not be required to give a full justification in writing prior to an opportunity to be heard. The grantee may require that an appeal be filed within 60 days of the denial of a person's application. The process must include an opportunity to be heard and to present information. The person hearing the appeal must be separate from the person who made the original decision to deny eligibility. The grantee is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days, paratransit must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

REASON FOR THE QUESTION

[49 CFR 37.121-125](#)

SOURCES OF INFORMATION

Review information provided to the public that describes the ADA complementary paratransit and the eligibility process. Discuss with the grantee how applications are processed and how eligibility determinations are made. Spot check recent application files to ensure that the grantee processed them within the 21-day required time frame. Discuss the appeals process and spot check files for recent appeals to ensure that the process meets the regulatory requirements. Collect and review sample eligibility (including denial and conditionally eligible) and appeal decision letters.

DETERMINATION

The grantee is not deficient if it has in place an eligibility determination process and an appeals process that conforms to the regulatory requirements. The grantee is deficient if the application process does not conform to the required time frames. The grantee is deficient if it fails to notify applicants of their right to appeal or if the appeals process does not include all required elements.

SUGGESTED CORRECTIVE ACTION

The grantee must modify its eligibility determination process and/or appeals process to meet the regulatory requirements and submit copies of the revised procedures to FTA.

10. Does the grantee's ADA complementary paratransit service meet the following regulatory requirements?

- *Service provided to an ADA eligible individual? A Personal Care Attendant (PCA)? One companion? Visitors' policy adhered to properly?*
- *Type of service? Service is required to be origin to destination (may be door-to-door or curb-to-curb but must be origin-to-destination when needed).*
- *Service area within 3/4-mile corridors of fixed routes and the core area? Is service provided beyond the 3/4-mile corridors and core area?*
- *Next day service provided? If yes, what percent of reservations are made for the next day? Are requests for reservations accepted during normal business hours on all days prior to days of service (e.g. weekends, holidays, even if the administrative office is closed)?*
- *Trips scheduled within one hour of the requested trip time?*
- *Fares no more than twice the fixed-route fare? *If a free-fare zone*

exists for the fixed-route, are comparable paratransit trips for that service area also free?

- *No fare charged for PCAs?*
- *No priorities based on trip purposes?*
- *ADA complementary paratransit service available during the same hours and days as fixed-route service?*
- *Subscription service does not exceed 50 percent unless there is non-subscription capacity?*

EXPLANATION

The DOT ADA regulations include detailed requirements for provision of ADA complementary paratransit. These requirements include:

Provision of service: ADA complementary paratransit must be provided to an ADA eligible individual, including those with temporary eligibility, the personal care attendant (PCA), if a PCA is necessary, and one other individual accompanying the ADA-eligible individual, if requested. Additional companions may be provided service if space is available. Service also must be provided to visitors. Any visitor who presents ADA eligibility documentation from another jurisdiction must be provided service. If a visitor does not have ADA eligibility documentation, the grantee may request proof of residency, and if the disability is not apparent, proof of disability. The grantee must accept a certification by the visitor that he or she is unable to use fixed-route transit. The grantee is not required to provide more than 21 days of service within a 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

Type of service: The regulations specify “origin to destination” service. In certain instances, this might require service beyond strict curbside-to-curb. See [DOT Disability Law Coordinating Council](#) guidance. The grantee may provide a higher level of service, but if the grantee is experiencing capacity constraints, the reviewer should identify if the level of service provided exceeds the minimum requirements.

Service area: The ADA service area at a minimum includes all origins and destinations within corridors with a width of 3/4-mile of each fixed route. Within the core service area, any small areas not inside a corridor but surrounded by corridors also must be served. Outside the core service area, the grantee may designate corridors with widths of up to 1 and 1/2

miles on each side of the fixed route, based on local circumstances. The grantee may provide additional service, but if the grantee is experiencing capacity constraints, the reviewer should identify if the paratransit service area exceeds the minimum requirements.

Response time: Requests for reservations must be accepted during normal business hours on a “next day” basis (not 24 hours in advance); on all days prior to days of service (e.g., weekends, holidays); and trips must be scheduled within one hour of the requested pickup time. The reviewer should discuss the number of next-day reservations that are actually made. If the number is a very low percentage of all trips, it may indicate capacity constraints. Advance reservations may be permitted up to 14 days before a desired trip.

Fares: The ADA complementary paratransit fare cannot exceed twice the fare for a trip of similar length, at a similar time of day, on the fixed-route system. No fare may be charged for PCAs. Any companions must pay the same fare as the ADA-eligible individual. If a free-fare zone exists for the fixed route, comparable paratransit trips for that service area should also be free, provided the origin and destination are both within in the free-fare zone.

Days and Hours of Service: Must be the same as the fixed-route days and hours of service. This is especially worthy of spot-checking in regards to weekend fixed-route service, very early or late service, and special or new services offered during these peripheral times.

Trip Purpose: No restrictions or priorities may be based on trip purpose.

Subscription Service: May not absorb more than 50 percent of the number of trips available at a given time unless there is non-subscription capacity. If there are no capacity constraints within a given system, subscription service is free to absorb as much as the transit system chooses.

REASON FOR THE QUESTION

[49 CFR 37.123-133](#)

SOURCES OF INFORMATION

Review information provided to the public, including the grantee's web site, for a description of the ADA complementary paratransit service. Most grantees have a brochure, riders' guide, or other information that describes the service and the procedures for reserving a trip. Review internal operating policies that describe how trips are reserved and scheduled. Ensure that the service characteristics are consistent with the regulatory requirements.

DETERMINATION

If the ADA complementary paratransit service meets all ADA regulatory requirements, the grantee is not deficient. If the grantee's service does not meet the minimum requirements, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must take immediate steps to modify any operating policies and change services that do not meet the regulatory requirements. The grantee should submit documentation of the changes to FTA.

11. *How does the grantee monitor ADA complementary paratransit service to ensure that there is no pattern or practice of trip denials? Lack of access to phone reservations? Untimely pick-ups? Missed trips? Excessively long trips? What is the denial rate (overall and for next-day trips)? What is the on-time performance rate? How are these data confirmed for accuracy?*
12. *If service is provided by contractual arrangement rather than directly operated, what mechanisms are in place to ensure adequate oversight on the part of the grantee?*
13. *Are rides that are not provided in a one-hour window tracked as denials?*
14. *When one leg of a round trip cannot be reserved, is it tracked as two denials when the rider declines the trip?*
15. *What is the entity's telephone hold time standard? How is telephone access measured (averages, percentiles, etc)?*
16. *For next day service, at what time of day are reservations cut off?*
17. *At peak times, can a caller reach the reservation office? Do callers ever receive busy signals?*
18. *How does a rider contact the reservation agent to cancel a trip?*

19. *Are cancellations used to penalize riders as part of the no-show policy? If so, is it limited only to cancellations that are the operational equivalent of a no-show?*

20. *Is a no-show suspension policy used? If so, does it only suspend riders who have demonstrated a true pattern or practice?*

EXPLANATION

This series of questions is designed to determine if the grantee's ADA complementary paratransit has adequate capacity to meet demand, and if the grantee is monitoring the situation to ensure that the service meets the regulatory requirements. The DOT ADA regulations specify that a grantee may not limit the availability of complementary paratransit to eligible individuals by restrictions on the number of trips or by waiting lists. Any operational pattern or practice that has the effect of limiting availability is prohibited, for example limited phone reservation capacity or substantial numbers of late pick-ups, trip denials, missed trips, or excessively long trips. "Pattern or practice" in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the grantee, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. One trip during the review period that is one hour late is probably not a capacity constraint, but 20 percent of the grantee's trips arriving one hour late probably would be.

In order to determine whether capacity constraints exist, the grantee should have a definition of what constitutes a missed trip, what "on time performance" means, when a trip has been "denied," and when travel time is "too long." For example, at what point in time does a trip go from being late to being "missed"? The reviewer should discuss with the grantee what its standards of service are and whether the complementary paratransit service is meeting them. Grantees are required to plan and budget for 100 percent of demand for next-day service. FTA has determined that to intentionally plan to deny a set percentage of trips is not in compliance with ADA requirements. The grantee should have a mechanism in place for monitoring its on-time performance and tracking these indicators of capacity constraints to comply with ADA requirements.

The regulations allow the grantee to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the grantee cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the grantee's inability to meet the ADA service criteria. Many grantees have been deficient in this regard. Similarly, if only one leg of a round trip can be reserved, and the rider declines the trip, it should be tracked as two denials. If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

If on a regular basis, the phone lines are busy, average or long phone hold times are excessive, call abandonment rates are high, or callers after a certain time (e.g., mid-morning) are told that they cannot reserve trips for the next day, the grantee is limiting the availability of service. The grantee also must ensure that an ADA eligible individual can reach a reservation agent to cancel a trip. The grantee should be able to provide data on the performance of its phone reservation system.

Many transit systems have a suspension policy for a pattern or practice of no-shows, as allowed by [49 CFR 37.125\(h\)](#). However, such a policy needs to be narrowly tailored to a true pattern or practice. For example, three no-shows in 120 days would not be a pattern or practice for a daily rider. Ideally, such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold. Furthermore, systems may include cancellations in their suspension policy, but only late cancellations that are the operational equivalent of a no-show. A provider should be able to absorb the capacity of an evening trip cancelled first thing in the morning.

REASON FOR THE QUESTION [49 CFR 37.131\(f\)](#); [49 CFR 37.125\(h\)](#)

SOURCES OF INFORMATION

Discuss with the grantee how complementary paratransit service is monitored and what is the system's denial rate. Review performance indicator data that the grantee collects. If possible, the reviewer should phone the reservation line at various times of day prior to or during the site visit to determine if a caller can reach a reservation agent. Some grantees may have communication systems that provide data on average call wait time, number of missed calls, call abandonment rates, and other indicators of performance. If no such data are collected or reviewed, how does the agency assure compliance with these requirements?

DETERMINATION

If the grantee's ADA complementary paratransit system has adequate capacity to meet demand for all

next-day trips, it is not deficient. The grantee is deficient if it relies on waiting lists, trip caps, or demonstrates phone access limitations or substantial, repeated numbers of untimely pickups, trip denials, missed trips, or excessively long trips. The grantee is deficient if it has no provisions to accommodate peaks in demand. While there is no regulatory requirement for record keeping or monitoring in any particular way, unless the grantee has zero trip denials and few complaints about other performance indicators, the grantee must be able to demonstrate that the denials it does have, as well as the missed trips, late pickups, etc. are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. The grantee may be deficient under these circumstances if it is not monitoring complementary paratransit service.

The grantee must track trip denials properly. If the grantee is not tracking as a denial trips provided outside the one-hour window, and is not tracking as two denials round trips that cannot be scheduled, it is deficient.

SUGGESTED CORRECTIVE ACTION

If the ADA complementary paratransit service does not have adequate capacity to meet the peak demand for service by ADA eligible riders, the grantee must increase capacity or take other measures to reduce demand (e.g., consider eliminating service that exceeds ADA requirements or modify the fixed-route service area or other characteristics). The grantee must track trip denials correctly.

21. *Has the grantee purchased or leased any new fixed-route vehicles (bus or rail) since the last triennial review? If yes, do the vehicles comply with the applicable standards under [49 CFR Part 38](#)? If no, has the grantee obtained a waiver from the FTA Administrator?*
22. *Has the grantee purchased or leased any used vehicles (bus or rail) since the last triennial review? If yes, do the vehicles comply with the applicable standards under [49 CFR Part 38](#)? If no, does the grantee have documentation of good faith efforts to obtain accessible vehicles?*
23. *If the grantee provides demand responsive service for the general public, has the grantee purchased or leased any new demand responsive*

vehicles that are not accessible since the last triennial review? If yes, is there equivalent service? Has the grantee filed a certification of equivalent service?

- 24.** *Has the grantee remanufactured any existing vehicles (bus or rail) since the last triennial review? If yes, do the vehicles comply with the applicable remanufacturing requirements under Part 37, Subpart D?*

EXPLANATION

The DOT ADA regulations include specific vehicle acquisition requirements for entities operating fixed-route bus, rail, and demand responsive systems.

In general, all new vehicles purchased or leased after August 25, 1990, by public entities operating fixed-route service must be accessible (must comply with [Part 38](#) standards). A public fixed-route operator may purchase or lease new non-accessible vehicles only after obtaining a waiver from the FTA Administrator. Used vehicles that are not accessible may be purchased or leased only after a good faith effort has been demonstrated to obtain accessible vehicles. Good faith efforts include specific steps described in the DOT ADA regulations ([49 CFR 37.73 \(c\)](#), [37.81 \(c\)](#), and [37.87 \(c\)](#)). The grantee must keep records documenting the good faith effort for three years. Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicle are established by [49 CFR Part 38](#).

Public entities operating demand responsive service for the general public must purchase or lease accessible vehicles unless it can be demonstrated that the system, when viewed in its entirety, provides a level of service to persons with disabilities that is equivalent to the level of service it provides to persons without disabilities. The regulations provide guidance for evaluating equivalent service ([§37.77\(a\) & \(b\)](#)). Before procuring any non-accessible vehicle for demand responsive service, the entity must file an equivalent service certification with FTA or with the state if the grantee receives its Urbanized Area Formula Grant Program funds from a state administering agency.

Appendix C to [Part 37](#) of the DOT ADA regulations includes a copy of the Certification of Equivalent Service.

REASON FOR THE QUESTION

[49 CFR 37.71-37.91](#)

SOURCES OF INFORMATION

Grant applications and quarterly progress reports are sources of information, as are discussions, vehicle inspections, and documentation obtained at the site visit. Procurement documents for vehicles should reference ADA requirements.

DETERMINATION

The grantee is not deficient if all new or used vehicles purchased or leased for fixed-route service are accessible in terms of [49 CFR Part 38](#). (Note that older, fixed-route buses may be lift-equipped, but not accessible by ADA standards.) The grantee also is not deficient if used, non-accessible vehicles have been purchased or leased, *and* adequate documentation of good faith efforts is provided. A demand responsive system open to the general public that has purchased or leased non-accessible vehicles is not deficient if it provides equivalent service to persons with disabilities (including wheelchair users) and has filed a certification of equivalent service. The grantee is deficient if new non-accessible vehicles have been purchased or leased and no exception applies. If a grantee that operates fixed-route service has purchased or leased used, non-accessible vehicles and cannot document good faith efforts to obtain accessible vehicles, the grantee is deficient. If the grantee operates a demand responsive service for the general public and purchased or leased non-accessible vehicles, but has not filed a certification of equivalent service, then it is deficient. Report any deficiencies to the regional office and headquarters.

SUGGESTED CORRECTIVE ACTION

The regional office and headquarters will determine corrective actions. A grantee that has purchased or leased non-accessible vehicles improperly must retrofit the vehicles or procure replacements that comply with [Part 38](#), unless documentation qualifying the grantee for an exception can be provided.

- 25.** *Has any new transit facility been constructed since the last triennial review? If yes, is the facility accessible? If no, did the grantee obtain from FTA a finding of equivalent facilitation?*
- 26.** *Have any transit facilities been modified since the last triennial review? If yes, were the modifications in accordance with Appendix A to [49 CFR Part 37](#), the [ADA Accessibility Guidelines \(ADAAG as adopted](#)*

November 29, 2006)? If no, did the grantee obtain from FTA a finding of equivalent facilitation?

EXPLANATION

Any new facility to be used in providing public transportation services that is constructed must be accessible according to the standards in [49 CFR Part 37](#), Appendix A. If the grantee alters an existing facility used to provide public transportation, the altered portions of the facility must be accessible. An exception may be made if the cost of making the facility accessible is disproportionate. The regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessible features. Departures from the standards in Appendix A are permitted if the alternative designs and technologies used provide equivalent or greater access and usability of the facility. Grantees must obtain approval from FTA for equivalent facilitation.

REASON FOR THE QUESTION

[49 CFR Part 37](#), Subpart C and Appendix A

SOURCES OF INFORMATION

Grant applications, Milestone/Progress Reports, discussions, and facility inspections during the site visit are sources of information. If the grantee has undertaken alterations, but has not made the altered facility accessible due to the costs, examine documentation of the cost calculations. Procurement documents for architectural/engineering services should reference the ADA requirements.

DETERMINATION

The grantee is not deficient if any new construction or alterations to existing facilities are accessible to individuals with disabilities. The grantee is deficient if the new or modified facilities do not comply with the standards in [49 CFR Part 37](#), Appendix A.

SUGGESTED CORRECTIVE ACTION

The grantee must submit to FTA a schedule for making the necessary modifications to bring the facility into compliance. The grantee must report quarterly on progress until full compliance is attained.

27. If the grantee is a rail operator, are any key stations currently covered by a Time Extension (TE) or a Voluntary Compliance Agreement (VCA)? If yes, has the grantee submitted Key Station Quarterly Status Reports, as required, and in a timely fashion? Has the VCA or TE expired? If yes, has

the grantee completed the necessary work on the affected stations?

28. If the grantee is a rail operator, have any new stations been constructed since the last triennial review? If yes, does the boarding platform coordinate with the level of the floor of the railcars? Have all other [ADAAG](#) requirements been met?

29. If the grantee is a rail operator, have any stations (other than key stations) been altered in any way since the last triennial review? If yes, is level boarding provided? Have all other [ADAAG](#) requirements been met?

30. If level boarding is not provided at stations altered or constructed since the last triennial review, has the grantee documented the specific factors that render level boarding structurally and/or operationally infeasible for each station? What alternative means of boarding are provided for passengers with disabilities, including wheelchair users? Does this method of boarding comply with the applicable provisions of [49 CFR Parts 27, 37, and 38](#)?

EXPLANATION

All rail operators are required to ensure that key stations (e.g., transfer points, major interchanges with other transportation modes, and stations serving major activity centers) are accessible. Some rail operators that have not yet met the regulatory requirements are working under a VCA or TE with FTA's Office of Civil Rights. If a VCA or TE is in place, the grantee is required to submit Key Station Quarterly Status Reports to FTA.

All rail operators are also required to ensure that new stations comply with ADAAG requirements for new construction and for new rail stations. This includes a requirement that the rail-to-platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. See [DOT Disability Law Coordinating Council](#) Guidance. ADAAG provides for exceptions to this requirement if it is not structurally or operationally feasible to provide level boarding, and lists alternate methods of boarding that may be used. If stations are constructed without level boarding, and the structural

and/or operational infeasibilities have not been documented, the grantee may be in violation of the DOT ADA regulations.

If a rail operator undertakes alterations to a station (other than key station requirements), those alterations must also be accessible per ADAAG.

REASON FOR THE QUESTION

[49 CFR 37.47-37.61](#)

SOURCES OF INFORMATION

At the desk review, you should determine if a VCA or TE is in effect. If so, check to see that the required reports have been submitted to FTA as required, and/or that timeframes have been met if the VCA or TE has expired. System and/or station plans and associated documentation should indicate any factors relating to exceptions from full level boarding requirements.

DETERMINATION

The grantee is not deficient if its rail service meets ADA requirements or if it has a VCA or TE and is reporting on progress to FTA as required, or if it has completed the necessary work within the specified timeframe. If the grantee has a VCA or TE and is not submitting reports to FTA on time, or has not completed the required work by the deadlines specified, it is deficient. If the grantee has constructed new stations that do not comply with ADAAG, or has not substantiated an exception from the level boarding/platform gap requirements, it is deficient. If a grantee has undertaken alterations to a station and has not complied with ADAAG, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit delinquent reports to FTA. The grantee must submit documentation supporting platform-related exceptions to FTA. The grantee must correct noncompliant station elements in new construction or alterations.

31. *If the grantee is a rail operator, is the system in compliance with the “one-car-per-train” rule?*

EXPLANATION

Under the DOT ADA regulations, as of July 25, 1995, all rail operators are required to ensure that each train (consisting of two or more vehicles if the grantee provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs.

REASON FOR THE QUESTION

[49 CFR Parts 37.93](#)

SOURCES OF INFORMATION

At the site visit you should verify “one-car-per-train” accessibility.

DETERMINATION

The grantee is not deficient if its rail service meets ADA requirements. The grantee is deficient if it violates the one-car-per-train rule.

SUGGESTED CORRECTIVE ACTION

The regional office and headquarters will determine corrective actions.

32. *Did the maintenance review indicate any deficiencies with ADA requirements for maintenance of accessibility features?*

EXPLANATION

See Questions 7 through 15 in Maintenance for maintenance of vehicles, facilities and equipment. This question cross-checks the maintenance area to ensure that any deficiency related to maintenance and availability of accessibility equipment is reported to FTA as an ADA deficiency. Note that proper lift maintenance is an ADA requirement, regardless of whether there is an FTA requirement to maintain equipment purchased with federal money. This question addresses all buses, not strictly FTA-funded ones. Additionally, during the facility maintenance review, particular attention should be made to elevators at transit facilities.

REASON FOR THE QUESTION

[49 CFR 37.161-163](#)

SOURCES OF INFORMATION

See Questions 7-15 in Maintenance.

DETERMINATION

The grantee is not deficient if there are no maintenance deficiencies related to accessibility features. If the grantee is assigned Deficiency Codes 05 in Maintenance, these findings should be applied in the ADA area.

SUGGESTED CORRECTIVE ACTION

See Questions 7-15 in Maintenance.

33. *What system of regular and frequent maintenance checks of lifts, ramps, and other accessibility equipment has*

the grantee established? Is this system sufficient to determine if lifts are operative? When a lift, ramp, or other equipment is found to be inoperative, is the vehicle taken out of service by the beginning of the next service day? Are lifts, ramp, and other equipment repaired within the timeframes required by the DOT ADA regulations prior to returning the vehicle to service?

- 34.** *What is the grantee's policy with regard to lift, ramp, and other accessibility equipment failures on in-service vehicles? Are operators required to report lift, ramp, and other equipment failures promptly? Is alternative service provided to persons stranded for more than 30 minutes due to lift, ramp, or other equipment failures?*

EXPLANATION

The grantee must have a system of regular and frequent maintenance checks for wheelchair lifts, ramps, and other required equipment on non-rail vehicles that is sufficient to ensure that the lifts are operative. There is no specific requirement for daily cycling of lifts or ramps, though many grantees have adopted this practice to meet this requirement. The adequacy of the grantee's system may be reflected in the frequency of in-service failures. Operators must report immediately any failure of a lift or ramp to operate in service. When wheelchair lift or ramp failure is experienced on an in-service vehicle, the grantee must meet several requirements. If lift or ramp failure occurs on a route where the headway is greater than 30 minutes, the grantee is required to provide alternative service promptly. The vehicle must be removed from service before the beginning of the next service day if the lift or ramp is not repaired. The lift or ramp should be repaired before the vehicle is returned to service. In the event that there is no spare vehicle available and the grantee would be required to reduce service to repair the lift or ramp, the grantee can keep the vehicle with the inoperable lift or ramp in service for no more than five days (if the grantee serves an area of 50,000 persons or fewer in population) or three days (if the grantee serves an area of more than 50,000 persons in population).

REASON FOR THE QUESTION

[49 CFR 37.161-163](#)

SOURCES OF INFORMATION

While in the maintenance facility, note if the grantee is following procedures for maintenance checks of wheelchair lifts, ramps and other equipment for non-rail vehicles. The grantee may have reports on lift availability. Spot check maintenance records to determine how long lifts, ramps, or other equipment may have been out of service. Review operational bulletins or manuals for procedures related to vehicle replacement.

DETERMINATION

The grantee is not deficient if it has procedures in place to address lift, ramp and equipment failures that adhere to the DOT ADA regulations and it follows them. The grantee is deficient if operators do not report lift, ramp or equipment failures immediately or if it operates vehicles with inoperable lifts, ramps or other equipment when it should not. If the grantee does not have (and follow) proper procedures to transport people when a lift, ramp or other equipment fails on routes with headways greater than 30 minutes, it is deficient.

SUGGESTED CORRECTIVE ACTION

A grantee failing to follow its system of lift maintenance checks must revise and/or fully implement the system. Procedures to correct a lift failure on a vehicle in-service must be implemented promptly and submitted to FTA.

- 35.** *Does the grantee have a procedure for responding to and tracking complaints? Who handles the complaints (Civil Rights Office, Legal Office, Customer Service, ADA Office)? Do these procedures apply to all modes, including complementary paratransit?*

- 36.** *Are any lawsuits alleging discrimination on the basis of disability pending? Identify parties to suits and issues.*

EXPLANATION

These questions are for information only. Complaints or legal actions may indicate a problem with implementation of the ADA requirements. The FTA Office of Civil Rights should be advised of any pending lawsuits.

REASON FOR THE QUESTION

Information

SOURCES OF INFORMATION

Information regarding complaints and lawsuits may be obtained from headquarters or the CRO or from the grantee.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

37. *Based on the answers to the above question, is the grantee a candidate for an in-depth civil rights review of its ADA complementary paratransit service, fixed-route lift maintenance and reliability, or fixed-route stop announcements and route identification?*

EXPLANATION

The FTA Office of Civil Rights is seeking input from the triennial review process to help it determine candidates for compliance reviews.

REASON FOR THE QUESTION

Information

SOURCES OF INFORMATION

Answers to the above questions and reviewer's opinion of compliance will be the basis for answering this question.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None by grantee. If the answer is yes, the reviewer needs to forward a copy of the draft report to the FTA Office of Civil Rights along with information on why the grantee is a candidate for a compliance review.

16. CHARTER BUS

BASIC REQUIREMENT

FTA grantees are prohibited from using federally funded equipment and facilities to provide charter service except on an incidental basis and when one or more of applicable exceptions set forth in the charter service regulation at [49 CFR 604.9](#) (b) applies.

AREAS TO BE EXAMINED

1. ***Charter Service Operation***
 - a. Annual public notice
 - b. Exceptions
2. ***Proof that Charter Service is Incidental***
3. ***Complaints***
4. ***Use of Locally Owned Vehicles***

REFERENCES

1. [49 CFR Part 604](#), "Charter Service."
2. [Federal Register, Volume 2, No. 212](#) "Charter Service Questions and Answers," November 3, 1987.

QUESTIONS FOR THE REVIEW

1. *Does the grantee or its subrecipients, contractors, or lessees operate any charter service?*
2. *If yes, has the grantee annually determined if there are any private charter operators willing and able to provide that service?*
3. *If yes, did the grantee publish a notice within the proposed geographic charter area describing the charter service that the grantee wishes to provide limited to the days, times of day, geographic area, and categories of revenue vehicles (buses and vans), and stating that any private operator desiring to be considered willing and able must submit evidence of such?*
4. *In addition, did the grantee send a copy of the notice to all private charter operators in the area, to other operators that requested the notice, and to the United Motorcoach Association and the American Bus Association?*

EXPLANATION

As defined in the regulations, charter service means “transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle or service, have acquired the exclusive use of the vehicle service to travel together under an itinerary either specified in advance or modified after having left the place of origin.”

Service to regularly scheduled but infrequent events such as sporting events or annual festivals that is open door, with the fare, routes and schedules set by the grantee is public transportation, not charter. In contrast, if the organizers of the annual festival control the route, the schedule, and the ridership, the service is charter. Similarly, service to another city department, for example city council members or dignitaries visiting an economic development project, fits the definition of charter. The service is to a defined group of people, there are not single contracts between the grantee and the individual riders, patrons

have exclusive use of the bus, and the riders have the sole authority to set the destination.

Grantees may provide charter service using FTA equipment or facilities only to the extent that there are no willing and able private operators who can provide the service. The grantee is further prohibited from providing charter service unless one or more of the exceptions discussed in Question 5 below apply. Any charter service that a grantee provides under any of the exceptions must be incidental, as defined in Question 6.

A grantee that wishes to provide charter service must first determine if there is at least one private charter operator willing and able to provide the charter service that the grantee wishes to provide. The regulations detail the procedural requirements for this determination. The process must, at a minimum, include:

- Placing a notice in a newspaper of general circulation within the proposed geographic charter service area
- Sending a copy of the notice to all private charter service operators in the proposed geographic charter service area and to any private operators that request the notice
- Sending a copy of the notice to the United Motorcoach Association and the American Bus Association
- Describing the charter service that the grantee wishes to provide limited to the days, times of day, geographic area, and categories of revenue vehicles, but not the capacity or the duration of the charter service.

Only two categories of vehicles can be specified: buses and vans. A bus is a bus whether it is an intercity bus, a transit bus, or a replica trolley. A private operator does not have to demonstrate that it has any particular type of bus to be considered “able.”

FTA does allow grantees to describe the services they wish to provide in terms of trip purposes or certain groups (e.g., youths to the museum). To the extent that such descriptions allow private operators to decide whether they desire to perform a certain trip, they are useful to the “willing and able” determination process. Note, however, that the private operator need only express in writing its desire to perform charter service generally in the service area specified by the transit agency. A private operator is considered “willing” even if it refuses to provide

charter service to some customers in the affected area.

The notice must instruct any operator who wishes to be considered willing and able to submit a statement of its desire and capability to provide the proposed service and proof of its legal authority. Any evidence submitted must be reviewed within 30 days. Within 60 days, the grantee must notify each private charter operator who submitted evidence of the results of the review.

REASON FOR THE QUESTION

49 CFR 604.11

SOURCES OF INFORMATION

Discuss at the site visit the grantee's procedures for determining the availability of willing and able private charter operators. Review copies of published notices, letters to or from private charter operators, and the results of the grantee's review of evidence. Look in the local Yellow Pages telephone book or online for names of private charter operators doing business in the area.

DETERMINATION

If the grantee provides no charter service (or provides it under Exceptions 2, 5, or 6 as described in the following question, which do not require a public notice process), it is not deficient with these requirements. If the grantee operates charter service, it is not deficient with the public notice requirements if it has evidence that it properly completed the willing and able determination process. It is deficient if its notice seeking willing and able private charter operators was not published as required, not sent to the appropriate parties, or if the responses were not properly evaluated and responded to.

SUGGESTED CORRECTIVE ACTION

If the grantee desires to operate charters in the future, it must notify FTA of steps it will take to correct any errors in its public notice process before continuing with charter operations. The grantee must submit documentation to FTA that the process has been implemented correctly.

5. *Under what exception is the charter service operated?*

a. *Exception 1 – No willing and able private charter operators.*

b. *Exception 2 – Entering into a contract with a private charter operator to provide equipment or service if the private operator has*

a request for service that exceeds its capacity or requires accessible equipment.

If yes, does the grantee have documentation of the contract?

c. *Exception 3 (Applies only in non-urbanized areas) – Hardship due to a private operator's minimum trip length requirements or distance from trip origin.*

If yes, did the grantee petition the FTA Chief Counsel to approve this exception?

d. *Exception 4 – Special events for which private operators are not capable of providing the service.*

If yes, did the grantee petition the FTA Administrator to approve this exception?

e. *Exception 5 – Contract with a government entity or private, non-profit organization providing service to persons with disabilities or eligible to receive public assistance.*

If yes, did the grantee obtain the required certifications from the sponsoring organization?

f. *Exception 6 (applies only in non-urbanized areas) – Contract with non-profit social service organizations if more than 50 percent of passengers are elderly.*

If yes, did the grantee obtain the required certifications from the sponsoring organization?

- g. Exception 7 – Formal agreement executed between the grantee and all private operators determined to be willing and able.*

If yes,

- i. Does the formal agreement specifically allow the grantee to provide the particular type of charter?*
- ii. Did the grantee provide for this type of agreement in its annual public charter notice or publish a separate notice of the agreement?*
- iii. Are all willing and able private operators party to the agreement?*

EXPLANATION

To the extent that there is at least one willing and able private charter operator, the grantee is prohibited from providing charter service unless one or more of the following exceptions apply.

1. A grantee may provide any and all charter service if there are no willing and able private operators. This exception requires that the grantee complete the annual willing and able determination process
2. A grantee may enter into a contract with a private charter operator to provide equipment or service if the private operator has a request for service that exceeds its capacity or requires accessible equipment. Under this exception, the grantee provides service under contract to the private operator, who is responsible for the direction and control of the grantee's vehicles while the service is being provided. The grantee does not contract directly with the public for the service. The grantee must have documentation of the contract with the private operator for the use of the equipment. Under this exception, the annual willing and able determination process is not required.
3. A grantee in a non-urbanized area may petition FTA for an exception to provide charter service directly if the service provided by the willing or able private operators would create a hardship for customers. The hardship would result if State regulations require the operators to impose a minimum duration for the charter trip that exceeded the desired trip length, or the operators

were located too far from the desired origin of the charter service. An annual willing and able determination process is required for this exception. The grantee must notify private operators that it is seeking this exception and give them an opportunity to respond. The regulations detail the other procedural requirements for submitting the petition.

4. A grantee may operate charter service for special events. This exception requires the grantee to submit its petition to the FTA Administrator at least 90 days prior to the event. The petition must describe the event, explain how it is special, and explain the amount of charter service that private operators are not capable of providing. The Administrator will issue a written decision denying or granting the request in whole or in part. The willing and able determination process is not required for this exception.
5. A grantee may provide service to government entities or non-profit agencies serving persons with disabilities or persons receiving public welfare funds. The contracting entity must provide a certification as specified in the regulations, which attests to the non-profit nature of the agency, identifies the passengers, declares that the requested charter trip is consistent with the function of the organization, and is consistent with Title VI of the Civil Rights Act of 1964. The willing and able determination process is not required for this exception.
6. A grantee in a non-urbanized area may contract with a government entity or a private, non-profit organization if more than 50 percent of the passengers of the charter trip will be elderly. The contracting entity must provide a certification to the grantee similar to the certification identified above for urbanized areas. The willing and able determination process is not required for this exception.
7. A grantee may provide charter service directly to a customer if it executes a formal agreement with all private operators it has determined to be willing and able. The agreement must specifically allow the grantee to provide the particular type of charter service defined. The grantee's annual public charter notice must provide for this type of agreement or must be amended to refer to the agreement before the grantee undertakes the charter trips the agreement describes. The grantee and the private operators may define the excepted charter service in any agreed-to terms and conditions.

The requirements for each exception are summarized in the table below.

| Exception | Willing and Able Determination Required? | Additional Procedural Requirements |
|--|--|---|
| 1. No willing and able private operators | Yes | None |
| 2. Contract with private operators to satisfy a capacity need or a need for accessible equipment | No | Contracts must be on file |
| 3. Hardship Petition (Non-urbanized areas only) | Yes | Submit petition to Chief Counsel. Provide written notice of petition request to private operators |
| 4. Special Events | No | Submit petition to Administrator at least 90 days in advance. |
| 5. Contracts with governmental entities or private, non-profit organizations | No | Obtain certifications of nonprofit status, that persons with disabilities are passengers, etc. |
| 6. Contracts with governmental entities or private non-profit organizations (Non-urbanized areas only) | No | Obtain certifications of nonprofit status, that more than 50 percent of passengers are elderly, etc. |
| 7. Formal agreement | Yes | <ul style="list-style-type: none"> - Agreement specifically allows the particular type of charter trip - Notice of agreement must be published. Annual public charter notice may provide for the agreement or be amended and re-published. - All willing and able private operators are party to the agreement |

Some grantees have provided a substantial amount of incidental charter service with replica trolley vehicles, often in violation of the regulatory exceptions, based on a misunderstanding of FTA's definition of categories of vehicles. As noted, the regulations recognize only two categories of vehicles: buses and vans. Rubber-tired replica trolleys, articulated buses, double decker buses, and other types of specifically modified equipment are all buses and are subject to the same rules as transit buses. If a charter customer insists on a particular type of equipment that the willing and able private operator does not have and the grantee does, the grantee still may not provide charter service with that equipment directly to the customer. If a customer wants a replica trolley bus and the private operator does not own one, the grantee cannot claim that there is no willing and able provider of trolleys. Even if a customer wants a transit bus and the private operator has only over-the-road coaches, the grantee cannot claim there is no willing and able provider of two-door buses. The "no willing and able" exception applies only if there are no willing and able operators with buses of any kind for charter service.

Further, the grantee cannot lease the trolley to a private operator and claim that the charter service is allowed under the exceptions unless the private operator has exhausted its supply of buses. The intent of the second exception is to satisfy a genuine capacity need for buses in general or a need for accessible equipment. "Specialized" equipment in this case does not refer to replica trolley buses or other modified buses. This exception does not recognize specific categories of buses.

REASON FOR THE QUESTION

[49 CFR 604.9](#)

[Question 25 in FR Notice 11/3/87](#), page 42252, and [Questions 46-47](#), page 42255

SOURCES OF INFORMATION

The grantee should identify the exception(s) under which it is providing charter service and document that the service qualifies. Review copies of published notices, letters to or from private charter operators, contracts with private operators, correspondence regarding special events, procedures for obtaining the required certifications from non-profit agencies, copies of formal agreements with private operators, and charter logs maintained by the grantee. Pull-out logs or charter logs can provide information on bus use, especially to document that charter service is incidental. Check the grantee's brochures and web site and also look in the local Yellow Pages telephone book to see if the grantee offers charter services to the general public.

DETERMINATION

If the grantee operates charter service, it is not deficient if it operates charter service under the exceptions and it has proper documentation of its procedures. If the grantee provides charter service without documentation of a qualified exception, or inconsistent with the specific provisions of one of the exceptions, it is deficient.

SUGGESTED CORRECTIVE ACTION

If the grantee desires to provide charter in the future, it must notify FTA of steps it will take to come into compliance with the regulations before continuing charter operations. The grantee must identify the exception under which it will provide charter service and submit documentation to FTA to support that the exception applies.

6. *Is all charter service incidental, i.e., service that does not interfere with or detract from the provision of mass transportation service (off peak), does not shorten the mass transit life of the equipment or facilities, and recovers fully allocated costs?*
7. *Does documentation show that mileage and/or hours are recorded and subtracted from the useful life of the equipment used in charter service?*

EXPLANATION

Any charter service that a recipient provides under any of the allowed exceptions must be incidental charter service. Incidental charter service does not interfere with or detract from providing mass transportation service or does not shorten the mass transportation life of the equipment being used. FTA considers that service operated during the peak period and service provided in equipment that is in excess of an approved spare ratio is not incidental. The grantee must have documentation to demonstrate that mileage and/or hours are recorded and subtracted from the useful life of the equipment. Any reasonable method of calculation is sufficient. The calculation does not necessarily have to be done for each particular bus; averages can be applied to the entire fleet. The fully allocated cost must be recovered from the charter revenue. Note that as a general rule, free charter service is not incidental. However, FTA will consider certain types of free charter service to be incidental only in a very limited number of cases (e.g., free service to an economically disadvantaged group when there is no private operator willing and able to provide the service).

REASON FOR THE QUESTION

49 CFR 604.9(e)
Question 24 in FR Notice 11/3/87, page 42251

SOURCES OF INFORMATION

Charter logs and procedures and financial records provided by the grantee are sources of information, as well as tariffs showing charter rates.

DETERMINATION

The grantee is not deficient if it has adequate records to demonstrate that all charter operations are incidental. Corrective action may be required if the grantee's record keeping procedures need to be improved. The grantee is deficient if it is unable to demonstrate that charter service is incidental to mass transit service. If the grantee's charter service impacts the service life of vehicles and the grantee does not account for such service in its calculation of vehicle life, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must cease charter service that is not incidental. It must certify its understanding of and intent to comply with the charter regulations. Procedures for documenting charter use and subtracting mileage or hours from vehicle service life should be submitted to FTA.

8. *Have any complaints been filed alleging that the grantee is operating charters in violation of the regulations?*

EXPLANATION

Any interested party who believes that a grantee is in violation of the charter regulations may submit a written complaint to FTA. The regulations specify how complaints will be processed. If FTA determines that a charter violation has occurred, appropriate remedies may be ordered.

REASON FOR THE QUESTION

Information

SOURCES OF INFORMATION

Review documentation available in the regional office files and provided by the grantee.

DETERMINATION

The grantee is not deficient if no complaints have been received, or if the grantee is operating in accordance with any orders resulting from a complaint determination. The grantee is deficient if a violation has not been remedied as ordered by FTA.

SUGGESTED CORRECTIVE ACTION

The grantee must immediately implement remedies as directed and report to FTA when pending complaints are resolved.

9. *Does the grantee provide charter service with locally owned vehicles? Are the vehicles stored and maintained in an FTA facility?*

EXPLANATION

Charter service may be provided with locally owned equipment if the grantee creates a separate company operated exclusively with local funds or if it keeps its charter accounts completely separate from its mass transit division.

REASON FOR THE QUESTION

[49 CFR 604.9\(a\)](#)

[Question 26 in FR 11/3/87](#), Page 42252

SOURCES OF INFORMATION

Information may be obtained through discussions and documentation provided by the grantee and through observation during the facility inspection.

DETERMINATION

The grantee is not deficient if it can be documented that any charter service provided with locally owned vehicles is physically and financially independent from and receives no benefits from the grantee's provision of mass transit. If the grantee has separate systems, but improved measures are required, or if charter service uses FTA funded equipment or facilities, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

All charter operations must immediately cease until procedures are in place to keep locally funded charter distinct from mass transit. Documentation is to be submitted to FTA.

17. SCHOOL BUS

BASIC REQUIREMENT

FTA grantees are prohibited from providing exclusive school bus service unless it qualifies under specified exceptions. In no case can federally funded equipment or facilities be used.

AREAS TO BE EXAMINED

1. **School Bus Service**—may be operated only under statutory exception or with non-federally funded equipment or facilities.
2. **Trippler Service**—may be operated if it complies with specified criteria.

REFERENCES

1. [49 CFR Part 605](#), "School Bus Operations."

QUESTIONS FOR THE REVIEW

1. *Does the grantee operate exclusive school bus service? If yes, does it qualify for one of the statutory exceptions? Does the grantee offer and operate that service only with non-federally funded equipment and/or facilities?*

EXPLANATION

This exception is rare. Very few grantees qualify. Grantees are prohibited from providing exclusive school bus service unless qualified under specified exceptions. To operate exclusive school bus service under an exception from the Administrator, the grantee must demonstrate it operates a school system and also operates an exclusive school bus service with non-federally funded equipment, vehicles, or facilities; that existing private operators are unable to provide adequate, safe service; or that the public entity or its predecessors were engaged in school bus service prior to August 13, 1973. (In operating the exclusive school bus service, no federally funded equipment, vehicles, or facilities may be used.)

REASON FOR THE QUESTION

[49 CFR 605](#)

SOURCES OF INFORMATION

Regional office staff should be aware if the Administrator has granted an exception. Other information is obtained through discussion at the site visit and during the inspection of facilities and equipment.

DETERMINATION

The grantee is not deficient if exclusive school bus service qualifies for one of the statutory exceptions and is operated with locally funded equipment and facilities. The grantee is deficient if it does not qualify for an exception and operates exclusive school bus service. If the grantee qualifies for an exception, but FTA funded equipment or facilities are used to operate exclusive school bus service, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must immediately cease operating any school bus service that violates the statute.

2. *Does the grantee provide school “tripper service”? If yes, does this service meet the following criteria?*

- *Regularly scheduled mass transportation service*
- *Buses are clearly marked as open to the public*
- *Service has been modified to meet needs of students/school personnel*
- *Service uses various fare collection systems or subsidies*
- *Buses have no special designations (e.g., “school bus,” “school special.” View buses if possible.)*
- *Buses use regular bus stops*
- *Service is noted on published schedules.*

EXPLANATION

The school bus regulations define school tripper service as regularly scheduled mass transportation service that is open to the public, is designed or modified to accommodate the needs of school students and personnel, and uses various fare collections or subsidy systems. Buses used in tripper service must clearly be marked as open to the public and may not carry designations such as “school bus” or “school special.” These buses may stop only at regular bus stops. All routes traveled by tripper buses must be within the regular service area as indicated in published schedules. Schedules listing tripper routes should be on the grantee’s regular published schedules or on separately published schedules that are available to the public with all other schedules. School tripper service should operate and look like all other regular service.

If the grantee operates tripper service, verify that the service meets all of the required criteria. Look at the buses used for this service when you are inspecting maintenance facilities. If the grantee states that it does not operate school tripper service, ask how students are transported to school. Does the school district provide bus service? If not, and students ride transit buses, the grantee may be providing tripper service, but may not be identifying it as such. In such cases, ensure that the school tripper requirements are met.

You should also verify that any subrecipients or lessees using FTA funded equipment that has not exceeded its useful life are not deficient with these requirements.

REASON FOR THE QUESTION

[49 CFR 605](#)

SOURCES OF INFORMATION

The grantee should provide this information. Review the grantee's route maps, brochures, and timetables. Note any signs or markings on buses on the property, and observe vehicles pulling out, if possible. Observe bus service near local schools, if feasible. Also, financial reports may list special school revenue.

DETERMINATION

The grantee is not deficient if school tripper service complies with the above criteria. If the grantee has not complied with the criteria, the grantee is deficient. Note that school tripper service is designed to serve a particular clientele and may do so very effectively. However, it must be operated as regular service or else it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must report to FTA on how it will modify service to comply with FTA requirements. The grantee also must revise route maps, brochures, and timetables to show school tripper service and submit copies to FTA.

18. NATIONAL TRANSIT DATABASE

BASIC REQUIREMENT

The grantee must collect, record, and report financial and non-financial data in accordance with the Uniform System of Accounts (USOA) and updated with the *National Transit Database (NTD) Reporting Manual* as required by 49 USC 5335(a).

AREAS TO BE EXAMINED

1. *Collection, Recording, and Reporting of Data*

All recipients of Urbanized Area Formula funding and any organization operating urban transit services that directly receive benefit from Urbanized Area Formula funding are required to submit or coordinate the submission of NTD data.

[FTA Circulars 2710.1A](#) and [2710.2A](#) contain a description of the system for collecting, recording, and reporting passenger mile data in accordance with the Uniform System of Accounts (USOA).

The [National Transit Database Reporting Manual](#), published by FTA each year, contains specific reporting instructions. This manual also includes clarifications and any changes to the

requirements. The Reporting Manual can be found on FTA's NTD website at <http://www.ntdprogram.gov/ntdprogram/>.

2. *Declarations*

Grantees are required to obtain and retain on file certain declarations to attest to the reliability and accuracy of the reported data. Declarations are based on two criteria: the size of the urbanized area within which the grantee operates service and the total combined number of vehicles operated in annual maximum service. The two required declarations are the Chief Executive Officer (CEO) Certification and the Independent Auditor Statement (Part I, Financial Data, and Part II, Federal Funding Allocation Data).

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws.
2. [49 CFR Part 630](#), "Uniform System of Accounts and Records Reporting System."
3. [National Transit Database Reporting Manual](#), (www.ntdprogram.gov)

QUESTIONS FOR THE REVIEW

1. *Did the grantee submit its NTD report for each of the past three years? Were its reports submitted on time? If not, did the grantee obtain FTA approval for the delay? Has the grantee submitted monthly ridership data as required? What is the current status of the grantee's NTD reports for the past three years? Have all issues in prior years' closeout letters been resolved?*

Did the grantee receive a reporting waiver from submitting an annual NTD report or a waiver because it operates nine or fewer vehicles? If yes, note the date of the letter granting the waiver.

Exemption or reporting waiver granted:

| <i>FY</i> | <i>Date</i> |
|-----------|-------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

EXPLANATION

All grantees are required to collect and annually file National Transit Database (NTD) reports in the NTD Internet Reporting System. The due dates and instructions for submitting reports are contained in the [NTD Annual Reporting Manual](#) (on line at <http://www.ntdprogram.gov>). The due date for a transit agency's NTD report submission is dependent on the date that the agency's fiscal year ends. The due dates are:

| Fiscal Year End Date (Between) | NTD Report Due Date |
|---|--------------------------------|
| January 1 to June 30 | October 28 |
| July 1 and September 30 | January 28 |
| October 1 and December 30 | April 30 |

Effective with the 2005 Report Year, the 15 calendar day automatic grace period and the 30 calendar day time extension were eliminated. A report not submitted by the due date is considered late. Grantees that fail to report risk being declared ineligible to receive Urbanized Area Formula Funds for an entire federal fiscal year.

Once reports are submitted, FTA tracks and reviews each report for completeness. As part of the validation process, FTA communicates with the grantee to correct reporting problems. When the validation process is complete, a closeout letter is generated by the system and is available to the grantee through the e-File tab. The closeout letter will document any outstanding issues. The grantee should be prepared to demonstrate that all validation issues and closeout issues have been resolved.

- In addition to its annual submission, grantees are required to submit monthly ridership data by mode. Agencies are also required to submit safety and security data by mode and type of service, with one exception. Transit agencies reporting commuter rail data do not have to submit safety data for that service.

A grantee that operates no more than nine vehicles in peak service at any time during the year may request a waiver from filing a complete NTD report. This waiver does not apply to fixed guideway service. The grantee must base it on all fleets and annual maximum service levels.

In very unusual circumstances, the grantee may request and FTA can grant a waiver from either some or all of the NTD reporting requirements.

The nine or fewer vehicle waivers and the reporting waivers must be requested and approved by FTA for every reporting year. FTA does not grant permanent waivers from reporting.

REASON FOR THE QUESTION

[49 USC 5335 \(a\)](#)
[49 CFR Part 630](#)
[NTD Reporting Manual](#)

SOURCES OF INFORMATION

The regional office files may contain copies of correspondence. If not, ask the grantee to provide copies of relevant letters and reports. Ask the grantee to provide information that demonstrates when it first submitted its report for each of the past three years. The copy of the reports provided to the reviewer probably will be updated versions, reflecting changes made in response to the validation process. If reports have been filed after the deadline, ask for copies of letters to FTA requesting an extension. If waivers have been granted, obtain information from the grantee on the waivers. If prior year closeout letters included issues, the grantee should have documentation on file to demonstrate how the issues were resolved.

DETERMINATION

If recent submissions have been timely and complete, responses to letters have been timely and complete, and no data have been disallowed, the grantee is not deficient. The grantee is deficient if reports have not been filed, if reports have been filed late, or if reports have been incomplete. If the grantee has submitted its NTD report before the due date, it is not deficient. If the grantee has submitted its report late, but it received FTA approval for a delay in the report submission, the grantee is not deficient. If the grantee submitted the report late and did not receive FTA approval for a delay in the report submission or submitted the report after the FTA approved delay, it is deficient.

If the grantee has not responded to validation issues by the specified due date(s) or has not resolved close out issues, the finding is deficient.

If the grantee has submitted ridership data on a monthly basis as required, the grantee is not deficient. If the grantee has not submitted monthly ridership data, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should provide FTA with documentation of its procedures for complying with reporting requirements, including a milestone schedule to ensure timely submissions and responses. The grantee should provide an assurance that future NTD reports and/or ridership data will be submitted in a timely manner and closeout issues will be addressed.

2. *Has the grantee submitted its required declarations, i.e., Chief Executive Officer (CEO) Certification and Independent Auditor Statement for Financial Data?*

EXPLANATION

The CEO Certification is submitted with the grantee's annual NTD report. The suggested format and wording for the CEO certification are contained in the annual [NTD Reporting Manual](#). Reviewers should make sure that the grantee is submitting the CEO Certification.

The grantee is required to have an independent accountant certify that the grantee's accounting system can produce an NTD report that conforms, in all material aspects, to the requirement to collect financial data contained in the USOA. The accountant's statement should list the financial forms that were reviewed; be on the letterhead of an independent, professional accounting firm; and identify the address of the office performing the statement.

The requirement for an Auditor Statement of Financial Data is a one-time requirement provided the grantee does not change its accounting system and invalidate the certification. If the grantee changes its accounting system, it must have a qualified auditor again certify that the accounting system is consistent with FTA's Uniform System of Accounts (USOA) and apply for a new waiver. The OMB A-133 Single Audit does not suffice for this requirement.

The CEO states in the annual CEO Certification that the Auditor Statement of Financial Data has been performed properly. The CEO Certification identifies the name of the auditor making the certification and the date the certification was submitted to FTA.

Effective with the 2005 Report Year, the CEO Certification also should state that the Auditor Statement for Federal Funding Allocation Data has been completed. The CEO Certification identifies the name of the auditor making the certification and the date the certification was completed and indicates whether there were any negative findings by the auditor. If there were negative findings, the CEO Certification should indicate what actions have been taken. The reviewers should ask for documentation of these actions on site.

The CEO Certification should also include a statement that passenger mile data are being collected according to one of the approved methods. Grantees can use either a 100 percent count or a valid statistical sampling procedure. If statistical sampling is used the process must meet FTA's minimum levels of confidence of 95 percent and 10 percent precision. FTA C 2710.1A, *Sampling Techniques for Obtaining Fixed-Route Bus Operating Data Required under the Section 15 Reporting System*, and FTA C 2710.2A, *Sampling Techniques for Obtaining Demand Response Bus System Operating Data Required under the Section 15 Reporting System* offer the grantee several sampling plans that meet the FTA statistical criteria. The grantee is free to use an alternate technique if a qualified statistician has examined the technique and certified that it meets FTA's statistical criteria.

The frequency for providing these data is based on the size of the UZA population and number of vehicles directly operated. The reporting thresholds are shown on the table below:

| Directly Operated (DO) Service | | | |
|--------------------------------|----------------|-----------------|--------------------------------------|
| Reporting Frequency | Mandatory Year | UZA Population | Number of Vehicles Directly Operated |
| Every Year | 2006 | >=500,000 | >=100 |
| Every Third Year | 2008 | >=500,000 | <100 |
| Every Third Year | 2008 | 200,000-499,999 | Any Number |
| Every Third Year | 2008 | <200,000 | Any Number |

| Purchased Transportation (PT) Service | | | |
|---------------------------------------|----------------|-----------------|--|
| Reporting Frequency | Mandatory Year | UZA Population | Number of PT Vehicles (Not filing separate report) |
| Every Third Year | 2008 | >=500,000 | Any Number |
| Every Third Year | 2008 | 200,000-499,999 | Any Number |
| Every Third Year | 2008 | <200,000 | Any Number |

Effective with the 2008 NTD Report year, grantees in or serving UZAs with a population of less than 200,000 will be required to sample every third year.

REASON FOR THE QUESTION

[NTD Reporting Manual](#)

SOURCES OF INFORMATION

The grantee should provide documentation that the CEO Certification was submitted with the NTD report. If the grantee used an alternate sampling method, the grantee should provide a statement from a statistician making this certification. To ensure accuracy for data validation, for NTD report year 2007, agencies were expected to provide the data for unlinked trips using 100% counts, unless granted an exception by FTA.

During the site review, the grantee should be asked whether or not its accounting system has been changed and, if it has, what steps the grantee has taken to renew the financial data certification.

DETERMINATION

If the grantee can provide documentation that the CEO Certification was submitted, the grantee is not deficient. If not, the grantee is deficient.

The grantee is not deficient if it has not changed its accounting system. The grantee also is not deficient if it has both changed its accounting system and obtained a new auditor's financial data certification. If changes have occurred and the certification is not up to date, the grantee is deficient. The grantee is not deficient if the auditor's statement included negative findings and the grantee can document actions taken to resolve the findings. If the findings were not addressed, the grantee is deficient.

If the CEO Certification includes the certification of passenger mile data, the grantee is not deficient. If the grantee uses an alternate method, and can show that a qualified statistician has certified it, it is not deficient. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must submit the CEO Certification. If the grantee has had its current accounting system certified and holds a valid FTA waiver, the grantee must prepare a valid CEO Certification and submit it to FTA. If the grantee has not had its current accounting system certified, the grantee must obtain a valid Auditor Statement of Financial Data. Copies should be filed with FTA's National Transit Database office. If the grantee has not properly collected passenger mile data, it must institute correct procedures and provide documentation to FTA of the changes it has made.

3. *If required, does the grantee have an Independent Auditor's Statement for Federal Funding Allocation Data for the current fiscal year's NTD report?*

EXPLANATION

Transit agencies that are in or service urbanized areas with 200,000 or more population who operate 100 or more vehicles in annual maximum service are required to have an independent auditor review all NTD data used in the Urbanized Area Formula and the Capital Program allocation. The count of the vehicles includes all revenue vehicles operated in all modes and types of service. The statement should address by mode and type of service: directional route miles, vehicle revenue miles, passenger miles, and operating costs. Specific audit areas, procedures, and suggested format for the Auditors Statement are contained in the [NTD Reporting Manual](#).

When a transit agency meets the 100-vehicle threshold, it must submit the Auditor's Statement for the year in which the agency meets the threshold. Otherwise, the agency must keep the statement on file for three years after the NTD Annual report is submitted.

REASON FOR THE QUESTION

[NTD Reporting Manual](#)

SOURCES OF INFORMATION

The transit agency must keep the Independent Auditor Statement for Federal Funding Allocation Data on file for three years after the NTD Annual report is submitted.

The Auditor's Statement should certify that the directional route miles, vehicle revenue miles, passenger miles, and operating cost data have been collected and reported properly.

DETERMINATION

If the grantee meets the reporting thresholds and provides a satisfactory, unqualified auditor's certification, the grantee is not deficient. If the grantee meets the reporting thresholds and does not provide the reviewer with a satisfactory Auditor's Statement, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must obtain a valid Auditor's Statement of Urbanized Area Formula Data. A copy should be provided to the FTA regional office.

4. *Does the grantee pass through Urbanized Area Formula Grant Program funds to transit operators? If yes, do these transit operators report required data?*

EXPLANATION

If a grantee passes Urbanized Area Formula Grant Program monies through to operators of transit services, these operators are required to report required data. The purpose of this question is to identify if any subrecipients exist and if so, that they report their data. Contracting for services is not a pass through of monies. If a grantee is contracting for services, required information should be provided by the grantee.

REASON FOR THE QUESTION

NTD Reporting Manual

SOURCES OF INFORMATION

This question needs to be asked at the site visit. Also, FTA headquarters can provide a copy of Summary Information and FTA Summary Reports for each grantee. These reports provide summary information on the grantee and schedule of submissions in response to National Transit Database reporting requirements.

DETERMINATION

If the grantee does not pass money through to another party, this question is not applicable. If monies are passed through, the entity receiving the monies should be reporting required information. The grantee should be found deficient if the subrecipient has not submitted the reports unless FTA directly exempted the subrecipient from submitting reports.

SUGGESTED CORRECTIVE ACTION

The grantee should work with the subrecipient to contact FTA and submit the required reports.

19. SAFETY AND SECURITY

BASIC REQUIREMENT

Any recipient of Urbanized Area Formula Grant Program funds must annually certify that it is spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

Under the safety authority provisions of the Federal transit laws, the Secretary has the authority to investigate the operations of the grantee for any conditions that appear to create a serious hazard of death or injury, especially to patrons of the transit service. However, FTA has no specific requirements for transit safety. States are required to oversee the safety of rail fixed guideway systems through a designated oversight agency.

Under security, a list of 17 Security and Emergency Management Action Items has been developed by FTA and the Department of Homeland Security's Transportation Security Administration (TSA). This list of 17 items, an update to the original FTA Top 20 security action items list, was developed in consultation with the public transportation industry through the Mass Transit Sector Coordinating Council, for which the American Public Transportation Association (APTA) serves as Executive Chair. Security and Emergency Management Action Items for Transit Agencies aim to elevate security readiness throughout the public transportation industry by establishing baseline measures that transit agencies should employ.

The goal of FTA's Safety and Security Program is to achieve the highest practical level of safety and security in all modes of transit. To this end, FTA continuously promotes the awareness of safety and security throughout the transit community by establishing programs to collect and disseminate information on safety/security concepts and practices. In addition, FTA develops guidelines that transit systems can apply in the design of their procedures and by which to compare local actions. As such, many of the questions in this review area are designed to determine what efforts grantees have made to develop and implement safety, security, and emergency management plans. While there may not be specific requirements associated with all of the questions, grantees are encouraged to

implement the plans, procedures, and programs referenced in these questions. For this reason, findings in this area will most often result in advisory comments rather than deficiencies.

AREAS TO BE EXAMINED

1. **Safety**
 - a. Policy and Management
 - b. Administration and Procedures
 - c. Personnel and Training
 - d. Safety Reporting
 - e. Safety Training
2. **Security and Emergency Management**
 - a. Security Expenditures
 - b. Management and Accountability
 - c. Security and Emergency Response
 - d. Training Homeland Security Advisory System (HSAS)
 - e. Public Awareness Drills and Exercises
 - f. Risk Management and Information Sharing
 - g. Facility Security and Access Control
 - h. Background Investigations
 - i. Document Control
 - j. Security Audits

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Act, Section 5307(d)(1), Security Expenditures.
2. [49 CFR Part 630](#), "Uniform System of Accounts and Records and Reporting."
3. [49 CFR Part 659](#), "Rail Fixed Guideway Systems, State Safety Oversight."
4. [TSA/FTA Security and Emergency Management Action Items for Transit Agencies](#).

QUESTIONS FOR THE REVIEW

Part A. Safety

1. *Does the grantee have a written policy on safety? Has it been signed by the CEO?*
2. *Does the grantee have a written system safety program plan (SSPP) for its transit services? Does the SSPP address management of the safety function?*
3. *How is the safety function managed? Are there staff safety personnel? If so, are responsibilities and authorities clear? To whom do they report?*

EXPLANATION

FTA is concerned about the safety of both transit passengers and transit workers. FTA can conduct safety investigations when conditions of any facility, equipment, or manner of operation appear to create a serious hazard of death or injury.

Recognizing that safety is an integral part of transit operations, grantees are encouraged to have a written safety policy and safety plan. The safety plan should assign responsibilities for safety management from the most senior executive to the first-line supervisory level. Endorsement by the CEO conveys this importance. At a minimum, a grantee's safety plan should address compliance with applicable legal requirements. Striving for continual improvement to achieve a high level of safety performance should be a program goal. Guidance on the development of a written bus transit system safety program plan is available in an APTA publication entitled, *Manual for the Development of Bus Transit System Safety Program Plans* (1998). Note that the grantee may have a safety plan developed from another source, which responds to specific state or local requirements.

These questions are intended to provide an overall understanding of how safety is incorporated into the organization, what kind of emphasis is placed on safety, how the safety program is managed, and how various responsibilities are communicated to personnel at all levels.

REASON FOR THE QUESTION

Suggested practice

SOURCES OF INFORMATION

If the grantee has a written safety policy or system safety program plan, it should be examined at the site visit. Reviewers should discuss with the grantee the reporting relationships in regard to safety to ensure that the safety function is managed adequately.

DETERMINATION

If the grantee has a safety policy and safety plan signed by the CEO, no advisory comment is made. If the grantee does not have a safety policy or safety plan, an advisory comment is made. If the safety plan does not address the management of the safety function, if staff responsibilities are not clearly delineated, or the CEO has not signed it, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have a written safety policy or system safety program plan, the grantee should be encouraged to prepare a plan. If the safety plan does not adequately address management of the safety function, the grantee should revise the plan to correct any deficiencies.

4. *What are the investigation procedures for major incidents? What circumstances and conditions determine which incidents will be investigated? Who does the investigation? To whom do reports go? What follow-up action is taken and by whom?*
5. *What key safety issues have been identified and how are they being addressed?*
6. *Is there a process for hazard identification and resolution? When corrective action is needed, how is it initiated and followed up?*

EXPLANATION

Safety issues include more than vehicle and passenger accidents and workplace injuries. As such, the grantee's safety-related responsibilities may be numerous. They may include, for example:

- investigating major incidents
- identifying workplace hazards
- proper handling of hazardous materials
- emergency preparedness.

Reviewers should ensure that the grantee has established procedures to investigate, identify, and address safety issues. The process should be both reactive in terms of investigating incidents and proactive in terms of identifying and responding to key safety issues and potential hazardous conditions.

REASON FOR THE QUESTION

Suggested practice

SOURCES OF INFORMATION

The minutes from safety committee and/or accident/incident review committee meetings should be made available during the site visit. Emergency management plans and procedures should be requested. The grantee should be able to provide safety statistics for the past three years for major incidents involving passengers, property damage, and work-related accidents. At the site visit or the desk review, newspaper articles or other publications describing accidents or safety incidents may be found. This does not necessarily indicate poor safety practices; however, the incident should be discussed at the site visit. Insurance companies also conduct assessments of their clients. Such reports are another source of information. Claims records and insurance costs identified in financial reports also provide information. Both costs and the actual number of incidents should be examined.

Procedures manuals and employee handbooks may contain information related to safety. Copies of these documents should be examined on site to determine if safety procedures are addressed for various functions (e.g., transportation, maintenance, procurement, and stores). Determine who is responsible for maintaining safety information, handbooks, procedures manuals, and materials safety data sheets (MSDS).

DETERMINATION

If the grantee has procedures to investigate incidents and accidents, no advisory comment is made. If incident and accident investigation procedures appear to be lacking, an advisory comment is made. If the grantee has procedures in place to identify and resolve workplace hazards, no advisory comment is made. If hazard identification and resolution procedures are lacking, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If procedures for investigating incidents appear to be lacking, the grantee should be encouraged to develop and implement adequate procedures. If procedures for dealing with workplace hazards, safe materials

handling, etc. appear to be lacking, the grantee should be encouraged to establish appropriate procedures.

7. *Does management hold line personnel accountable for safety? Do line personnel job descriptions (senior level to first-line supervisors) include a provision for safety accountability? Are safety responsibilities clearly defined? Do annual evaluations include an appraisal of safety performance?*

8. *Is there safety training for employees performing safety sensitive functions? Who performs the training? How is it done? Do supervisors receive formal safety training? If so, please describe.*

EXPLANATION

Grantees are encouraged to clearly define the safety responsibilities for all employees and establish a comprehensive safety training program. By providing training to the appropriate personnel, grantees can enhance safety performance in all areas (e.g., accidents, workplace hazards, and emergency preparedness). Training may consist of initial training to new hires as well as recurrent training to all employees. Additional training may be provided on a case-by-case basis, if employees have a high number of incidents in a particular area of concern.

REASON FOR THE QUESTION

Suggested practice

SOURCES OF INFORMATION

Ask the grantee to provide an overview of its training program for drivers, mechanics, supervisors, and other line personnel. Job descriptions and requirements for safety sensitive positions and supervisory personnel should be discussed with the grantee. The grantee should provide training records of its employees (line personnel and supervisors) to be examined on site. Additionally, training manuals, safety handouts, safety postings and other materials should be made available.

DETERMINATION

If the grantee has clearly defined safety responsibilities for safety-sensitive and supervisory personnel and provided adequate training, no advisory comment is made. If safety responsibilities have not been clearly defined, an advisory comment is made. If safety-sensitive and supervisory

personnel have not received adequate safety training, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee has not clearly defined safety responsibilities, it should be advised to do so. If the grantee does not have an adequate safety training program, the grantee should be encouraged to develop one.

9. *Has the grantee submitted transit safety data in NTD for the past year in a timely manner?*

EXPLANATION

All transit agencies, regardless of the number of vehicles operated, are required to provide information by mode and type of service in the Safety & Security Module of NTD on a monthly basis. If a grantee operates nine or fewer vehicles and has been granted a waiver, it is exempt from the safety and security reporting requirements.

The NTD Safety & Security Module has three components: Major Incident Reporting, Non-Major Incident Safety, and Non-Major Incident Security reporting. Grantees are required to submit information for each component and for all modes except commuter rail. Agencies that operate commuter rail service do not have to report Major Safety Incident and Non-Major Incident Safety data to FTA since these data are available from FRA. However, agencies operating commuter rail service must complete the NTD Major Security Incident and Non-Major Incident Security reports. Major Incident forms are due thirty days after the major incident occurred.

A Major Incident is defined as an event involving a transit vehicle or transit-controlled property, involving one or more of the following:

- A fatality
- Injuries requiring immediate medical attention away from the scene for two or more persons
- Property damage equal to or exceeding \$25,000
- An evacuation due to life safety reasons
- A collision at a grade crossing
- A main-line derailment
- A collision with person(s) on a rail right of way resulting in injuries that require immediate medical attention away from the scene for one or more persons
- A collision between a rail transit vehicle and another rail transit vehicle or a transit non-revenue vehicle resulting in injuries that require immediate medical attention away from the scene for one or more persons.
- Forcible rape

- Confirmed terrorist/security events
 - Bombings
 - Chemical/biological/radiological/other release
 - Cyber incident
 - Hijacking
- Sabotage

Non-Major Incident Safety data include any incident not reported as a Major Incident and meeting one or more of the following criteria:

- Injuries requiring immediate medical attention away from the scene for one person
- Property damage equal to or exceeding \$7,500, but less than \$25,000
- All non-arson fires not qualifying as a Major Incident.

REASON FOR THE QUESTION

[49 CFR 630](#)

SOURCES OF INFORMATION

Ask the grantee to provide a summary of its Major Incidents for the past year. Verify that this information is being reported into NTD as required.

Examine three months of Non-Major Incident (Safety) data and ensure that the grantee is reporting information as required.

DETERMINATION

If the grantee has submitted the safety data for the past year, the grantee is not deficient. If the grantee has not submitted Major Incident data for the past year or is not submitting information for the current year, the grantee is deficient in the NTD requirements. If the grantee has not submitted Non-Major Incident Safety data, the grantee is deficient in the NTD requirements. [Note: If these findings are made, they are to be discussed in the NTD area of the report, and the deficiency code is to be entered in the NTD area of the summary table.]

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit information in the NTD as required.

Part B. Security and Emergency Management

10. *Does the grantee utilize the one percent expenditure of its Urbanized Area Formula Grant funds for transit security?*

- a) *If yes, how did the grantee utilize the one percent expenditure over the last three years?*
- b) *If no, why does the grantee consider that existing security measures meet agency needs?*

Provide project and expenditure information for the last three years in Exhibit 19.1.

EXPLANATION

The grantee is required to certify that it is spending at least one percent of the Urbanized Area Formula Grant (UAFG) Program funds it receives annually for transit security projects or that such expenditures are not necessary. This certification is part of the annual certifications and assurances.

For grantees that spend the one percent, examples of appropriate security expenditures include facility perimeter security and access control systems (e.g., fencing, lighting, gates, card reader systems, etc.), closed circuit television camera systems (at stations, platforms, bus stops and on-board vehicles), security and emergency management planning, training and drills (SAFETEA-LU expanded the definition of security related capital projects to include planning, training and drills, such that these expenditures are now eligible expenses for grantees in UZAs over 200,000 population to apply towards the 1% for security requirement.) and any other project intended to increase the security and emergency management of an existing or planned transit system. Grantees should provide detail on how these funds were spent during the review period.

There are three reasons that grantees may have for considering the one percent security expenditure to be unnecessary: (1) No deficiencies identified from conducting a recent threat and vulnerability assessment; (2) TSA/FTA Security and Emergency Management Action Items met or exceeded; or (3) Other. For the Other category, the primary basis is that a grantee spends sufficient local funds on security projects and therefore does not need to spend formula grant funds on security projects. Regardless of their reasons for deciding not to spend FTA formula funds on transit-related security, grantees should provide information and documentation that supports this decision.

REASON FOR THE QUESTION

[49 USC 5302\(a\)\(1\) and 5307\(d\)\(1\)\(J\)](#)

SOURCES OF INFORMATION

These questions should be asked at the site visit. If a grantee is spending at least one percent of its formula

funds on security projects, the grantee should be asked to provide the detail of these expenditures for each year of the review period in the requested format as well as documentation that supports these expenditures.

If the grantee has decided that it is not necessary to expend one percent of its UAFG funds, the grantee should provide a written explanation and any information that supports this decision. Such information may include the recommendations/findings from (1) a threat and vulnerability assessment and (2) a TSA/FTA Security and Emergency Management Action Items assessment. If the grantee indicates that it spends local funds on security, the grantee should provide expense detail in the requested format as well as documentation that supports these expenditures.

DETERMINATION

If the grantee has been spending at least one percent of its Urbanized Area Formula Grant Program funds on transit security projects, the grantee is not deficient. If the grantee has decided that the expenditure is not necessary and can provide an explanation and adequate documentation, the grantee is not deficient. If the grantee decides that expenditures for security are necessary but cannot document the expenditures, the grantee is deficient. If a grantee decides that expenditures for security are necessary but expenditures fall short of the one percent requirement, the grantee is deficient. If the grantee cannot provide adequate documentation of its security expenditures using formula funds, the grantee is deficient. If the grantee decides that expenditures for security are not necessary but cannot explain or provide adequate documentation to support its decision, the grantee is deficient.

**EXHIBIT 19.1
TRANSIT SECURITY EXPENDITURES**

Does the grantee expend one percent or more of its Section 5307 Urbanized Area Formula Grant funds for transit security? Yes___ No___

If no, why does the grantee consider such expenditure unnecessary? Check all that apply.

___ No deficiency found from a threat and vulnerability assessment

___ TSA/FTA Security and Emergency Management Action Items met or exceeded

___ Other (please describe): _____

| Security Funding | FTA Section 5307 Funds | | |
|---|------------------------|---------|---------|
| | FY 2005 | FY 2006 | FY 2007 |
| Total amount of 5307 Funds expended | \$ | \$ | \$ |
| Amount of 5307 Funds expended on security | \$ | \$ | \$ |
| Percent of 5307 Funds expended on security | % | % | % |
| Infrastructure/Capital Improvement Security Projects: | | | |
| Lighting, Fencing & Perimeter Control | | | |
| CCTV and Surveillance Technology | | | |
| Communications Systems | | | |
| Security Planning* | | | |
| Drills & Tabletop Exercises* | | | |
| Employee Security Training* | | | |
| Other Security-Related Infrastructure & Capital Improvements (please list) | | | |
| Operating/Personnel Expenditures (can only be used by agencies in areas with populations UNDER 200,000): | | | |
| Contracted Security Force | | | |
| In-house Security Force | | | |
| Other Security-Related Operating Expenditures (please list) | | | |

* SAFETEA-LU amended the definition of a capital project to include:

- projects to refine and develop security and emergency response plans;
- the conduct of emergency response drills with public transportation agencies and local first response agencies; and
- security training for public transportation employees.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide a plan for meeting the one percent expenditure requirement and report on implementation of this plan to FTA. Direct the grantee to provide a plan for documenting the amount of formula funds spent on transit security. Direct the grantee to provide an explanation and adequate documentation on why the expenditure is not necessary.

Management and Accountability

11. *Does the grantee have written security and emergency management plans for all modes of operation?*
12. *Do the security and emergency management plans define roles and responsibilities for transit personnel?*
13. *Do the security and emergency management plans ensure that operations and maintenance supervisors, forepersons, and managers are held accountable for security issues under their control?*

EXPLANATION

FTA has specific requirements for a written system security plan for rail fixed guideway systems (RFGS). FTA encourages all transit systems, particularly those in areas with populations of 200,000 or more, to develop and implement a transit system security program plan and emergency management plans that cover passengers, employees, vehicles, and facilities, including the planning, design, and construction of new facilities. Guidance on the development and implementation of system security program plans is available in a report entitled, [The Public Transportation System Security and Emergency Preparedness Planning Guide](#) (DOT-VNTSC-FTA-03-01), dated January 2003.

Grantees should ensure that security and emergency management plans are endorsed by senior level management in order that they are communicated throughout the agency from the highest level. Plans should be reviewed annually and updated as circumstances warrant. Plans should integrate visibility, randomness, and unpredictability into security deployment activities in order to avoid exploitable patterns and to enhance deterrent effects. Plans should also address Continuity of Operations and Business Recovery in the event that normal operations need to be suspended or altered as the

result of a catastrophic incident. In addition, plans and protocols should address specific threats from Improvised Explosive Devices (IED), Weapons of Mass Destruction (WMD), and other high consequence risks identified in transit risk assessments. Grantees should also establish and maintain standard security and emergency operations procedures (SOPs/EOPs) for each mode operated, including procedures for operations control centers.

In situations where grantees are planning the construction or modification of systems and facilities, security design and crime prevention criteria through environmental design (CPTED) should be applied to ensure a secure environment for the riding public and employees.

The security and emergency management programs should be assigned to the senior level managers in the grantee's organization. The names and titles of the Primary and Alternate Security Coordinator (including Security Directors and Transit Police Chiefs) should be recorded and maintained on file. The telephone numbers, e-mail addresses and other contact information for these individuals should be accurately maintained so that they are accessible at all times. The Security Coordinators also should report to the senior level management of the organization. Security duties should be defined and properly delegated to front line employees. The grantee should distribute the security and emergency management plans to appropriate personnel. Regular security coordination meetings involving all personnel assigned security responsibilities should be held. Informational briefings with appropriate personnel also should be held whenever security protocols are substantially updated. In order to ensure continuity of the plans, the grantee should establish lines of delegated authority and/or succession of security responsibilities and inform the affected personnel.

The grantee should hold regular supervisor and foreperson security review and coordination briefings for operations and maintenance personnel. An internal security incident reporting system should be developed and maintained and a Security Review Committee should be established in order to regularly review security incident reports, trends, and program audit findings, and make recommendations to senior level management for changes to plans and processes.

Note: Due to the Sensitive Security Information (SSI) designation of grantees' security and emergency management plan, they must be examined on-site. Reviewers must not remove security and emergency management plans from the grantee's premises or request them in advance of the review.

REASON FOR THE QUESTION
49 CFR 659.31

[TSA/FTA Action Item No. 1](#)
[TSA/FTA Action Item No. 2](#)
[TSA/FTA Action Item No. 3](#)

SOURCES OF INFORMATION

If the grantee has written security and emergency management plans, these should be examined at the site visit. At the site visit or the desk review, newspaper articles or other publications describing security incidents may be found. Such articles may highlight an incident. Though this does not necessarily indicate poor security practices, the incident should be discussed at the site visit.

The security and emergency management plans may not be stand-alone documents, but may be chapters or sections of a more comprehensive safety/security plan, such as a System Safety Program Plan for a Rail Fixed Guideway System. The plan should cover all modes the contractor operates, including contracted services.

DETERMINATION

If the grantee has a security plan for all modes, no advisory comment is made. If a grantee does not have a security plan for all modes, an advisory comment is made. If a grantee has a security plan for each mode, but it does not include personnel roles and responsibilities, protocols to address specific threats, a Continuity of Operations, a Business Recovery Plan, or other elements described in the Explanation, an advisory comment is made. If the plans do not have an endorsement from the top official, an advisory comment is made. If responsibilities have not been clearly defined, an advisory comment is made.

If the grantee has an emergency management plan, no advisory comment is made. If the grantee does not have an emergency management plan or if the plan does not cover all modes, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have a written security and emergency management plan for all modes, the grantee should be encouraged to prepare and implement one. If the grantee has a plan, but it does not include the specific elements described above, the grantee should be encouraged to update its plan according to the TSA/FTA guidelines.

14. *Are the security and emergency management plans coordinated with local agencies?*

EXPLANATION

A grantee's security and emergency management plans should be an integrated system program and be

coordinated with local first responders. Coordination should include mutual aid agreements with these agencies and should address communications interoperability with first responders (e.g., police and fire departments) in the grantee's service area. Grantees also should coordinate with federal and state entities associated with public transportation security such as the TSA's Surface Transportation Security Inspection Program (STSIP) area office, the FBI's Joint Terrorism Task Force (JTTF), the State Homeland Security Office, and FTA Regional Office. Coordinated plans should be consistent with the [National Incident Management System](#), (NIMS) and the [National Response Plan](#) (NRP). NIMS provides a unified approach to incident management including standard command and management structures and an emphasis on preparedness, mutual aid and resource management. The NRP forms the basis of how the federal government coordinates with state, local, and tribal governments and the private sector during incidents.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 4](#)

SOURCES OF INFORMATION

Ask the grantee to provide copies of security plans and procedures. Also, ask the grantee to provide copies of any inter-agency agreements that outline a coordinated emergency response. If no formal agreements exist, ask if the grantee has met with representatives of other agencies to discuss and/or plan emergency response coordination. Ask the grantee whether its plans are consistent with NIMS and the NRP.

DETERMINATION

If the grantee has coordinated with other agencies at the local, state and federal levels, no advisory comment is made. If the grantee has not coordinated with other agencies, an advisory comment is made. If the grantee is a party to an agreement that outlines emergency response coordination, no advisory comment is made. If no agreement exists, but the grantee has taken steps to establish coordinated emergency response procedures with other agencies, no advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee has not coordinated with other local, state and federal agencies, it should be encouraged to do so. Advise the grantee to establish contacts with other agencies and begin developing coordinated emergency response procedures.

Security and Emergency Response Training

15. *Has the grantee established a security and emergency training program?*

EXPLANATION

The grantee should provide ongoing basic training to all employees in security orientation and awareness and emergency response. Ongoing training should be provided to employees that have direct security responsibilities such as operating, maintenance, law enforcement and fare inspection. Ongoing training should include advanced security and emergency response training by job function and actions required at incremental Homeland Security Advisory System (HSAS) threat advisory levels. Security training programs should emphasize integration of visible deterrence, randomness, and unpredictability into security deployment activities to avoid exploitable patterns and heighten deterrent effect.

Advanced security training programs also should be established for transit managers, including but not limited to CEOs, General Managers, Operations Managers, and Security Coordinators (includes Security Directors and Transit Police Chiefs). The materials should be updated regularly to address high consequence risks that have been identified by the grantee's risk assessments. Training should reinforce roles and responsibilities and should ensure that employees are proficient in their duties at all times.

The grantee should establish a system that records personnel training in security and emergency response that, at a minimum, documents employee's initial training, and any recurrent training (e.g., periodic and/or refresher). Grantees should also establish and maintain a security notification process to inform personnel of significant updates to security and emergency management plans and procedures, as necessary.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 5](#)

SOURCES OF INFORMATION

Procedure manuals, employee handbooks, and training materials may provide information on the grantee's efforts to train employees in security and emergency response. Ask the grantee if security training seminars or workshops have been conducted for all employees.

Ask the grantee if records are kept concerning security and emergency training and if so, review a sample to verify the grantee's recordkeeping system. Ask whether or not the grantee has a notification

process to inform employees of significant updates to plans and procedures.

DETERMINATION

If the grantee has provided training to operating and non-operating personnel, no advisory comment is made. If training has not been provided to operating personnel, an advisory comment is made. If training has not been provided to non-operating personnel, an advisory comment is made. If the grantee maintains records of security training, no advisory comment is made. If the grantee does not maintain training records, an advisory comment is made. If the grantee has a process to notify employees of significant updates to security plans and procedures, no advisory comment is made. If the grantee does not have such a process, then an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to implement a security and emergency response training program for operating and/or non-operating personnel and maintain records of employee training. If necessary, advise the grantee to establish and maintain a notification process to inform employees of updates to security and emergency plans and procedures.

Homeland Security Advisory System (HSAS)

16. *Have protocols been established to respond to the Department of Homeland Security Threat Levels?*

EXPLANATION

FTA recommends that all grantees have an updated security plan that addresses terrorism as well as procedures to respond incrementally to the HSAS threat levels issued by the Department of Homeland Security.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 6](#)

SOURCES OF INFORMATION

The grantee's security plan and/or procedures should be examined to ensure that there are protocols for responding to the Department of Homeland Security's threat advisory levels.

DETERMINATION

If the grantee has protocols for responding to threat advisory levels, no advisory comment is made. If the grantee does not have protocols for responding to threat advisory levels, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

The grantee should be encouraged to develop protocols to respond to Department of Homeland Security threat advisory levels.

Public Awareness

17. *Have public awareness materials been developed and distributed on a system-wide basis?*

EXPLANATION

The grantee should disseminate information to the riding public on identifying and reporting suspicious or illegal activity. Public service announcements, billboards, and brochures are effective mechanisms to provide security information to passengers. Grantees also should consider implementing FTA's Transit Watch program at their agency.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 7](#)

SOURCES OF INFORMATION

Ask the grantee to provide any information related to security that has been disseminated to passengers.

DETERMINATION

If passengers have received information on recognizing and reporting suspicious or illegal activity, the grantee is not deficient. If security information has not been provided to passengers, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If information on recognizing and reporting suspicious or illegal activity has not been provided to the riding public, the grantee should be encouraged to do so.

Drills and Exercises

18. *Are tabletop and functional drills conducted at least once every six months, and are full-scale exercises, coordinated with regional emergency response providers, performed at least annually?*

EXPLANATION

It is good practice for grantees to conduct tabletop exercises on a semi-annual basis and full scale exercises on an annual basis. Such drills and exercises should be coordinated with regional security partners, including federal, state, and local

governmental representatives and other affected entities (e.g., other transit agencies or rail systems) to integrate their representatives into exercise programs. Recommended exercise plans and procedures include threat scenarios involving improvised explosive devices (IEDs), weapons of mass destruction (WMD), and other high consequence risks identified through the grantee's risk assessments. Following each exercise and drill, the grantee should conduct and/or participate in de-briefings to examine the results of the exercise and/or drill and develop after-action reports to address any updates to plans and procedures that might be warranted.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 8](#)

SOURCES OF INFORMATION

Ask the grantee what drills and/or exercises have been conducted. Ask the grantee to provide a list of the drills and exercises showing the dates that they were conducted and the other agencies that participated. Review any after-action reports and determine if plans and/or procedures were updated accordingly.

DETERMINATION

If the grantee has conducted drills and/or exercises of potential emergency events, no advisory comment is made. If the grantee has not conducted such drills and/or exercises, an advisory comment is made.

Risk Management and Information Sharing

19. *Has the grantee established a risk management process to assess and manage threats, vulnerabilities and consequences? Did the process identify mitigation measures after the risk assessment had been completed?*

EXPLANATION

Grantees are encouraged to establish a risk management process that is based on a system-wide assessment of risks and obtain management approval of this process. As part of the process, grantees should ensure proper training of management and staff responsible for managing the risk assessments. Whenever a new asset/facility is added or modified, and when conditions warrant (e.g. changes in threats or intelligence), the risk assessment process should be updated. The risk assessment process should be used to prioritize security investments.

As with the overall security and emergency management plans, the risk assessment process should be coordinated with regional security partners, including federal, state, and local governments as well as agencies with shared infrastructure (e.g., other transit agencies or rail systems). Coordination will assist grantees to leverage resources and experience for conducting risk assessments.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 9](#)

SOURCES OF INFORMATION

Ask the grantee if it has established a risk assessment process. Ask the grantee to provide documentation (e.g., risk assessments and mitigation measures) that demonstrates such a process has been established.

DETERMINATION

If the grantee has established a risk management process, no advisory comment is made. If the grantee has not established a risk management process, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to establish a risk management process and conduct risk assessments according to the established process.

20. *Does the grantee participate in information sharing networks such as the FBI's Joint Terrorism Task Force (JTTF) or other regional anti-terrorism task force and/or the Public Transportation Intelligence Sharing & Analysis Center (PT-ISAC)?*

EXPLANATION

Grantees are encouraged to participate in intelligence sharing networks such as the FBI's JTTF (if they have their own law enforcement personnel) or PT-ISAC in order to facilitate coordination on regional security matters throughout the area and share intelligence with law enforcement and other agencies. The PT-ISAC is a clearinghouse of security threats, vulnerabilities and solutions for the public transit industry. Members report and receive information through the PT-ISAC to assist them and other members in preparing for and responding to threats. APTA is the coordinator for the PT-ISAC. Other intelligence sharing networks include the DHS Homeland Security Information Network (HSIN) and the TSA's Surface Transportation Security Inspectors (STSI).

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 10](#)

SOURCES OF INFORMATION

Ask the grantee if it participates in an information sharing network such as the JTTF, PT-ISAC, or other agency to share intelligence on potential threats.

DETERMINATION

If the grantee participates in an information sharing network for the purpose of sharing intelligence on potential threats, no advisory comment is made. If the grantee does not participate in an information sharing network, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee is not participating in a regional task force, advise the grantee to join the JTTF, ST-ISAC or other regional task force in order to share intelligence on potential threats.

21. *Does the grantee have a process to ensure that security threats, concerns and incidents are reported appropriately? Is security information reported through the National Transit Database (NTD)?*

EXPLANATION

All grantees, regardless of the size of their urbanized areas, are required to report security data as part of their National Transit Database (NTD) report. Transit agencies are required to provide information by mode and type of service in the Safety & Security Module of NTD on a monthly basis. If a grantee operates nine or fewer vehicles and has been granted a waiver, it is exempt from the safety and security reporting requirements.

The NTD Safety & Security Module has three components: Major Incident Reporting, Non-Major Incident Safety, and Non-Major Incident Security reporting. Grantees are required to submit information for each component and for all modes except commuter rail. Agencies that operate commuter rail service do not have to report Major Safety Incident and Summary Safety data to FTA since these data are available from FRA. However, agencies operating commuter rail service must complete the NTD Major Security Incident and Non-Major Incident Security reports. Major Incident forms are due thirty days after the major incident occurred.

Non-Major Incident Security data include any incident not reported as a Major Incident and meeting one or more of the following criteria:

Occurrence of Part I Offenses (except homicide):

- Robbery
- Aggravated assault
- Burglary
- Larceny/theft
- Motor vehicle theft
- Arson

Arrest/Citation for Part II Offenses:

- Other assaults
- Vandalism
- Trespassing
- Fare evasion

Occurrence of Other Security Issues:

- Bomb threat
- Non-violent civil disturbance

Occurrence of Suicides and Attempts

REASON FOR THE QUESTION

[49 CFR 630](#)
[TSA/FTA Action Item No. 11](#)

SOURCES OF INFORMATION

Ask the grantee to provide a summary of its Major Incidents for the past year. Verify that this information is being reported to NTD as required (see Question 9). Examine three months of Non-Major Incident Security data and ensure that the grantee is reporting information as required.

DETERMINATION

If the grantee has submitted the security data for the past year, the grantee is not deficient. If the grantee has not submitted the required security data for the past year or is not making current-year submissions as required, the grantee is deficient in the NTD requirements [Note: If this finding is made, it is to be discussed in the NTD area of the report and the deficiency code is to be entered in the NTD area of the summary table.]

SUGGESTED CORRECTIVE ACTION

If the grantee is not reporting NTD information, direct the grantee to submit information in the NTD as required.

Facility Security and Access Control

22. *Are ID badges used for all visitors, employees, and contractors to control access to key critical facilities?*
23. *Has the grantee conducted a physical inspection of facilities to ensure that*

access is controlled and that facilities are secure?

EXPLANATION

Grantees should identify security critical facilities and assets and ensure that access to these facilities is controlled. Grantees should develop written procedures to control access to security critical facilities and areas. The use of ID badges, while not required, is encouraged, for employees, visitors, and contractors that need entry to controlled areas. As with all policies and procedures, access control procedures should be updated as conditions warrant (e.g., new threats are identified).

Grantees should conduct, monitor and document facility security inspections (e.g., perimeter/access control) on a regular basis. The frequency of such inspections should increase in response to elevation of the HSAS threat advisory level. In addition, grantees should develop and use protocols for vehicle (e.g. buses and rail cars) inspections as well as protocols for inspections of rights-of-way corresponding to HSAS threat advisory levels. In order to integrate unpredictability in the process, grantees should vary the manner in which inspections of facilities, vehicles, and rights-of-way are conducted to avoid setting discernible and exploitable patterns.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 12](#)
[TSA/FTA Action Item No. 13](#)

SOURCES OF INFORMATION

Review the grantee's policies and procedures that pertain to granting access to security critical systems and facilities.

DETERMINATION

If the grantee has policies and procedures for granting access to security critical systems and facilities, no advisory comment is made. If the grantee does not have policies and procedures for granting access to security critical systems and facilities, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to develop procedures for access control for security critical systems and facilities.

Background Investigations

24. *Have background investigations been conducted on all new front-line operations and maintenance employees?*

25. *Have criteria for background investigations been established?*

EXPLANATION

Operating personnel have a responsibility for the safety of the public that they serve. As such, it is imperative that grantees take all available precautions in the hiring process to ensure the public's safety and security. Criminal background checks can be used to identify individuals that may pose a potential threat to the public safety and security. Although the focus of background checks is on new hires, grantees are encouraged to conduct checks for all operating employees, particularly those with access to safety and/or security critical systems (e.g., revenue vehicle operations and maintenance, signal rooms, and control centers). Grantees should establish specific criteria for background checks by employee type (e.g., operator, maintenance employees, safety/security sensitive, and contractors). These criteria should be documented.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 14](#)

SOURCES OF INFORMATION

Ask the grantee if criminal background checks are performed on applicants for operating positions. If available, examine recent job applications (blank) or descriptions of application requirements. An individual's criminal background information is strictly confidential. Under no circumstances should a reviewer request to see individual records. Answers to these questions should be discussed in general terms within the context of the grantee's hiring practices.

DETERMINATION

If the grantee conducts criminal background checks on applicants for operating positions, no advisory comment is made. If criminal background checks are not conducted for new hires, an advisory comment is made. If the grantee conducts background checks for new hires, but has not done so for existing employees, no advisory comment is made. However, grantees should be encouraged to check the criminal backgrounds of all operating employees, particularly those with access to safety and/or security critical systems.

SUGGESTED CORRECTIVE ACTION

The grantee should be encouraged to implement a program to conduct criminal background checks on all applicants for operating positions and for existing operating employees.

Document Control

26. *Is access to documents of security critical systems and facilities controlled?*

27. *Does the grantee have a process for handling of and access to Sensitive Security Information (SSI)?*

EXPLANATION

Controlling access to documents of security critical systems safeguards the public, transit employees and transit assets from potential sabotage and security risks. Grantees should ensure that an appropriate level of security is provided around the plans and designs of its operating and maintenance facilities and its infrastructure (e.g., tunnels, bridges, electrical substations, etc.). Also, measures to protect documentation for security detection systems also should be tightly controlled. The grantee should develop document control procedures to ensure that such documents are identified and that a person or department is made responsible for administering the document control program.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 15](#)

[TSA/FTA Action Item No. 16](#)

SOURCES OF INFORMATION

Grantees should be asked if there are adequate document control procedures to safeguard Sensitive Security Information (SSI) and documentation of security critical systems. Policies and procedures also should be reviewed.

DETERMINATION

If the grantee has procedures to control access to documentation of security critical systems and facilities and security sensitive documents, no advisory comment is made. If the grantee does not have procedures to control access to documentation of security critical systems and facilities and security sensitive documents, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to develop procedures to control access to documentation for security critical systems and security sensitive documents.

Security Audits

28. *Has the grantee conducted periodic audits of security policies and procedures?*

EXPLANATION

It is important for grantees to audit security and emergency response procedures and to take all necessary steps to identify potential security and emergency events. In determining the likelihood of security and emergency scenarios, a grantee can take actions to reduce the chances of an event occurring or, at a minimum, lessen its effects. For example, identifying fire hazards and implementing measures to address them can reduce or even eliminate the risk of fires from potential sources. Some events, such as natural disasters, are not preventable. However, with proper planning, the effects of these events can be mitigated.

REASON FOR THE QUESTION

[TSA/FTA Action Item No. 17](#)

SOURCES OF INFORMATION

Ask the grantee what audits have been conducted. Review any reports or memoranda that contain security audit information. Review security committee meeting minutes if available. Ask the grantee if procedures and plans have been updated to reflect findings from security audits.

DETERMINATION

If the grantee has conducted an audit of its security policies and procedures, no advisory comment is made. If the grantee has not conducted an audit of its security policies and procedures, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to have audits of its security and emergency response plans performed and to update plans and procedures as necessary.

20. DRUG-FREE WORKPLACE

BASIC REQUIREMENT

FTA grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program.

Note: The provisions of the Drug-Free Workplace Act (DFWA) are separate from and in addition to the FTA Drug and Alcohol Testing Program. Specific requirements of the Drug and Alcohol Testing Program are discussed in Section 21 of this handbook.

AREAS TO BE EXAMINED

1. *Publication and distribution of a written policy on substance abuse that notifies employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace*
2. *Establishment of an ongoing, drug-free workplace*
3. *Establishment of an employee education program that informs the employees of the dangers of drug abuse and about the possible penalties for drug abuse violations.*

4. *Requirement that each employee notify the grantee within five days of any criminal drug statute conviction for a violation occurring in the workplace.*
5. *Requirement that the grantee notify FTA within ten days of receiving notification from the employee.*
6. *Requirement that within 30 days following a conviction, the grantee will impose sanctions on the employee. The sanctions include (1) appropriate personnel action or (2) the employee's satisfactory participation in a rehabilitation program.*

Note to Reviewers: The time frame for corrective actions in this area is 30 days, rather than the customary 90 days for most other areas.

REFERENCES

1. [49 CFR Part 32](#) "Governmentwide Requirements for a Drug-free Workplace (Grants)."
2. [41 USC Sections 701 et seq.](#), Drug-Free Workplace Act (DFWA) of 1988.

QUESTIONS FOR THE REVIEW

1. *Has the grantee established a drug-free workplace according to the requirements of the Drug-Free Workplace Act (DFWA)?*
2. *Does a written policy exist as prescribed in the DFWA and has it been distributed to all employees?*
3. *Does the policy:*
 - a. *Notify employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace?*
 - b. *Notify employees that they must abide by the terms of the policy statement as a condition of employment?*
 - c. *Notify employees that, if convicted of a drug statute violation occurring in the workplace, they are to report such to the employer in writing no later than five days after such a conviction?*

EXPLANATION

The answers to these questions determine whether the grantee is complying with the DFWA. The grantee is required to provide a written policy that the workplace is drug-free and that the unlawful, manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. The grantee must notify employees that they must abide by the terms of the policy statement as a condition of employment. The grantee is required to inform all employees that, if convicted of a drug statute violation occurring in the workplace, they are to report it to the employer in writing no later than five calendar days after such a conviction. The DFWA policy can be in the FTA Drug and Alcohol Testing Policy as long as it is clearly differentiated and its applicability is extended to all employees, not just safety-sensitive employees.

Note that DFWA requirement applies to employees of a recipient directly engaged in the performance of work under the grant, including both direct and

indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to that employee. The requirements do not apply to volunteers, consultants or independent contractors not on the grantee's payroll, or employees of subrecipients or contractors in covered workplaces. These requirements should not be confused with the FTA Drug and Alcohol Testing Program, which applies only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

REASON FOR THE QUESTION

49 CFR 32.200; 205; and 210

SOURCES OF INFORMATION

Minutes or resolutions of policy boards can show the adoption of a drug-free workplace policy. A copy of the written policy, memoranda, notifications on bulletin boards, employee handbooks, and letters sent to employees are all potential sources of information to show that the grantee has notified its employees. Some employers may have had employees sign statements that they have received such notification.

DETERMINATION

If the grantee has a written policy and has provided written notification to all of its employees, the grantee is not deficient. If the grantee has not implemented these requirements, the grantee is deficient. If the grantee does not have a written policy, the grantee is deficient. If the grantee has a policy, but the policy does not stipulate the specific requirements of the DFWA, the grantee has not provided written notification to its employees, has not included all employees, has not informed employees that adherence to the policy is a condition of employment, has not informed employees of the criminal drug statute violation time frames, or has other omissions in its policy, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop a written policy that includes all the required elements.

4. *Has the grantee established an ongoing drug-free awareness program?*
5. *Has the grantee informed employees of the dangers of drug abuse and any*

available drug counseling,
rehabilitation, and employee
assistance programs?

EXPLANATION

In addition to establishing and maintaining a drug-free workplace environment, a grantee must establish an ongoing drug-free awareness program that informs employees about the dangers of drug abuse, and any available drug counseling, rehabilitation, and employee assistance programs.

REASON FOR THE QUESTION

49 CFR 32.200; 215; and 220

SOURCES OF INFORMATION

The written policy, employee handbooks, brochures, posters and other information on bulletin boards, employee assistance program information, and other material distributed to employees provide the basic sources of information for answering these questions. This information can be distributed periodically and on a general basis to all employees. In some cases, grantees may rely on an employee assistance program to provide drug-free awareness information. This procedure is acceptable, provided the material includes a drug-free workplace message.

DETERMINATION

If the grantee periodically informs employees about the dangers of drug abuse in the workplace, the grantee's policy on drug-abuse, the opportunities for assistance, and the penalties, the grantee is not deficient. If the grantee has not given such information to the employees, the grantee is deficient. If the grantee has provided such information in the past (e.g., two years ago) but has not provided information on a consistent basis, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to implement an ongoing drug-free awareness program, inform employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs.

6. *Has any employee reported to the grantee a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely?*

7. *Did the grantee provide FTA timely notice of the conviction? What action was taken against personnel that reported such a conviction?*

EXPLANATION

When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, the grantee has ten calendar days within which to report the conviction to the FTA Regional Counsel. Grantees must provide the individual's position title and the grants in which the individual was involved. Further, the grantee must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

REASON FOR THE QUESTION

49 CFR 32.225

SOURCES OF INFORMATION

This question should be asked at the site visit. At the desk review, files should be examined to determine if any report of a conviction has been made by the employee to the grantee and subsequently by the grantee to FTA.

DETERMINATION

If the grantee has informed employees of the criminal drug statute violation time frames and states that no convictions have occurred and no reports have been made, the grantee is not deficient. If the grantee has reported a conviction within the proper time frames, the grantee is not deficient. If the grantee has reported a conviction, but not within the appropriate time frames, or has taken personnel actions, but not within the appropriate time frames, the grantee is deficient. If the grantee states that a conviction has occurred, but did not notify FTA or take appropriate personnel actions, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to report outstanding convictions to FTA, and/or take appropriate personnel actions within 30 days.

21. DRUG AND ALCOHOL PROGRAM

BASIC REQUIREMENT

Grantees receiving FTA funds under Capital Grant (Section 5309), Urbanized Area Formula Grant (Section 5307), or Non-Urbanized Area Formula Grant (Section 5311) Programs must have a drug and alcohol testing program in place for all safety-sensitive employees.

The FTA-mandated drug and alcohol testing program is separate from and in addition to the provisions of the Drug-Free Workplace Act (DFWA). Policy provisions and reporting requirements mandated by that Act are discussed in Section 20 of this Contractors' Guide.

AREAS TO BE EXAMINED

1. ***Policy statement on prohibited drug use and alcohol misuse in the workplace***
2. ***Types of tests and substances***
3. ***Rate of random testing***
4. ***Post-accident determinations***
5. ***Monitoring contractors and/or subrecipients with safety-sensitive employees***
6. ***Monitoring program vendors (e.g., collection sites, MROs, and SAPs).***

Note to Reviewers: The time frame for corrective actions in this area is shorter (typically 30 to 60 days), rather than the customary 90 days for most other areas.

REFERENCES

1. [49 CFR Part 655](#), "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations."
2. [49 CFR Part 40](#), "Procedures for Transportation Workplace Drug Testing Programs."

QUESTIONS FOR THE REVIEW

1. *Has a Drug and Alcohol Program compliance audit been conducted in the past two fiscal years? If yes, when was the site visit? Is an audit scheduled for the current fiscal year?*

EXPLANATION

Consistent with FTA's oversight responsibilities, FTA conducts grantee audits assessing compliance with the drug and alcohol regulations. The audit is comprehensive in nature, including a review of each agency's and selected contractor's policies, procedures, and recordkeeping. Vendors, including collection sites, third-party administrators (TPAs), MROs, and SAPs also are interviewed and a mock collection is performed.

After the audit is complete, the audit team conducts an exit interview presenting the findings, if any, to the grantee. A letter and final report documenting the deficiencies and necessary corrective actions are provided to the grantee during the exit interview. The grantee then has 90 days to take corrective actions and provide appropriate documentation to the audit team. The Office of Safety and Security issues a closeout letter once the grantee is fully in compliance.

If a Drug and Alcohol Program compliance audit has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, or 2007), a review of the Drug and Alcohol Program area is not necessary.

REASON FOR THE QUESTION

Input to triennial review

SOURCES OF INFORMATION

The reviewer should contact the regional office to determine if a Drug and Alcohol Program compliance audit is scheduled for the current year or has been conducted during the past two fiscal years.

DETERMINATION

If a Drug and Alcohol Program compliance audit has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year, a finding of "Not Reviewed" (NR) should be made.

SUGGESTED CORRECTIVE ACTION

None

2. *Does the grantee have a drug and alcohol testing program for safety-*

sensitive employees as defined by FTA? Do contractors and subcontractors with safety-sensitive employees have drug and alcohol testing programs?

EXPLANATION

Grantees and their contractors and subcontractors that have safety-sensitive employees are required to have a drug and alcohol testing program for these employees. For grantees that use volunteer drivers, the volunteers are not subject to testing unless the volunteer is required to hold a commercial driver's license (CDL) or receives remuneration in excess of expenses incurred while engaged in a safety-sensitive function. Safety-sensitive employees are employees that perform the following functions:

- operating a revenue vehicle including when not in revenue service
- operating a non-revenue vehicle when required to be operated by a holder of a Commercial Driver's License (CDL)
- controlling dispatch or movement of a revenue service vehicle
- maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the exception of:
 - all maintenance contractors of grantees that serve populations under 200,000; and
 - subcontractors of maintenance contractors.

Note: contractors or subcontractors that provide maintenance services to an operations contractor are subject to FTA's drug and alcohol testing regulations.

- carrying a firearm for security purposes.

Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations, and follow FTA regulations for its non-railroad operations. Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard's (USCG's) chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered

safety-sensitive by the USCG, since the USCG does not have a similar requirement.

Grantees that have employees, contractors, or subcontractors that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

Contractors that overhaul or rebuild vehicles, engines and parts are subject to FTA regulations, unless this work is done on an ad hoc or one-time basis. Also, vendors from whom grantees purchase or exchange rebuilt engines or other components are not subject to the regulations.

If a grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of the drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab company, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

REASON FOR THE QUESTION

49 CFR [655.3](#) and [655.4](#)

SOURCES OF INFORMATION

Reviewers should ask the grantee to provide evidence that all safety-sensitive employees (including contractor and subcontractor employees) are covered by a drug and alcohol testing program. Reviewers should request a list of all contractors and subcontractors in order to determine if the requirement applies.

DETERMINATION

If the grantee and its contractors and subcontractors have a drug and alcohol testing program for all covered employees, the grantee is not deficient. If the grantee or any of its contractors and subcontractors has not adopted an FTA program, as applicable, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and implement a drug and alcohol testing program for all covered employees within 60 days and submit evidence of

such to FTA. The grantee can include the contractor's employees in its program or require the contractor to have its own program based on FTA requirements. If a contractor is lacking a drug and alcohol testing program, direct the grantee to ensure that the contractor implements a program within 60 days and have the grantee provide evidence of such to FTA.

- 3. Does the grantee have a drug and alcohol policy as required by FTA drug and alcohol regulations? Does the policy contain the following elements: approval by governing board or other "final authority" for the agency, identity of contact person, employee categories subject to testing, prohibited behavior, testing circumstances, testing procedures, requirement that covered employees submit to testing, behavior that constitutes a refusal to submit to a test, consequences for an employee who has a verified positive test result, consequences for an employee found to have an alcohol concentration of 0.02 or greater but less than 0.04, and a policy regarding secondary testing upon receipt of a negative-dilute result from the Medical Review Officer (MRO)?*

EXPLANATION

Grantees and their contractors and subcontractors covered by [49 CFR Part 655](#) must have a drug and alcohol policy detailing the provisions of their drug and alcohol program. The policy should cover all the provisions noted above and should reflect all updates and regulation amendments.

The following checklist identifies the minimum requirements of a policy as defined by [49 CFR 655.15](#):

- Proof of policy adoption by the appropriate governing body with effective date indicated.
- Identity of the person designated by the employer to answer questions about the anti-drug and alcohol misuse program.
- Categories of employees who are subject to testing.

- Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs.
- Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing).
- Drug and alcohol testing procedures consistent with [49 CFR Part 40](#), as amended. (Note: a grantee does not have to reiterate Part 40 in the policy provided that Part 40 is referenced in the policy and is readily available to any employee who requests a copy).
- The requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations.
- Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the DOT program:

- Failure to provide breath or urine sample
- Insufficient volume without valid medical explanation
- Tampering, adulterating, or substituting specimen
- Failing to appear within a reasonable time - defined by employer
- Leaving the scene of an accident without just cause prior to submitting to a test
- Leaving collection facility prior to test completion
- Failing to permit an observed or monitored collection when required
- Failing to undergo a medical examination when required
- Failing to cooperate with any part of the testing process
- Failing to sign Step 2 of alcohol test form
- MRO verified adulterated/ substituted sample
- Once test is underway, failing to remain at the site and provided a specimen
- For pre-employment, failure to appear is NOT a refusal
- For pre-employment, failure to remain at site prior to

commencement of test is NOT a refusal

- For pre-employment, aborting the collection before the test commences is NOT a refusal
- Refusing to take a non-DOT test or to sign a non-DOT form, is not a refusal to take a DOT test.
- Description of the consequences for a covered employee who has a verified positive test result. If the system has a second chance policy, a description of the evaluation and treatment processes must be included.
- Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

In addition to the requirements listed above, the grantee's policy should include the following requirement identified in [49 CFR 40.197](#):

- If the MRO informs the agency that a *negative* drug test was dilute, the agency may (but is not required to) direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, you must not retest some employees and not others.

Some grantees may have modeled their testing programs after Federal Motor Carrier Safety Administration (FMCSA) regulations ([49 CFR Part 382](#)). FMCSA regulations do not meet FTA requirements. For example, the definition of covered employee is different. If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.

REASON FOR THE QUESTION

[49 CFR 655.15](#)
[49 CFR 40.191; 197](#)

SOURCES OF INFORMATION

The grantee's drug and alcohol policy as well as the policies of any contractors or subcontractors with safety-sensitive employees should be reviewed. If there are numerous contractors, the reviewer may choose to review a sample of contractor policies. If the grantee is covered by FRA or the USCG, the grantee should provide documentation that it complies with FRA or USCG regulations. In these situations, the grantee should confirm that there are no employees subject to FTA requirements.

DETERMINATION

If the policy contains all of the provisions mentioned in the above question, the grantee is not deficient. If the policy neglects any of the above provisions required by the regulations, the grantee is deficient. If the grantee is covered by FRA or the USCG and provides documentation that it complies with FRA or USCG regulations, the grantee is not deficient. If a grantee or its contractor has not updated its policy to reflect updates and/or amendments to the regulations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to correct the policy to bring it into compliance, obtain governing board or other "final authority" approval, and recommunicate the policy to all affected employees within 60 days. If a grantee or its contractor has not updated its policy to reflect updates and/or amendments to the regulations, instruct the grantee to update the policy; obtain approval by appropriate governing board; and recommunicate the policy to all affected employees within 60 days.

4. *Does the grantee conduct the following types of drug and alcohol testing:*

- a. *Pre-Employment (alcohol optional)*
- b. *Random*
- c. *Post-Accident*
- d. *Reasonable Suspicion*
- e. *Return to Duty*
- f. *Follow-up?*

Does the grantee test for the following substances: Marijuana, Cocaine, Opiates, Phencyclidine, Amphetamines, Alcohol?

EXPLANATION

Six types of testing are required by the drug and alcohol testing regulations. Pre-Employment (mandatory for drugs and optional for alcohol), Random, Post-Accident, and Reasonable Suspicion under certain conditions must be conducted by all grantees. If the grantee offers rehabilitation and the opportunity for an employee who tested positive to return to work, the grantee must conduct Return to Duty and Follow-up testing also.

The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol.

Note: if the grantee optionally conducts pre-employment alcohol tests of covered employees, the grantee must follow Part 40 testing procedures.

REASON FOR THE QUESTION

49 CFR 655.31, 655.33, 655.34, 655.41, 655.42, 655.43, 655.44, 655.45, 655.46, and 655.47

SOURCES OF INFORMATION

The grantee's drug and alcohol policy should indicate clearly when and under what circumstances employees will be tested for drugs and alcohol. The policies and procedures for each type of testing should be explained clearly.

DETERMINATION

If the policy includes the types of employee testing and the substances to be tested, and all tests are being conducted, the grantee is in compliance. If the policy omits the required information, tests are not being conducted, or substances are not being tested, the grantee is deficient. The reviewer is not permitted to examine specific employee records to make this determination.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to correct the policy to bring it into compliance, obtain governing board approval and recommunicate the policy to all affected employees within 60 days. The grantee must implement the testing program immediately if any requirement is lacking.

5. *Does the grantee use drug testing laboratories certified by the DHHS?*

EXPLANATION

All grantees conducting drug testing under 49 CFR Part 655 must use drug testing laboratories certified by the U.S. Department of Health and Human Services (DHHS). A second, separate laboratory may be used to test split-sample specimens. That laboratory must be DHHS certified, also. A notice listing all currently certified laboratories is published in the *Federal Register* during the first week of each month, and is updated to include laboratories that subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted. The Notice is now available on the Internet at the following website:
http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.aspx

REASON FOR THE QUESTION

49 CFR 40.81

SOURCES OF INFORMATION

The grantee should know which laboratories are being used. The use of these laboratories can be verified by reviewing the Drug Testing Custody and Control Form and/or contracts between the grantee and the laboratories. Use the most current *Federal Register* list to determine if the grantee is not deficient. This is important because laboratories routinely lose or give up their certification.

DETERMINATION

If the grantee is using laboratories on the most current list of DHHS certified laboratories, the grantee is not deficient. If the grantee's laboratories are not on that list, the grantee is deficient. Laboratory name changes, which occur often, do not revoke a laboratory's certification.

SUGGESTED CORRECTIVE ACTION

The grantee must discontinue using uncertified laboratories and contract with DHHS certified laboratories.

6. *Is the grantee testing at a random rate of 25 percent for drugs and 10 percent for alcohol?*

Please provide:

- a. *Total number of safety-sensitive employees = _____*
- b. *Number of random test periods per year = _____*
- c. *Number of test periods completed as of site visit: _____*
- d. *Actual number of random tests:*
 - (1) *for drugs = _____*
 - (2) *for alcohol = _____*

EXPLANATION

Grantees are required to conduct random tests for drugs and alcohol at rates specified by FTA. The current rate for random drug testing is set at 25 percent of the number of safety-sensitive employees annually. This is a reduction in the drug testing rate for 2005 and 2006, which was 50%. The random testing rate for alcohol is 10 percent of the number of safety-sensitive employees annually.

REASON FOR THE QUESTION

49 CFR 655.45

SOURCES OF INFORMATION

Most grantees perform random selections four times a year. To determine the appropriate number of

random tests for calendar year 2007, the reviewer should perform the following calculation:

$$T = 0.25 * (D / P) \quad (a)$$

Where:

- T = the number of required random tests;
D = the number of safety-sensitive employees to be tested; and
P = the number of random test periods per year.

For example, if a grantee selects for random tests four times per calendar year and the triennial review is conducted in July, the grantee should have made two selections (one for each quarter). If there were 60 safety-sensitive employees at the time of the first selection and 80 safety-sensitive employees at the time of the second selection, the number of random test to be conducted for drugs would be calculated as follows:

$$T = 0.25 * [(60+80)/4] \quad (b)$$
$$T = 8.75$$

In which case, the answer in (b) would be rounded up to the nearest whole number. As such, the grantee should have conducted 9 random tests for drugs.

To calculate the number of random alcohol tests, the reviewer would substitute 0.1 for 0.25 in the equation shown in (a). As such, the number of random tests for alcohol would be calculated as follows:

$$T = 0.1 * [(60+80)/4] \quad (c)$$
$$T = 3.5$$

In which case, the answer in (c) would be rounded up to the nearest whole number. As such, the grantee should have conducted 4 random tests.

DETERMINATION

If the grantee has conducted within 10 percent of the required number of random tests, the grantee is not deficient. If the number of random tests is below 90 percent of the required number, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and implement a plan to bring the random testing rate to the required level within 90 days.

7. *Does the grantee make proper post-accident determinations?*

EXPLANATION

Following a fatal accident involving a transit vehicle, grantees and/or their contractors and subcontractors with safety-sensitive employees are required to test

all surviving covered employees on duty in the vehicle at the time of the accident as well as any other covered employee whose performance may have contributed to the accident. The determination of who should be tested must be made by the employer using the best available information at the time the decision is made.

Following a nonfatal accident all covered employees operating the vehicle or deemed to have otherwise contributed to the accident must be tested unless the employer determines that an employee's performance did not contribute to the accident. The determination of who should be tested must be made by the employer using the best available information at the time the decision is made. The decision of who should and should not be tested following an accident must be documented in detail, including the decision-making process used to make the determination.

A non-fatal accident is defined by the following:

- One or more individuals is immediately transported for medical treatment away from the accident
- Any vehicle incurs disabling damage requiring a tow truck.
- A rail transit vehicle is taken out of service as a result of the accident

Note: Failure to conduct any required testing is addressed under Question 4 of this section.

REASON FOR THE QUESTION

[49 CFR 655.44](#)

SOURCES OF INFORMATION

The reviewer should request to see copies of accident reports in which post-accident testing was performed as well as copies of accident reports in which post accident testing was not performed. Minutes from accident review committee meetings should also be reviewed if these are relevant to post accident determinations.

DETERMINATION

If the grantee's contractor's and/or subcontractor's post-accident determinations are properly documented, the grantee is not deficient. If a covered employee was not tested following a nonfatal accident and the grantee cannot properly document its determination, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Within 30 days, the grantee must develop and implement a process to make proper post accident determinations including procedures to document the decision-making process.

8. *Are drug and alcohol testing program records maintained in a secure location with controlled access?*

EXPLANATION

The grantee must maintain records on program administration and the test results of individuals for whom the grantee has testing responsibility (see Question 9 for the list of required records). The records must be maintained by the grantee in a secure location with controlled access. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records. It is necessary, under this circumstance, for the grantee to maintain a duplicate set of records. It is the responsibility of the grantee to exercise and document oversight/compliance activities to ensure that records are accurate and current and that they comply fully with FTA regulations.

As an example, the grantee should maintain program records in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys.

REASON FOR THE QUESTION

[49 CFR 655.71](#)

SOURCES OF INFORMATION

The drug and alcohol testing program records must be maintained in a secure location with controlled access. The records must be at the grantee's office.

DETERMINATION

If the drug and alcohol testing program records are maintained in a secure location with controlled access, the grantee is not deficient. If the drug and alcohol testing program records are not maintained in a secure location with controlled access, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should move program records to a secure location with controlled access.

9. *Does the grantee's records retention policies for the drug and alcohol testing program meet the following FTA requirements?*

- a. *One year: records of negative drug or alcohol test results.*

- b. *Two years: records related to the collection process and employee training.*
- c. *Five years: records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, covered employee referrals to the SAP, and copies of annual MIS reports.*

EXPLANATION

The grantee must maintain specific records concerning its testing program for specific periods of time. The FTA regulations allow a grantee to maintain additional records and do not require disposal of records after the minimum retention times have been met. If the grantee uses a consortium to administer the testing program, the consortium may maintain some or all of the grantee's records. It is necessary, under this circumstance, for the grantee to maintain a duplicate set of records. It is the grantee's responsibility to exercise and document oversight/compliance activities to ensure that records are accurate and current and that they fully comply with FTA regulations.

REASON FOR THE QUESTION

[49 CFR 655.71](#)

SOURCES OF INFORMATION

Drug and alcohol testing records must be available. Procedures regarding records retention time frames should be on file.

DETERMINATION

If the records retention requirements are met, the grantee is not deficient. Failure to maintain the records or failure to retain the records for the minimum length of time will result in the grantee being deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must implement and maintain a comprehensive records retention program.

- 10. *Are employees who have a verified positive drug test result or a breath alcohol concentration of 0.04 or greater referred to a SAP for evaluation even if they are to be terminated?*

EXPLANATION

Employees who have a verified positive drug test result, a breath alcohol concentration of 0.04 or who refuse to be tested must be referred to and evaluated by a SAP even if they are to be terminated. The SAP evaluates the employee to determine if the employee is in need of assistance in resolving problems associated with prohibited drug or alcohol use. The SAP will recommend a course of action to the employee. Grantees are not required to provide rehabilitation or to offer to return the employee to duty after rehabilitation. Grantees are not required to refer to the SAP those applicants for safety-sensitive positions who fail to pass a pre-employment drug test.

REASON FOR THE QUESTION

[49 CFR 655.12 \(d\)](#)

SOURCE OF INFORMATION

The grantee's drug and alcohol testing program should specify what procedures the grantee will take when employees have a verified positive drug test result, a breath alcohol concentration of 0.04, or who refuse to be tested.

DETERMINATION

If employees who have a verified positive drug test result or a breath alcohol concentration of 0.04 or greater, or who refuse to be tested, are referred to a SAP, the grantee is not deficient. If the employees are not referred to a SAP, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must revise its drug and alcohol testing program to reflect proper referral and evaluation by a SAP and re-communicate the program to all covered employees.

- 11. *Does the grantee prepare and maintain an annual management information system (MIS) report of drug and alcohol test results?*

EXPLANATION

All grantees must prepare, maintain and submit annual reports to FTA summarizing their drug and alcohol testing program results from the previous calendar year. The standard MIS report forms that must be used are on the web at: <http://transit-safety.volpe.dot.gov/DrugAndAlcohol/DAMIS/default.asp>. The MIS forms must be used "as-is"; they may not be combined or modified by a grantee and must be filled out completely. Grantees are responsible for ensuring the annual MIS reports of their contractors with covered employees are prepared, maintained, and submitted to FTA.

The annual reports covering the prior calendar year must be submitted by March 15th to the FTA Office of Safety and Security or its designated agent. The MIS reports can also be submitted on-line at: <http://damis.dot.gov/>. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet.

REASON FOR THE QUESTION

[49 CFR 655.72](#)

SOURCES OF INFORMATION

Copies of the MIS reports must be retained for five years. The grantee should provide documentation that the MIS reports were submitted as required.

DETERMINATION

If the MIS reports are properly submitted, the grantee is not deficient. If a grantee uses contractors, an MIS report must be filed for each of those contractors. If the MIS reports for a grantee and/or contractors are not being submitted, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must prepare and submit all delinquent MIS forms.

12. *Have safety-sensitive employees received 60 minutes of training on the effects and consequences of prohibited drug use on the personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?*

EXPLANATION

A grantee is required to provide a one-time, 60-minute, training session to all safety-sensitive employees on the effects and consequences of prohibited drug use. This includes newly hired safety-sensitive employees and employees transferring to safety-sensitive positions. Training safety-sensitive employees on the effects and consequences of prohibited alcohol use is not a requirement of the FTA regulations.

REASON FOR THE QUESTION

[49 CFR 655.14](#)

SOURCES OF INFORMATION

A grantee is required to maintain records for two years for all safety-sensitive employees indicating that they have been properly trained.

DETERMINATION

If safety-sensitive employees have received 60 minutes of training, including the elements described above, the grantee is not deficient. If any safety-sensitive employee has not received 60 minutes of training or the training did not involve the required information, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide training to all safety-sensitive employees who have not been properly trained.

13. *Have supervisors who are designated to determine whether reasonable suspicion exists to require a safety-sensitive employee to undergo alcohol and/or drug testing been provided the following training: at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse? At least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use?*

EXPLANATION

Supervisors who make reasonable suspicion determinations for drug or alcohol testing of their safety-sensitive employees must receive a one-time 60-minute training session for drugs and a one-time 60-minute training session for alcohol. The training sessions may be combined for a total of at least 120 minutes and the training may be reoccurring, although it is not required.

REASON FOR THE QUESTION

[49 CFR 655.14](#)

SOURCES OF INFORMATION

Grantees are required to maintain training records for two years of supervisors who are designated to make reasonable suspicion determinations.

DETERMINATION

If all supervisors who make reasonable suspicion determinations have received the required amount of training, the grantee is not deficient. If any supervisor is making reasonable suspicion determinations and has not received the required 120 minutes of training or the training did not involve the required information, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide training to all affected supervisors who have not been trained.

14. *What efforts does the grantee make to monitor the FTA Drug and Alcohol testing program requirements of its contractors, subrecipients, or lessees with safety-sensitive employees?*

EXPLANATION

If the grantee contracts with another agency or firm (contractors, subrecipients, or lessees) to provide safety-sensitive functions, it must monitor each contractor's drug and alcohol program proactively over the course of the contract. At a minimum, it is suggested that each contractor provide the grantee a copy of its policy; employee and supervisor training documentation; name and location of the collection site, laboratory, MRO, Breath Alcohol Technician (BAT), Screening Testing Technician (STT) and Substance Abuse Professional (SAP); a description of its random selection process; quarterly management reports summarizing test results; and annual MIS reports.

Many grantees contract with service providers that already are required to comply with Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations. If this situation exists, special procedures apply and the reviewer should consult FTA Drug and Alcohol Regulation *Updates*, Spring 1996, Issue 2, for more information.

Note that there is no need to solicit information from terminated or former contractors despite the fact that they may have provided service within the previous two fiscal years.

REASON FOR THE QUESTION

[49 CFR 655.81](#)

SOURCES OF INFORMATION

At the site visit, the grantee should provide copies of documentation demonstrating that contractors, subrecipients, and lessees are properly monitored. Such documentation may include monitoring reports, site visit reports, memoranda summarizing site visits, and self-certification documentation submitted by the contractors, subrecipients, or lessees.

DETERMINATION

If the grantee has shown that it is monitoring its contractor(s) proactively, the grantee is not deficient. If the grantee has not made efforts to monitor its contractor(s), it is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to begin monitoring contractors, subrecipients, or lessees with safety-sensitive employees within 30 days.

15. *If the grantee contracts out any or all aspects of its Drug and Alcohol Program, what steps is the grantee taking to monitor vendor (e.g., collection sites, MROs) compliance with program requirements?*

EXPLANATION

If the grantee contracts out any aspects of its Drug and Alcohol Program implementation to a vendor(s), the grantee remains responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, grantees should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. The grantee should not assume that its vendors are following the correct procedures or that they are knowledgeable about FTA regulations.

REASON FOR THE QUESTION

[49 CFR 40.15](#)

SOURCES OF INFORMATION

The grantee should have a written contract with each vendor. The grantee should provide copies of contracts and monitoring reports to show that it is monitoring vendor compliance by taking such actions as making periodic mock collections, investigating reports by employees of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training, when required.

DETERMINATION

If the grantee has written contracts with vendors and can show that it is monitoring vendor operations, the grantee is not deficient. If the grantee does not have written contracts and/or it cannot show that it is monitoring vendor operations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to execute contract(s) with vendor(s) and/or begin monitoring the vendor(s) within 30 days.

22. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, creed, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving federal financial assistance from the federal transit laws.

AREAS TO BE EXAMINED

1. **EEO Program**
 - a. Designated EEO Officer
 - b. Approved EEO program and updates (every three years, or as major changes occur in the work force or in employment conditions, e.g., major layoffs)
 - c. Outreach Efforts
 - d. LEP Provisions
2. **EEO Complaints/Lawsuits**
 - a. Number and status of complaints and lawsuits alleging discrimination
 - b. Complaint handling procedures
3. **Workforce Utilization**
 - a. EEO Goals
 - b. Underutilization area

4. Title I of ADA

- a. Plan in place to ensure non-discrimination in hiring and promotion
- b. Reasonable accommodation policy and reasonable accommodations made for persons with disabilities

REFERENCES

1. [49 CFR 27](#), "Nondiscrimination On The Basis Of Disability In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance."
3. [FTA Circular 4704.1](#), "Equal Employment Opportunity Program Guidelines for Grant Recipients."
4. [Federal Register](#): December 14, 2005 (Volume 70, Number 239, pp.74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons."

QUESTIONS FOR THE REVIEW

1. *Has the grantee had, or been informed that it will have, an EEO Compliance Review by the FTA Office of Civil Rights? If yes, when was/will be the site visit?*

EXPLANATION

Consistent with FTA's oversight responsibilities, FTA has initiated a program of grantee reviews assessing compliance with the EEO regulations. EEO compliance reviews assess the implementation of the EEO program in the following areas: Policy statement; dissemination of the policy; designation of personnel responsibility; utilization analysis to identify any underutilization and/or overconcentration of minorities and women; goals and timetables to correct underutilization or overconcentration; and a monitoring and reporting system to assess EEO accomplishments.

After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to FTA within 30 days of the site visit. A letter and final report is typically issued within 60 days of the site visit. The grantee then takes corrective actions and provides appropriate documentation to the Civil Rights Officer (CRO). A closeout letter is issued once the grantee has corrected all deficiencies.

If an EEO Compliance Review has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year, (FYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was performed. If findings from the EEO review are still being monitored, or if the EEO review is pending, the triennial review will not include this area. If the EEO review is closed, the reviewer should seek guidance on whether or not to conduct the review from the CRO and the Office of Civil Rights.

REASON FOR THE QUESTION

Input to triennial review

SOURCES OF INFORMATION

Prior to the site visit, the reviewer should contact the CRO to determine if an EEO Compliance Review is scheduled or has been conducted during the past two fiscal years. The Regional Oversight Resource Plan also may contain a schedule of EEO reviews to be held during the year.

DETERMINATION

If the EEO area is not included in the review, use the finding of Not Reviewed (NR).

SUGGESTED CORRECTIVE ACTION

None

2. *Who is responsible for ensuring that equal employment opportunities (EEO) obligations are fulfilled? To whom does this individual report for EEO matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

EXPLANATION

The grantee's Chief Executive Officer (CEO) should designate an EEO Officer and adequate staff to administer the EEO program. The EEO Officer should be an executive and must report directly to the CEO. Care should be taken to avoid conflicts when assigning responsibility for administering the EEO program as a collateral duty assignment, e.g., a personnel officer may have a conflict of interest.

REASON FOR THE QUESTION

[FTA C 4704.1](#), Chapters II, Section1; Chapter III, Section 2.c

SOURCES OF INFORMATION

EEO program submissions to the CRO may include the name and reporting relationship of the EEO Officer. This information should be updated at the site visit. The CRO should be consulted for any indications of past problems with staffing. Current staff assignments should be confirmed in discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the EEO Officer can confirm responsibilities and reporting relationships.

DETERMINATION

If the grantee has designated an EEO Officer and adequate staff to administer the EEO program and there are no potential conflicts of interest with this assignment, the grantee is not deficient. A temporary staffing problem or coordination problems among responsible offices could lead to a finding of deficient. If the EEO Officer does not report directly to the CEO, the grantee may be deficient. The determination will be partially based on the size of the grantee. Large

grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles, resulting in more latitude for enforcing this requirement.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to designate EEO responsibilities properly. The grantee may need to change reporting relationships or assignment of responsibilities. The grantee should provide evidence of corrective actions to the regional office.

- 3. Has the grantee's EEO program been approved by FTA, (if the grantee employs 50 or more transit-related employees, and if the grantee received in excess of \$1 million in capital or operating assistance or in excess of \$250,000 in planning assistance in the previous federal fiscal year)? If yes, when does the approval expire? If not, provide an explanation.*

EXPLANATION

A formal EEO program is required of any grantee that both employed 50 or more transit-related employees (including temporary, full-time or part-time employees) and received in excess of \$1 million in capital or operating assistance or in excess of \$250,000 in planning assistance in the previous federal fiscal year. The program requirements detail what must be included, such as a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices and proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years.

Note: Employees are not counted in the aggregate. The requirement applies to any single employer of 50 or more transit-related employees. For example, if a city (receiving over \$1 million in FTA funds) with 10 transit-related employees contracts with a private provider who employs 40 transit-related employees, then neither the city nor the contractor is required to have a formal EEO Program. However, if the city (the grantee) exceeds both thresholds, then the grantee would be required to submit a formal EEO Program to FTA. If the contractor employs 50 or more transit-related employees, the grantee should ensure that the contractor submits a formal EEO Program to them for review and approval. In some circumstances, the CRO may require that the grantees submit the EEO program of a contractor that meets this threshold for review. If the grantee has a contractor that meets the employee threshold, seek additional guidance from the CRO on the submittal of their program.

REASON FOR THE QUESTION

FTA C 4704.1, Chapter II, Section 2 and 5; Chapter III

SOURCES OF INFORMATION

The CRO's files should include a copy of the most recently submitted program. Correspondence should indicate when it was approved by FTA and when the approval expires. The grantee's files should include a copy of the EEO Program of its contractor(s) who meet the threshold.

DETERMINATION

If a current EEO program has been submitted and approved, the grantee is not deficient. If the current EEO program has expired and the grantee has not submitted a program update or requested and received an extension for submitting a new program, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the required EEO program or program update to the regional office.

- 4. Has FTA placed any conditions on the EEO program approval? If yes, what is the status of the corrective actions?*

EXPLANATION

In reviewing the grantee's EEO program, the CRO may have issued a conditional approval and identified corrective actions that need to be taken. Corrective actions may be required in cases where FTA has determined that a grantee is deficient or is in probable deficiency with the requirements of FTA C 4704.1.

REASON FOR THE QUESTION

FTA C 4704.1, Chapters III; IV

SOURCES OF INFORMATION

The CRO's files should include documentation of any corrective action that is required of grantees. During the site visit, discuss the status of any outstanding items that require corrective action.

DETERMINATION

If the grantee has completed all corrective actions, the grantee is not deficient. If the grantee has not completed all corrective actions as scheduled, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to take steps to complete corrective actions within 60 days and provide evidence of such to the regional office.

5. *Please provide a summary of EEO complaints, both formal and informal, filed during the past three years. How are these complaints addressed?*

EXPLANATION

Employees and applicants have the right to file complaints alleging discrimination on the basis of race, color, creed, national origin, sex, age, or disability. The grantee should have sufficient staff and procedures to handle such complaints appropriately and to respond in a timely manner.

REASON FOR THE QUESTION

[FTA C 4704.1](#), Chapter III, Section 2; Chapter VI

SOURCES OF INFORMATION

Information regarding complaints may be obtained from headquarters, the CRO, or the grantee. A listing of all complaints during the past three years and the disposition of such complaints should be made available at the site visit.

DETERMINATION

If the grantee has documentation indicating that any complaints received are being addressed, the grantee is not deficient. If no complaints have been received but the grantee provides a satisfactory explanation of how complaints would be processed, the grantee is not deficient. (There is no specific requirement that there be a written complaint handling process.) If complaints indicate that the grantee is violating EEO program regulations or if the grantee does not respond to complaints, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and implement procedures for handling EEO complaints and submit these procedures to the regional office. Outstanding complaints should be addressed.

6. *If applicable, were EEO goals met during the past three years? What are the grantee's current areas of underutilization? What is the grantee doing to address this underutilization (e.g., outreach programs)?*

EXPLANATION

Goals and timetables are management tools to assist in the optimum utilization of human resources. For grantees that meet the formal program threshold, specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis. Grantees

must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Barriers can include not having employment material available for persons with limited English proficiency. Grantees should have outreach efforts to populations that are underrepresented.

REASON FOR THE QUESTION

[FTA C 4704.1](#), Chapter III, Sections 2.d; e; f; and g
[Federal Register: December 14, 2005 \(Volume 70, Number 239, pp. 74087-74100\)](#)

SOURCES OF INFORMATION

The grantee's EEO program update should contain current information on the EEO goals and areas of underutilization. At the site visit, the grantee should provide employment material, examples of actions taken to accommodate persons with disabilities and persons with LEP, and a copy of the most recent workforce utilization analysis to show progress toward meeting EEO program goals. Discussions should be held with the grantee on its current efforts to not discriminate in its employment practices (including outreach) and to resolve any situations of underutilization.

DETERMINATION

If the grantee has approved EEO goals and is making satisfactory progress toward current year goals, the grantee is not deficient. If the grantee has not met its prior year goals, but it has outreach efforts in place to address areas of underutilization, the grantee is not deficient. If prior year goals were not attained and a satisfactory explanation cannot be provided, or the grantee did not have adequate procedures including outreach, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop a plan to meet its EEO goals, including a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization, and submit the plan to the regional office. Develop and implement an outreach program and report to FTA on both efforts.

7. *Does the grantee's program ensure non-discrimination for ADA-eligible persons in terms of employment? Does the grantee have a policy and procedures for making reasonable accommodations for persons with disabilities? If requested, did the grantee make reasonable accommodations for persons with*

disabilities during the past three years, in accordance with Title I of the ADA? If so, please describe.

EXPLANATION

Grantees are required to not discriminate against persons with disabilities. Discriminatory acts include, but are not limited to, denying a person the opportunity for participation in or the benefit of a program and limiting, for a qualified handicapped person, the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Grantees are required to not discriminate in employment and to make reasonable accommodations for qualified candidates with disabilities hired by the grantee. Such accommodations could include modifications to telephone systems, computers, office furniture, etc.

REASON FOR THE QUESTION

[49 CFR 27.7](#)

[49 CFR 27.19](#)

SOURCES OF INFORMATION

At the site visit, the grantee should identify its employment program and efforts to employ persons with disabilities. They should also indicate if any persons with disabilities that have been employed in the past three years have requested reasonable accommodations. The grantee should describe reasonable accommodations made for qualified employees.

DETERMINATION

If the grantee has a program that does not discriminate, employs persons with disabilities, and makes reasonable accommodations, the grantee is not deficient. If the grantee has no process for making reasonable accommodations for persons with disabilities, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop a process for making reasonable accommodations for persons with disabilities and submit evidence of such to the CRO.

23. ITS ARCHITECTURE

BASIC REQUIREMENT

Intelligent Transportation Systems (ITS) projects funded by the Highway Trust Fund and the Mass Transit Account must conform to the [National ITS Architecture](#), as well as to United States Department of Transportation (USDOT) adopted ITS Standards.

AREAS TO BE EXAMINED

1. *As of April 8, 2005, regions implementing ITS projects were required to have a Regional ITS Architecture in place. Regions not currently implementing ITS projects must develop a Regional ITS Architecture within four years from the date their first ITS project advances to final design.*
2. *ITS projects funded by the Highway Trust Fund and the Mass Transit Fund must conform to a locally adopted Regional ITS Architecture.*
3. *If a major ITS project is the first project in a region, then it should move forward based on a project level architecture that clearly reflects consistency with the National ITS Architecture. The project must be integrated with the locally approved Regional ITS Architecture.*
4. *ITS projects must use USDOT adopted ITS standards as appropriate. To date, the USDOT has not adopted any ITS standards. The USDOT encourages the use of ITS standards approved by standards development organizations.*

REFERENCES

1. [TEA-21, PL 105-178](#), Section 5206(e).
2. [23 USC Section 502](#), Surface Transportation Research.
3. [Federal Register: January 2, 2001 \(Volume 66, No. 5, pp. 1455-1459\)](#) "FTA National Architecture Policy on Transit Projects."

QUESTIONS FOR THE REVIEW

1. *Is the grantee attempting to deploy ITS technologies?*

EXPLANATION

FTA grantees may deploy many types of ITS technologies and projects. An ITS project is defined in the ITS Architecture Policy Guidance as “any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the [National ITS Architecture](#).” Thus, if the project includes ITS components that implement any of the defined User Services it is considered an “ITS Project.” There are currently 33 User Services, organized in seven User Service Bundles, represented within the [National ITS Architecture](#). The User Services most likely to be proposed/implemented by an FTA grantee include:

- Travel and Traffic Management
 - Pre-Trip Travel Information
 - Route Guidance
 - Ride Matching and Reservation
 - Traffic Control
 - Highway Rail Intersection
- Public Transportation Management
 - Public Transportation Management
 - En-Route Transit Information
 - Personalized Public Transit
 - Public Travel Security
- Electronic Payment
 - Electronic Payment Services
- Emergency Management
 - Emergency Notification and Personal Security
- Information Management
 - Archived Data User Services

Examples of systems that may be implemented as part of transit ITS Projects are:

- **Pre-trip traveler information systems** through phone, 511 systems, kiosks, the web, and other electronic channels that help provide route and fare information or itinerary planning
- **En-route transit information** through 511 systems, variable message signs, enunciators, or personal devices that provide next vehicle and stop information, or route and itinerary planning

- **Multi-modal traveler information systems** that integrate transit information with highway, rail, and other options
- **Personalized public transit** for route deviation, flex route, and paratransit services
- **Transit management systems and management centers** using AVL, computer aided dispatch, GIS, and surveillance of network conditions to improve the travel time and reliability of the transit system, and provide for transfer connection protection
- **Transit Signal Priority** to improve the travel time and reliability of the transit vehicles operating in mixed flow, or crossing major arterials at grade
- **Carpool Ride Matching & Reservation systems**
- **Electronic payment systems** both at transit centers and stations and on vehicles that include both fare payment and the ability to pay for other services (parking or toll charges)
- **Communications systems** that provide the backbone for the vehicle and wayside communication to each other and to the transportation management center
- **Automatic Passenger Counters** for performance monitoring and service planning
- **Vehicle and system monitoring** that track system functions and provides warning of likely malfunction or maintenance needs
- **Vehicle, stop, or wayside surveillance** to provide for passenger, driver, and system safety and security. Silent alarms to notify authorities of an incident or emergency
- **Highway/Rail Intersection Protection** to improve the safety of rail-transit operations and buses that travel through rail intersections
- **Collision warning/avoidance, vision enhancement, and driver assistance** to ensure safe transit operations in increasingly congested conditions, or limited rights of way
- **Data archiving and information management systems** to store and analyze the real time system data and assist in service planning, system monitoring, and other decisions.

Examples of projects that are not ITS related include acquisitions of microcomputer equipment and software for essential business processes (e.g., word processing, spreadsheet and database applications). ITS projects are those that contribute to the provision of one or more ITS user services as described above.

REASON FOR THE QUESTION

Determine whether to pursue Questions 2 to 4
Input to Risk Assessment

SOURCES OF INFORMATION

The grantee should be able to provide a description(s) of ITS technology deployment projects. These may be available from feasibility studies, work statements in RFPs for project implementation, the TIP, or the STIP.

DETERMINATION

No determination is made. If the grantee is implementing an ITS Project/deploying ITS technologies, ask questions 2 to 4.

SUGGESTED CORRECTIVE ACTION

None

2. *Are the grantee's ITS projects and programs part of a locally approved Regional ITS Architecture?*
3. *Have all ITS projects awarded since April 8, 2005 been a part of the locally approved Regional ITS Architecture?*
4. *Has the grantee established a process for the systems engineering analysis of ITS projects? Has it applied the process?*

EXPLANATION

The ITS Architecture Policy provides flexibility to local areas in determining what agencies or organizations take the lead in developing the Regional ITS Architecture. The Policy requires that the regional ITS Architecture must be part of the local planning process and be consistent with and reflected in the Transportation Plan, TIP, and STIP. The FTA grantee is not likely to be the lead agency for the development of the Regional ITS Architecture. The lead agency may be the MPO or the State Department of Transportation. The grantee needs to be an active participant in the Regional ITS Architecture if the grantee is implementing ITS projects. The grantee's ITS projects must be included in the locally approved Regional ITS Architecture.

FTA grantees are required to follow a Systems Engineering Analysis in determining the final design of an ITS project. The process should include a number of alternatives that achieve the same objective and consider the technical merits, costs and value for the total life-cycle of each alternative. More information on the systems engineering process can be found online at: www.iteris.com/itsarch/index.htm and www.floridait.com/SEMP/Index.htm.

REASON FOR THE QUESTION

PL 105-178 Section 5206(e)

Federal Register: January 2, 2001 (Volume 66, No. 5, pp. 1455-1459)

SOURCES OF INFORMATION

The grantee should provide documentation showing that ITS projects are included in the locally approved Regional ITS Architecture. Some Regional ITS Architectures are available on the Internet.

The grantee should be able to provide a description of the process for the Systems Engineering Analysis of ITS projects. If the process was applied to an ITS project(s), the grantee should be able to provide a report, a Request for Proposal for a system, procurement documents, or analysis describing the results.

DETERMINATION

If the grantee has or is implementing ITS technology projects and the projects are included in the Regional ITS Architecture, the grantee is not deficient. If the ITS projects are not included in the Regional ITS Architecture, the grantee is deficient. If the grantee has established a process for the Systems Engineering Analysis of ITS projects, and it has applied the process to its ITS projects, the grantee is not deficient. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to establish a plan to have its ITS projects included in the Regional ITS architecture. Direct the grantee to develop and apply a process for the Systems Engineering Analysis of ITS projects.