



State Management Review Handbook

FY2007

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

SUMMARY OF SUBSTANTIVE CHANGES

PROGRAM MANAGEMENT (1)

- “Specific Requirement” – Expanded the description of the State Management Plan
- Question #1 and all attendant sections – Incorporate into Question #2 and Delete
- Question #5 and all attendant sections – Delete (for Section 5310, incorporated into Selection & Eligibility Question #4)

GRANTS ADMINISTRATION (2)

- “Specific Requirements”, “Annual Program Status Report and Financial Status Report” – Changed wording to be more consistent with C 9040.1E and C 9070.1E
- Question #1 “Explanation” paragraph #1 – Delete sentence #2
- Question #1 “Explanation” last paragraph – Delete
- Question #1 “Sources of Information” – Delete sentence #2
- Question #1 “Determination” – Delete sentence #1
- Question #4 “Sources of Information” – change “regional office” to “TEAM”
- Question #5, all dates changed to October 31, to be consistent with circulars.
- Question #5 “Sources of Information” paragraph #1, sentence #2 – Delete “At the regional office”
- Question #5 “Suggested Corrective Action” paragraph #1, sentence #1 – Delete “to the regional office” & Add “in TEAM”
- Question #5 “Documentation” – Delete last sentence
- Question #6 “Explanation” paragraph #4 – Delete entire paragraph, starting “With implementation...”
- Question #7 and all attendant sections – Delete

SELECTION & ELIGIBILITY (3)

- “Specific Requirements”, “Eligible Assistance Categories”, 4th Bullet – add “coordination activities” after “general administrative expenses”
- Question #5 and all attendant sections – Delete
- Question #7 – Add “and ensure that subrecipients propose general public transportation”
- Question #8 “Sources of Information” paragraph #2, sentence #1 – Change “in the FTA regional office grant files” to “that are part of the TEAM application”
- Question #8 “Sources of Information” paragraph #2, sentence #2 – Change “the grant files for all active grants” to “the active grants”
- Question #12 – Delete “only eligible” & emphasize “open to general public”

FINANCIAL MANAGEMENT (4)

- All References to OMB C. A-128 are changed to A-133
- All references to “share” are changed to “match”
- Question #1 and all attendant sections – Delete
- Question #2, “Explanation” para #1, sent #2 – Delete “or transit”
- Question #2, “Explanation” para #2, bullet #1 – Add two sentences, further description
- Question #2, “Explanation”, para #3 sent #3 – add “with no local match” after “including planning”
- Question #5 “Explanation”, sent #2 – Add “without requirement for local match”
- Question #5 “Explanation” – Add sentence about local match
- Question #5 “Explanation” para #3 – Delete

- Question #5 “Explanation” para #4 sent #3 – Add “with no local match”
- Question #5 “Explanation” para #5 – Major revision of paragraph
- Question #6 – Add question “How does the State ensure that subrecipients comply with FTA requirements related to indirect costs?”
- Question #6 “Explanation”, para #2 - Add sentence “Indirect costs charged by subrecipients must also be supported by an indirect cost allocation plan approved by the State agency”
- Question #6 “Sources of Information”, para #2 – Add sentence “Inquire whether subrecipients charge indirect administrative costs and, if so, determine if an approved cost allocation plan exists. Obtain a copy of the State-approved plan”
- Question #6 “Determination” – Add sentence “If the subrecipient charges indirect costs without an approved cost allocation plan, the State is deficient”
- Question #6 “Suggested Corrective Action”, sent #1 – Add “or a subrecipient” after “state”
- Question #6 “ Documentation”, para #1, sent #1 – Add “or its subrecipients” after “state”
- Question #6 “ Documentation”, para #1, sent #2 – Add “State”
- Question #6 “ Documentation”, para #1 – Add sentence “If subrecipients are charging indirect costs and cost allocation plans exist, indicate the date of the plans and date of state approval of the plans”
- Question #12 “Explanation”, para #2 – Wholesale changes for a state’s reporting requirements
- Question #12 “Sources of Information”, para #2 – Change “not deficient” to “in compliance”
- Question #12 “Documentation” para #1, sent #1 – Change “should” to “may”
- Question #13, “Sources of Information”, sent #1 – Change “may” to “must”
- Question #13, “Explanation”, sent #1 – Add “receiving over \$500,000 in total Federal assistance” between “subrecipients” and “have”.
- Question #14 and all attendant sections – Delete
- Question #16 and all attendant sections – Delete

INTERCITY BUS (5)

- Specific Requirements “State Programming of Funds” – Delete bullets specifying ramping up of percentages by year

RTAP (6)

- Questions #1, 3, 5, & 7 and all attendant sections – Delete

SATISFACTORY CONTINUING CONTROL (7)

- No substantive changes made

MAINTENANCE (8)

- Question #1, “Explanation”, para #1, sent #1 – Add “(49 CFR 18.32(b))” after “common rule”
- Question #3, “Documentation” para #1, sent #3 – Delete “preventative” before “maintenance”

PROCUREMENT (9)

- All references to contracts exceeding 5 years are changed to show only rolling stock contracts exceeding 5 years
- “Basic Requirement” – Change wording to be consistent with C. 9040.1E

- “Basic Requirement”, para #2, delete last sentence: “All a state must follow state requirements.”
- “Specific Requirements” – “Certifications”, sent #1 – Delete “annual” and Add “as part of the Annual Certification and Assurance Process”
- “Specific Requirements” “Lease of Equipment”, sent #1 – Place period after “5311” and change “is” to “must be demonstrated to be” after “leasing”
- “Specific Requirements, “Bus Testing”, para #1 – Delete “certify that, before final acceptance” Add “ensure before Federal funds can be expended for the purchase”
- “Specific Requirements, “Bus Testing”, para #1, bullet #2 – Add “or subrecipient” after “the state”
- Question #2 “Explanation” para#2, sent #2 – Change “Best Transit Acquisition Practices Manual (currently in draft) to “Best Practices Procurement Manual”
- Question #6 – Add “Do these governmental subrecipients comply with the requirements?”
- Question #7 and all attendant sections – Delete
- Question #8 “Explanation”, sent #1 – Add “shown to be” between “is” and “more”
- Question #9 “Explanation”, para #1 - Change “final acceptance of the first vehicle” to “the expenditure of Federal funds”
- Question #9 “Explanation” last para – adjust date of list
- Question #9 “Determination”, para #2, last sent – Change “accepted buses or expended” to “allowed a subrecipient to expend”
- Question #10 and all attendant sections – Delete
- Question #11 and all attendant sections – Delete

BUY AMERICA (10)

- “Basic Requirement” – Change wording to be consistent with C. 9040.1E

DEBARMENT/SUSPENSION (11)

- “Basic Requirement”, para #3 - Change “file a certification” to “certify as part of the Annual Certification and Assurance Process”
- “Specific Requirements”, “Certification regarding debarment” para #1 - Add (\$100,000) after “threshold”
- “Specific Requirement”, “Continuing Duty”, last sent – Add “such” before “notice” (twice)

LOBBYING (12)

No substantive changes

PLANNING AND COORDINATION (13)

- Question #1 and all attendant sections – Delete
- Question #3, “Determination”, para #1- Reword. The state is not deficient if it provides MPOs with Section 5310 and 5311 funding information, and in metropolitan planning areas, the state considers funding only for those projects that are included in the MPO TIP
- Question #3, “Suggested Corrective Action” para #1 – Replace with “The state must develop and implement procedures for giving funding consideration only to metropolitan planning area projects that are included in the MPO TIP. The state must send documentation of the procedures to the FTA regional office.”
- Question #4 and all attendant sections – Delete

- Question #6, “Explanation”, para #1 – Add language for states requiring subrecipients’ coordination with local transit providers

ADA (14)

No substantive changes made.

CIVIL RIGHTS (15)

- Question #8 and all attendant sections – Delete
- Question #14 and all attendant sections – Delete

DRUG & ALCOHOL PROGRAM / DRUG-FREE WORKPLACE (16)

- “Basic Requirement” para #2, sent #2 – Delete
- “Basic Requirement” para #2, sent #3 – Add “also” after must
- “Basic Requirement” para #2, last sent – Change “FHWA” to “FMCSA”
- “Specific Requirement”, “Prevention of Prohibited”, para #1 – Add “and alcohol misuse” after “drug use”
- Question #3 and all attendant sections – Delete
- Question #4 and all attendant sections – Delete

CHARTER BUS (17)

- “Specific Requirements”, “Charter Bus Agreement” sent #3 – Delete “Categories VII and XIV respectively for FY 1995”

SCHOOL BUS (18)

- Question #4, “Determination”, sent #3 – Delete “does not qualify, or”
- Question #4, “Suggested Corrective Action” - Change “does not qualify for one of the statutory exemptions” to “has not been approved by the Administrator”

RAIL FIXED GUIDEWAY SAFETY (19)

- “Basic Requirement”, para #4 - Add “Arkansas”, “Wisconsin” and “Minnesota” to the state list.
- Question #2, “Determination” – Change “This question is for informational purposes only and does not result in a finding in 1996.” to “No determination is made.” (Obsolete)
- Question #3, “Determination” – Delete (obsolete). Change to “No determination is made.”

Global Changes:

- Updated or removed obsolete dates.
- Changed Determination terms from “compliant” to “not deficient.”
- Determinations requiring “follow-up” have been deleted.
- Made all references more specific.
- Changed “annual FTA Assistance Programs Certification and Assurance” to “FTA’s Annual Certifications and Assurances”.

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1. PROGRAM MANAGEMENT

BASIC REQUIREMENT

The governor designates the state agency(ies) responsible for administering the Section 5310 and Section 5311 programs. The state must be able to manage the Section 5310 and Section 5311 programs in accordance with the grant application, grant agreement, and all applicable laws and regulations using sound management practices.

The state must submit a state management plan to FTA documenting its policies and procedures for administering the Section 5310 and Section 5311 programs. The state management plan facilitates FTA oversight by this documentation. The plan serves primarily as the basis for state management reviews and as public information on the state's administration of the programs.

The state must enter into an agreement with each local subrecipient stating the terms and conditions of assistance. The state is responsible for passing through and ensuring subrecipients' compliance with applicable Federal requirements.

SPECIFIC REQUIREMENTS

Designation of State Agency(ies) Responsible for Section 5310 and 5311 Programs

[FTA C. 9070.1E Ch I, sec 3 & Ch II, sec 1; FTA C. 9040.1E Ch I, sec 3 & Ch III, sec 1]

The governor of each state designates a state agency(ies) to administer the Section 5310 and 5311 programs.

Technical Capacity

[FTA C. 9040.1E Ch III, sec 1; FTA C. 9070.1E Ch II, sec 1; FTA Master Agreement Subsection 2a(3)]

The state and all local subrecipients must have the requisite technical, fiscal, managerial, and legal capability to carry out the Section 5310 and 5311 programs and to receive and disburse Federal funds.

State Management Plan

[FTA C. 9040.1E Ch XI, sec 1-3,5; FTA C. 9070.1E Ch VII, sec 1-2,4]

The state is required to have an approved state management plan for the Section 5310 and 5311 programs on file in the FTA regional office. The state can file separate plans for each program. (However, in this document, the word "plan" will be used in all cases.) The state must update the plan regularly to incorporate changes in program management or new requirements.

Minimally, this document must include the state program's objectives, policies, procedures, and administrative requirements. It should be considered the heart of the program. The plan primary purposes are to serve as the basis for FTA to perform state-level management reviews and to provide public information on the state's administration of the programs. It may also be used internally by the state as a program guide for local project applicants.

Subrecipients

[FTA Master Agreement Subsection 2d(2)]

The state must ensure that subrecipients are aware of requirements imposed on them by Federal statutes and regulations.

Subrecipients' Compliance with Federal Requirements

[FTA C. 9040.1E Ch I, sec 3;

FTA C. 9070.1E Ch I, sec 3]

The state is responsible for ensuring compliance with Federal requirements by all local subrecipients.

Subrecipient Agreement

[FTA Master Agreement, Subsection 2e(2)(b)]

Prior to expending Federal funds on a local project, the state must enter into an agreement with the local subrecipient stating the terms and conditions of assistance.

QUESTIONS FOR THE REVIEW

1. *Which agency (ies) has the governor designated for administering the Section 5310 and 5311 programs? What division within the agency (ies) is responsible for administering the Section 5310 programs? The Section 5311 programs? Who is the person(s) with day-to-day management responsibility? What is the organizational structure and staffing of the division? What are the major functions of the division(s)? What other agencies or divisions support the Section 5310 and 5311 programs?*

EXPLANATION

The governor of each state designates the state agency (ies) with the principal authority and responsibility for administering the Section 5310 and Section 5311 programs. The designation remains in effect until changed by the governor by official notice of redesignation to the FTA Regional Administrator.

The designated agency (ies) must have the requisite legal, financial and management capabilities to receive and administer Federal funds under the Section 5310 and 5311 programs.

The following questions identify how each agency has organized the division(s) to administer and manage the Section 5310 and 5311 programs and how the division(s) fits within the overall agency organization.

The division(s) must have the staffing resources necessary to carry out its

responsibilities in accordance with FTA requirements and to ensure subrecipients' compliance with Federal requirements. Most states also provide some level of state funding for rural transportation and special service for the elderly and persons with disabilities. The organizational unit administering the Federal programs generally administers these state programs. The division(s) may also perform functions related to urban transportation. An understanding of the major functions of the division is necessary to draw any conclusions about the organizational structure and staffing levels necessary to carry out the Section 5310 and 5311 programs.

A comprehensive organizational analysis is clearly beyond the scope of the state management review. The organizational and staffing elements are considered in conjunction with other aspects of program management to determine whether the state is devoting the necessary resources to carry out its responsibilities in accordance with FTA requirements, e.g., providing technical assistance to subrecipients, monitoring subrecipients' compliance with Federal requirements, and conducting routine grant administrative functions in a timely manner.

SOURCES OF INFORMATION

Discuss the state's organization and staffing levels with FTA regional office staff at the desk review.

On site, obtain copies of the agency's overall organization chart and a more detailed organization chart for the specific division within the agency that is responsible for the Section 5310 and/or 5311 programs. Ask

the state to explain the organizational structure, identify current and authorized positions within the division, and describe the principal responsibilities of each position. Identify other departments or divisions within each agency that provide support services for administration of the Section 5310 and 5311 programs, such as accounting, human resources, and civil rights.

Identify the major functions and programs administered by the division, including Federal and state programs.

DETERMINATION

Review of the division's organizational structure and staffing levels does not by itself lead to a finding. The division's organization, functions, and staffing levels, when considered with findings in other aspects of program management (the state's technical assistance, monitoring, and routine administrative activities), support a determination whether the state is applying the resources necessary to manage the Section 5310 and 5311 programs in accordance with FTA requirements (see question 8).

If the state staff devoted to the Section 5310 and 5311 programs is small and the state has findings in one or more areas of program management or grants administration (e.g., inadequate monitoring of subrecipients, late or incomplete submission of required information to FTA, ineffective grant management procedures, etc.), the state may not be applying adequate resources to the programs and may be found in non-compliance (see question 8).

SUGGESTED CORRECTIVE ACTION

Refer to question 8.

DOCUMENTATION

Include in the review file an organization chart of the agency and an organization chart of the division that is responsible for the Section 5310 and 5311 programs. Note the name and title of the person(s) responsible for each program. Document the current and authorized staffing levels within the division and the major responsibilities of each position. Identify significant trends in staffing levels over the last several years.

Document the major functions of the division, related to the Section 5310 and 5311 programs and other programs. Document other departments or divisions that provide support to the programs, i.e., central procurement, accounting.

- 2. Has the state submitted a state management plan for the Section 5310 and 5311 programs? Does the state management plan address all required areas?***

EXPLANATION

Each state is required to have an approved state management plan for the Section 5310 and Section 5311 programs on file with the FTA regional office. The state management plan documents the state's policies and procedures for administering the Section 5310 and 5311 programs. FTA gives each state the maximum discretion permitted by law in designing and managing Section 5310 and Section 5311 programs to meet rural

public transportation needs and the special needs of elderly persons and persons with disabilities. The state develops program standards, criteria, procedures, and policies for the programs.

The state management plan is intended to facilitate state management as well as FTA oversight of the programs. The state management plan forms the basis for FTA state-level management reviews, provides public information on the state's administration of the program, and may be used by the state as a program guide for local applicants. The state management plan should be developed in sufficient detail to meet these objectives. While FTA does not prescribe a format for the state management plan, it does require that specific areas be covered for each program.

FTA made submission of a state management plan for the Section 5311 program a requirement in 1983 when it assumed responsibility for the program from the Federal Highway Administration. FTA required each state to submit a revised state management plan for the Section 5311 program by May 1993, six months after FTA issued revised guidance for the Section 5311 program in Circular 9040.1E.

FTA required each state to submit state management plans for the Section 5310 program by June 1993, six months after issuance of program guidance in Circular 9070.1E.

The state may develop separate state management plans for the Section 5310 and 5311 programs or combined state management plans covering both programs. Parallels in the Section 5310 and 5311

programs make it desirable for the state to consider both resources and plan for their use in a complementary way. Many of the policies and procedures implemented by the state apply to both programs.

Each FTA regional office has interpreted its responsibility to "approve" the state management plans. Some regions have taken a more active approach than others. Consequently, the nature and extent of the regional office's review and approval of the state management plans will vary.

SOURCES OF INFORMATION

Obtain and review copies of the state management plan from the regional office in advance of the desk review.

At the desk review, discuss the state management plan with regional office staff to determine their approach for reviewing and approving plans and any concerns or issues they have identified with the plan.

On site, discuss the state management plan with state staff. As the review proceeds through the remaining review areas, note any policies or procedures that should be addressed in the state management plan.

DETERMINATION

If the state has a current state management plan on file with the regional office, covering all the required areas in sufficient detail, it is not deficient with the requirement.

If the state does not have a current state management plan on file, it is deficient.

If the state management plan does not address each required area or does not provide sufficient detail, the state may be compliant with follow-up action required (or deficient based on the nature of the missing information). Specific deficiencies are determined throughout the review via discussion of requirements in each review area.

SUGGESTED CORRECTIVE ACTION

If the state has not yet submitted the state management plan for the Section 5310 or 5311 programs, it must develop and submit to the regional office the state management plan.

If the state management plan is incomplete or does not provide sufficient detail, the state must submit a revised plan correcting specific deficiencies to the regional office.

DOCUMENTATION

Indicate whether the state has submitted individual state management plans for the Section 5310 and 5311 programs or a single plan covering both programs. Note the date of submission of the plan. Check off the required areas for each program that are covered by the state management plan. Note areas that may not be covered in sufficient detail.

Include copies of the state management plans in the review file.

3. Is the state administering all aspects of its program in accordance with the state management plan?

EXPLANATION

Each state is required to have an approved state management plan on file with the FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The state should seek public comment in making significant revisions to the state management plan. Opportunity for comment should be given, at a minimum, to potential local subrecipients, potential service providers, other state agencies and representatives of other funding sources, and any relevant state association or professional organization.

SOURCES OF INFORMATION

Review the state management plan and note in each section of the review workbook the pertinent policies and procedures documented in the state management plan. During the on-site review of each area, discuss and confirm the policies and procedures documented in the state management plan. Compare the information provided in the state management plan with that obtained through discussion with state staff.

Ask the state if the state management plans are up-to-date and reflect current practice in each area.

DETERMINATION

Determination of compliance is based on the state's direct response to this question as well as comparison of the policies and procedures documented in the state management plan with the responses of state staff to specific questions in each review

area. This determination can only be made after completing the review of each area.

If the state management plan reflects actual practice, the state is not deficient. If there are discrepancies between the state management plan and actual policies and procedures, the state is not deficient with follow-up action required.

SUGGESTED CORRECTIVE ACTION

If the state management plan does not reflect current practice in all areas, the state must submit a revised state management plan to the regional office. If substantial revisions are required, the state must seek public comment on the revised state management plan.

DOCUMENTATION

In each review area, document the pertinent policies and procedures identified in the state management plan and described by state staff on site. Summarize discrepancies between the state management plan and actual policies and procedures under program management.

- 4. Has the state entered into a written agreement with each Section 5310 and 5311 subrecipient stating the terms and conditions of assistance?***

EXPLANATION

FTA obligates Section 5310 and 5311 funds based on the program of projects in the statewide grant applications. Before Federal funds can be expended on individual local projects the state must certify to FTA that

the local recipient has met all statutory and program requirements (see Grants Administration, question 2) and must enter into a written agreement with the local subrecipient. The state assures FTA that it will enter into a written agreement with each local subrecipient prior to the expenditure of Federal funds on a local project as part of the FTA's Annual Certifications and Assurances.

The written agreement must state the terms and conditions of assistance by which the project will be undertaken and completed. The written agreement provides a mechanism for the state to pass through applicable Federal and state requirements to subrecipients. The Federally required clauses that the state is required to incorporate in subrecipient agreements (see Competitive Procurement) reference some of the basic Federal requirements that flow through to subrecipients. The state may use the standard agreement as a means to provide more specific detail on specific requirements and how the state will monitor subrecipients' compliance.

The state generally has developed separate subrecipient agreements for the Section 5310 and 5311 programs, considering the unique requirements of each. Some states have separate operating and capital agreements for assistance under Section 5311.

SOURCES OF INFORMATION

Obtain and review the state's standard Section 5310 and 5311 subrecipient agreements prior to the site visit. On site, discuss with state staff. Review the

executed agreements for a sample of subrecipients.

DETERMINATION

The state is not deficient if it enters into a written agreement with each Section 5310 and 5311 subrecipient prior to the expenditure of funds on a local project within the program of projects. If the state has not entered into a written agreement with each local subrecipient, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop standard subrecipient agreements for the Section 5310 and 5311 programs and implement procedures to execute a written agreement with each local subrecipient prior to the expenditure of Federal funds on a local project. The state must submit the new standard agreement and procedures to the FTA regional office.

DOCUMENTATION

Document the major elements of the Section 5310 and 5311 subrecipient agreements. Under the individual review areas, indicate relevant policies or requirements documented and certifications obtained in the standard agreements.

5. *How does the state provide technical assistance to subrecipients?*

EXPLANATION

The state is responsible for providing appropriate technical assistance to local

subrecipients. Under Section 5311, technical assistance may include project planning, program development, development of vehicle and equipment specifications, management development, coordination of public transportation programs, and research to promote effective delivery of services.

The state should provide technical assistance to subrecipients on Federal requirements, particularly new Federal requirements. Some states require applicants/subrecipients to participate in program orientation sessions, which cover Federal and state requirements. Some states provide detailed guidance to subrecipients on specific requirements.

Technical assistance may be provided through orientations, informal conversations, formal correspondence, on site performance reviews, conferences, etc. Many states conduct annual or biannual statewide conferences, frequently in conjunction with the state transit association. The state frequently provides technical assistance on new Federal requirements through the statewide meetings. State activities directly related to administration of the Section 5311 program should be funded through the state's administrative expenses (up to 15 percent for Section 5311). Other technical assistance activities may be funded through the RTAP program.

The state should document in its state management plan the resources and technical and management assistance it makes available to local subrecipients.

SOURCES OF INFORMATION

Review the state management plan for documentation of technical assistance activities and delivery approaches. On site, discuss the state's technical assistance activities with state staff and how they are funded: as state administrative expenses or under RTAP.

Inquire how the state has provided technical assistance to subrecipients for new or revised Federal requirements.

DETERMINATION

Generally this question would not result in a finding. If however, the state is inappropriately charging activities directly related to administration of the Section 5311 program to RTAP rather than state administrative expenses, follow up action may be required to redirect charges to state administration.

SUGGESTED CORRECTIVE ACTION

The state should charge activities directly related to administration of the Section 5311 program to state administration.

DOCUMENTATION

Document the technical assistance activities that the state conducts and charges to state administrative expenses.

6. *How does the state monitor subrecipients' compliance with Federal and state program requirements?*

EXPLANATION

Many Federal requirements flow through the state to local subrecipients. The designated state agency is responsible for ensuring that subrecipients are aware of the requirements imposed on them by Federal statute and regulation and for ensuring that subrecipients comply with these requirements. Before expending any Federal funds on local projects, the state must certify to FTA that local subrecipients have met all statutory and program requirements (see Grants Administration). The state must obtain sufficient documentation from subrecipients to support the certifications to FTA.

The state must have a system in place for informing subrecipients of applicable Federal requirements. The state management plan can serve as a program guide for local project subrecipients. The state's standard agreements with subrecipients should identify major Federal requirements applicable to the subrecipient. In addition to the standard agreements, the state sometimes provides more detailed guidance for specific activities, such as the procurement of vehicles, in separate documentation. Some states require applicants/subrecipients to participate in program orientation sessions.

The state must have an ongoing system in place to ensure that subrecipients adhere to Federal requirements. While FTA does not prescribe specific monitoring activities for ensuring subrecipients' compliance, it does expect each state to look beyond subrecipients' certifications and assurances of compliance with specific requirements. FTA relies on each state to develop and implement effective systems for monitoring and ensuring subrecipients' compliance with statutory and program requirements.

The issue of monitoring subrecipients' compliance with Federal requirements is a continuing, critical theme throughout the state management review. In each review area, the state is asked to provide information on the specific mechanisms in place for monitoring subrecipients' compliance with the Federal requirements in that area. The examination under program management takes an overall look at the systems in place for monitoring subrecipients' compliance with a range of Federal requirements. Appropriate systems may include:

- # Periodic reporting requirements
- # Periodic on-site reviews
- # Inspections of vehicles
- # Mandatory attendance by subrecipients at meetings

While not prescribed, previous reviews have found that the states with the most effective monitoring systems generally conduct site visits on a regular basis. Site visits allow the state to see the programs as they are implemented by the subrecipients and provide a level of assurance that specific requirements are being met that is not possible without direct observation.

It is not necessary for the state to perform all of its monitoring functions in-house. Some states, for example, use consultants or outside contractors to conduct inspections of subrecipients' vehicles.

Many requirements apply to both the Section 5310 and 5311 programs and the

state's systems for monitoring Section 5310 and 5311 subrecipients may overlap in some areas. Frequently, however, some states have implemented monitoring systems that reflect the different nature of assistance provided under the programs (e.g., capital assistance only for Section 5310; capital and/or operating assistance for Section 5311).

SOURCES OF INFORMATION

The state management plan should identify major monitoring activities, including management or financial reviews, project monitoring and on-site reviews, and reporting requirements. The state's subrecipient application package(s) for Section 5310 and 5311 assistance and the state's standard agreement with Section 5310 and Section 5311 subrecipients may provide additional information regarding mechanisms for monitoring subrecipients' compliance with Federal requirements in specific areas, particularly reporting requirements.

Discuss the state's methods of monitoring subrecipients' compliance with regional office staff. Regional staff may have insights regarding the effectiveness of the state's monitoring systems and may be able to provide specific examples of problems reflecting inadequate monitoring.

On site, discuss information obtained from the state management plans, application packages, standard agreements and other documents regarding monitoring activities and have state staff confirm and explain the use of specific monitoring mechanisms. Discuss the use of on site performance reviews, identifying the frequency of such

reviews, the areas covered in the reviews, the documentation of findings, and follow-up procedures. Review written reports, if applicable, for a sample of subrecipients.

Obtain copies of routine reporting forms or guidelines for reporting. Discuss how the state analyzes the information obtained through periodic reporting and types of follow-up action that could result.

Discuss required meetings, which may include status meetings, to determine their frequency and the topics covered.

DETERMINATION

Determination of compliance is based on the adequacy of the state's overall systems for monitoring subrecipients' compliance with Federal requirements. In each review area, a determination will be made whether the monitoring mechanisms used by the state can reasonably ensure subrecipients' compliance with specific requirements in that area. Determination of compliance in program management is made after reviewing each area.

The state is not deficient if it has appropriate systems in place and is applying the resources necessary to monitor subrecipients' compliance with Federal and state requirements. If the state does not have in place appropriate systems for monitoring subrecipients' compliance with a broad range of requirements or is not applying the resources required to carry out an effective monitoring program, the state is deficient. The state could be found deficient in its monitoring of a specific area but compliant under program management. Similarly, the state could be found deficient

under program management, but not deficient in a specific area where it is effectively monitoring subrecipients' compliance with Federal requirements. If the monitoring mechanisms are adequate but improvements are warranted, the state could be found not deficient with follow-up action required.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a plan for effectively monitoring subrecipients' compliance with Federal and state requirements. The state must submit documentation of the plan to the FTA regional office.

DOCUMENTATION

Document the systems the state has in place for monitoring subrecipients' compliance with Federal requirements.

Note the frequency of site visits and the major issues covered. If the state uses a formal review questionnaire, include a copy in the state management review file. Note the state's process for documenting findings and tracking the subrecipient's correction of any deficiencies noted during the site visit.

Note subrecipient reporting requirements (e.g., monthly financial and performance reports, annual reports) and the information required on each report. Document what the state does with the data. Include copies of standard forms required in the review file. Identify and include in the review file copies of pertinent documents describing Federal requirements and the state's monitoring activities.

7. *How does the state ensure that all contracted-out service with private providers meets Federal requirements?*

EXPLANATION

Private for-profit operators of public transportation services may participate in the Section 5311 program through contracts with eligible recipients.

At the state's discretion, transportation services acquired under contract, lease, or other arrangement may be eligible capital expenses under the Section 5310 program. Both capital and operating costs associated with contracted service are eligible expenses. Funds may be requested for contracted services covering a time period of more than one year.

The state should have established policies governing subrecipients' contracting for services with funds provided through the Section 5310 and 5311 programs. Policies may be documented in the state management plan.

The state is responsible for ensuring that subrecipients contracting out all or a portion of their service pass through applicable Federal requirements to their contractors. The state must make its subrecipients aware of requirements imposed on them by Federal statutes and regulations. Further, the state must certify to FTA and ensure that subrecipients incorporate in their contracts financed with FTA assistance all clauses required by Federal laws, executive orders or regulations (see Competitive Procurement).

The state should inform subrecipients of, and require subrecipients to comply with, specific Federal requirements through their standard subrecipient agreement. The state may provide subrecipients with special terms and conditions covering Federal requirements that must be incorporated in their contracts with providers. Some states require subrecipients to submit copies of their contracts to the state for review.

SOURCES OF INFORMATION

The state management plan may address the state's policy and requirements imposed on subrecipients contracting for service. Review the state management plan, the state's standard subrecipient agreements for Section 5310 and 5311 assistance, and other documents providing guidance to subrecipients. On site, discuss with state staff how the state informs subrecipients about the Federal requirements that must be passed through to service contractors. Discuss the mechanisms the state uses to ensure that subrecipients are passing applicable Federal requirements through to service providers and ensuring compliance.

DETERMINATION

The state is not deficient if it has appropriate systems in place to make subrecipients aware of Federal regulations that must be passed through to purchased service contractors and to ensure that subrecipients pass applicable Federal requirements through to purchased service contractors and monitor their compliance. If the state does not have appropriate systems in place, a finding of deficiency should be made.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to ensure that subrecipients contracting for service are passing through applicable Federal requirements to their contractors and ensuring their compliance. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's policy on the eligibility for Section 5310 funding of subrecipients' acquisition of transportation services under a contract, lease, or other arrangement. If permitted by the state, identify subrecipients receiving funding for capital or operating costs associated with contracted service.

Document the state's policy on Section 5311 subrecipients' contracting for service.

Document the state's methods for informing subrecipients of Federal requirements that must be passed on to purchase of service contractors and monitoring subrecipients to ensure that they pass through applicable Federal requirements and ensure contractors' compliance.

Identify and include in the review file documents addressing subrecipients' purchase of service contracts.

- 8. *Are resources (staff and budget) devoted to administration sufficient to manage and oversee the Section 5310 and Section 5311 programs?***

EXPLANATION

The designated state agency must have the financial and staffing capabilities to receive and administer Federal funds and to monitor and ensure subrecipients' compliance with Federal and state program requirements.

This question brings together the review of the organization and staffing of the division responsible for administering the programs [question 1], the assessment of the state's systems for monitoring subrecipients' compliance with Federal requirements [question 6], and the state's compliance with routine administrative requirements [Grants Administration, questions 11 and 12].

Also consider the amount and percentage of funds under each program that are being applied for administration. Section 5310 allows up to 10 percent of the apportionment to be used for administration; Section 5311 allows up to 15 percent. [Financial Management and Monitoring]

SOURCES OF INFORMATION

Responses to other questions in the area of program management and grants administration provide the basis for making a determination in this area. Discussions with regional office and state staff support the determination.

At the desk review, discuss the adequacy of resources the state is applying to the programs with regional office staff. On site, ask the state staff responsible for the programs whether the resources are adequate. State staff may indicate that resources are insufficient to permit the level

of technical assistance and monitoring that they feel is required.

DETERMINATION

The state is in compliance if it is devoting an appropriate level of resources to carry out its responsibilities in administering and managing the Section 5310 and 5311 programs. The state is not in compliance if it is not deploying the resources necessary to effectively manage the Section 5310 and 5311 programs. If the state is not effectively monitoring and ensuring subrecipients' compliance with Federal requirements or is not carrying out routine administrative functions in a timely manner, a determination that the state is not applying sufficient resources to the administration of the programs can be made. Changes in the state's management of the programs such as reductions in state staff, decreases in the frequency of on-site monitoring of subrecipients, and increasing delays in submission of information to FTA are indications that the state is not applying adequate staffing resources to the programs.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a plan for deploying the resources necessary to properly manage the Section 5310 and 5311 programs. The plan may involve increased in-house resources or the use of consultants and outside contractors to provide support in specific areas. The state must submit documentation of the plan to the FTA regional office.

DOCUMENTATION

Summarize the major factors supporting determination that the state's resources are inadequate (e.g., small staff or staff reductions in recent years, limited technical assistance to subrecipients, insufficient monitoring of subrecipients to ensure compliance with Federal requirements, and grant administration and management deficiencies).

2. GRANTS ADMINISTRATION

BASIC REQUIREMENT

The state agency(ies) administering the Section 5310 and 5311 programs must certify to FTA that it will comply with applicable Federal requirements and that each local subrecipient has met all statutory and program requirements before expending Federal funds on a local project. The state must certify to the Department of Labor that each subrecipient has accepted in writing the Section 13(c) special warranty.

The state must develop and implement grant management procedures to track and report on the progress of projects, expend grant funds in a timely manner, and close out local projects and grants when project activity is completed.

SPECIFIC REQUIREMENTS

Annual Certification of Recipients

***[FTA Master Agreement Sect 2, sec a (3);
FTA C. 9040.1E Ch V, sec 2d;
FTA C. 9070.1E Ch IV, sec 1f]***

Before award of a Federal grant from FTA, an applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or project. The state must annually submit the FTA's Annual Certifications and Assurances. The state must receive and maintain certifications and sufficient documentation from all local subrecipients to support the assurances to FTA.

Implementation Schedule

[FTA C. 9040.1E Ch V, sec 2d;

FTA C. 9070.1E Ch IV, sec 1d]

The state is required to submit a program implementation schedule with significant milestones and completion date with each Section 5310 or 5311 grant application. The state must also submit a drawdown schedule with applications for Section 5311 assistance.

Annual Program Status Report and Financial Status Report

***[FTA C. 9040.1E Ch VI, sec 10a;
FTA C. 9070.1E Ch V, sec 13a]***

The state is required to submit to the FTA regional office by October 31 of each year an annual program status report for the program of projects of each active grant, covering the 12 month period ending September 30. The annual program status report must include an updated program of projects, and a revised project implementation plan if the schedule has changed. The state must also submit a Financial Status Report (SF269A) for each active grant.

Revisions to Programs of Projects

***[FTA C. 9040.1E Ch IV, sec 7;
FTA C. 9070.1E Ch III, sec 5]***

The state is required to notify FTA, and in some cases obtain FTA approval, before making certain types of revisions to the program of projects.

The following revisions require prior notification to FTA:

- # Advancement of projects from Category B to Category A;

- # Allocation of Category C funds to new operating assistance projects or capital projects (under \$250,000 for Section 5311; no threshold for Section 5310);
- # Creation of new operating assistance projects or capital projects under \$250,000 with funds reprogrammed from approved projects (under \$250,000 for Section 5311; no threshold for Section 5310); or
- # Deletion of a project over \$250,000 or 10 percent of the total program of projects, whichever is greater (Section 5311 only).

work activities for the program of projects are completed. A final FSR and budget and a revised program of projects are required at grant closeout.

The following revisions (under Section 5311) require prior FTA approval:

- # Reprogramming of funds for any new capital project over \$250,000 or greater than 10 percent of the total of the program of projects, whichever is greater, or for any project which is not a categorical exclusion under National Environmental Protection Agency (NEPA); or
- # Changes in intercity bus projects where the change results in less than the required percentage of the apportionment being programmed for intercity bus projects.

Project and Grant Closeout
[FTA C. 9040.1E Ch VI, sec 11;
FTA C. 9070.1E Ch V, sec 12]

The state should initiate project closeout with Section 5310 and 5311 subrecipients as soon as all work activities are completed and all funds are expended. The state should initiate grant closeout with FTA after all

QUESTIONS FOR THE REVIEW

1. *Has the state annually submitted the FTA Assistance Programs Certifications and Assurances?*

EXPLANATION

To receive a Federal grant for mass transportation purposes from FTA, an applicant must provide certain certifications and assurances required by Federal laws and regulations. The annual comprehensive compilation of Federal certifications and requirements has a single signature page that allows the applicant and its attorney to certify compliance with all the certifications and assurances pertinent to any and all grants for which the applicant would apply in that fiscal year. FTA will update the annual list of certifications and assurances annually to reflect any changes in requirements.

The FY05 FTA Annual Certifications and Assurances groups the certifications into sixteen categories. The state is not required to complete all categories for the Section 5310 and 5311 programs. The following categories may apply to the state agencies administering the Section 5310 and 5311 programs:

I. **Certifications and Assurances Required of Each Applicant**

- Authority of Applicant and Its Representative
- Standard Assurances
- Intergovernmental Review Assurance
- Nondiscrimination Assurance
- Assurance of Nondiscrimination on the Basis of Disability

- Procurement Compliance
- Certifications and Assurances Required by OMB

II. **Lobbying**

III. **Private Mass Transportation Companies**

IV. **Public Hearing**

V. **Acquisition of Rolling Stock**

VI. **Bus Testing**

VII. **Charter Service**

VIII. **School Transportation Agreement**

IX. **Demand Response Service**

X. **Alcohol Misuse and Prohibited Drug Use**

XI. **Interest and Other Financing Costs**

XII. **Intelligent Transportation Systems**

XIII. **Urbanized Area, JARC, and Clean Fuels Program**

XIV. **Elderly and Persons with Disabilities Program**

XV. **Nonurbanized Area Formula Program**

XVI. **State Infrastructure Bank Program**

SOURCES OF INFORMATION

Review the FTA's Annual Certifications and Assurances in TEAM.

DETERMINATION

The state is not deficient if it has submitted a properly executed FTA’s Annual Certifications and Assurances with the appropriate categories checked.

The regional office should not approve a grant without a properly executed FTA’s Annual Certifications and Assurances from the state. Therefore, it is unlikely that a finding of non-compliance would be made.

SUGGESTED CORRECTIVE ACTION

If the FTA’s Annual Certifications and Assurances is deficient in some way, the state must correct the deficiency for subsequent submissions.

DOCUMENTATION

Note the date and signatories of the FTA’s Annual Certifications and Assurances for the review period. Indicate whether all pertinent categories have been designated on the signature page and identify any required categories that have not been certified. Note the location where the certifications are filed in the regional office.

- 2. *Does the state have on file documentation of its subrecipients necessary to make the certifications and assurances?*

EXPLANATION

The state must make certifications and assurances to FTA that require compliance with Federal requirements by its Section 5310 and 5311 subrecipients. FTA requires

the state to obtain certifications and sufficient documentation from its subrecipients to support the state’s certifications and assurances. The state must maintain adequate files documenting the basis for all assurances it makes to FTA.

The following certifications and assurances are currently required:

- # Standard assurance
- # Special 5333(b) warranty (Section 5311 only)
- # Non-procurement debarment and suspension
- # Lobbying (if grant > \$100,000)
- # Nondiscrimination assurance **or** Title VI standard assurance and FTA civil rights assurance
- # Assurance of nondiscrimination on the basis of disability
- # Bus testing (if directly procuring rolling stock)
- # Acquisition of rolling stock
- # Charter bus agreement (Section 5311 only)
- # School transportation agreement
- # Alcohol misuse and prohibited drug use (Section 5311 only)

FTA does not require the state to adopt its new annual comprehensive list of certifications and assurances for

subrecipients. The state may continue to obtain from subrecipients individual certifications of pertinent requirements or may use FTA's annual comprehensive certifications and assurances.

Most states require subrecipients to provide certifications and assurances as part of the application package or the agreement between the state and the subrecipient.

SOURCES OF INFORMATION

Review the state management plans, subrecipient application packages, and standard subrecipient agreements to determine the state's process for obtaining required certifications and documentation from its subrecipients.

On site, ask the state to verify its system for obtaining and maintaining the appropriate supporting documentation from subrecipients.

Select a sample of subrecipients and review the state's files to ascertain whether the required subrecipients' certifications and assurances are on file.

DETERMINATION

The state is not deficient if it has appropriate systems in place for obtaining and maintaining on file required certifications and assurances from subrecipients to support its own certifications and assurances to FTA. The state is deficient if it does not have appropriate systems in place to obtain and maintain the supporting certifications and assurances from subrecipients.

The state's compliance with requirements to obtain specific certifications from

subrecipients is determined in the individual review areas.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to ensure that each subrecipient provides the required certifications and assurances and other documentation to support the state's certifications and assurances to FTA.

DOCUMENTATION

Identify the certifications and documentation obtained by the state and indicate the mechanism used to obtain each required certification -- the grant application, the subrecipient agreement, or another mechanism.

Note the subrecipients sampled and identify the supporting certifications reviewed.

- 3. Has each Section 5311 subrecipient that has been involved in a labor project signed the special Section 5333(b) warranty for Section 5311? Has the state made the required certification to the Department of Labor that local subrecipients agreed to the warranty and submitted the list of providers and unions as required?***

EXPLANATION

49 U.S.C. 5333(b) requires that, as a condition of assistance from FTA, fair and equitable arrangements be made to protect the interests of employees affected by such assistance. To meet rural program administrative needs while affording the employee protections required under the

Act, the Department of Labor (DOL) and the Department of Transportation (DOT) agreed to a special Section 5333(b) warranty for Section 5311 projects, which substitutes for the certification by DOL of individually negotiated agreements for each project.

Each local recipient of Section 5311 funding must agree in writing to accept the terms and conditions of the special Section 5333(b) warranty for the Section 5311 program. Once a recipient has signed the Special 5333(b) warranty, it is not necessary to sign it again for subsequent projects.

The state must certify to DOL that each local Section 5311 subrecipient has agreed in writing to the special 5333(b) warranty. The state must make the certification to DOL for each subrecipient with a project in Category A prior to grant approval, and for each subrecipient with a project in Category B prior to advancing the project to Category A. The warranty is incorporated by reference in the grant agreement between FTA and the state.

As part of the Certifications and Assurances for the Nonurbanized Area Formula Program (Part XV of the FTA's Annual Certifications and Assurances), the state certifies to FTA that each Section 5311 subrecipient has complied with the Section 5333(b) labor protection provisions by 1) signing the Special Warranty for the nonurbanized area program, 2) agreeing to alternative comparable arrangements approved by the DOL, or 3) obtaining a waiver from DOL. The state also certifies to FTA that it has certified the subrecipients' compliance to the DOL.

The warranty requires the state to provide to DOL and maintain at all times, an accurate,

up-to-date listing of all existing transportation providers that are eligible recipients of transportation assistance funded by the project, in the transportation service area of the project, and any labor organizations representing the employees of such providers. The state must inform DOL of any changes following initial submission of the list to DOL.

The conditions of Section 5333(b) do not apply to recipients under the Section 5310 program.

SOURCES OF INFORMATION

On site, review the state's certification to DOL. Also select a sample of subrecipients and review the state's files for the subrecipients' warranty and other required information.

DETERMINATION

The state is not deficient if it has made the required certification to the DOL and has on file the signed warranties and other information required for Section 5311 subrecipients. If the state does not have on file signed warranties for subrecipients or has not made the required certifications to DOL, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to obtain signed warranties from each Section 5311 subrecipient and maintain the warranties and accompanying documentation for each subrecipient on file. The state must submit documentation of the procedures to the FTA regional office.

The state must submit the required certification to DOL. The state must document to the FTA regional office that it has submitted the certification to DOL.

DOCUMENTATION

Note the date of the state's certification to DOL. Identify the subrecipient files reviewed and indicate whether the certifications and documentation were present.

- 4. *Did the state submit a project implementation plan with its application? Did the plan contain the required elements: significant milestones schedule, project completion date, and schedule of encumbrances (Section 5311 only)?***

EXPLANATION

The state must submit a plan for implementation of the program of projects as part of its application to FTA for Section 5311 or 5310 assistance. For Section 5311 grants, the plan should include significant milestones such as vehicle procurements and agreements with subrecipients, an estimated schedule for funds encumbrance, and an estimated completion date for the grant. For Section 5310 grants, the plan should include estimated schedules, significant milestones, and a project completion date.

The project implementation plan forms the basis for reporting progress in the Annual Program Status Report.

SOURCES OF INFORMATION

Examine TEAM grant files for each active grant.

DETERMINATION

The state is not deficient if it submitted a project implementation plan with the appropriate information for each active grant.

If the state did not submit a project implementation plan with each grant, or if the implementation plan did not include all the required information, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit a project implementation plan containing all the required information with each future grant application.

DOCUMENTATION

Document whether an appropriate project implementation plan was submitted with each active grant reviewed at the FTA regional office.

- 5. *Has the state submitted Annual Program Status Reports for each active grant by October 31? Do the Annual Program Status Reports contain the required information? Does the state report financial data on an accrual basis? How does the state define unliquidated obligations? Does the state submit the reports to FTA electronically?***

EXPLANATION

The state must submit to the FTA regional office an annual program status report for the program of projects of every active grant, covering the 12-month period ending September 30. The reports must be submitted to the regional office by October 31. Reports must include an updated program of projects and a revised budget for each approved program of projects, reflecting revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. The regional office may require additional information as part of the annual program status report. The annual program status reports should report progress against the schedule identified in the project implementation plan submitted with the grant application or the latest revised project implementation plans.

The state must submit a Financial Status Report (FSR) for each active grant along with the annual program status report. FTA requires grantees to report financial data on an accrual basis.

FTA defines unliquidated obligations for the Section 5310 and 5311 programs as follows:

- # Funds retained by the state: signed third party contracts and open purchase orders.
- # Program funds: signed grant agreements with subrecipients.

Some states submit FSRs quarterly to coincide with the requirements for other FTA grants (e.g., Section 5309).

FTA encourages each state to submit the annual program status reports and FSRs electronically.

Timely submission of annual program status reports may be an indication of the adequacy of resources devoted to administration of the Section 5310 and 5311 programs (see Program Management).

SOURCES OF INFORMATION

Examine annual program status reports and FSRs on TEAM. Examine grants or annual program status reports. Some regional offices maintain logs tracking submission of program status reports.

Ask regional office staff whether reports have been submitted on time and include all of the required information. Ask if the regional office has required additional information as part of the annual report.

Review FSRs to determine if the state has checked the box indicating it is reporting on the accrual basis.

Review any correspondence from FTA to the state regarding program status reports or FSRs. Discuss with regional office staff to determine if there are any problems with the state's reporting. Also discuss the status of the state's electronic reporting.

On site, ask the state how it defines unliquidated obligations. If applicable, ask the state when it plans to submit FSRs electronically.

DETERMINATION

If the state has submitted annual program status reports containing all the required information and FSRs for each active grant

to the regional office by October 31 each year, the state is not deficient.

If the state has not submitted annual program status reports and FSRs for each active grant, if reports are submitted late, or if reports are submitted but required information is missing, the state is deficient.

If the state incorrectly reports unliquidated obligations or does not report on the accrual basis in FSRs, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit an annual program status report and FSR in TEAM for each active grant by October 31 of the current year. Depending on the timing of the state management review, the state could be required to submit a current program status report and FSR for each active grant.

The state must develop and implement procedures to report the financial data on an accrual basis. The state is not required to convert its accounting system but must develop accrual information through an analysis of the documentation on hand. The state must submit documentation of the procedures to the FTA regional office.

The state must develop and implement procedures to correctly track and report unliquidated obligations. The state must submit documentation of the procedures to the FTA regional office.

The state should work with the FTA regional office to implement electronic reporting of FSRs.

DOCUMENTATION

For each active grant, indicate the dates of submission of annual program status reports and FSRs during the review period. Indicate whether the required information is included in the annual program status reports.

Document whether the state reports financial data on an accrual basis and correctly reports unliquidated obligations.

6. *Has the state revised its Program of Projects? Did the state notify FTA and obtain FTA approval for revisions if required?*

EXPLANATION

The state may revise an approved program of projects without constituting a change in scope. Only the addition of Federal funds to the program of projects requires an amendment of the grant agreement.

However, the state is required to notify FTA, and in some cases obtain FTA approval, before making certain types of revisions to the program of projects. The state may make the following revisions to an approved program of projects without prior notification of, or approval by, FTA:

- (1) Deletion of a project from the program of projects (if project cost is less than \$250,000 or 10 percent of the program of projects, whichever is greater for Section 5311; no threshold for Section 5310)
- (2) Allocation of Category C funds to existing projects within the period of availability of the funds
- (3) Reallocation of funds among approved projects within a local area or from one local area to another

- (4) Transfer of funds designated for intercity bus projects to other approved projects, provided the amount transferred does not reduce the intercity funding level below the required percentage (Section 5311 only)
- (5) Transfer of RTAP funds to other RTAP projects within the program of projects (Section 5311 only).

The state must notify (but is not required to obtain approval from) FTA prior to making the following revisions to an approved program of projects:

- (1) Advancement of projects from Category B to Category A;
- (2) Allocation of Category C funds to new operating assistance projects or capital projects (under \$250,000 for Section 5311; no threshold for Section 5310);
- (3) Creation of new operating assistance projects or capital projects under \$250,000 with funds reprogrammed from approved projects (under \$250,000 for Section 5311; no threshold for Section 5310); or
- (4) Deletion of a project over \$250,000 or 10 percent of the total program of projects, whichever is greater (Section 5311 only).

The state must obtain FTA approval before making the following revisions to an approved program of projects (under Section 5311 only):

- (1) Reprogramming of funds for any new capital project over \$250,000 or greater than 10 percent of the total of the program of projects, whichever is greater, or for any project which is not a categorical exclusion under National

Environmental Protection Agency (NEPA); or

- (2) Changes in intercity bus projects where the change results in less than the required percentage of the apportionment being programmed for intercity bus projects.

While FTA has not established a specific time frame for the state to notify it of changes to a program of projects or budget revisions (not requiring prior notification or approval), regional offices may have recommended time frames. Some regional offices prefer the state inform them as changes are made while others prefer the state to inform them on a periodic basis. Each state should keep its regional office informed of such changes. Timely reporting to the regional office improves the region's ability to manage grants.

SOURCES OF INFORMATION

At the desk review, examine grant files for correspondence from the state notifying FTA of revisions to the program of projects, correspondence from the state requesting FTA approval of revisions if necessary, and correspondence from FTA approving revisions. Review the program of projects submitted with the grant application as well as any revised programs of projects submitted. Discuss the state's submission of revised programs of projects with regional office staff.

On site, confirm with the state the types of changes made to the program of projects and its process for submission of appropriate documentation to FTA.

DETERMINATION

The state is not deficient if the appropriate documentation exists to support revisions to the program of projects. If the correspondence is not located in the regional office, it may be available on site. If the state has made revisions to its program of projects without prior FTA notification or approval as required, it is deficient.

The state is not deficient if it has established and follows a system for informing FTA of revisions to the program of projects in a timely manner. If the state is not informing FTA of changes within a reasonable time frame, the state may be found deficient.

If the state does not keep FTA informed of changes in the program of projects in a timely manner, it may be an indication that the state is not applying the resources necessary to effectively manage the programs (see Program Management).

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to notify FTA of changes to the program of projects and obtain FTA approval as required. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Indicate the kinds of changes made to the programs of projects during the review period and the supporting correspondence from the state to the regional office. If documentation is missing from regional office files, obtain copy on site and include in review file.

Document the state's process for informing FTA of changes to programs of projects and obtaining FTA approval, if required.

7. ***Have all Category C funds been allocated to specific projects within twelve months? Have Section 5311 funds not allocated within 12 months been allocated within the period of availability (the year of apportionment plus two)? Have funds not obligated within the period of availability been deobligated?***

EXPLANATION

Category C represents a "program reserve" unique to the Section 5310 and 5311 programs. It is designed to allow the state to obligate its entire apportionment in one grant, even if the funds are not completely programmed. Funds in this category may also supplement previously identified projects where original cost estimates were inadequate, though contingency line items for this purpose are preferred.

The state may not assign more than 10 percent of the total amount programmed in the Section 5310 or 5311 program of projects to Category C. The state may hold Section 5311 funds in Category C earmarked for intercity bus projects.

FTA expects the state to allocate all funds (Section 5310 or 5311) in Category C to either new approvable projects or to budget adjustments in existing Category A and B projects within 12 months of grant approval. If the state does not expect to program the funds within that time period, obligation should be deferred until the following year.

Section 5310 funds are available only in the year in which they are apportioned.

Section 5311 funds are available in the year apportioned plus two years. Section 5311 funds must be allocated to specific projects within the period of availability. If they are not allocated within the period of availability, the funds will be deobligated and redistributed to all states.

In its management of the program of projects, the state may include contingency line items for operating, capital, or project administration in Category A or B for individual project budget adjustments. These would be reflected in the appropriate aggregate line item in the TEAM program of projects budget, not in Category C.

SOURCES OF INFORMATION

At the desk review, examine active grants. Compare revised programs of projects with the original program of projects submitted with the grant application to determine when funds in Category C were advanced to new or existing projects.

Discuss with regional office staff the state's allocation of Category C funds to projects within the period of availability and any funds deobligated.

On site, review any balances in Category C with state staff and discuss their risk for losing Federal funds if not allocated within the period of availability.

DETERMINATION

The state is not deficient if it has allocated Category C funds to approved projects within the period of availability (the year of

apportionment for Section 5310 and the year of apportionment plus two years for Section 5311). If the state has not allocated Category C funds within the period of availability, it is deficient.

SUGGESTED CORRECTIVE ACTION

Generally, the regional office will initiate deobligation of amounts in Category C that have not been allocated to projects within the period of availability. For programs of projects approaching the end of the period of availability of funds, the state should identify existing or new projects and allocate the Category C funds to these projects.

The state that has incorrectly put funds from approved projects into Category C after grant approval should adjust the POP budget.

DOCUMENTATION

For each active grant, indicate any balances remaining in Category C and the end of the period of availability. Identify programs of projects where Category C funds have not been allocated to projects within the period of availability. Also identify any programs of projects with funds at risk for deobligation in the near future.

- 8. *Have local projects been implemented according to schedule? Have revised schedules been submitted with annual program status reports?***

EXPLANATION

Section 5310 programs of projects should be implemented within two years of grant approval. FTA may terminate and close out

grants not implemented within two years and deobligate the funds.

For Section 5311 programs of projects, the state should generally not program local projects that will extend for more than two years. The state may seek exceptions from the regional office for proposed projects that may exceed two years.

The state must submit a project implementation plan with each Section 5310 and 5311 grant application, identifying the schedule, major milestones, and projected completion date for the program of projects. In their annual program status reports, the state must report progress of projects against the schedule and submit revised schedules when projects are delayed.

The ability to implement the approved program of projects is an indication of the technical capacity of the state's subrecipients and the state's grant management capability. Projects for operating assistance under Section 5311 and routine capital under Section 5310 or 5311 should rarely experience significant delays. Projects involving facility construction are more likely to experience delays.

SOURCES OF INFORMATION

Review regional office grant files for programs of projects, project implementation schedules, annual program status reports, and other correspondence to identify major delays in projects. Discuss the state's general implementation of its programs of projects with regional office staff.

On site, discuss with state staff the status of each active program of projects, any

significant delays in project completion and the reasons for such delays.

DETERMINATION

The state is not deficient if it manages its programs of projects in accordance with the implementation schedule submitted with the grant application. If reasonable minor delays in projects have occurred on an occasional basis and have been addressed in annual program status reports, the state can be found not deficient. Frequent or significant delays in projects and repeated revisions to project implementation schedules may indicate that projects were programmed prematurely or that the state or local subrecipients are not effectively managing projects and the state may be found deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to better manage grants to ensure that projects are completed within a reasonable amount of time. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document significant delays in programs of projects and the state's explanation for such delays.

9. *How does the state administer closeouts in the Section 5310 and 5311 programs?*

EXPLANATION

FTA awards grants for approved programs of projects and expects the projects to be completed within a reasonable, specified time frame. The state should initiate project closeout with subrecipients as soon as all work activity is completed and funds are expended. The state should initiate closeout with FTA immediately after all work activities for a program of projects are completed. A final Financial Status Report, a final budget, and revised program of projects are required at the time of closeout.

Sometimes local projects may not require the amount of funds originally requested and obligated by the state and therefore funds may remain after the project is completed. The state may reprogram remaining funds to other projects. However, the state should not excessively prolong the life of the grant, which results in a large number of active grants.

The state should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects. Some states actively track remaining funds and reprogram them for other projects. For many states, however, small balances remain in grants because the state does not have effective procedures for identifying and reprogramming the excess funds to other projects. Some states have established minimum thresholds for reprogramming funds and will close out a grant with balances below the threshold rather than reprogram the funds.

SOURCES OF INFORMATION

Review the state management plan, the state's standard subrecipient agreements, and other documents for documentation of the state's closeout procedures. On site ask the

state to confirm or explain its project and grant closeout procedures and schedule.

DETERMINATION

The state is not deficient if it has procedures in place to track projects and close out completed projects in a timely manner. If the state does not have procedures in place for tracking projects, reprogramming unused balances to other projects, and initiating grant closeout in a timely manner, the state may be found deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for tracking projects, identifying project balances, reprogramming the unused project funds to other projects, and closing out the projects. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's procedures for administering project closeouts in the Section 5310 and 5311 programs.

- 10. *What is the status of all active Section 5310 and 5311 grants? Are any grants ready for closeout?***

EXPLANATION

The state should close out projects funded under Section 5310 or 5311 when project activities have been completed. Frequently, the state allows small balances in completed projects to delay project closeout. Many states have old grants that have not been

closed out, some going back more than five years.

FTA is placing a priority on closing out grants for which activity has ceased.

SOURCES OF INFORMATION

Examine TEAM data to determine the balances remaining in each active grant and the date of the last disbursement. Some regional offices notify states when grants have been inactive for more than six months (e.g., have not had any disbursements). Review state correspondence.

On site, discuss the status of each active grant with state staff. Identify grants that are old, have small balances remaining, or have not had disbursement activity in several months. Have the state identify remaining project activities and the projected dates for project completion and grant closeout.

DETERMINATION

The state may be found deficient if it has not closed out old, inactive grants, depending on the number of open grants and progress towards closeout.

SUGGESTED CORRECTIVE ACTION

If small amounts of funds remain in an inactive grant, the state should request that the funds be deobligated and the project closed out. Alternatively, within the scope of the project (i.e., Category C funds within the period of availability or funds reprogrammed from approved projects), the state may reprogram funds to projects which can be completed in a reasonable time and

submit a timetable for grant completion and closeout.

DOCUMENTATION

For each open Section 5310 and 5311 grant note the grant number, the date of obligation, the balance remaining, the date of the last disbursement, the activities remaining under the project, and the state's projected completion and closeout dates. Identify projects that should be closed out and funds that are subject to deobligation.

- 11. *Have the state or subrecipients used Section 5311 funds for facility construction projects? Have environmental requirements been satisfied?***

EXPLANATION

FTA's environmental impact regulation requires different levels of analysis and documentation for various types of projects. The majority of projects funded through the Section 5311 program does not normally involve significant environmental impacts and are categorically excluded from the requirement to prepare an environmental document. Construction projects (including new construction or expansion of transit terminals, storage and maintenance facilities, offices and parking facilities) have potential for off site environmental impacts and can be designated as categorical exclusions only after FTA approval. The state must provide documentation that clearly demonstrates that the stated conditions or criteria are met and that no significant adverse affects will result. The documentation generally focuses on consistency with local land use plans,

zoning, and any state or local plans or programs governing the protection and management of environmental resources. FTA reviews the information and determines if a categorical exclusion is appropriate. Generally, the project is identified as a categorical exclusion in the FTA notification of grant approval.

For any project found not to be a categorical exclusion, the state may be required to prepare an Environmental Assessment for public comment and FTA review to determine if a finding of no significant impact (FONSI) is appropriate.

The state must discuss with the regional office any project involving new construction of a facility or substantial rehabilitation of an existing facility to determine if information is needed to support a categorical exclusion and the applicability of additional environmental requirements.

Compliance with environmental requirements must be completed before a construction project can be included in Category A of the program of projects. Any Category B or C project that is not a categorical exclusion requires environmental clearance from FTA before being advanced to Category A.

SOURCES OF INFORMATION

Review programs of projects to identify facility construction projects. If FTA approves the project as a categorical exclusion, documentation of the approval should be in the grant file, generally in the notification of grant approval. If FTA has issued a FONSI, documentation should be in the grant file.

Discuss with regional office staff any projects involving facility construction or rehabilitation and the applicable environmental requirements.

On site discuss the state's compliance with environmental requirements and review relevant documentation.

DETERMINATION

The state is not deficient if FTA has approved any facility construction or rehabilitation projects as categorical exclusions or has issued a FONSI for the project.

The state is deficient if it or one of its Section 5311 subrecipients has proceeded with a construction project that is not a categorical exclusion without completing applicable environmental requirements and receiving a FONSI from FTA.

SUGGESTED CORRECTIVE ACTION

The state must complete or obtain the environmental assessment from the subrecipient.

The state must develop and implement procedures to ensure that subrecipients meet environmental requirements when constructing facilities. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe any facility construction or rehabilitation projects funded under Section 5311. Note dates of FTA approval of

construction projects as categorical exclusions or issuance of a FONSI for the project.

Withholding payment of a portion of the grant until final inspection and acceptance of the facility by the state

Identify environmental assessment documents and the opportunity provided for public comment.

SOURCES OF INFORMATION

Review the state management plan and the subrecipient agreement for a discussion of procedures for administering and monitoring construction and rehabilitation projects. Review programs of projects to determine whether subrecipients have had facility construction or rehabilitation projects.

12. How does the state monitor Section 5311 subrecipients' facility construction or rehabilitation projects?

On site, discuss with state staff and review other documentation of procedures, if available.

EXPLANATION

The state is responsible for monitoring Section 5311 subrecipients' facility construction and rehabilitation projects. The state must document its procedures for administering construction projects in the state management plan.

DETERMINATION

If the state has procedures for monitoring the construction or rehabilitation of facilities, the state is not deficient. If the state does not have procedures for monitoring the construction or rehabilitation of facilities, the state is in deficient.

Few states use Section 5311 funds for facility construction projects. When Section 5311 funds are used for construction projects, the state should have procedures in place for overseeing the project activities. Monitoring mechanisms may include:

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for monitoring the construction or rehabilitation of facilities. The state must submit documentation of the procedures to the FTA regional office.

- # Reviewing the request for proposals and construction contracts
- # Reviewing architectural plans and drawings
- # Conducting periodic site inspections
- # Requiring special progress reports
- # Conducting regular project management meetings

DOCUMENTATION

Document the state's procedures for monitoring subrecipients construction or rehabilitation of facilities. Identify any facility construction or rehabilitation projects in progress during the review period.

BASIC REQUIREMENT

Section 5311 provides grants for mass transportation in rural and small urban areas. Recipients may be state agencies, private nonprofit organizations, public bodies, tribal governments, or operators of public transportation services. Section 5311 requires that the state provide for "fair and equitable" distribution of funds within the state.

Section 5310 provides grants for private nonprofit organizations where mass transportation services provided by public agencies are unavailable, insufficient, or inappropriate to meet the special needs of elderly persons and persons with disabilities. A public body that is approved by the state to coordinate services or that has certified that no nonprofits are readily available to provide the service is also eligible under Section 5310.

The state may further restrict eligibility under both Section 5310 and Section 5311.

The state and all local subrecipients must have the requisite fiscal, managerial, and legal capability to carry out the Section 5310 and 5311 programs and to receive and disburse Federal funds.

SPECIFIC REQUIREMENTS

Section 5310 Eligibility

[FTA C. 9070.1E Ch II, sec 5]

Eligible services:

Section 5310 funds are available for special transportation services to meet the needs of elderly persons and persons with disabilities in both urban and rural areas.

Eligible applicants:

- Private nonprofit organizations, as determined by the Secretary of the Treasury or under state law
- Public bodies that certify to the governor that no nonprofit corporations or associations are readily available in an area to provide the service
- Public bodies approved by the state to coordinate services for elderly and persons with disabilities

Eligible assistance categories:

- State administration
- Capital expenses:
 - Vehicles and equipment
 - Initial installation costs
 - Vehicle procurement, testing, inspection, and acceptance costs
 - Lease of equipment when lease is more cost effective than purchase
 - Acquisition of transportation services under contract, lease, or other arrangement

Matching requirements:

- General - Federal share of eligible capital and program administrative costs is not to exceed 80 percent of the net cost of the program.
- Exceptions - Federal share of the incremental cost of vehicle related equipment required by the Clean Air Act Amendments of 1990 (CAAA) or the Americans with Disabilities Act of 1991 (ADA) is not to exceed 90 percent.

Section 5311 Eligibility

[FTA C. 9040.1E Ch III, sec 2-3]

Eligible services and service areas:

Section 5311 funds are available for public transportation and intercity bus transportation projects in areas other than urbanized areas (rural and small urban). The annual program of projects must provide for fair and equitable distribution of funds within the state.

Eligible applicants:

- State agencies
- Local public bodies and agencies thereof
- Private nonprofit organizations
- Indian tribal governments
- Operators of public transportation service

Eligible assistance categories:

- State administration, planning, and technical assistance - not to exceed 15 percent of apportioned Section 5311 funds excluding the RTAP allocation
- Capital expenses -
 - Acquisition, construction, and improvement of public transit facilities and equipment
 - Lease of equipment when lease is more cost effective than purchase
 - The capital cost of contracting

- Up to 20 percent of vehicle maintenance costs (bus overhaul)
- Operating expenses - costs directly related to system operations which include, at a minimum, fuel, oil, replacement tires, replacement parts which do not meet criteria for capital items, maintenance and repairs, drivers' and mechanics' salaries and fringe benefits, dispatcher salaries, and licenses (after April 1, 1996, may capitalize up to 20 percent of vehicle maintenance costs)
- Project administration expenses - at the state's discretion, local project administration expenses may be treated as a separate cost category. Project administration expenses may include: general administrative expenses, coordination activities, marketing, insurance, office supplies, facilities and equipment rental, or standard overhead rates

Matching requirements:

- State administration - no local match required
- Operating - Federal share not to exceed 50 percent of the net operating deficit for the project
- Capital - Federal share not to exceed 80 percent of the net project cost
- Incremental cost of vehicle related equipment required to comply with the CAAA and ADA - Federal share not to exceed 90 percent

- Bicycle facility projects - Federal share not to exceed 90 percent of the net project cost
- Project administration - Federal share not to exceed 80 percent

Public Hearings

[FTA C. 9040.1E Ch V, sec 3d;

FTA C. 9070.1E Ch III, sec 8]

Applicants for Section 5311 capital assistance and applicants for Section 5310 assistance that are public bodies must afford an opportunity for a public hearing.

QUESTIONS FOR THE REVIEW

1. ***How does the state define eligible subrecipients under Section 5310? Is the state more restrictive than FTA?***

EXPLANATION

FTA established three categories of eligible subrecipients for Section 5310:

- Private nonprofit organizations, determined by the Secretary of the Treasury to have tax-exempt status or by state law to be nonprofit;
- Public bodies that certify to the governor that no nonprofit corporations or associations are readily available in an area to provide the service; and
- Public bodies approved by the state to coordinate services for elderly persons and persons with disabilities.

State agencies may further limit recipient eligibility requirements for the Section 5310 program in order to comply with state laws or to further program goals. For example, the state may, as a matter of policy, limit Section 5310 funding to private nonprofit organizations and not permit public bodies to apply.

SOURCES OF INFORMATION

The state must document program eligibility requirements in their state management plan, including identification of state eligibility requirements more restrictive than Federal eligibility requirements. Review the

eligibility requirements documented in the state management plan and the Section 5310 subrecipient grant application package. Confirm eligibility requirements on site.

DETERMINATION

The state is not deficient if its eligibility requirements are consistent with FTA's requirements or if the state imposes additional restrictions on eligibility. The state may be more restrictive than FTA, but may not be more permissive.

The state is deficient if its eligibility criteria are less restrictive than FTA's eligibility requirements.

SUGGESTED CORRECTIVE ACTION

The state must revise its eligibility requirements to be consistent with, or more restrictive than, FTA's requirements. The state must revise its state management plan and other pertinent documents to reflect the revised eligibility requirements. The state must implement the revised eligibility requirements in its next application cycle.

DOCUMENTATION

Document the state's categories of eligible subrecipients under the Section 5310 program, noting state policies that are more restrictive than the eligibility requirements established by FTA for the program.

- 2. Do any public bodies receive Section 5310 funds? Has the state approved all such public bodies to coordinate services or has the public body certified that no nonprofits are readily***

available? Did the public body afford an opportunity for a public hearing?

EXPLANATION

Public bodies are eligible to receive Section 5310 funds under one of the following conditions:

- The public body certifies to the governor that no nonprofit corporations or associations are readily available in the area to provide the service; or
- The state approves the public body to coordinate services for elderly persons and persons with disabilities.

The state develops its own process and criteria for approving public bodies to coordinate service.

Public body applicants for Section 5310 assistance must afford an adequate opportunity for a public hearing. The state is responsible for ensuring that the opportunity for public comment is made before providing funding to public bodies.

The state must document its policy and procedures for providing Section 5310 assistance to public bodies in the state management plan.

SOURCES OF INFORMATION

Review the state management plan for documentation of the state's policy and process for approving public bodies to coordinate service.

On site, confirm any public agencies that are receiving Section 5310 funds and the condition under which they are eligible. Discuss the state's process and criteria, if applicable, for approving public bodies to coordinate services. Review subrecipients' certifications to the governor or state correspondence approving a public body to coordinate services.

DETERMINATION

The state is not deficient if the appropriate documentation exists for any public bodies receiving Section 5310 assistance. If the public body is otherwise eligible but the documentation does not exist, or if the state could not have truthfully obtained the documentation, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit the appropriate documentation (subrecipient's certification to the governor or state's correspondence approving a public body to coordinate service) to FTA.

The state must develop and implement procedures for approving public bodies to coordinate service (if it is the state's policy to do so). The state must develop and implement procedures to obtain and maintain on file subrecipients' certifications to the governor that no nonprofits are available to provide the service. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's policy for funding public bodies under Section 5310. Identify

any public bodies for which the state has provided Section 5310 funding and the year and grant number under which funding was provided. Document the condition under which the subrecipient was determined eligible (i.e., certification to governor or state approval) and the date and signatory of correspondence.

3. *What matching requirements does the state impose for Section 5310 assistance? Are they consistent with or more restrictive than FTA's requirements?*

EXPLANATION

The Federal share of eligible capital and program administrative costs is not to exceed 80 percent of the net cost of the program. The local share of eligible capital and administrative costs shall be no less than 20 percent of the net cost of the program.

However, the Federal share may be 90 percent for the incremental cost of vehicle related equipment required by the CAAA or the ADA.

All of the local share must be provided from sources other than Federal funds except where specific legislative language of a Federal program permits its funds to be used to match other Federal funds.

The state may impose additional matching requirements on Section 5310 subrecipients. The state develops policies to meet the specific needs and demand for funding within the state. For example, the state may choose not to fund CAAA and ADA related equipment at the higher Federal share or

may impose higher local shares in order to provide assistance to more applicants.

imposes a higher local match requirement than required by FTA.

SOURCES OF INFORMATION

Review the state management plan for discussion of the state's matching requirements. On site, confirm with state staff.

4. *What is the state's process for evaluating and selecting Section 5310 projects? What are the elements of the subrecipient application?*

DETERMINATION

The state is not deficient if it imposes FTA's matching requirements or requires a higher local match for Section 5310 projects. The state is deficient if it uses Section 5310 funds to cover more than 80 percent of the cost of administering the program. The state is deficient if it provides Section 5310 funding for capital projects at more than 80 percent of the net cost of the project. The state is deficient if it provides Section 5310 funding for the incremental cost of CAAA or ADA related equipment at more than 90 percent.

EXPLANATION

The state is responsible for developing project selection criteria and selecting projects for funding under Section 5310. The process must allow for the evaluation and selection of projects without regard to race, color, or national origin. (See Civil Rights.)

SUGGESTED CORRECTIVE ACTION

The state must determine the amount of Section 5310 funding used to support program administration or capital projects in excess of the maximum Federal match and apply the funds to current projects or reimburse FTA.

A typical selection process involves evaluation of each application on the basis of specific evaluation criteria by an evaluation committee. The state generally establishes the evaluation committee, which may include other agencies. State staff may participate in the evaluation and in some cases, where an evaluation committee is not used, are solely responsible for evaluating and selecting projects.

Some states have established a two-tier approach, with minimum threshold criteria, which an applicant must meet in order to be considered for funding, and evaluation criteria used to evaluate and rank projects that meet the minimum criteria.

DOCUMENTATION

Document the state's matching requirements for the Section 5310 program. Indicate if the state takes advantage of the higher match for the incremental cost of CAAA and ADA related equipment. Indicate if the state

The state frequently includes availability of local match and operating funds, coordination, and maintenance capability as criteria for selection.

The state can use the subrecipient application to obtain information related to a number of FTA requirements, such as eligible services, local funding, coordination efforts, and maintenance and control of equipment. The state can also use the subrecipient application as a means to obtain certifications and assurances required by FTA.

SOURCES OF INFORMATION

The state must document its project selection criteria and method of distributing funds in the state management plan. Review the state management plan, the state's Section 5310 subrecipient application package, and other documentation of the project selection process. On site, discuss the selection process with state staff.

Obtain and review the state's Section 5310 subrecipient application and accompanying instructions prior to the site visit. On site, discuss with state staff.

DETERMINATION

This question is for information only. No determination of compliance is made.

SUGGESTED CORRECTIVE ACTION

None required.

DOCUMENTATION

Document the state's process for selecting Section 5310 projects for funding. If an evaluation committee is used, identify the composition of the committee. Document threshold and project evaluation criteria and weighting. Include copies of evaluation

forms and instructions, if applicable, in the review file.

5. *How does the state monitor Section 5310 subrecipients to ensure only eligible services are funded?*

EXPLANATION

Section 5310 funds are available for capital expenses to support transportation services meeting the special needs of elderly persons and persons with disabilities for whom mass transportation service is unavailable, insufficient, or inappropriate. Section 5310 funds are available for projects for transportation for elderly and persons with disabilities in urbanized, small urban, and rural areas.

At the discretion of the state, a subrecipient's acquisition of transportation services under contract, lease, or other arrangement may be funded under Section 5310. Both capital and operating expenses associated with the acquired service are eligible for funding.

The state is responsible for monitoring Section 5310 subrecipients to ensure that Section 5310 funds are being used to support eligible transportation services for elderly persons and persons with disabilities. Generally, the state's subrecipient application packages request a description of the service proposed for funding, including service area, eligible customers, days and hours of operation, and reservation requirements. The state must enter into an agreement with local subrecipients prior to expending funds on a local project. The agreement must specify the service to be funded under the grant. Some states require

subrecipients to report information on the services provided and populations served (e.g., general public, elderly, disabled) on a periodic basis. The state may also observe a subrecipient's service during periodic site visits.

SOURCES OF INFORMATION

Review the state management plan and the standard Section 5310 subrecipient agreement. Review the state's Section 5310 subrecipient application package(s) to identify the information obtained in the application process on the populations to be served. On site, discuss the state's application requirements, reporting requirements, site visits, and other mechanisms used by the state to ensure that Section 5310 subrecipients are providing services to meet the need of elderly persons and persons with disabilities.

DETERMINATION

The state is not deficient if it has systems in place to effectively monitor the services provided by Section 5310 subrecipients and to ensure that the services being funded with Section 5310 funds are eligible. If the state does not have appropriate systems in place for ensuring that subrecipients' services are eligible for Section 5310 funding, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement systems for monitoring subrecipients to ensure that services provided are eligible for Section 5310 funding. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the mechanisms the state uses to ensure that services provided are eligible for funding under Section 5310.

- 6. *How does the state define eligible subrecipients under Section 5311 and ensure that subrecipients propose general public transportation? Is the state more restrictive than FTA?***

EXPLANATION

Under Section 5311, eligible recipients may include state agencies, local public bodies and agencies thereof, private nonprofit organizations, Indian tribal governments, and operators of public transportation services. Private for-profit operators of transit service may participate through contracts with eligible subrecipients.

State agencies may further limit recipient eligibility requirements for the Section 5311 program in order to comply with state laws or to further state program goals.

SOURCES OF INFORMATION

The state must document program eligibility requirements in its state management plan, including identification of state eligibility requirements more restrictive than Federal eligibility requirements. Review the eligibility requirements documented in the state management plan and the Section 5311 subrecipient grant application package. Confirm eligibility requirements on site.

DETERMINATION

The state is not deficient if its eligibility requirements are consistent with or more restrictive than the eligibility requirements established by FTA. The state's eligibility requirements may be more restrictive than FTA's, but may not be more permissive.

The state is deficient if its eligibility criteria are less restrictive than FTA's eligibility requirements.

SUGGESTED CORRECTIVE ACTION

The state must revise its eligibility requirements to be consistent with, or more restrictive than, FTA's requirements. The state must revise its state management plan and other pertinent documents to reflect the revised eligibility requirements. The state must implement the revised eligibility requirements in its next application cycle.

DOCUMENTATION

Document the state's categories of eligible subrecipients under each program, noting state policies that are more restrictive than the eligibility requirements established by FTA for the programs.

- 7. What categories of eligible assistance does the state provide to subrecipients with Section 5311 funds: capital, operating, and/or project administration?***

EXPLANATION

The state may provide assistance under Section 5311 to subrecipients for eligible capital, operating, and project administrative expenses.

Capital expenses include the acquisition, construction, and improvement of public transit facilities and equipment. Leases of equipment or facilities may be considered a capital expense when the lease is more cost effective than purchase.

Operating expenses are the costs directly related to system operations. The state has the option to classify certain expenses as either operating or non-operating. At a minimum, fuel, oil, replacement tires, replacement parts that do not meet criteria for capital items, maintenance and repairs, drivers' and mechanics' salaries and fringe benefits, dispatchers' salaries and fringe benefits, and licenses must be included as operating expenses.

The state has the option to treat subrecipients' project administrative expenses as a separate cost category. These expenses can be considered non-operating and funded with up to 80 percent Federal share. Eligible project administrative costs include general administrative expenses such as the salaries of the project director, secretary and bookkeeper, marketing expenses, insurance premiums, office supplies, facilities and equipment rental, or standard overhead rates.

The state may, as a matter of policy, further restrict the categories of eligible assistance under Section 5311. Most states' Section 5311 annual apportionments are no longer sufficient to cover demand. Due to limited funding, some states limit Section 5311

funding to operating assistance only. Some states provide assistance for project administration as a separate category at the higher 80 percent Federal share; most states however treat these expenses as operating expenses and fund them at the lower 50 percent Federal share.

For the state that restricts Section 5311 to operating assistance, the review should determine how nonurbanized area operators are purchasing vehicles. The state may be providing state funding for vehicle acquisitions. Some operators may be receiving vehicles through Section 5309 grants, either through the state or directly. In some cases where subrecipients provide both general public transportation service in rural areas and special service for elderly and persons with disabilities, the state may be providing Section 5310 funding for the acquisition of vehicles and Section 5311 operating assistance for the general public service.

SOURCES OF INFORMATION

Review the Section 5311 state management plan for documentation of the state's eligible assistance categories, including any restrictions on eligible expenses, and the state's policy on allocation of costs between administration and operating categories.

The program of projects that are part of the TEAM application will identify the categories of assistance funded. At the desk review, examine programs of projects and budgets in active grants.

On site, discuss the state's policies for funding operating, capital and project administration projects.

DETERMINATION

This question provides information on how the state has chosen to target its resources, which in many cases are limited.

The regional office approves the state's program of projects. There will generally be no finding in this area. If the state is not funding capital with Section 5311 however, this question should lead to discussion of how Section 5311 subrecipients are purchasing capital equipment.

SUGGESTED CORRECTIVE ACTION

Generally none are applicable.

DOCUMENTATION

Document the categories of eligible assistance funded by the state over the last several years. Document state policies that limit assistance to specific categories, restrict eligible assistance, or further limit the Federal share of projects.

- 8. *What matching requirements does the state impose for Section 5311 assistance? Are they consistent with or more restrictive than FTA's requirements?***

EXPLANATION

The Federal share for eligible capital and project administrative expenses under Section 5311 is not to exceed 80 percent of the net cost of the project.

However, there are three exceptions where the Federal share is not to exceed 90 percent:

- # Capital projects used to provide access for bicycles to mass transit facilities, or to install racks or other equipment for transporting bicycles on mass transit vehicles
- # The incremental cost of vehicle related equipment required by the CAAA
- # The incremental cost of vehicle related equipment required by the ADA

The Federal share for operating assistance under Section 5311 is not to exceed 50 percent of the net operating deficit for the project. The state has the option to treat subrecipients' project administrative expenses as a separate cost category, which may be considered non-operating and funded with up to 80 percent Federal share.

There is no local match required for state administration of the Section 5311 program. A maximum of 15 percent of the state's apportionment, not including RTAP allocation, may be used to administer the program and provide technical assistance to subrecipients. The state may pass any portion of these funds to subrecipients for the same purposes and may, at its discretion, impose local share requirements.

There is no local share requirement for RTAP.

All of the local share must be provided from sources other than Federal funds except where specific legislative language of a

Federal program permits its funds to be used to match other Federal funds.

The state may impose additional matching requirements on Section 5311 subrecipients. The state develops policies to meet the specific needs and demand for funding within the state. For example, the state may choose not to fund CAAA and ADA related equipment at the higher Federal share or may impose higher local share requirements in order to fund more projects/subrecipients (at lower levels).

SOURCES OF INFORMATION

Review the state management plan for discussion of the state's matching requirements. On site, confirm with state staff.

DETERMINATION

The state is not deficient if it imposes FTA's matching requirements or requires a higher local match for Section 5311 projects. The state is deficient if it provides Section 5311 funds to cover more than 80 percent of the cost of eligible capital and project administration projects. The state is deficient if it provides Section 5311 funding for the incremental cost of CAAA or ADA related equipment or bicycle access projects at more than 90 percent. The state is deficient if it provides Section 5311 funding for operating assistance at more than 50 percent of the net operating deficit.

SUGGESTED CORRECTIVE ACTION

The state must determine the amount of Section 5311 funding used to support projects in excess of the maximum Federal

match and apply the funds to current projects or reimburse FTA.

DOCUMENTATION

Document the state's matching requirements for the Section 5311 program. Indicate if the state has taken advantage of the higher match for the incremental cost of CAAA and ADA related equipment or bicycle access/equipment. Indicate if the state has provided a portion of its state administrative funds to local subrecipients and whether it has imposed a local share.

Indicate if the state imposes a higher local match requirement than required by FTA.

9. *What is the process used to distribute funds under Section 5311? How are Indian tribal governments, where present, treated? Does the project selection process reflect a fair and equitable distribution of funds?*

EXPLANATION

Under Section 5311, the annual program of projects must provide for fair and equitable distribution of funds within the state. The state's project selection process must assure equity of distribution of benefits among all groups within the state, as required by Title VI.

The state is responsible for developing project selection criteria and reviewing and selecting projects for approval. The state must document its processes for selecting projects and distributing funds in the state management plan.

The state should have a process for publicizing the availability of funding and for distributing applications for funding to all interested parties. The state should provide outreach to minority areas, including Indian tribal governments, regarding the availability of Section 5311 funding and the application process.

Generally, state staff evaluates the applications. Some may establish an evaluation committee, particularly for evaluating applications for capital assistance.

The state may distribute funds by formula or on a discretionary basis. Normally, the project selection processes for capital and operating assistance will differ. Some states have established minimum threshold criteria that an applicant must meet in order to be considered for funding. Examples of minimum threshold criteria include availability of local match and coordination.

Applicants for operating assistance tend to be consistent over time. States frequently distribute operating assistance by formula, based on population or some other measure, to ensure a base level of assistance for all applicants. Some states use performance criteria in addition to, or instead of, population-based formulas.

Most states generally select projects for capital assistance based on specific project evaluation criteria. Evaluation criteria frequently include need, coordination, and other factors determined by the state. Generally, states assign weights to each evaluation criterion and provide an overall score for each project, allowing projects to be ranked.

For many states, demand for funding exceeds the funding available through the Section 5311 program. The state may restrict Section 5311 funding by increasing the local match requirement, by limiting the use of funds (e.g., operating assistance only), or by imposing other limitations. Some states, for example, have adopted policies to provide operating assistance only to systems in existence prior to a specific time (generally the point at which demand exceeded availability of funds) in order to maintain the existing level of funding for current subrecipients. While this may prevent new systems from participating in the Federal assistance program, it would not necessarily indicate an inequitable distribution of funds. Some states are reviewing their policies to find ways to allow new systems to participate in the Section 5311 program.

Some states provide assistance to Indian tribes and other minority organizations in the application process and assist them in preparing a complete application.

SOURCES OF INFORMATION

The state is required to document its process for distributing Section 5311 funds in the state management plan. Review the state management plan, the state's Section 5311 subrecipient application package, and other documentation of the project evaluation and selection process.

On site, discuss the selection process with state staff. Identify the basis for distribution of funds for each category of assistance (capital, operating, project administration). Identify evaluation factors used, weighting

of evaluation factors, and the participants in the evaluation process.

DETERMINATION

The state is not deficient if it has a process for selecting projects and distributing Section 5311 funds fairly and equitably among various applicants, including Indian tribal governments.

The state is deficient if its method for soliciting applications for funding, selecting projects or distributing funds does not provide for fair and equitable distribution of funds.

SUGGESTED CORRECTIVE ACTION

The state must revise its policies and procedures for distributing Section 5311 funding to provide fair consideration of projects throughout the state and by all eligible applicants. The state must revise its state management plan to reflect the revised processes for evaluating and selecting projects for Section 5311 funding. The state must implement the revised procedures in its next application cycle.

DOCUMENTATION

Document the state's process for selecting Section 5311 projects for funding including the process for publicizing the availability of funds and distributing applications, the organization and composition of evaluation committees, formulas used, threshold and evaluation criteria and weighting used, and priority factors.

10. Do any Section 5311 subrecipients provide service in areas besides nonurbanized areas? How does the state monitor the subrecipients to ensure that costs are properly allocated?

EXPLANATION

A subrecipient may receive both Section 5307 and Section 5311 funding to provide public transportation to an urbanized area and surrounding nonurbanized areas. The subrecipient must develop a reasonable basis for allocating the cost of service between the two funding sources.

The state is responsible for ensuring that subrecipients' allocation of expenses between urban and nonurbanized areas is reasonable. States generally require applicants for Section 5311 funding to identify the service area. The state may require subrecipients to document their process for allocating costs between urbanized and nonurbanized areas. The state may require subrecipients to report total expenses and show the allocation of expenses between urbanized and nonurbanized areas when requesting reimbursement. The state may review financial information and the allocation of costs between urbanized and nonurbanized areas during periodic site visits.

SOURCES OF INFORMATION

On site, ask the state to identify any Section 5311 subrecipients that provide service in both urbanized and nonurbanized areas. Discuss the state's mechanism for monitoring subrecipients to ensure that costs

are allocated appropriately between the urban and non-urban service.

DETERMINATION

The state is not deficient if it has procedures in place to ensure that subrecipients providing service in both urbanized and nonurbanized areas are appropriately allocating the costs. The state is deficient if it provides Section 5311 assistance to subrecipients operating in both urbanized and nonurbanized areas but does not have a system in place for ensuring that subrecipients are properly allocating the costs and seeking reimbursement for eligible costs.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to ensure that subrecipients operating in both urbanized and nonurbanized areas are properly allocating costs. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Identify Section 5311 subrecipients operating in both urbanized and nonurbanized areas. Document the mechanisms used by the state to monitor subrecipients to ensure that costs are being properly allocated.

11. How does the state monitor Section 5311 subrecipients to ensure services open to the general public are funded?

EXPLANATION

Section 5311 funds are available for expenditure for public transportation projects and intercity bus projects in areas other than urbanized areas. Public transportation is defined as mass transportation by bus (or rail or other surface conveyance) either publicly or privately owned, which provides, to the public, general or special service on a regular and continuing basis. Section 5311 projects may include the transportation of nonurbanized area residents to and from urbanized areas. Charter or sightseeing service is not eligible.

Section 5311 service may be targeted to general public who are transportation disadvantaged, including elderly and persons with disabilities. However, the service may not be restricted; it must be available and marketed to the general public.

The state is responsible for ensuring Section 5311 funds are being used to support eligible services. The state's subrecipient application package generally requests a description of the service proposed for funding, including service area, eligible customers, days and hours of operation, and route information. The state may require Section 5311 applicants to provide information on marketing in the application package.

The state must enter into an agreement with local subrecipients prior to expending funds on a local project. The agreement should specify the service to be funded under the grant.

Some states require subrecipients to report information on the services provided (e.g., populations served - general public, elderly, disabled) on a periodic basis. The state may

also observe subrecipients' service during periodic site visits.

SOURCES OF INFORMATION

Review the state's subrecipient application package(s) to identify the information obtained in the application process. On site, discuss the state's application requirements, reporting requirements, site visits, and other mechanisms used by the state to ensure that subrecipients are providing services eligible for Section 5311 funding.

DETERMINATION

The state is not deficient if it has systems in place to effectively monitor the services provided by subrecipients and to ensure that the services being funded with Section 5311 funds are eligible. If the state does not have appropriate systems in place for ensuring that subrecipients' services are eligible for Section 5311 funding, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement systems for monitoring subrecipients to ensure that services provided are eligible for Section 5311 funding. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the mechanisms the state uses to ensure that services provided are eligible for funding under Section 5311.

12. *How does the state ensure that applicants for Section 5311 capital projects afford an opportunity for a public hearing?*

EXPLANATION

Applicants for Section 5311 capital assistance are required to afford an opportunity for a public hearing. There is no public hearing requirement for operating assistance projects. Applications to the state for Section 5311 assistance should describe the extent of public involvement in preparing the local application as required by 49 U.S.C. 5323(b).

In order to make the required assurances to FTA, the state must obtain sufficient documentation from the subrecipients. The state should obtain from each subrecipient a description of the extent of public involvement in preparing the local application for assistance.

The state may require applicants to submit copies of public notices.

SOURCES OF INFORMATION

Review the state's Section 5311 subrecipient grant application package to identify information required in the grant application process. On site discuss with state staff.

DETERMINATION

The state is not deficient if it has a system in place for ensuring that Section 5311 applicants for capital assistance provide an opportunity for public comment. If the state has not required applicants to provide an opportunity for public comment and/or does not have a system in place for ensuring that

applicants are providing such opportunity, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must implement a system for ensuring that applicants for Section 5311 capital assistance provide an opportunity for public comment. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's requirements for local applicants to inform the state about its public involvement efforts.

13. *Where meal delivery or other incidental services are provided, how does the state ensure such services do not conflict with the provision of transit service or result in a reduction of service to transit passengers?*

EXPLANATION

Transit service providers receiving assistance under Section 5310 or Section 5311 may coordinate and assist in providing meal delivery service for homebound persons on a regular basis if this service does not conflict with the provision of mass transit service or result in a reduction of service to transit passengers. All operating costs attributable to the meal delivery service must be borne by the nutrition program that provides the meals.

Section 5310 and 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase

specialized equipment related to meal delivery.

Similarly, incidental use of a vehicle for non-passenger transportation on an occasional or regular basis is also permitted, as long as it does not result in a reduction of service quality or availability of public transportation service.

For some Section 5310 subrecipients, particularly senior service organizations, nutrition programs are a major function of the organization. Transporting people to a nutrition site for meals is an eligible and appropriate service.

The state should have a system in place for ensuring that incidental services provided by subrecipients do not interfere with the provision of transit service. The state may request information on incidental services in the subrecipient application process. Some states require subrecipients to report periodically on the services provided, such as the number of passengers, miles and other statistics. The state could require subrecipients to report on meal delivery and other incidental services as well. Periodic site visits provide an opportunity to observe the services being provided.

SOURCES OF INFORMATION

Review the state management plan for discussion of incidental services. On site, discuss with state staff their policy on meal delivery and other incidental services and identify subrecipients providing meal delivery services.

During subrecipient site visits, ask if the subrecipients provide meal delivery or other incidental service.

DETERMINATION

The state is not deficient if it has appropriate systems in place for monitoring the services provided by subrecipients and ensuring that any incidental services provided are allowable and do not interfere with the subrecipients' provision of transit service. If the state does not have an appropriate system for monitoring subrecipients' service, a finding of deficiency should be made.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement monitoring procedures to ensure that incidental services provided by subrecipients do not detract from transit service. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's policy regarding meal delivery and other incidental service, and the mechanisms the state uses to ensure that such services do not interfere with the provision of transit service. Note subrecipients that the state identifies as providing meal delivery or other incidental service.

14. *Has the state received any complaints regarding the distribution of Section 5311 or 5310 funds? If so, how were complaints resolved?*

EXPLANATION

Complaints regarding the distribution of Section 5311 or 5310 funds, particularly a

history of complaints, could be an indication that the state's process for selecting projects is not fair and equitable.

SOURCES OF INFORMATION

During the desk review, discuss the state's distribution of Section 5310 and 5311 funds with regional office staff. On site, ask state staff if there have been any complaints and the status of such complaints. If complaints were in writing, obtain copies of correspondence.

DETERMINATION

This question supports determination of the state's non-deficiency with the requirement to provide fair and equitable distribution of funds to all groups within the state (see

question 9). A history of complaints regarding the selection of projects for funding may be indicative of a process that does not provide for fair and equitable distribution of benefits and, depending on the specific complaints, could lead to a deficient finding.

SUGGESTED CORRECTIVE ACTION

See question 9.

DOCUMENTATION

Document the nature and status of any complaints received regarding the state's distribution of funds under Section 5310 or 5311. Include in the review files copies of written complaints.

4. FINANCIAL MANAGEMENT AND MONITORING

BASIC REQUIREMENT

The state and all local subrecipients must have the fiscal capability to carry out the Section 5310 and Section 5311 programs. The state must expend and account for Federal funds in accordance with state laws and procedures for expending and accounting for state funds. The state and subrecipients must have annual independent audits conducted.

SPECIFIC REQUIREMENTS

Annual Single Financial, Programmatic, and Internal Audit

[OMB C. A-133; FTA C. 9040.1E Ch VI, sec 7; FTA C. 9070.1E Ch V, sec 11]

The state is required to have annual audits conducted in accordance with OMB Circular A-133. State agencies administering the Section 5310 and 5311 grant programs are responsible for:

- # Ensuring that subrecipients have audits conducted in accordance with OMB Circular A-133
- # Resolving audit findings
- # Bringing problems to FTA's attention

Financial Management

[49 CFR 18, Subpart C; 49 CFR 19, Subpart C]

The state must expend and account for Federal grant funds in accordance with state laws and procedures for expending and

accounting for its own funds. The state may apply their own procedures to all subrecipients, regardless of whether they are public entities or private nonprofit organizations. Nonprofit organizations must meet the minimum standards of A-110.

Fiscal control and accounting procedures of the state and its subrecipients must be sufficient to:

- # Permit preparation of reports necessary to comply with program and statutory requirements
- # Permit the tracing of funds to ensure that such funds have not been used in violation of the restrictions and prohibitions applicable to the program

State Administrative Expenses - Sect 5311 [FTA C. 9040.1E Ch III, sec 5a]

The state may use an amount not to exceed 15 percent of its apportioned Section 5311 funds to administer the program and provide technical assistance to local subrecipients. No local match is required for the state's administrative expenses. The state may pass any portion of these funds to local subrecipients for the same purposes. The state may carry over administrative funds, within the cap, for use in subsequent years.

State Administrative Expenses - Sect 5310 [FTA C. 9070.1E Ch II, sec 6]

The state may use an amount not to exceed \$25,000 or 10 percent of its Section 5310

apportionment, whichever is greater, for program administration costs incurred in implementing and managing the Section 5310 program. A minimum 20 percent local match is required.

Indirect Administrative Charges
[OMB Circular A-87]

A cost allocation plan is required to support the distribution of indirect administrative ("overhead") costs related to Federal grant programs. FTA or the cognizant Federal agency must approve the cost allocation plan.

Transfer of Apportionments Under Other Sections of the Law
[FTA C. 9040.1E Ch II, sec 5;
FTA C. 9070.1E Ch II, sec 5]

Section 5310: The governor may transfer Section 5310 funds within 90 days of the end of the Federal fiscal year to supplement Section 5311 funds for nonurbanized areas or Section 5307 funds for urbanized areas with populations under 200,000.

Section 5311: The governor may transfer Section 5311 funds to supplement Section 5307 funds in urbanized areas with populations less than 200,000.

Section 5307: The governor may transfer Section 5307 funds for urbanized areas with less than 200,000 populations to supplement Section 5311 funds.

Surface Transportation Program (STP): STP funds and certain other funds for highway or transit (e.g., CMAQ) may be transferred to Section 5310 or Section 5311 for use in those programs (specified for a particular project at the time of transfer or for programming by the state).

Disbursement of Federal Funds
[Department of Treasury Circular 1075,
part 205; FTA's ECHO System Operations
Manual; FTA C. 9040.1E Ch VI, sec 5b;
FTA C. 9070.1E Ch V, sec 14b]

Payments to the state are made under the Electronic Clearing House Operation (ECHO) system. The state may initiate cash drawdowns only when actually needed for immediate disbursement for project purposes. The state must disburse the funds drawn down within three calendar days.

QUESTIONS FOR THE REVIEW

1. *Has the state transferred funds between Section 5307, 5310 and 5311, or transferred flexible funds to the Section 5310 or 5311 programs? If so, have restricted funds been used for capital projects or project administration as required?*

EXPLANATION

The Section 5310 and 5311 programs allow for the transfer of funds between these programs and Section 5307 for small, urbanized areas, with certain stipulations. Legislation also permits transfer of funds apportioned for highway to these programs. Such transfers are made at the discretion of the state.

The governor may transfer funds between Section 5311 and Section 5307 as follows:

- # The governor may transfer any amount of the state's apportionment of Section 5307 funds for urbanized areas with populations less than 200,000 to supplement the state's Section 5311 apportionment. (The Governor may make such transfers only after consultation with responsible local elected officials and publicly owned operators of mass transportation services in each area to which funding was originally apportioned. The Governor may transfer funds without consultation within the last 90 days in which the funds are available for obligation.) The funds are treated as additional Section 5311 funding and all the

application requirements of Section 5311 apply. Three conditions follow the Section 5307 funds, however, when they are transferred:

- 1) Transferred funds are subject to the capital and operating limitations applicable to the original Section 5307 apportionment (the governor must designate whether the transferred funds are unrestricted, i.e., available for both capital and operating, or are restricted to non-operating purposes)
 - 2) The transferred funds do not increase the amount of Section 5311 funds which can be used for administration with no local share (i.e., up to 15 percent of the state's apportionment); however, transferred Section 5307 funds can be used for planning with up to 80 percent Federal share
 - 3) The period of availability of the transferred funds remains that of the Section 5307 apportionment (year of apportionment plus 3 years)
- # The governor may also transfer Section 5311 funds to supplement Section 5307 funds apportioned to the state for urbanized areas with populations less than 200,000. The amount transferred is subject to any limitations applicable to the original apportionment.

The governor may transfer any portion of the Section 5310 apportionment that remains

unobligated within 90 days of the end of the Federal fiscal year to Section 5311 or to Section 5307 for small, urbanized areas (populations less than 200,000). Section 5310 funds transferred to Section 5311 may only be used for non-operating costs (capital and project administration). The funds do not change the amount available for state administration under either Section 5311 or Section 5310. The period of availability of the funds is three years.

Surface Transportation Program (STP) funds and certain other funds may be transferred to the Section 5310 or Section 5311 programs. STP funds, Congestion Management and Air Quality Improvement Program (CMAQ) funds and other "flexible funds" transferred to Section 5311 are restricted to non-operating costs. Fifteen percent of the transferred funds may be used for state administration, including planning, with no local match. Transferred funds must be included in the calculation of the state's percentage of funds for administration (see question 4). The period of availability of the funds is generally three years. However, STP funds transferred to Section 5310 have a period of availability of one year.

The state must notify the FTA Regional Administrator of each transfer of funds. For transfers of Section 5307 funds to Section 5311, notice should include the amount of funds to be transferred, the fiscal year in which the funds were apportioned, whether the funds are restricted to non-operating projects or unrestricted, and, unless the transfer is within the last 90 days of the period of availability, the statement by the governor or designee that responsible local officials and operators have been consulted prior to the transfer.

For transfers from Section 5311 to Section 5307, the notice must indicate the amount of funds transferred and the fiscal year in which they were apportioned.

Notice of transfers of Section 5310 funds to Section 5311 or 5307 must indicate the amount of funds and the program to which they are to be transferred.

Some states have adopted policies and procedures regarding the transfer of funds. For example, some states have procedures in place for identifying and transferring to the Section 5311 program any Section 5307 funds about to lapse.

SOURCES OF INFORMATION

Examine grant files in the regional office for notification to the Regional Administrator of the transfer of funds to or from the Section 5310 and 5311 programs. Discuss transfers with regional office staff.

Review the state management plan for a description of the state's policy and procedures for transferring funds. On site, discuss the state's process and restrictions for transferring funds and confirm any transfers that have been made in the last three years. Discuss with state staff the projects funded with transferred funds and confirm that restrictions have been followed.

DETERMINATION

The state is not deficient if it follows the correct procedures when transferring funds, including providing the necessary notification to the FTA Regional Administrator and administering and

managing the transferred funds in accordance with FTA requirements.

If the state transfers funds but does not adhere to the restrictions on the use of transferred funds, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must implement procedures to follow when transferring funds between the Section 5307, 5310, and 5311 programs or transferring flexible funds to the Section 5310 or 5311 programs.

The state must implement procedures to ensure that transferred funds are used in accordance with applicable restrictions. The state must submit documentation of the procedures to the FTA regional office. The regional office could request reimbursement of funds from the state that have not been expended in accordance with the restrictions applicable to the transferred funds.

DOCUMENTATION

Document the state's policies and procedures for transferring funds to or from the Section 5310 and 5311 programs. Note any transfers that have been made during the last three years, indicating the date, the source of funds (program and grant), the amount of funds transferred, and the receiving program and grant. Also note the date of correspondence notifying the Regional Administrator of the transfer of funds. Indicate whether transferred funds were used in accordance with their restrictions, if any.

2. *Has the state deferred local match spending? If so, has the state made the proper drawdowns?*

EXPLANATION

FTA issued a policy statement in July 1992 that allows states and other direct grantees to defer local match spending on a grant by drawing down and applying Federal funds to the first 80 percent of project costs for capital, planning, and research projects. The state would apply the 20 percent local match to the last 20 percent of project costs.

The state must request and obtain FTA approval in advance of deferring local share spending.

Internal FTA guidelines recommend, but do not require, the use of a Joint Statement of Understanding of Deferred Local Share.

Few states have deferred local match spending on Section 5310 or 5311 projects.

SOURCES OF INFORMATION

Annually, FTA headquarters prepares a list of the grantees that have deferred local match. Review the report at the regional office. Review the list at the regional office. Discuss the use of deferred local match spending with regional office staff.

If the state has deferred local match, confirm with state staff the use and status of deferred local match spending on any projects within the last three years. Examine annual financial status reports and state financial records to determine if the state properly implemented the policy.

DETERMINATION

If the state has obtained FTA approval to defer local match spending on a project and has properly drawn down the Federal funds and paid the 20 percent local match, the state is not deficient. If the state has drawn down the Federal money and is unable to make the 20 percent local match, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must provide the 20 percent local match or repay the advanced Federal share.

DOCUMENTATION

Identify grants that involve deferred local match spending. Note the dates and signatories of correspondence requesting and approving deferred local match spending and the date and signatories of the Joint Statement of Understanding of Deferred Local Share, if used. Indicate the financial status of projects involving deferred local match, i.e., the project cost and the amounts and timing of Federal and local expenditures.

- 3. *What are the Section 5310 apportionments for the previous three years? What amount and percentage of Section 5310 funds have been used for administration? Does the amount used for Section 5310 administration exceed \$25,000? Does it exceed 10 percent?***

EXPLANATION

Up to \$25,000 or 10 percent of the state's total Section 5310 apportionment,

whichever is greater, may be used as the Federal share of program administration costs. Program administrative costs cover the costs incurred by the state in implementing and managing the entire Section 5310 program, including previously funded projects. Administrative funds are not specific to one grant; they may pay the ongoing administrative costs of previous projects. Program administrative costs may include, but are not limited to, general administrative and overhead costs, staff salaries, office supplies, and development of specifications for vehicles and equipment. A minimum 20 percent local match is required.

SOURCES OF INFORMATION

Review the Section 5310 apportionments listed in the Federal Register annually. Review programs of projects and budgets in regional office grant files to determine the amount of Section 5310 funds programmed for state administration. For each of the last three years, calculate the percentage of the Section 5310 apportionment programmed for state administration.

DETERMINATION

The state is not deficient if, for each of the last three years, it has spent an amount less than or equal to \$25,000 or 10 percent of the Section 5310 apportionment on state administration. If the state has spent more than \$25,000 or more than 10 percent of the total Section 5310 apportionment on administration costs, the state is deficient.

SUGGESTED CORRECTIVE ACTION

For active grants, the state must adjust the amount of funds used for administration to within the \$25,000 or 10 percent limit.

DOCUMENTATION

For each of the last three grants, indicate the Section 5310 apportionment and the amount and percentage of funds used for state administration.

4. *What are the Section 5311 apportionments for the previous three years? What amount and percentage of Section 5311 funds have been used for administration/planning/technical assistance? Does the amount used for Section 5311 administration exceed 15 percent? Has the state passed any portion of its administrative funds to subrecipients?*

EXPLANATION

The state may use up to 15 percent of its apportioned Section 5311 funds (excluding the RTAP allocation) without the requirement for a local match to administer the program and provide technical assistance to local subrecipients. No local match is required for the 15 percent allowed for state administration of the Section 5311 program.

Administrative costs may include salaries, overhead expenses, supplies and office equipment. Technical assistance may include project planning, program development, development of vehicle and equipment specifications, management development, coordination of transportation programs, and research.

Transfers of funds between Section 5311 and Section 5310 and 5307 do not affect the amount available for state administration. Flexible funds assume the characteristics of the programs to which they are transferred. Therefore, when flexible funds are transferred into the Section 5311 program, the state may use up to 15 percent of the transferred funds for state administration with no local match. The state may carry over remaining funds within the administrative cap to use in subsequent years.

The 15 percent cap on state administrative expenses does not limit use of Section 5311 funds for planning and marketing for intercity bus services. That is, Section 5311 funds that are not part of the 15 percent administrative portion may be used for planning and marketing for intercity bus service with a 20 percent local match. Similarly, transferred Section 5307 funds can be used for planning with a 20 percent local match.

The state may pass any portion of its funds for state administration to local recipients. At its discretion, the state may impose a local share requirement for such funds.

SOURCES OF INFORMATION

Review Section 5311 apportionments listed in the Federal Register annually. Review programs of projects and budgets in the regional office grant files to determine the amount of Section 5311 funds programmed for state administration. For each of the last three years, add the state's apportionment of Section 5311 funds and flexible funds transferred to the program and calculate the percentage of funds programmed for

administration. If the percentage exceeds the 15 percent cap, determine whether funds within the previous year's administrative cap were carried over. If so, subtract the amount of carry over funds from the amount programmed for administration and recalculate the percentage.

On site, discuss with state staff whether the state has passed any of its administrative funds (within the 15 percent cap) to subrecipients and whether it has imposed a local share on the funds.

DETERMINATION

The state is not deficient if, for each of the last three years, the amount programmed for state program administration is less than or equal to 15 percent of the apportionment and transferred flexible funds, unless funds are carried over from the previous year. If the state uses more than 15 percent of the total Section 5311 apportionment (and transferred flexible funds) for state administration, planning or technical assistance, the state is deficient. Note that planning (unless for intercity bus or with Section 5307 transfers) must fall within the cap.

SUGGESTED CORRECTIVE ACTION

For active grants, the state must adjust the amount of funds used for administration to within the 15 percent limit.

DOCUMENTATION

For each of the last three years, indicate the amount of the Section 5311 apportionment, the amount of any administrative funds carried over from the previous year, and the amount of any flexible funds transferred into

the Section 5311 program. Indicate the amount and percentage of total used for state administration.

Indicate the grant and amount of any state administrative funds that the state passed on to local subrecipients. Indicate the local match imposed by the state, if applicable.

- 5. *Does the state charge indirect administrative costs to grants? Does the state have a cost allocation plan to support indirect administrative costs related to a grant program? Did FTA or the cognizant Federal agency approve the plan? How does the state ensure that subrecipients comply with FTA requirements related to indirect costs?***

EXPLANATION

Under federally funded grant programs, recipients may incur costs of both a direct and indirect nature. Direct transit related activities may be charged to a grant as long as the activity is permitted under the grant and can be supported by daily records such as time sheets or expenditure records. Indirect costs can only be charged to a grant with an approved indirect cost allocation plan prepared in accordance with OMB Circular A-87. FTA or the cognizant Federal agency (usually FHWA) must approve the cost allocation plan..

According to the circular, indirect costs are:

- # Incurred for a common or joint purpose benefiting more than one cost objective; and

- # Not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved.

Indirect costs charged by subrecipients must also be supported by an indirect cost allocation plan approved by the state agency.

SOURCES OF INFORMATION

At the regional office, review grant files and correspondence for indication of the existence of a cost allocation plan. Discuss with regional office staff.

On site, inquire whether the state charges indirect administrative costs to Section 5310 and 5311 grants and discuss the cost allocation plan if it exists. Obtain a copy of the state's cost allocation plan and correspondence from the state if it is not on file in the regional office. Inquire whether subrecipients charge indirect administrative costs and, if so, determine if an approved cost allocation plan exists. Obtain a copy of the state-approved plan.

As part of the examination of ECHO system documentation (question 7), review a disbursement involving state administrative funds and compare the labor charges to the staffing examined under Program Management. Charges from upper levels of management and from other departments may indicate that indirect costs are being charged to the grant and the state should have an approved cost allocation plan to support such charges.

DETERMINATION

The state is not deficient if it charges indirect administrative costs to Section 5310 or 5311 grants consistent with an approved cost allocation plan. If the state is charging indirect administrative costs to the grants but does not have, or is not following, an approved cost allocation plan, it is deficient. (See question 7.) If the subrecipient charges indirect costs without an approved cost allocation plan, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state - or a subrecipient - that is charging indirect administrative costs to Section 5310 or 5311 grants and does not have an approved cost allocation plan to support such charges must discontinue charging the indirect costs to the grant. The state must document the amount of the indirect charges to grants that were not supported by a cost allocation plan.

The regional office may seek reimbursement of indirect administrative costs charged to a grant that were not supported by a cost allocation plan (immediate reimbursement or deduction from future charges against the grants for performance of the necessary managerial activities of the grant).

In order to charge indirect administrative costs to a grant, the state must develop and submit a cost allocation plan to the cognizant Federal agency. Once the plan is approved, the state may charge appropriate indirect costs to the grants.

DOCUMENTATION

Indicate whether the state or its subrecipients are charging indirect

administrative costs to Section 5310 or 5311 grants. If the state cost allocation plan exists, indicate the date of the plan, the cognizant Federal agency, and the date of approval of the plan. If subrecipients are charging indirect costs and cost allocation plans exist, indicate the date of the plans and date of state approval of the plans.

Note the ECHO drawdown reviewed. Include in the review file documentation of the payroll data reviewed that supports the ECHO drawdown. Note any indirect charges to grants that are not supported by a cost allocation plan.

6. *What is the state's process for receiving and disbursing Federal funds?*

EXPLANATION

The state generally requests Federal funds through the Electronic Clearing House Operation (ECHO) system. The state may initiate cash drawdowns only when actually needed for immediate disbursement and must disburse the Federal funds promptly (within three calendar days). FTA does not charge state grantees interest on funds not disbursed promptly. However, FTA may revoke or suspend the state's access to the ECHO system if the state fails to expend Federal funds within three days of receipt or fails to return the funds to FTA within a reasonable period. The state must establish procedures to minimize the time elapsing between ECHO drawdowns and disbursements to subrecipients or contractors.

States generally require Section 5311 subrecipients to submit requests for

reimbursement for operating expenses on a periodic basis (e.g., monthly). Often, states require subrecipients to submit operating performance reports at the same time.

Generally, for Section 5310 and Section 5311 capital assistance, subrecipients submit requests for reimbursement after the expenses have been incurred.

States generally request reimbursement for state administrative expenses (i.e., payroll) that have already been incurred. Daily records (such as timesheets) must support direct transit-related activities charged to a grant. Other indirect costs can only be charged to a grant with an approved indirect cost allocation plan prepared in accordance with OMB Circular A-87. (See question 5.)

States generally have a process in place for reviewing subrecipients' requests for reimbursement, combining approved requests, and forwarding requests to the finance or accounting department to initiate an ECHO drawdown. Generally, the finance or accounting department requests the drawdown of Federal funds and instructs the state Treasury to issue checks to subrecipients and vendors.

SOURCES OF INFORMATION

On site, ask the state to describe its process for receiving and disbursing Federal funds, including:

- 1) Subrecipients' procedures for requesting funds
- 2) State's procedures for reviewing and approving subrecipients' requests for funds and direct contractor invoices

- 3) State's procedures for initiating ECHO drawdowns (coordinating with finance or accounting department) for administrative expenses and subrecipient or vendor requests
- 4) State's procedures for disbursing funds to the state's administration account, subrecipients, and vendors.

In addition, review the state management plan and the state's standard Section 5310 and 5311 subrecipient agreement(s) for documentation of these procedures.

DETERMINATION

Determination is made regarding the system established by the state for the receipt and disbursement of Federal funds. (Question 7 assesses the effectiveness of the system by reviewing a sample of ECHO drawdowns.) The state is not deficient if it has a system in place for disbursing Federal funds within three days of receipt. If the system does not provide for prompt disbursement of Federal funds, the state is deficient.

SUGGESTED CORRECTIVE ACTION

FTA may seek reimbursement of Federal funds if not promptly disbursed by the state. If the state consistently fails to expend Federal funds within three days of their receipt or to return funds to FTA within a reasonable period, FTA may revoke the state's access to the ECHO system.

DOCUMENTATION

Document the state's process for receiving and disbursing Federal funds for

administrative funds, subrecipients, and vendors.

7. *Do the state's records support the ECHO system requests for funds? Has the state had excess Federal cash on hand?*

EXPLANATION

This question examines how the state's system for receiving and disbursing Federal funds works, based on a sample of ECHO drawdowns. It determines whether the state has promptly disbursed the Federal funds for the sample.

SOURCES OF INFORMATION

This question involves review of a sample of ECHO system requests and supporting documentation. Review TEAM grant disbursement data for open grants and select a small sample (2 or 3) of recent disbursements. Include at least one disbursement for Section 5310 and one for Section 5311. Include in the review ECHO drawdowns for capital, operating and state administration. Once on site, it may be necessary to adjust the sample selected to ensure that each category of assistance is included.

On site, review the ECHO system documentation including the request for Federal funds (date and amount), the documentation supporting the request (tracking back to subrecipients' requests for reimbursement, vendor invoices, and state payroll information), and evidence of issuance of reimbursement to subrecipients or vendors (date and amount). Determine

whether Federal funds were disbursed within three days of receipt, as required.

Review at least one disbursement that involves state administrative charges. Payroll records (time sheets) should be available to support the ECHO drawdown. Review the payroll records, comparing the labor charges that support the ECHO drawdown to the program staffing identified under Program Management. Charges from upper levels of management and from other departments within the agency which are not charged directly (e.g., supported by time records) may indicate that indirect costs are charged to the grant and the state should have an approved cost allocation plan to support such charges (see question 5).

DETERMINATION

If the sample shows that the state requested drawdown of Federal funds after incurring the eligible expenses and disbursed the funds to subrecipients or vendors within three days, the state is not deficient. If the sample shows that the state did not have adequate documentation of expenses incurred to support the request to drawdown Federal funds, the state is deficient. If the sample shows that the state did not disburse the Federal funds to subrecipients or vendors within three days of receipt, the state is deficient. If such situations have occurred in the past, but corrective actions are in place, the state is not deficient.

If the state has an appropriate system in place for receiving and disbursing Federal funds (see question 6), but review of the sample of ECHO drawdowns and supporting documentation indicates that the system is not being followed, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to disburse Federal monies within three days of receipt. The state must submit documentation of the procedures to the FTA regional office.

The regional office may request reimbursement for Federal cash held in excess of three days.

DOCUMENTATION

Note on the worksheets the ECHO requests that were examined at the site visit, including:

- 1) The grant number and amount and date of the ECHO drawdown,
- 2) The nature of the expenses incurred, e.g., capital, operating, state administration,
- 3) The subrecipient or vendor and the date and amount of the disbursement,
- 4) Payroll information for state administration charges, including date and amount.

Copies of supporting documentation may be included in the review file.

8. *Do the state's financial management systems enable it to track grant balances accurately? Are there any discrepancies between regional office TEAM and state accounting records?*

EXPLANATION

The state must implement fiscal control and accounting procedures sufficient to:

- # Permit the preparation of reports necessary to comply with program and statutory requirements; and
- # Permit the tracing of funds to ensure that funds have not been used in violation of restrictions and prohibitions applicable to the program.

The state's financial management system should track local project and grant balances for requesting drawdown of Federal funds, reporting to FTA in the annual FSR, and closing out grants.

Some states have not effectively tracked grant activity, particularly for older grants. In some cases, the state's grant balances may not reconcile with those of the FTA regional office. Discrepancies in grant balances have made it difficult to close out grants.

FTA encourages grantees to access TEAM on-line. Direct access to TEAM may help the state improve the tracking of grant balances. Both the state's program and accounting staff should have access.

SOURCES OF INFORMATION

Discuss the state's financial management systems and grant accounting with regional office staff. Regional office staff is frequently aware when the state's grant balances differ through review of annual FSR and progress reports and grant closeout documentation. Review TEAM for current

grant balances. On site, discuss with state staff.

DETERMINATION

If the state's financial management systems allow it to accurately track grant balances, the state is not deficient. If the state's financial management systems do not allow it to accurately track grant balances, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a plan to reconcile the differences between the balances in TEAM and the state's accounting system and to identify and correct the procedures that allowed the differences to develop. The must submit the plan to the FTA regional office.

DOCUMENTATION

Document any discrepancies in grant balances between TEAM and state accounting records. Indicate if the differences have delayed the closing of grants by FTA.

9. *How does the state ensure local subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds?*

EXPLANATION

The Common Rule requires that the state and its subrecipients have fiscal control and accounting procedures sufficient to:

Permit preparation of required reports

Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

The state is responsible for overseeing subrecipients to ensure that they have adequate financial management systems to ensure that Federal funds are expended and accounted for properly. The state must have a system in place for monitoring subrecipients to ensure that their financial management systems are adequate. The state would not be required to monitor the financial management systems of subrecipients that do not receive Federal cash (e.g., Section 5310 subrecipients for which the state procures vehicles).

Some states require applicants for assistance under Section 5310 or 5311 to describe their accounting systems. Some may require subrecipients to maintain separate accounting records for projects. The state reviews A-133 audits of public bodies and perform periodic audits of subrecipients. In addition to the A-133 audit, some states require Section 5311 subrecipients to have their auditors certify the year-end financial statements for their transit operations. Some states limit eligibility for Section 5311 assistance to public bodies.

SOURCES OF INFORMATION

Review the state management plan and the state's Section 5310 and 5311 subrecipient

applications for discussion of fiscal capability. On site, discuss with state staff.

DETERMINATION

If the state ensures that local subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds, the state is not deficient. If the state does not, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to ensure that subrecipients have adequate financial management systems to carry out the programs and to receive and disburse Federal funds. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document how the state ensures that subrecipients have adequate financial management systems.

10. *How does the state determine the availability of subrecipients' local matching and operating funds?*

EXPLANATION

The state must certify to FTA (as part of the FTA Annual Certifications and Assurance Process) and ensure that each local subrecipient has or will have the required non-Federal match for the project and has or will have sufficient funds to operate and maintain the vehicles and equipment purchased under the project. Revenue

sources should be stable and reliable enough to meet future annual operating and routine capital costs. The state must obtain and maintain sufficient documentation from each subrecipient to support the certification to FTA.

Operating assistance under Section 5311 is available for up to 50 percent of the net operating deficit included in the project. Of the remaining deficit, at least 50 percent must be financed from local sources (other than Federal funds or revenues). Funds received by subrecipients pursuant to service agreements with the state or local social service agency or a private social service organization may be considered local rather than Federal funds, even though the original source of such funds may have been another Federal program.

Income from contracts to provide human service transportation may be used to offset the cost of providing the service or as local match for Section 5311 operating assistance. The state may not prohibit a local recipient from using income from human service agency contracts as local match. However, the state may regard the degree to which a local recipient demonstrates local financial commitment to the project from other sources of local funds as a rating factor in making project selection decisions.

States generally require applicants for Section 5310 or 5311 assistance to indicate in the application the sources of non-Federal funding that will be applied to the project. Some states have included the availability of local funding for the project as either a threshold criteria or evaluation criteria in the project selection process.

SOURCES OF INFORMATION

Review the state management plan and the state's Section 5310 and 5311 application package(s) and standard subrecipient agreement(s) for information on how the state ensures that the local subrecipient has the necessary local match and sufficient funds to operate and maintain vehicles purchased under the project.

On site, discuss with state staff how local match is considered in the evaluation process and how the state ensures that local recipients have the necessary local match and funds to operate and maintain capital equipment.

DETERMINATION

The state is not deficient if it has a system in place for ensuring the availability of subrecipients' local match for Section 5310 and 5311 projects and, for vehicle procurements, sufficient funds to operate the system and maintain the equipment.

The state is deficient if it does not have an appropriate system in place for ensuring that subrecipients have the required local match and sufficient operating funds to operate and maintain the vehicles. The state is deficient if it does not have sufficient documentation of the source and amount of local match and operating revenues from subrecipients necessary to make or support its assurance to FTA.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a process for obtaining information from subrecipients on the source and amounts of

local match available for projects and the anticipated sources and amounts of operating revenue and subsidies for continued operation and maintenance of vehicles funded under the Section 5310 or 5311 programs. The state must develop and submit documentation of the process to the FTA regional office.

DOCUMENTATION

Document the state's process for obtaining information from Section 5310 and 5311 applicants on the sources and amounts of local match available for the grant and on the anticipated sources and amounts of operating revenue and subsidies for continued operation and maintenance of the vehicles. Identify the data requested at the time of application for funds and the methods the state employs to confirm the validity of the subrecipients information.

Document how the availability of local match and sufficient operating funds is considered in the project selection process.

11. *Has the state had annual audits conducted in accordance with OMB Circular A-133? Are there any unresolved audit issues?*

EXPLANATION

The state is required to have annual audits conducted in accordance with OMB Circular A-133. The audit may encompass all departments within the state.

The state must submit a copy of the annual audit report and Federal Audit Clearinghouse (FAC) transmittal form to the

Office of Inspector General (OIG) within 9 months of the end of the state's fiscal year. At the same time, the state must submit a copy of the FAC transmittal form to the FTA regional office and a copy of the audit report if the report has any DOT-related finding. (Dear Colleague letter June 17, 2004) OIG reviews the audits and determines whether the audit has been conducted in accordance with OMB Circular A-133.

SOURCES OF INFORMATION

Regional office files may contain A-133 audits and correspondence from the OIG office accepting the audit as meeting the requirements of A-133. If the most recent fiscal year audit is not in the regional office, obtain a copy of the audit from the state.

At the regional office, review the audits and correspondence from OIG to determine if the state is in compliance with the OMB Circular and if any unresolved audit issues relevant to the Section 5310 or 5311 programs exist.

On site, discuss any findings related to the agency or specifically to the Section 5310 or 5311 programs. If there are unresolved audit issues relevant to the Section 5310 or 5311 programs, obtain an explanation of how the state intends to resolve the issues. Also review issues that the state has resolved that are relevant to the state management review.

DETERMINATION

The state is not deficient if it has had annual audits conducted in accordance with OMB Circular A-133 and has resolved audit issues

related to the Section 5310 or 5311 programs.

If the state has not had annual audits conducted in accordance with A-133, it is deficient.

If the state has not taken appropriate action to resolve audit issues promptly, it is deficient. If the state is in the process of implementing actions to resolve audit issues, the state may be not deficient. If the state has taken actions to resolve audit issues, but it is determined that such actions are not sufficient to address audit findings, the state may be deficient.

SUGGESTED CORRECTIVE ACTION

The state must have annual audits conducted in accordance with OMB Circular A-133.

The state must resolve open audit issues relating to the Section 5310 or 5311 programs. The state must submit documentation of the resolution of audit findings to the FTA regional office.

DOCUMENTATION

Copies of A-133 audits and OIG correspondence may be in the regional office files. If not, obtain a copy for the file from the state.

Identify the audit for each fiscal year, the OIG's determination, and any audit findings related specifically to the Section 5310 or 5311 programs or to the state agency responsible for the programs. Note whether findings have been resolved. If a finding has not been resolved, note what steps the state is taking to resolve the audit issue.

Excerpts from the audit may be included in the review file.

12. *What is the mechanism the state uses to ensure A-133 audits of subrecipients are conducted and findings resolved?*

EXPLANATION

The state is responsible for ensuring that Section 5310 and 5311 subrecipients receiving over \$500,000 in total Federal assistance have audits conducted pursuant to the requirements of OMB Circular A-133. The state must ensure that subrecipients resolve audit findings and must advise FTA of problems in the resolution of audit findings.

The state should have a mechanism for informing subrecipients of the requirement to have annual audits conducted. The requirement may be included in the state's standard subrecipient agreement. The state must have a process in place for receiving and reviewing annual audits of subrecipients and monitoring subrecipients' resolution of relevant findings. The state should have a system for tracking the audits, including the resolution of findings.

SOURCES OF INFORMATION

The state management plan must describe the state's process for obtaining and reviewing audits and monitoring the resolution of findings. The state's standard subrecipient agreement should indicate the requirement for subrecipients to have audits conducted. Review the state management plan and the standard subrecipient agreement. On site, discuss the process with

state staff. Obtain copies of logs or management reports which address subrecipients' audit activities.

DETERMINATION

The state is not deficient if it has a system in place for obtaining and reviewing subrecipient audits and monitoring the resolution of findings. If the state has not been receiving subrecipients' audits, the state is deficient. If the state has not been reviewing audits and monitoring subrecipients resolution of audit findings, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to obtain and review subrecipients' audits and to monitor and track the resolution of audit findings. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's process for receiving, reviewing and monitoring subrecipients' audits. Indicate how the state informs subrecipients of the audit requirement. Include in the review file copies of logs or reports that track submission of audits and resolution of findings.

13. *Does the state have an internal audit department? Has the internal audit department conducted audits that address the Section 5310 or 5311 programs? Are there any unresolved audit issues?*

EXPLANATION

In addition to external auditors, state governments may have internal auditors. Internal audits may have been conducted on specific aspects of the Section 5310 or 5311 programs or on agency wide issues that affect the Section 5310 or 5311 programs. The state management review should address internal audits involving or affecting the Section 5310 and 5311 programs and determine how relevant audit issues have been or are being resolved.

SOURCES OF INFORMATION

On site, identify and discuss with state staff any internal audits that have been conducted within the last three years that specifically address the Section 5310 or 5311 programs or agency wide issues that affect the Section 5310 or 5311 programs. Review relevant internal audit reports. Discuss findings and how the state has resolved or plans to resolve relevant audit findings.

DETERMINATION

If state internal auditors have conducted audits that are relevant to the Section 5310 or 5311 programs and the state has resolved all audit findings, the state is not deficient. If the state has not taken appropriate action to resolve audit issues promptly, the state is deficient

SUGGESTED CORRECTIVE ACTION

The state must document its plan for resolving open audit issues that affect the Section 5310 or 5311 programs.

DOCUMENTATION

Note any internal audits conducted in the last three years that address the Section 5310 or 5311 programs or that have findings applicable to the programs. Indicate the status of findings, describing those that have not been resolved and actions the state has taken or plans to take to resolve unresolved findings.

5. INTERCITY BUS PROGRAM - SECTION 5311(f)

BASIC REQUIREMENT

Under Section 5311(f), the state must spend a percentage of its annual Section 5311 apportionment to support intercity bus service in rural and small urban areas, unless the Governor certifies that the intercity bus transportation needs of the state are adequately met.

SPECIFIC REQUIREMENTS

State Programming of Funds

[49 U.S.C. 5311(f); FTA C. 9040.1E Ch VII]

The state is required to spend 15% of its Section 5311 apportionment to carry out a program for the development and support of intercity bus transportation unless the Governor certifies that the intercity bus service needs of the state are adequately met.

Definition of Intercity Bus Service

[FTA C. 9040.1E Ch VII]

Intercity bus service is defined as regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.

Eligible Activities

[49 U.S.C. 5311(f)]

Assistance must support intercity bus service in rural and small urban areas or the connection between these nonurbanized areas and larger regional or national systems of intercity bus service.

Eligible activities may include, but are not limited to:

- Planning and marketing for intercity bus transportation
- Capital grants for intercity bus shelters, joint use stops and depots
- Operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects
- Coordination of rural connections between small transit operators and intercity bus carriers

QUESTIONS FOR THE REVIEW

1. *Has the state programmed funds for intercity bus service per Section 5311(f)? If not, has the Governor certified that intercity bus service needs are adequately met? How was this determination made? Was an opportunity for public input and comment made available?*

EXPLANATION

Under Section 5311(f), which was authorized by ISTEA, the state is required to expend a portion of its Section 5311 apportionment on a program to develop and support intercity bus transportation. The percentage required by the statute is not less than 15 percent since FY94.

The state is not required to expend the specified percentage of its apportionment on an intercity bus program in any fiscal year in which the Governor certifies that the intercity bus service needs of the state are adequately met. A new certification must be made each year that the state does not program the required percentage of funds.

The Governor's certification that intercity bus service needs are adequately met should be supported by the statewide assessment of intercity bus service currently available and of any unmet needs. The state should provide opportunity for public input into the decision to certify that the intercity bus needs in the state are adequately met.

The Governor could certify that intercity bus needs are partially met and, therefore, program an amount less than the specified

percentage for an intercity bus program in that year.

The state may withhold the required percentage required to be expended for an intercity bus program in a given year for later programming along with funds from subsequent years' apportionments. To do so, the state must indicate, in its application to FTA, its intent to program the funds along with future apportionments.

The state must include the intercity bus projects in the annual Section 5311 program of projects and implement the program as part of its management of the Section 5311 program.

SOURCES OF INFORMATION

Examine Section 5311 programs of projects in grant files for the last three years to determine the amount and percentage of funds the state has programmed for its intercity bus program. If funds have not been programmed, look for the certification by the Governor that intercity bus service needs are adequately met which should be on file with the grant application.

Review the Section 5311 state management plan for documentation of the state's process for assessing statewide needs and seeking public comment. On site, discuss the state's process for assessing intercity bus needs and determining whether needs are adequately met, including the opportunity for public input. Review documentation of any statewide assessment of intercity bus service, documentation of the public input process, and other documentation supporting the Governor's certification that the intercity bus needs of the state are adequately met.

DETERMINATION

The state is not deficient if it has programmed the required percentage of its Section 5311 apportionment for an intercity bus program in FY 1992 and subsequent years.

If the state has not programmed the required percentage of its Section 5311 apportionment for an intercity bus program in any year and the Governor has certified that the intercity bus service needs within the state are adequately met for that fiscal year, the state is not deficient.

If the state has not programmed the required percentage of its Section 5311 apportionment for an intercity bus program in any year and the Governor has not certified that the intercity bus service needs within the state are adequately met in that fiscal year, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must reprogram funds to projects to develop and support intercity bus transportation, obtain a certification from the Governor that the intercity bus service needs for the state are adequately met, or partially met, as appropriate, in the year that funds were not programmed, or return the funds to FTA.

DOCUMENTATION

Indicate whether the state has programmed funds for an intercity bus program in the current and prior two fiscal years. Indicate the amount and percentage of funds programmed.

If the Governor has certified that intercity bus service needs are adequately met in any year, indicate the fiscal year covered by the certification, and the date of the certification. If the Governor has certified that intercity bus service needs have been partially met, indicate the fiscal year covered by the certification, the percentage of apportionment being programmed for intercity bus, and the date of the certification.

Document the process used by the state to assess intercity bus service and determine intercity bus needs within the state or that needs are fully or partially met. Note studies conducted, surveys, meetings or other processes for collecting information. Document the public input process.

- 2. *What activities is the state pursuing to support intercity bus service in rural and small urban areas? Are these activities eligible according to the circular guidance?*

EXPLANATION

Assistance under Section 5311(f) must support intercity bus service in rural and small urban areas. FTA C. 9040.1E defines intercity bus service as regularly scheduled bus service for the general public which:

- Operates with limited stops over fixed routes connecting two or more urban areas not in close proximity;
- Has the capacity for transporting baggage carried by passengers; and

- Makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.
- Commuter service is excluded.

The statute identifies eligible intercity bus activities, including:

- Planning and marketing for intercity bus transportation
- Capital grants for intercity bus shelters, joint-use stops, and depots
- Operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects
- Coordination of rural connections between small transit operations and intercity bus carriers

Other capital and operating projects supporting rural intercity bus service are also permitted, such as operating assistance to a public or private nonprofit organization for the direct operation of intercity service and capital assistance to purchase vehicles or vehicle related equipment for use in intercity service. Service that acts as a feeder to intercity bus service, but does not necessarily have the same characteristics as intercity bus service, is eligible for funding.

FTA encourages each state to implement programs that support a network of intrastate services and provide connections with larger regional or national networks of interstate service.

SOURCES OF INFORMATION

Review programs of projects in grant files for a general description of the state's intercity bus projects. On site, obtain information on the proposals received, the projects selected, and the status of projects.

Review agreements/contracts with subrecipients of Section 5311(f) for a description of the scope of the project and schedule.

DETERMINATION

The state is not deficient if the programmed projects support intercity bus service in rural and small urban areas and are eligible activities according to the circular.

The state is deficient if projects selected or funded do not meet the definition of intercity bus service or are not consistent with the eligible activities.

SUGGESTED CORRECTIVE ACTION

The state must modify the service to comply with the requirements or identify new projects that apply. The state must submit documentation of the changes to the FTA regional office.

DOCUMENTATION

Document the projects funded under Section 5311(f), the funds expended on each project, and the status of each project. Also document the state's process for soliciting and evaluating proposals and selecting projects for funding.

3. *Where the state programmed funds in Category C (program reserve) for Section 5311(f), have they been reprogrammed for specific eligible projects within the period of availability of the funds (year of apportionment plus two years)?*

EXPLANATION

The state must program the required percentage of its annual apportionment for intercity bus transportation within the period of availability (year of apportionment plus two years).

All projects for intercity bus service should be grouped together and identified in the Section 5311 program of projects. Funds may be programmed for specific projects in Category A or B, or reserved in Category C for intercity bus projects not yet identified.

The state may withhold the percentage required for the intercity bus program in a given year and obligate the funds at a later date along with funds from the subsequent year's apportionment. The state should notify FTA in its grant application of its intent to withhold funds for later programming.

If the state cannot immediately program all the required funds to be programmed for intercity bus transportation, funds may be reserved for intercity bus in Category C. FTA expects the state to allocate all funds in this category either to new approvable projects or to budget adjustments in Category A and B projects within twelve months. In any case, Category C funds must be allocated to specific projects within the period of availability.

If the state does not program and expend the funds for intercity bus service, they will lapse to the state.

SOURCES OF INFORMATION

In the regional office, review programs of projects and correspondence in grant files. Confirm on site whether funds initially reserved in Category C have been programmed for specific projects within the three-year time frame.

For any funds remaining in Category C, discuss with the state how it plans to program the funds within the period of availability.

DETERMINATION

The state is not deficient if it has programmed all intercity bus funds to specific projects within the three-year period of availability. If the state has not programmed intercity bus funds to specific projects within the three-year period of availability, and the Governor has not certified that intercity bus needs are adequately met, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must program funds in Category C and submit a revised program of projects to FTA for funds nearing the end of their period of availability. If funds have not been programmed to specific projects within the three-year period of availability, FTA may deobligate the funds.

If the state chronically fails to comply with the requirement to program funds for intercity bus programs within the period of

availability, FTA may impose other sanctions (e.g., loss of other grant funds).

DOCUMENTATION

For the current and prior two fiscal years, document the amount of intercity bus funds held in reserve in Category C in the original program of projects submitted with the grant application. Document funds remaining in Category C at the time of the desk review and site visit, indicating the end of the period of availability, and any funds that should be deobligated.

Document the state's plan for programming funds nearing the end of their period of availability to specific intercity bus projects.

6. RURAL TRANSIT ASSISTANCE PROGRAM (RTAP)

BASIC REQUIREMENT

The state must design and implement training and technical assistance programs and other support services to meet the specific needs of transit operators in nonurbanized areas.

SPECIFIC REQUIREMENTS

RTAP Allocation

***[49 U.S.C. Section 5311(b)(2);
FTA C. 9040.1E Ch VIII, sec 3]***

The Secretary is authorized to make grants and enter into direct contracts for transit research, technical assistance, training, and related support services in nonurbanized areas. FTA makes an annual allocation to each state to develop and implement training and technical assistance programs.

Eligible Activities

[FTA C. 9040.1E Ch VIII]

The state may use RTAP funds to support nonurbanized transit activities in four categories:

- Training
- Technical assistance
- Research
- Related support services

RTAP funds may not be used for administration of the RTAP program or for

overhead expenses. The use of state staff for direct delivery of RTAP services is a program expense, not an administrative expense.

Program Development

[FTA C. 9040.1E Ch VIII, sec 4b]

Each state should develop an RTAP program through a process that provides maximum opportunity for public and private nonurbanized transit operators to participate in identifying and prioritizing needs for the training, technical assistance, research, and other support services and mechanisms for delivering services.

RTAP Participation by Providers in Urbanized Areas

[FTA C. 9040.1E Ch VIII, sec 4e]

Providers of specialized transportation in urbanized areas and public transit operators in small, urbanized areas are permitted to participate in RTAP funded activities as long as the activities are primarily designed and delivered to benefit nonurbanized transit providers.

QUESTIONS FOR THE REVIEW

1. *How has the state used its annual allocation of RTAP funds in the areas of training, technical assistance, research, and related support activities?*

EXPLANATION

RTAP provides a source of funding to assist each state in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in nonurbanized areas. The state develops an RTAP program of projects and applies for RTAP funds as an element of the annual Section 5311 grant application. The state may hold up to 10 percent of their RTAP allocation in program reserve for projects not fully developed at the time of application.

RTAP funds may be used to support nonurbanized transit activities in four categories: training, technical assistance, research, and related support services. The state may use RTAP funds for special projects that support its planning program for rural and small urban areas.

Most states focus the majority of their RTAP resources on training activities. States frequently provide one or more of the following types of training: direct driver training, train-the-trainer, passenger assistance techniques, management training, and training in new requirements such as drug and alcohol testing. Many states hold annual meetings that bring together a large number of nonurbanized transit operators to

participate in training activities. Some states provide scholarships for subrecipients to attend conferences, training courses, or workshops.

Many states publish newsletters under the RTAP program that provide information to subrecipients on RTAP activities.

RTAP funds may only be used for direct delivery of service. The state may not use RTAP funds for administration of the RTAP program or for overhead expenses. Administrative expenses associated with the RTAP program may be covered by the portion of the state's Section 5311 allocation (maximum 15 percent) available for state administration.

SOURCES OF INFORMATION

Review Section 5311 grant files for information on the annual allocation of RTAP funds. The annual RTAP program of projects should describe the major projects and amount of funding in each program category.

On site, discuss the specific types of projects undertaken each year. Discuss the status of current year projects. If the state contracts with another organization for administration of the RTAP program, review the agreement (contract) for a description of the work plan for the year. Obtain and review any state prepared reports that document RTAP activities. Obtain and review a recent copy of the RTAP newsletter, if applicable.

DETERMINATION

This question provides information on the state's RTAP activities. Generally no

determination of compliance is made. However, if the state is charging administrative expenses or other ineligible expenses (i.e., for activities other than training, technical assistance, research, and related support activities) to the RTAP program, the state is deficient.

SUGGESTED CORRECTIVE ACTION

Generally no corrective action is required, unless ineligible expenses are being funded. The state must discontinue charging ineligible expenses to the RTAP program.

Recommend to the state that they put the FTA regional office, the FTA Section 5311 program manager in Washington, and the National RTAP on their mailing list for the state RTAP newsletter, if they haven't already.

DOCUMENTATION

For each of the last three fiscal years, note the amount of RTAP funds used for each category - training, technical assistance, research, and related support activities. Identify the major activities conducted under each category. Specify the training programs being developed or offered. Note the amount held in reserve in Category C.

2. *How were the nonurbanized (5311) transit operators involved in the development of the RTAP program?*

EXPLANATION

Each state should develop its RTAP program through a process which provides maximum opportunity for nonurbanized

transit operators, both public and private, to participate in identifying priority areas of need for training, technical assistance, research, and other support services and in determining the appropriate mechanisms for delivering these services.

FTA Circular 9040.1E suggests that one effective way to involve nonurbanized transit operators in ongoing review and comment on the state's program development and delivery is through an RTAP advisory committee. Other appropriate methods could include public meetings, group meetings with interested parties, or surveys.

The state should periodically assess its RTAP programs to ensure that the training and technical assistance offered address the needs of its nonurbanized area operators.

SOURCES OF INFORMATION

Review the Section 5311 state management plan for documentation of the state's methods for involving nonurbanized operators in the development and implementation of the program. On site, discuss the process for obtaining input with state staff.

DETERMINATION

The state is not deficient if it has an on-going process for obtaining and considering input of public and private operators in nonurbanized areas in the development and delivery of the RTAP. If the state has not implemented a process for obtaining and considering input from nonurbanized area operators, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to obtain and consider input from nonurbanized area operators in the development of the RTAP program and the mechanisms for delivering the program elements. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's process for involving public and private operators in the development of the RTAP program of projects. Document methods the state uses to obtain feedback on specific activities from RTAP participants.

3. *Are RTAP funds "pooled" with funds from other states?*

EXPLANATION

FTA encourages states to consider "pooling" funds in order to support activities or projects that would be more effectively carried out on a larger scale than a single state.

Two methods are available to consolidate funding:

- 1) Each state can obligate funds for the joint project as part of its program of projects and subsequently transfer the funds to the implementing organization through a contract or an interagency agreement; or

- 2) Participating states may designate a single state to be the grant recipient for all of the pooled funds. Each donor state then informs FTA in writing of the amount of RTAP funds to be transferred to the recipient state.

Activities that could be funded through pooled state RTAP funds include regional workshops or training courses, development of technical assistance information, and peer-to-peer assistance.

The state may contribute to combined state efforts such as the Multi-State Technical Assistance Project (MTAP) or regional consortia provided the activities support the RTAP objectives and benefit nonurbanized public transportation. FTA has determined that MTAP annual dues are an eligible RTAP expense.

SOURCES OF INFORMATION

At the regional office, review grant files and discuss with regional office staff. The program of projects should identify any jointly funded projects. The grant files should contain correspondence from the state requesting a transfer of RTAP funds to another state, if applicable.

On site, confirm with state staff whether funds have been pooled with funds from other states. Identify any activities that have been conducted with joint funds and the states involved. Review contracts or interagency agreements in cases where the state directly transfers the funds to another state.

DETERMINATION

Pooling of RTAP funds with another state or states is done at the discretion of the state. If the state pools funds with other states, determination of compliance is based on the existence of the required documentation.

If the state obligates RTAP funds for a joint project in its program of projects and subsequently transfers the funds to the implementing state, it must have an executed contract or interagency agreement. If the state has an executed contract or interagency agreement with the implementing state, it is not deficient. If the state has not properly executed a contract or agreement, the state is deficient.

If FTA transfers the funds to another state, no determination of compliance is required, since the proper documentation would exist.

SUGGESTED CORRECTIVE ACTION

The state must execute a formal contract or interagency agreement to transfer RTAP funds between states for joint projects. The state must submit documentation of the agreement to the FTA regional office.

DOCUMENTATION

If the state has pooled RTAP funds with funds from another state, note the fiscal year of the funds, the states pooling funds, the amount, and the activities planned or accomplished with the pooled funds.

Document the date and signatories of interagency agreements or contracts

executed to pool RTAP funds with another state.

Document the date and signatory of correspondence from the state requesting FTA to transfer RTAP funds to another state.

4. Do Section 5310 subrecipients participate in the training and technical assistance aspects of the program?

EXPLANATION

FTA permits Section 5310 providers in urbanized areas and public transit operators in small urbanized areas to participate in RTAP sponsored activities, at the state's discretion, as long as the activities are primarily designed and delivered to benefit nonurbanized transit providers. Many states allow their participation in training activities.

SOURCES OF INFORMATION

On site, ask whether the state allows Section 5310 providers and public transit operators in small urbanized areas to participate in RTAP activities. Identify the types of activities in which they are permitted to participate.

DETERMINATION

The state is not deficient if it designs and delivers RTAP activities primarily to benefit nonurbanized transit providers. The state is not deficient if it permits Section 5310 providers and public transit operators in small urbanized areas to participate in RTAP

activities, as long as the activities are primarily designed and delivered to benefit nonurbanized transit providers and the inclusion of the Section 5310 or small urbanized area operators does not displace Section 5311 providers wishing to participate.

The state is deficient if it develops or provides training or technical assistance through its RTAP program that is specific to providers of special transportation for elderly and persons with disabilities and is not beneficial or available to nonurbanized general public transportation operators, or if participation by others significantly prevents participation by rural providers.

SUGGESTED CORRECTIVE ACTION

The state must discontinue any training or technical assistance activities for the exclusive use or benefit of providers of special transportation for the elderly and persons with disabilities or public transit operators in small urbanized areas or allow participation only on a space available basis.

DOCUMENTATION

Indicate whether the state allows Section 5310 providers and public transit operators in small urbanized areas to participate in RTAP activities. Indicate the types of activities that are open to Section 5310 and small urban operators.

7. SATISFACTORY CONTINUING CONTROL

BASIC REQUIREMENT

The state administering the Section 5310 and 5311 programs must maintain control over federally funded facilities and equipment and ensure that they are used in transit service. The state can use, manage, and dispose of facilities and equipment under its own laws and procedures.

SPECIFIC REQUIREMENTS

Equipment Management

[49 CFR Part 18;

FTA C. 9040.1E Ch VI, sec 2a;

FTA C. 9070.1E]

The state can use, manage, and dispose of equipment acquired under a Section 5310 or 5311 grant in accordance with state laws and procedures. The state may use the same procedures for private nonprofit as for public body subrecipients.

Equipment Title

[49 CFR 18.32(a)]

Title to equipment acquired under a grant or a subgrant will vest in the grantee or the subgrantee, respectively. State administering agencies or local Section 5310 and 5311 subrecipients may hold title to vehicles funded with Section 5310 or 5311 assistance.

Vehicle Useful Life and Replacement Standards [FTA Master Agreement Sect 19;

FTA C. 9040.1E Ch VI, sec 2(c);

FTA C. 9070.1E Ch V, sec 9b]

The state has the responsibility for establishing and implementing its own

useful life and replacement standards for vehicles.

Leasing Vehicles Acquired With Section 5310 or 5311 Funds

[FTA 9070.1E Ch V, sec 4]

Vehicles acquired under the Section 5310 or 5311 programs may be leased to other entities. The state must approve the lease of Section 5310 vehicles. FTA does not require the state to approve the lease of Section 5311 vehicles. The lease between the Section 5310 subrecipient and the lessee must contain the terms and conditions that must be met in providing transportation service to elderly persons and persons with disabilities.

Real Property

[49 CFR 18.31,

FTA Master Agreement Section 19]

Title to real property acquired under a grant or a subgrant will vest in the grantee or the subgrantee, respectively. Real property will be used for the originally authorized purpose.

Transfer of Capital Assets

[49 USC Section 5334(g);

FTA C. 9040.1E Ch VI, sec 2b;

FTA C. 9070.1E Ch V, sec 3c]

If authorized by the Secretary, the state may transfer facilities and equipment and other assets (including land) which are no longer needed for the purposes for which they were acquired to any public body to be used for any public purpose with no further obligation to the Federal government.

QUESTIONS FOR THE REVIEW

1. *What procedures does the state follow to manage and control federally funded facilities and equipment operated directly by the state or by subrecipients? What requirements does the state place on subrecipients?*

EXPLANATION

The state can rely on its own laws and procedures for managing and controlling facilities and equipment acquired with Section 5310 or 5311 assistance. The state may use the same procedures for public bodies and private nonprofit organizations.

Typical procedures used by the state to track and maintain control over federally funded facilities and equipment include:

- # **Equipment inventories.** The state can generally maintain an inventory of vehicles, facilities, real property and other items procured with Federal or state assistance.
- # **Retention of or liens on titles.** The state or the local subrecipients may hold title to the vehicles acquired with Section 5310 or 5311 assistance. In the state where subrecipients hold title to FTA funded vehicles, the state frequently places liens on the titles. Either the state or subrecipient must hold title to any vehicle leased to public bodies or nonprofit organizations.
- # **Minimum useful life standards.** The state can establish minimum

useful life standards to ensure that vehicles and facilities are well maintained and are used to the fullest extent.

- # **Disposition requirements.** The state can use disposition procedures to recoup any remaining Federal or state interest on vehicles, facilities, real property, or equipment. This ensures that vehicles are used until the end of their useful lives, vehicles are identified that can be transferred to other subrecipients, and that facilities or real property are not sold without acknowledging the Federal interest.
- # **Lease restrictions.** Lease restrictions help the state control vehicles that are used and maintained by entities other than subrecipients.
- # **Productivity standards.** Productivity standards ensure that vehicles serve a minimum number of riders and enable the state to transfer vehicles that are underused.
- # **Site visits.** Site visits are important for visually inspecting vehicles to ensure their continued use in transit service.

Typical requirements placed on subrecipients by the state for maintaining control of FTA funded vehicles and equipment include:

- # **Equipment inventories.** Inventories enable the state to know how many vehicles a subrecipient has, including those not purchased with Federal or

state assistance. Many states require subrecipients to provide an equipment inventory with each application for Section 5310 or Section 5311 capital assistance. Some states reconcile the subrecipients' inventories to the state's inventory.

- # **Annual vehicle use certifications.** Many states require Section 5310 subrecipients and sometimes Section 5311 subrecipients to submit annual vehicle use certifications. The certifications are particularly important for tracking vehicles acquired by Section 5310 subrecipients who generally do not apply for capital assistance on an annual basis. The state can use the certifications to update the state's inventory.
- # **Periodic reporting of vehicle use.** Many states require periodic reports of vehicle use (miles, hours, passengers, trip purpose) to ensure that vehicles are used in accordance with program requirements and are not underused.
- # **Insurance.** The state requires insurance to ensure that the Federal and state interests are adequately protected.

SOURCES OF INFORMATION

The state management plan must document how the state tracks, controls, and monitors equipment and facilities. Before the site visit, review the state management plan for

the state's procedures, requirements placed on subrecipients, and copies of forms.

On site, confirm the procedures with the state. Review Section 5310 and 5311 application package(s), standard Section 5310 and 5311 subrecipient agreements, and other documents such as vehicle buyer's guides for reporting and other requirements and copies of the forms. Review the state's equipment inventory if it has one. Discuss the frequency of site visits, if conducted, and how equipment control is addressed through the site visits. Obtain a copy of the site visit questionnaire for the file. Identify information obtained through periodic reports and how the state uses the data to track and maintain control of equipment and facilities. Obtain a copy of a report for the file.

DETERMINATION

If the state has procedures to track, control, and monitor equipment, real property, and facilities, the state is not deficient. If the state does not have procedures to track and control equipment, real property, and facilities the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to track and control FTA funded equipment and facilities. The state must submit documentation of the procedures to the FTA regional office.

The state must update the state management plan to include is procedures for controlling federally funded equipment.

DOCUMENTATION

Document the state's procedures for tracking and maintaining control over federally funded facilities and equipment. If the state maintains an equipment inventory, include a copy of a page of the inventory in the review files. Note the frequency of site visits and vehicle inspections. Note the frequency of vehicle use reports and the data collected. Document how the state analyzes and uses the data to manage equipment. Include copies of any report forms in the review files.

2. Does the state have insurance or other casualty loss requirements for subrecipients operating federally funded equipment and facilities? How is the Federal interest protected?

EXPLANATION

FTA does not impose specific requirements for insurance coverage on the states or subrecipients of Section 5310 or 5311 assistance. However, the state must ensure that the Federal interest is protected in the case of casualty loss and that the Federal share of casualty loss payments are used for mass transit purposes.

States and their subrecipients are not required to reimburse FTA for the Federal share of casualty loss payments but should have policies and procedures for ensuring that the proceeds are used for mass transit purposes. Many states require subrecipients to reimburse the state for the Federal and state share of casualty loss payments or to use the payments towards replacement equipment.

State and local insurance requirements govern the type and extent of insurance that subrecipients maintain. The state usually defines a minimum level of insurance coverage for vehicles acquired with Section 5310 or 5311 assistance.

Minimum liability insurance requirements will be expressed either as split limit coverage--per person bodily injury liability/per occurrence bodily injury liability/per occurrence property damage liability--or as combined single limit coverage. The state may require additional medical expense coverage for passengers. Conventional minimum liability coverage levels are as follows:

Split limit:
\$100,000/\$300,000/\$50,000

Combined single limit: \$300,000

Medical expense: \$5,000

Collision insurance covers damage to a vehicle incurred during an accident up to the actual cash value of the vehicle less a deductible. Standard deductibles for collision coverage are \$250 or \$500. Comprehensive insurance covers all damage other than collision, such as glass breakage and damage due to theft, vandalism, falling objects, fire, or hitting an animal, up to the actual cash value of the vehicle less a deductible. Standard deductibles for comprehensive coverage are \$100 or \$250.

Some states have assigned risk pools that offer special vehicle insurance rates to nonprofit organizations.

The state may require Section 5311 subrecipients to insure facilities constructed with program funds for replacement value. The insurance usually covers contents, including vehicles stored in the facility. Conventional minimum facility coverage is replacement value for facilities and contents, including stored vehicles.

SOURCES OF INFORMATION

Review the state management plan, Section 5310 and 5311 application package(s), standard Section 5310 and 5311 subrecipient agreements, and other documentation for insurance requirements and requirements for the use of casualty loss payments. On site, confirm the requirements with the state.

DETERMINATION

The state is not deficient if it has a mechanism for protecting the Federal interest in the case of loss due to accident or fire and procedures for ensuring that loss payments are used for mass transit purposes. If the state does not have a mechanism for protecting FTA funded equipment and facilities in the case of loss or procedures for returning casualty loss payments to the programs, the state is deficient.

FTA does not impose specific insurance requirements on the states or their Section 5310 or 5311 subrecipients. Therefore, a determination of deficient or not deficient based on levels of insurance is not made.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for safeguarding FTA funded facilities and equipment in the case of loss.

The state must develop and implement procedures for ensuring that casualty loss payments are used for mass transit purposes.

DOCUMENTATION

Document the state's insurance requirements in the workbook. Document state requirements and procedures for the use of casualty loss payments.

- 3. *Has the state established minimum useful life standards for vehicles? What is the state's basis for determining fair market value? What is the state's replacement policy for vehicles and equipment?***

EXPLANATION

In keeping with the intent of the common rule that the state be given greater flexibility in managing and disposing of equipment under Section 5310 and 5311, FTA assigns the states the responsibility for establishing and implementing their own rolling stock requirements for all categories of vehicles. FTA permits the states to:

- # Establish their own minimum useful life standards for vehicles
- # Use their own procedures for determining fair market value
- # Develop their own policies and procedures for replacement of vehicles

Most states will not replace a vehicle prior to the end of its useful life. Some states have requirements for rehabilitation of

vehicles to extend their useful lives before replacement is considered. Some states will review requests for replacement of a vehicle prior to the end of its useful life and will permit replacement under certain conditions.

SOURCES OF INFORMATION

Review the state management plan, the standard Section 5310 and 5311 subrecipient agreements, and other documentation for minimum useful life standards for vehicles, procedures for determining fair market value, and policies and procedures for replacement of vehicles.

On site, confirm the requirements and procedures with the state.

DETERMINATION

Since FTA provides the states the flexibility to establish their own useful life standards and replacement policies and procedures, this question does not lead to a finding.

SUGGESTED CORRECTIVE ACTION

None required.

DOCUMENTATION

Document the state's minimum useful life standards for vehicles, procedures for determining fair market value, and policies and procedures for replacement of vehicles.

- 4. *Does the state have procedures for transferring equipment between subrecipients? Has the state transferred equipment? Has the state***

included the transfers in a program of projects?

EXPLANATION

The state may transfer to any eligible subrecipient for continued use in accordance with the requirements of the program under which the facility or equipment was acquired. The state must include the subrecipient receiving the transferred equipment in a new or revised program of projects if the transferred equipment has remaining Federal interest.

Some states have established vehicle productivity standards that set a minimum number of riders per month by size of vehicle. Those states may transfer underused vehicles to other subrecipients.

With authorization of the Secretary, the state may transfer equipment and other assets that are no longer needed for the original purpose for which they were required to any public body to be used for any public purpose, with no further obligation to the Federal government. As the demand for vehicles is generally not satisfied at current funding levels, it is unlikely that the state would request such a transfer or that FTA would grant an approval.

SOURCES OF INFORMATION

Review the state management plan, standard agreements with Section 5310 and 5311 subrecipients, and other documentation for procedures for transferring equipment between subrecipients. Review the program of projects for open grants for any recent equipment transfers.

On site, confirm with the state its current policies and procedures for transferring equipment. Identify transfers that have occurred in the review period and, if the equipment had remaining Federal interest, ask the state if it has included the transfers in the programs of projects.

DETERMINATION

If the state transfers equipment with remaining Federal interest and has procedures for revising the program of projects to reflect the transfer, the state is not deficient. If the state transfers equipment with remaining Federal interest between subrecipients but does not have procedures in place for revising the program of projects, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for revising the program of projects to reflect the transfer of equipment with remaining Federal interest. The state must submit documentation of the procedures regarding equipment transfers to the FTA regional office.

DOCUMENTATION

Document in the workbook the state's policy and procedures for transferring equipment between subrecipients. Document any equipment transfers during the review period, indicating whether the transferred equipment had remaining Federal interest and whether the state included the transfers in a revised program of projects.

5. *What are the state's disposition procedures for the Section 5310 and 5311 programs? How does the state monitor disposition of equipment by subrecipients? Have subrecipients disposed of any federally funded equipment? Were the proceeds used for mass transit purposes?*

EXPLANATION

The state and its subrecipients follow state laws and procedures for disposing of equipment. The state is not required to return the proceeds from the disposition of equipment to FTA, regardless of the fair market value at the time of disposition. The state follows its own procedures for the use of proceeds; however, the proceeds must remain in use for mass transit purposes.

SOURCES OF INFORMATION

Review the state management plan, standard Section 5310 and 5311 subrecipient agreements, and any other documentation for vehicle disposition procedures.

On site, discuss and confirm with the state its current vehicle disposition policies and procedures. Review state equipment inventory records or state equipment disposition records for federally funded equipment that has been disposed.

DETERMINATION

If the state has equipment disposition procedures and uses the proceeds for mass transportation, the state is not deficient. If the state does not have equipment disposition procedures or does not use the

proceeds from equipment disposition for mass transportation, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for the disposition of federally funded facilities and equipment, including procedures to ensure that the proceeds from equipment disposal are used for mass transportation. The state must submit documentation of the procedures to the FTA regional office.

The state must update the state management plan to reflect the disposition policy and procedures.

DOCUMENTATION

Document in the workbook the state's policy and procedures for disposing of federally funded equipment. Identify the requirements for use of the proceeds of the sale of the equipment.

- 6. *Does the state allow Section 5310 and 5311 subrecipients to lease vehicles to other public entities, nonprofit organizations, or private for-profit operators? How does the state monitor subrecipients' leases? Have Section 5310 or 5311 subrecipients leased any FTA funded vehicles to other parties?***

EXPLANATION

Vehicles acquired under the Section 5310 and 5311 programs may be leased to other entities such as local public bodies or agencies, private nonprofit organizations, or private for-profit operators. Under a lease of

vehicles acquired with Section 5310 or 5311 assistance, the lessee operates the vehicles on behalf of the subrecipient and provides transportation as described in the grant application.

FTA has established specific requirements for leases of Section 5310 vehicles. The state must agree in writing to the lease between the Section 5310 subrecipient and the lessee. The lease must specify that the vehicles will be used to provide transportation service as described in the grant application and that the vehicle may be used for incidental purposes only after grant needs have been met. The state and subrecipients are responsible for ensuring that adequate control is exercised over use of the leased equipment. Either the state or the subrecipient must retain title to the vehicle and this must be specified in the lease.

FTA is not as prescriptive with leases of Section 5311 vehicles. FTA requires each state to exercise control over the vehicles and to ensure that Section 5311 vehicles are used for general public transportation. Many states require subrecipients who are leasing Section 5311 equipment to submit a copy of the lease to the state for review. Other states provide a standard lease that subrecipients are required to use. Others prohibit leasing altogether.

SOURCES OF INFORMATION

Review the state management plan and standard Section 5310 and 5311 subrecipient agreements for the state's policy regarding the lease of federally funded vehicles and its procedures for monitoring subrecipients'

leases of FTA funded vehicles to other public or private operators.

On site, discuss with the state its current policies and procedures. Identify subrecipients that are currently leasing equipment to other public or private operators. Review a Section 5310 lease to ensure that it contains the required terms and conditions.

DETERMINATION

The state is not deficient if it has a system in place for reviewing and approving, in writing, Section 5310 subrecipients' leases of federally funded vehicles. If the state reviews leases of Section 5310 vehicles but does not agree in writing to the leases, the state is not deficient with follow up required. If the state does not monitor leases of Section 5310 vehicles, the state is deficient.

The state is not deficient if it monitors leased Section 5311 vehicles for use in public transportation service. The state is deficient if it does not monitor leased Section 5311 vehicles for eligible use.

Note that FTA does not require the state to review leases of Section 5311 vehicles. If the state has an effective system for monitoring to ensure that only eligible service is provided, then the state will be not deficient. (See Selection and Eligibility of Subrecipients and Projects)

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for monitoring leases of FTA funded vehicles by Section 5310

subrecipients. As part of the monitoring process, the state must agree in writing to the leases. The state must submit documentation of the procedures to the FTA regional office.

The state must develop and implement procedures for ensuring that leased Section 5311 vehicles are used for the provision of eligible service (See Selection and Eligibility). The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's procedures for monitoring Section 5310 and 5311 subrecipients' leases of FTA funded vehicles to other public bodies, nonprofit organizations, or private operators. Identify subrecipients currently leasing vehicles to other entities.

- 7. *How does the state monitor the use of real property (land or facilities) funded through the Section 5311 program? Does the state have a mechanism in place to ensure FTA interest is maintained in real property until it is sold?***

EXPLANATION

Most states have funded few, if any, facilities with Section 5311 funds. Therefore, tracking the use of these facilities does not require elaborate systems. There are exceptions, however. For example, Puerto Rico primarily uses its Section 5311 funding to construct public terminals.

The state must have a system in place for monitoring the continued use of facilities to ensure that facilities are is being used for project purposes. The state may require annual certifications of use. In addition, the state should be observing the use of the facility during site visits.

SOURCES OF INFORMATION

Review the state management plan and subrecipient agreement for discussion of procedures used to control the use of real property. On site, discuss the procedures with state staff.

DETERMINATION

If the state has procedures in place to control the use of real property, the state is not deficient. If the state does not, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop procedures for controlling the use of real property. The state must submit to the FTA regional office documentation of the procedures.

DOCUMENTATION

Document the procedures the state uses to maintain control over facilities and ensure their continued use in mass transportation service. Obtain copies of any reports or site visit questionnaires for the review file.

8. MAINTENANCE

BASIC REQUIREMENT

The state and its subrecipients must keep federally funded equipment and facilities in good operating order. The state manages equipment acquired under a Section 5310 or 5311 grant using state laws and procedures. The state develops its own policies and procedures for maintenance of vehicles.

Maintenance of Lifts in Non-Rail Vehicles ***[49 CFR 37.163]***

Public entities operating non-rail vehicles must establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

SPECIFIC REQUIREMENTS

Equipment Management

[49 CFR 18.32(b);

FTA Master Agreement Section 19c]

The state manages equipment acquired under a grant in accordance with state laws and procedures.

Maintenance Procedures

[FTA C. 9040.1E Ch VI, sec 2c (3);

FTA C. 9070.1E Ch V, sec 9b (3)]

The state develops its own policies and procedures for maintenance of vehicles.

Maintenance of Accessible Features

[49 CFR 37.161]

Public and private entities providing transportation service must maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible. Accessibility features must be repaired promptly if they are damaged or out of order.

QUESTIONS FOR THE REVIEW

1. *What maintenance requirements has the state imposed on its subrecipients? Are maintenance requirements documented in the state management plan? Do maintenance requirements address ADA requirements for maintenance of accessible features?*

EXPLANATION

Under the common rule (49 CFR 18), the state develops and implements its own procedures for managing equipment acquired with Section 5310 or 5311 assistance. The state is responsible for ensuring that equipment acquired under Section 5310 or 5311 is maintained in good operating order.

ADA regulations require that public and private entities providing transportation services maintain in operative condition all accessibility features such as lifts, elevators, ramps, securement devices, signage and communications equipment for the disabled. Further, public entities operating non-rail vehicles must establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operational.

As part of their standard subrecipient agreements, states generally require Section 5310 and 5311 subrecipients to maintain equipment in good operating order. Few states however, prescribe specific maintenance activities or schedules. Many states require subrecipients to follow manufacturers' suggested maintenance activities and schedules. Some states

require applicants for assistance under Section 5310 or 5311 to document their maintenance procedures in the application and may evaluate applicants' ability to maintain vehicles as part of the project selection process.

SOURCES OF INFORMATION

The state must document its program management procedures, including equipment use and maintenance, in the state management plan. The state generally specifies maintenance requirements in the subrecipient agreement.

Review the state management plan, Section 5310 and 5311 subrecipient application packages, standard Section 5310 and 5311 subrecipient agreement(s), and other documentation of maintenance requirements. On site, discuss maintenance requirements with state staff.

DETERMINATION

The state is not deficient if it requires subrecipients to maintain federally funded equipment, including vehicle accessibility features, in good operating condition. If the state has not included maintenance of equipment in good operating order as a condition of assistance to subrecipients, the state is deficient.

The state is not deficient if it requires Section 5311 subrecipients that are public entities to establish a system of regular maintenance checks of lifts. If the state has not specifically required public entity subrecipients to establish a system of maintenance checks of lifts in accordance with ADA, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and disseminate procedures to require subrecipients acquiring vehicles and equipment with Section 5310 or Section 5311 assistance to maintain the vehicles and equipment in good operating order. The procedures must specifically include the requirement to maintain accessibility features in operable condition and, for public entity subrecipients, the requirement to establish a routine system of checks of the operability of lifts. The state must submit documentation of the procedures to the FTA regional office. The state must incorporate the maintenance requirements in the state management plan.

DOCUMENTATION

Document the state's requirements for maintenance of vehicles and accessibility features and routine lift checks. Indicate how the state informs subrecipients of the specific requirements, i.e., incorporated as part of the standard subrecipient agreement. Indicate if the requirements are incorporated in the state management plan.

- 2. How does the state monitor subrecipients' maintenance of equipment and facilities, including the implementation of ADA requirements and conduct of preventive maintenance? Does the state conduct site visits?*

EXPLANATION

The state is responsible for ensuring that subrecipients maintain equipment acquired under Section 5310 or 5311 in good

operating order. FTA does not prescribe a monitoring system or specific monitoring activities for the states. Each state is responsible for developing and implementing a monitoring system that provides adequate assurance that subrecipients are properly maintaining federally funded equipment.

Most states use a combination of the following monitoring mechanisms:

- # Requirement for periodic reporting
- # Periodic site visits
- # Periodic inspection of vehicles

Some states require applicants for capital assistance to describe their maintenance procedures in the application. A few states require subrecipients to report specific maintenance activities on a regular basis.

Most states incorporate maintenance in their periodic on-site performance reviews of subrecipients. Direct inspection of equipment, observance of maintenance activities, and direct inspection of maintenance records provide the most reliable basis for determining that vehicles are properly maintained.

Some states contract with maintenance experts to inspect vehicles on a periodic basis.

SOURCES OF INFORMATION

The state management plan should identify maintenance requirements imposed by the

state as well as the monitoring mechanisms used by the state to ensure that subrecipients are adequately maintaining vehicles. The standard subrecipient agreement(s) may also describe the state's monitoring of subrecipients' maintenance activities, particularly maintenance standards and reporting requirements. Review the state management plan, the standard subrecipient agreement(s), and other documentation of maintenance requirements.

On site, discuss the state's monitoring approach with state staff. If the state conducts site visits, determine how often site visits are conducted, the activities undertaken during the site visits, use of checklists or questionnaires, categories of findings, reporting of findings, and how the state follows up with subrecipients to ensure findings are resolved. Review samples of completed forms, reports or other documentation of site visit findings. Review reporting requirements, including the frequency of reporting, the information required, how the state analyzes the information, and the actions the state may take.

DETERMINATION

The state is not deficient if it has appropriate systems in place for monitoring subrecipients' maintenance activities to ensure that subrecipients are adequately maintaining federally funded vehicles and equipment. If the state does not have an effective system in place for monitoring subrecipients' maintenance activities, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for effectively monitoring subrecipients' maintenance activities and ensuring that subrecipients are maintaining federally funded vehicles and equipment in good operating order. The state must submit documentation demonstrating the State's procedures to the FTA regional office.

DOCUMENTATION

Document the state's mechanisms for monitoring subrecipients' maintenance activities. Indicate periodic reporting requirements including the frequency of reporting and the data required. If the state conducts site visits, indicate the frequency of visits and the activities involved with respect to maintenance, e.g., inspection of vehicles, review of maintenance records. Briefly describe the state's process for making a finding, documenting findings, and following up with subrecipients to ensure problems are resolved.

Include in the review file copies of reporting forms and checklists used.

- 3. Does the state directly operate or contract for rural transportation service? What are the state's maintenance procedures for directly operated or contracted service? Do the procedures implement ADA requirements for maintenance of accessibility features and regular checks of lift operability?***

EXPLANATION

Under Section 5311, the state may carry out a project directly. However, few states directly operate or contract for service. This question only applies if the state directly operates or contracts for rural transportation service.

The state is responsible for ensuring that vehicles acquired under Section 5311 are maintained in good operating order whether the state directly operates service or contracts for it or whether the service is operated by subrecipients.

In accordance with ADA regulations, the state must maintain in operative condition all accessibility features of vehicles, such as lifts, elevators, ramps, securement devices, signage and communications equipment for the disabled. Further, the state must establish a system of regular and frequent maintenance checks of lifts on non-rail vehicles sufficient to determine if they are operational.

If the state directly operates service, it should have established maintenance standards and procedures for vehicles including accessibility features. If the state directly contracts for rural service, it should have systems in place for requiring contractors to maintain vehicles and accessibility features in good operating order and for monitoring contractors' maintenance activities to ensure that vehicles are properly maintained. The state should be conducting periodic site visits and inspections to monitor contractors' maintenance of equipment.

SOURCES OF INFORMATION

First, determine if the state directly operates service or contracts for it. Discuss with regional office staff and review programs of projects in grant files.

Review the state management plan for documentation of the state's maintenance standards and procedures. On site, discuss maintenance requirements with state staff and review documented maintenance procedures and maintenance forms. Tour the maintenance facility and review maintenance records for a sample of vehicles.

If the state directly contracts for rural service, review purchase-of-service contracts for maintenance requirements imposed on contractors. Discuss the state's monitoring of contractors' maintenance activities.

DETERMINATION

The state is not deficient if it has appropriate procedures for maintaining directly operated vehicles in good operating condition and has established maintenance procedures for vehicle accessibility features and a system of routine checks of the operability of lifts. If the state directly operates rural service but has not established procedures for maintaining vehicles in good operating condition, has not established maintenance procedures for accessibility features, or has not established a system for routine lift checks, the state is deficient.

The state is not deficient if it has appropriate systems in place for requiring contractors to maintain federally funded vehicles and

accessibility features in good operating condition and for monitoring contractors' maintenance activities. If the state contracts directly for the provision of rural service and has not established procedures for requiring contractors to maintain vehicles and accessibility features or for monitoring contractors' maintenance activities, the state is deficient.

reviewed and indicate whether maintenance is performed according to schedule. If the state directly contracts for rural service, indicate the state-imposed maintenance requirements and the state's mechanisms for monitoring contractors' maintenance of federally funded vehicles and equipment.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for maintaining directly operated vehicles in good operating condition, maintaining accessibility features in operable condition, and routinely checking the operability of lifts. The state must submit documentation of the procedures to the FTA regional office.

The state must develop and implement procedures for requiring contractors to maintain federally funded vehicles and accessibility features in good operating condition and for monitoring contractors' maintenance activities to ensure that vehicles and accessibility features are properly maintained. The state must submit documentation of the procedures to the FTA regional office.

The state must incorporate the maintenance requirements in the state management plan.

DOCUMENTATION

If the state directly operates vehicles, briefly describe the state's maintenance standards and procedures. Identify where the procedures are documented. Identify the vehicles whose maintenance records were

9. COMPETITIVE PROCUREMENT

BASIC REQUIREMENT

The state administering the Section 5310 and 5311 programs may use its own procurement procedures that reflect applicable state laws and regulations. However, FTA Circular 4220.1E requires that the state comply with five specific requirements: prohibit entering into any contract for rolling stock with a period of performance exceeding five years inclusive of options, conduct procurements in a manner providing full and open competition, exclude in-state or local geographical preference clauses, use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services if the state has not adopted a statute governing the procurement of such services, and include required Federal clauses in procurements.

Subrecipients must comply with FTA procurement requirements contained in FTA Circular 4220.1E. Each state is responsible for making these organizations aware of their requirements.

SPECIFIC REQUIREMENTS

Procurement of Supplies, Equipment, or Services by the State

[49 CFR 18.36;

FTA C. 4220.1E Section 9;

FTA C. 9040.1E Ch VI, sec 3;

FTA C. 9070.1E Ch V, sec 10]

When procuring supplies, equipment, or services using FTA funds, the state will follow the same policies and procedures it uses for procurements with non-Federal

funds and will comply with the following statutory requirements:

- Ensure that every purchase order and contract executed using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations
- Conduct all procurement transactions in a manner providing full and open competition
- Exclude the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference
- Prohibit entering into any contract for rolling stock with a period of performance exceeding five years inclusive of options
- Use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services if the state has not adopted a statute governing the procurement of such services

Procurement of Supplies, Equipment, or Services by Subrecipients

[49 CFR 18.36; 49 CFR 19.40-19.48; FTA C. 4220.1E; FTA C. 9040.1E Ch VI, sec 3; FTA C. 9070.1E Ch V, sec 10]

Subrecipients shall follow state law and procedures, Federal statutory requirements, and FTA third party contracting requirements when awarding and administering FTA assisted contracts.

Certification

[FTA C. 4220.1E Section 4a, 5a; 49 CFR 18.36a]

The state must certify to FTA as part of the FTA's Annual Certification and Assurance Process that they will: 1) comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1E, Third Party Contracting Requirements, and other implementing guidance or manuals FTA may use; 2) include in contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations; and 3) ensure that each subrecipient and contractor will include in its sub-agreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

Subgrants

[49 CFR 18.37; 49 CFR 19.5; FTA C. 9040.1E Ch VI, pars 3 b & c; FTA C. 9070.1E Ch V, pars 10 b & c]

The state shall ensure that subrecipients are aware of requirements imposed on them by Federal statutes and regulations and that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations.

Lease of Equipment or Facilities as a Capital Expenditure

[49 CFR Part 639]

Lease of equipment or facilities is an eligible capital expenditure under Sections

5310 and 5311. Leasing must be demonstrated to be more cost-effective than purchasing. The state must establish the criteria for determining cost-effectiveness, which may include non-economic factors such as management efficiency, availability of equipment, and staffing capabilities, before subrecipients can lease equipment or facilities as a capital expenditure.

Bus Testing

[49 CFR Part 665]

The state or its subrecipient purchasing buses with FTA funds obligated after September 30, 1989, must ensure before Federal funds can be expended for the purchase of the first bus of any new bus model or any bus model with a major change in configuration or components acquired or leased with Federal assistance, two conditions will have been met:

- The model of the bus has been tested at a bus testing facility approved by FTA.
- The state or subrecipient has received a copy of the test report prepared on the bus model.

Initially, the bus testing requirement applied to three categories of vehicles:

- Heavy-duty large buses (12 years or 500,000 miles)
- Heavy-duty medium buses (10 years or 350,000 miles)
- Medium-duty buses (7 years or 200,000 miles)

FTA extended the bus testing requirements to the following categories of small vehicles in June 1994 and October 1994:

- Vehicles built from unmodified mass-produced chassis
- Vehicles manufactured from modified mass-produced chassis or vans

- Vehicles manufactured from non-mass produced chassis or vans

The state must certify to FTA.
Subrecipients directly procuring vehicles must certify to the state.

QUESTIONS FOR THE REVIEW

1. *What are the state's procedures for the procurement of vehicles, equipment, construction, and services under the Section 5310 and 5311 programs? What are the roles and responsibilities of the state and subrecipients in the procurement process? Does the state procure vehicles or equipment for subrecipients? Does the state use term contracts to procure vehicles for subrecipients?*

EXPLANATION

This question provides an understanding of the state's procurement policies and procedures applicable to the Section 5310 and 5311 programs. It addresses the roles and responsibilities of the state and its subrecipients in the procurement of vehicles, equipment, construction, and services with Section 5310 and 5311 funds.

According to the Common Rule, when procuring equipment, supplies, or services with FTA funds, the state will use the same policies and procedures it uses for procurements with non-Federal funds, provided those policies and procedures do not violate applicable Federal laws or regulations, or the terms of the state's grant agreement. Each state establishes its own procurement policies and procedures consistent with state law and assigns responsibilities between the state and its subrecipients for various types of procurements.

There is considerable diversity among the states in procedures and assignments of responsibility for procurements under the

Section 5310 and 5311 programs. Some arrangements include:

- The state establishes term contracts with one or more manufacturers for the procurement of specific types of vehicles. Subrecipients buy off the state's term contract(s).
- The state conducts procurements on behalf of a subrecipient or group of subrecipients.
- Subrecipients procure vehicles, equipment, or services directly.

Several departments or units within the state may be responsible for various aspects of the procurement process.

Where subrecipients procure vehicles, equipment, construction, or services directly, that state has implemented various types of controls. Some states provide specific procurement guidelines or standard terms and conditions to subrecipients. Some states review subrecipients' procurements for bid decisions or compliance with requirements; other states do not review subrecipients' procurements at all.

The reviewer should understand the state's process and division of responsibilities for various types of procurements. Specifically, the reviewer should ascertain where responsibility lies for:

- Developing bid specifications
- Establishing solicitation/contract terms and conditions
- Soliciting and receiving bids

- Evaluating bids, determining bid responsiveness, and selecting a contractor
- Conducting pre-award audits (for vehicle procurements)
- Executing a contract
- Receiving and inspecting vehicles, conducting post-delivery audits, and accepting vehicles
- Paying the contractor

Summarize the procurement processes and division of responsibility for procurements of vehicles, equipment, services, and construction under the Section 5310 and 5311 programs. Identify documents that describe the process and include copies in the review files.

2. *Has the state included federally required clauses in its procurement documents? Has the state included federally required clauses in its subrecipient agreements?*

Understanding the process will help the reviewer answer the remaining questions.

SOURCES OF INFORMATION

Review the state management plan, standard Section 5310 and 5311 subrecipient agreements, and other state documents that describe the procurement process and division of responsibilities. On site, discuss with state staff the process for various types of procurements--vehicles, equipment, services, and construction.

DETERMINATION

Since FTA does not prescribe procurement procedures for the states, this question does not itself lead to a finding of deficient or non-deficient. The information provides a context for other deficiency questions.

SUGGESTED CORRECTIVE ACTION

None required.

DOCUMENTATION

EXPLANATION

The state is required to ensure that every purchase order or other contract using Federal assistance includes clauses required by Federal statutes and executive orders and their implementing regulations. The state is also required to ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations.

The annual master agreement identifies the clauses currently required by FTA. The FTA Best Practices Procurement Manual discusses the required clauses, applicability to various types of procurements, flow down requirements, and required or model language. A list of federally required clauses developed from the master agreement is included.

SOURCES OF INFORMATION

On site, review the state's standard Section 5310 and 5311 subrecipient agreement(s) and a sample of state procurement documents (solicitations and contracts) for inclusion of all federally required clauses.

The review should focus on large procurements and should cover the major types of procurements made by the state under the Section 5310 and 5311 programs. If the state uses term contracts or purchases vehicles or other equipment on behalf of its subrecipients, include in the sample the most recent contract for the procurement of vehicles. If the state contracts with a third party for management of the RTAP program, include that contract in the sample. Also include in the review state contracts related to facility construction, if applicable.

Review the standard and special terms and conditions in the standard subrecipient agreements and in each procurement document using the attached list of required clauses. Identify specific clauses that are missing.

DETERMINATION

The state is in not deficient if it has included all required clauses in its procurement documents and in its standard agreements with subrecipients. If the procurement documents or subrecipient agreements do not contain all of the required clauses, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must revise its standard Section 5310 or 5311 subrecipient agreement to incorporate all federally required clauses. The state must submit a copy of the revised agreements to the FTA regional office. The state must use the revised agreements with its next grant cycle. The state must develop revised standard or special terms and conditions for its solicitations and contracts that incorporate all federally required clauses. The state

must submit documentation of the new terms and conditions to FTA. The state must use the revised terms and conditions beginning with its next procurement of equipment or services using FTA assistance.

DOCUMENTATION

Identify the subrecipient agreements and procurement documents examined and note each required clause that is missing from each document.

- 3. What procedures does the state follow to ensure full and open competition? Are there any clauses or provisions that provide local or state preference in the state's procurement process?***

EXPLANATION

FTA requires each state to conduct procurement transactions in a manner providing full and open competition. Procedures to provide full and open competition include:

- If pre-qualification lists are kept (though there is no requirement to do so), the lists must be maintained as current and do not preclude potential bidders from qualifying during the solicitation period
- Maintaining written codes of ethical standards and conduct governing the performance of employees engaged in the award and administration of contracts
- Using complete, adequate, and realistic specifications

- Specifying clear and accurate requirements that a bidder must fulfill
- Adequately publicizing and advertising for bids and proposals
- Obtaining or soliciting an adequate number of bids or proposals from qualified sources
- Providing adequate time for bidders and offerors to respond to bids or proposals

Conditions considered restrictive of competition include:

- Specifying only a “brand name” product instead of allowing “an equal” product to be offered without listing its salient characteristics, where “an equal” can be defined as a product that is appropriate and compatible and does not violate a manufacturer’s warranty
- Placing unreasonable requirements on firms to qualify
- Requiring unnecessary experience and/or excessive bonding
- Allowing non-competitive pricing practices between firms or between affiliated companies
- Making non-competitive awards to any person or firm on retainer contracts
- Allowing organizational conflicts of interest

- Acting arbitrarily during the procurement process

Few, if any, states will not conduct procurements in a manner providing full and open competition. Typically, state procurement laws and procedures are more prescriptive than Federal requirements.

FTA prohibits the states from using statutorily or administratively imposed in-state or local geographic preferences in the evaluation of bids or proposals in federally assisted procurements, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This requirement does not preempt state licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering services provided its application leaves an appropriate number of qualified firms to compete for the contract.

Many states have legislated state preference requirements. In these states, if the Section 5310 and 5311 procurements are coordinated through a central procurement department or use the state's standard terms and conditions, they probably will contain an in-state preference clause. In some states, these requirements have been specifically waived for procurements under federally assisted programs where they are prohibited. In other states, however, the units responsible for administering the programs may not have been successful in having the clauses deleted.

SOURCES OF INFORMATION

Discuss the procedures the state follows to ensure full and open competition with state staff. Review documented procurement

standards and procedures for conditions that restrict competition.

Review the state's standard terms and conditions and a sample of procurement documents for the inclusion of state or local preference clauses. Discuss state requirements for procurements with state staff.

DETERMINATION

The state is not deficient if it conducts FTA assisted procurements in a manner providing full and open competition. It is deficient if it does not conduct FTA assisted procurements in a manner providing full and open competition.

The state is not deficient if it does not include the state or local geographic preference clause in its FTA assisted procurements. It is deficient if it includes the state or local geographic preference clause in its FTA assisted procurements.

SUGGESTED CORRECTIVE ACTION

The state must revise its procurement procedures to eliminate conditions or clauses that restrict full and open competition in FTA assisted contracts. The state must submit a copy of the revised procedures to the FTA regional office.

The state must revise its procurement procedures and standard terms and conditions to exclude or waive state or local geographic preference clauses in FTA assisted procurements. The state must submit the revised procedures and standard terms and conditions to the FTA regional office.

DOCUMENTATION

Document whether the state's procedures provide for full and open competition. Where state law requires state preference, indicate if and how the state has waived the requirement for FTA assisted procurements.

Note the procurement documents reviewed and identify state or local geographic preference clauses.

4. *Did the state enter into any rolling stock procurement contracts exceeding five years inclusive of options with Section 5310 or 5311 funds?*

EXPLANATION

Federal regulations require that no state or subrecipient receiving Federal assistance enter into any contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for more than 5 years after the date of the original contract.

Footnote 22, Page 11 of FTA C. 4220.1E says, "FTA interprets this five-year rule as the *requirements* from day one of the contract to those at the end of the fifth year. In determining what a requirement for today is, we look at the date a piece of equipment is needed, then back the date off to offset the necessary lead time for delivery.... [T]he five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing five years of requirements."

SOURCES OF INFORMATION

Review the state management plan and other documentation of procurement procedures for discussions of restrictions on the length of contracts.

In the regional office, review grant files for requests for FTA approval to enter into contracts longer than five years. Discuss with regional office staff. On site, discuss the requirement with the state.

DETERMINATION

If the state did not enter into an FTA assisted contract with a period of performance exceeding five years including options, the state is not deficient. If the state did enter into an FTA assisted contract with a period of performance exceeding five years inclusive of options, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop procedures to prevent it from entering into an FTA assisted contract for more than five years inclusive of options. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document state requirements concerning the period of performance of contracts. Document whether the state complies with the requirement and whether and where the requirements are documented.

5. *Did the state contract directly for architectural and engineering services*

using Section 5310 or 5311 funds? If yes, does the state have a statute prescribing a formal procedure for the procurement of architectural and engineering services? If no, did the state use competitive proposal procedures based on the Brooks Act?

EXPLANATION

FTA requires that the state use competitive proposal procedures based on the Brooks Act when using FTA assistance to contract for architectural and engineering services if the state has not adopted a statute prescribing a formal procedure for the procurement of such services. FTA considers architectural and engineering services to include program management, construction management, feasibility studies, preliminary engineering, design, surveying, and mapping.

The Brooks act requires that grantees:

- Evaluate an offeror's qualifications
- Exclude price as an evaluation factor
- Conduct negotiations with only the most qualified offeror
- Failing agreement on price, conduct negotiations with the next most qualified offeror until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee

SOURCES OF INFORMATION

Review the state management plan and other documentation of procurement procedures for a discussion of procedures for

contracting for architectural and engineering services.

In the regional office, review grant files to identify facility construction projects. On site, discuss with the state.

DETERMINATION

If the state directly procures architectural and engineering services with FTA assistance and has a statute prescribing a formal procedure for the procurement of architectural and engineering services, the state is not deficient. If the state does not have a statute prescribing a formal procedure for the procurement of architectural and engineering services and the state uses competitive proposal procedures based on the Brooks Act when using FTA assistance to contract for architectural and engineering services, the state is not deficient. If the state has not adopted a statute prescribing a formal procedure for the procurement of architectural and engineering services and does not follow the Brooks Act when using FTA assistance to contract for architectural and engineering services, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for following the Brooks Act when using FTA assistance to contract for architectural and engineering services. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document whether the state procures architectural and engineering services

directly using Section 5311 assistance. Document if the state has requirements for the procurement of architectural and engineering services. Document whether the state complies with the Brooks Act when procuring architectural and engineering services.

6. *How does the state ensure that subrecipients comply with Federal statutory requirements when making procurements with FTA assistance? Do the subrecipients comply with the requirements?*

EXPLANATION

Subrecipients using Section 5310 or 5311 assistance to directly procure vehicles, equipment, construction, or services must comply with all third party contracting requirements as specified in FTA C 4220.1E, *Third Party Contracting Requirements*. The state is responsible for ensuring that subrecipients comply with the requirements of Circular 4220.1E and that subrecipients are aware of requirements imposed upon them by Federal statutes and regulations. These requirements include, but are not limited to, the following:

- Maintain written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts
- Have written protest procedures
- If lists of pre-qualified bidders are kept (even though there is no requirement to do so), maintain a current list and do not preclude

potential bidders from qualifying during the solicitation period

- Have written selection procedures for procurement transactions
- Conduct all procurement transactions in a manner providing full and open competition
- Exclude the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference
- Conduct a contract cost or price analysis for every procurement
- Use the appropriate method of procurement
- Use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services if the state has not adopted a statute governing the procurement of such services
- Include sufficient contract provisions to define a sound and complete agreement
- Include all clauses required by Federal statutes and executive orders and their implementing regulations in contracts
- Evaluate options at the time of bid award, exercise the options at the agreed upon terms, and determine

that the option price is better than current market prices before exercising the options

- Do not enter into any contract for rolling stock with a period of performance exceeding five years inclusive of options
- Make awards to the lowest responsive, responsible contractors through the “best value” process
- Maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders
- May use local match for advance payment (though reimbursement by FTA to the state is not allowed); advance payment(s) exceeding \$100,000 must be approved by FTA in writing prior to payment
- Maintain a written record of procurement history

FTA C. 4220.1E contains a complete list of third party contracting requirements.

Some states provide written guidelines or standard terms and conditions to subrecipients for direct procurements. Some states review subrecipients' direct procurements, particularly for vehicles, equipment, and construction. Such reviews, which generally focus on bid evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of subrecipients' compliance with FTA third party contracting

requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. The state is not required to review each subrecipient procurement to ensure compliance with Federal requirements. The state may review selected procurements on a periodic basis in conjunction with a site visit or other general review of subrecipients' compliance with Federal requirements.

SOURCES OF INFORMATION

Review the state management plan for a discussion of policies and procedures applicable to procurements with Federal funds by subrecipients. Review the Section 5310 and 5311 subrecipient applications and standard agreements for procurement-related requirements. Review other pertinent documents that describe state procurement policies and procedures or provide guidance to subrecipients regarding applicable Federal and state procurement requirements.

On site, discuss with state staff the mechanisms used to inform subrecipients of procurement requirements and to monitor compliance by subrecipients. Identify technical assistance provided to subrecipients in the procurement of goods and services. If the state provides standard terms and conditions, review them for inclusion of federally required clauses and clauses that restrict free and open competition. If the state reviews procurements and procurement procedures during site visits, review and retain for the file any documentation of reviews of non-profit organization's written procurement procedures. Review a sample of subrecipients' procurement documents if the state has any on file.

DETERMINATION

The state is not deficient if it informs subrecipients making direct procurements with FTA assistance of third party contracting requirements and monitors subrecipients for compliance with the requirements. The state is deficient if it does not inform subrecipients making direct procurements with FTA assistance of third party contracting requirements or does not monitor subrecipients for compliance with the requirements.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for informing nonprofit organizations making direct procurements with FTA assistance of Federal procurement requirements and for monitoring subrecipients for compliance with the requirements. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's process for informing subrecipients of Federal procurement requirements and monitoring subrecipients' compliance with the requirements. If the state reviews subrecipients' procurement documents, indicate the frequency of such reviews and the areas covered in the reviews. If the state conducts site visits, note the frequency and topics covered. Obtain a copy of the site visit questionnaire. If applicable, note where the state's monitoring activities are documented.

7. Do any Section 5310 or 5311 subrecipients use Federal funds to lease equipment using FTA capital assistance? If so, has the state established criteria for determining cost-effectiveness?

EXPLANATION

Lease of equipment or facilities is an eligible capital expenditure under Sections 5310 and 5311 when leasing is shown to be more cost-effective than purchasing. The state must establish the criteria for determining cost-effectiveness, which may include non-economic factors such as management efficiency, availability of equipment, and staffing capabilities.

SOURCES OF INFORMATION

Review the state management plan and other documentation that may address the state's policy on the lease of equipment, including its cost-effectiveness criteria.

Review programs of projects in regional office grant files for indication that funds are being used to lease capital equipment.

On site, discuss the state's policy for leasing equipment. If the state permits subrecipients to lease equipment, discuss the state's process for determining that leasing is more cost-effective than purchasing the equipment. Identify the criteria used. Identify subrecipients who have leased equipment with Section 5310 or 5311 assistance.

DETERMINATION

The state is not deficient if it has established procedures for determining the cost-

effectiveness of leasing versus purchasing equipment. The state is deficient if it permits subrecipients to lease equipment but has not established procedures for determining the cost-effectiveness of leases and approving subrecipient leases.

SUGGESTED CORRECTIVE ACTION

If the state permits subrecipients to lease equipment rather than purchase, the state must establish procedures for determining the cost-effectiveness of leases and approving subrecipient leases. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's policy with respect to leasing equipment. Note where the state's policy or procedures are documented and include copies in the review file. Identify subrecipients that have leased capital equipment.

8. Have the state or subrecipients purchased or leased vehicles subject to the bus testing requirement? If yes, did the models require testing? How was this determination made? If required, was a model tested? Was a report issued? Was the report received prior to the expenditure of FTA funds? If models did not require testing, do the state or subrecipients have certification from the manufacturer that the vehicle does not need to be tested?

EXPLANATION

FTA's bus testing regulation, effective October 30, 1989, requires any new bus

model purchased or leased by a recipient of FTA assistance to be tested at the FTA sponsored testing facility in Altoona, Pennsylvania, and a test report received by the recipient before the expenditure of Federal funds.

FTA defines a new bus model as a bus design or variation of a bus design (usually designated by a manufacturer by a specific name 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.

Initially, three categories of vehicles were subject to the bus testing requirement:

- Heavy-duty large buses with minimum service life of 12 years or 500,000 miles
- Heavy-duty small buses with minimum service life of 10 years or 350,000 miles
- Medium duty buses with minimum service life of 7 years or 200,000 miles

FTA delayed implementation of the bus testing requirement for two categories of small vehicles:

- Light-duty, mid-size buses (25 to 35 feet) with minimum service life of 5 years or 150,000 miles
- Light-duty small buses, cutaways, or modified vans with min. service life of 4 years or 100,000 miles

FTA subsequently established four subcategories for the four and five-year service life vehicles. Three of the four categories are subject to the bus testing requirement and were phased in as follows:

- Vehicles built from unmodified mass-produced chassis (manufactured from incomplete, partially assembled chassis provided by the original equipment manufacturer (OEM) to a secondary small bus manufacturer) effective October 1, 1994
- Vehicles manufactured from modified mass-produced chassis or vans (manufactured from incomplete, partially assembled chassis or vans provided by an OEM to a secondary small bus manufacturer) effective June 1, 1994
- Vehicles manufactured from non-mass produced chassis or vans (manufactured from incomplete, partially assembled chassis or vans provided by an OEM to a secondary small bus manufacturer with an annual production rate less than 20,000) effective June 1, 1994

FTA exempted the fourth subcategory, unmodified mass-produced vans (manufactured as complete, fully assembled vehicles), from the bus testing requirements.

Many states have not procured heavy or medium duty buses for use in the Section 5310 or 5311 programs. Thus, for many states, the bus testing requirements were not applicable to procurements of vehicles under the Section 5310 and 5311 programs until

the requirements were phased in for small vehicles in June and October 1994.

SOURCES OF INFORMATION

Review programs of projects in regional office grant files to determine the general types of vehicles purchased with Section 5310 and 5311 funds during the review period.

On site, discuss the state's implementation of the bus testing requirement for procurements of vehicles by the state and by subrecipients. If the state procures vehicles directly on behalf of its subrecipients, review a sample of the state's procurement files. The procurement files should show how the state implemented the bus testing requirement. Determine whether the state obtained a test report or a certification from the manufacturer that the vehicle did not require testing. Check the test report receipt date against the date of expenditure of Federal funds.

If subrecipients procure vehicles directly, review documentation submitted to the state that bus testing requirements are met.

DETERMINATION

The state is not deficient if, for each direct procurement of vehicles, it has determined whether a vehicle model needs to be tested and, prior to the expenditure of Federal funds, has obtained a copy of the test report or a certification from the manufacturer that the vehicle does not need to be tested.

If for any direct procurement of vehicles subject to the bus testing requirement, the state did not require bus testing or has not obtained a copy of the test report or a

certification from the manufacturer that the vehicle does not need to be tested prior to the expenditure of Federal funds, the state is deficient. If the state allowed a subrecipient to expend Federal funds prior to the receipt of the report or certification, the state is deficient.

Where subrecipients directly procure vehicles, the responsibility for determining whether the model needs to be tested and for obtaining the test report or the certification from the manufacturer that the vehicle does not need to be tested lies with the subrecipient. The state must have a process for ensuring that subrecipients comply with the bus testing requirement, however. In the state where subrecipients directly procure vehicles, deficiency will be determined on the basis of the state's system for monitoring subrecipients' procurements.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for determining whether vehicles require testing and obtaining the test report or certification from the manufacturer that the vehicle does not require testing prior to the expenditure of Federal funds. The state must submit documentation of the procedures to the FTA regional office.

For procurements in process, the state must obtain a copy of the test report or certification by the manufacturer that the vehicle does not require testing. The state must submit copies of the test reports or certifications to the FTA regional office.

FTA may require reimbursement if Federal funds have been expended before a test report has been received.

DOCUMENTATION

For the sample of procurements reviewed, identify the type of vehicles procured by the state or subrecipient and whether the model required testing. If the model required testing, note the date the test report was received by the state and the date the state paid the vehicle manufacturer. If the model did not require testing, note the date and signatory of the manufacturer's certification.

10. BUY AMERICA

BASIC REQUIREMENT

Section 5323(j) provides that, with exceptions, Federal funds may not be obligated for mass transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. General waivers are listed in Appendix A to 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

FTA grantees are required to conduct pre-award and post-delivery reviews to confirm Buy America, purchaser's requirements, and Federal Motor Vehicle Safety Standards (FMVSS) compliance for all revenue service rolling stock procurements using funds obligated after October 24, 1991. Revenue rolling stock purchases below the Federal small purchase threshold are exempt from Buy America requirements as of July 24, 1995; however, a certification that the rolling stock is exempt is still required under the pre-award and post-delivery review requirements.

The state grantee must certify as part of the Annual Certification and Assurance Process with FTA that it will comply with these requirements and must keep supporting documentation showing how it complied when purchasing revenue service rolling

stock. Section 5310 and 5311 subrecipients directly procuring revenue service rolling stock must certify compliance with the state and must keep supporting documentation showing how they complied when procuring revenue service rolling stock.

SPECIFIC REQUIREMENTS ***Buy America Requirement*** ***[49 CFR 661.5]***

FTA may not obligate funds for a grantee project unless all steel, iron, and manufactured products are produced in the United States, unless the product is subject to a general waiver, or a waiver has been granted.

Buy America Requirements for Rolling Stock Procurements ***[49 CFR 661.11]***

FTA may not obligate funds for procurement of rolling stock unless the rolling stock has a minimum 60 percent domestic content and final assembly takes place in the United States. Effective July 24, 1995, Buy America requirements are waived for revenue rolling stock purchases below the small purchase threshold (currently \$100,000).

Certification of Compliance with Buy America Requirements ***[49 CFR 661.6]***

The state and its Section 5310 and 5311 subrecipients must include Buy America provisions in all procurements of steel, iron, and manufactured products (unless subject to a general waiver) with Federal funds and must obtain Buy America certifications from

successful bidders.

Buy America Waivers
[49 CFR 661.7-661.9]

The state and its Section 5310 and 5311 subrecipients may request a waiver from FTA when domestically produced goods are unavailable or when there is a price differential of at least 25 percent between domestic and foreign bids.

Certification of Pre-Award and Post-Delivery Review of Rolling Stock
[49 CFR Part 663]

The state and its Section 5310 and 5311 subrecipients purchasing revenue rolling stock with funds obligated by FTA on or after October 24, 1991 must conduct or cause to be conducted pre-award and post-delivery reviews to ensure compliance with bid specifications, Buy America, and Federal Motor Vehicle Safety Standards requirements. The state makes the certification through the FTA's Annual Certifications and Assurances. Subrecipients directly procuring rolling stock certify to the state.

Pre-Award and Post-Delivery Reviews and Certifications
[49 CFR Part 663]

The state and its Section 5310 and 5311 subrecipients must complete pre-award Buy America and purchaser's requirements reviews and certifications prior to entering into a formal contract for purchasing rolling stock and must complete post-delivery reviews and certifications before title to rolling stock is transferred to the state or subrecipient.

The state or subrecipient must obtain from the manufacturer and review information on

the proposed (pre-award) and actual (post-delivery) cost of components and subcomponents and the location of final assembly to confirm that Buy America requirements have been met (minimum 60 percent domestic content and final assembly in the United States). Effective July 24, 1995, Buy America requirements do not apply to procurements of revenue rolling stock below the small purchase threshold (currently \$100,000). However, the state must complete a certification that the procurement is exempt from the Buy America requirement.

The state or subrecipient must verify the manufacturer's proposed vehicle specifications against the bid specifications (pre-award). The state or subrecipient must complete visual inspections and road tests to demonstrate that the vehicles meet the contract specifications (post-delivery). If a subrecipient, or the state on its behalf, purchases more than 10 buses, a resident inspector must monitor the final assembly process and prepare a final report.

If the vehicle purchased is subject to Federal Motor Vehicle Safety Standards (FMVSS), the state or subrecipient must, at the pre-award stage, obtain a copy of the manufacturer's self-certification sticker information and, at the post-delivery stage, verify that the FMVSS sticker is affixed to each vehicle. If a vehicle is not subject to FMVSS, the state or subrecipient must obtain the statement of such from the manufacturer. Prior to awarding a contract to a vendor and after delivery of the vehicles, the state or subrecipient must complete certifications that the manufacturer will or has met compliance with FMVSS or

that the manufacturer has certified that the vehicles are exempt from FMVSS.

The state or subrecipients must keep the pre-award and post-delivery Buy America, purchaser's requirements, and FMVSS certifications and supporting documentation on file.

QUESTIONS FOR THE REVIEW

1. *Has the state included Buy America provisions in all procurements of steel, iron, and manufactured products, except for products subject to a general waiver? Has the state obtained Buy America certifications from vendors?*

EXPLANATION

Buy America regulations require that all procurements of steel, iron, and manufactured products, except for those subject to general waivers, contain Buy America provisions. General waivers are listed in Appendix A to 49 CFR 661.7 and include:

- Final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation;
- Microcomputer equipment and software; and
- Small purchases (currently less than \$100,000) made with capital, planning, or operating assistance.

Contract price determines whether the procurement falls below the small purchase

threshold. Grantees may not split procurements that exceed the threshold in order to avoid Buy America requirements.

Buy America requirements apply to the state's procurements of steel, iron and manufactured products as well as direct procurements by Section 5310 and 5311 subrecipients and direct procurements by management or service contractors of the state or its subrecipients. This question addresses the state's compliance with Buy America requirements for direct procurements of steel, iron, and manufactured products. Question 2 addresses the state's compliance with respect to applicable procurements directly by subrecipients.

The state must include Buy America provisions in all applicable procurement solicitations for steel, iron and manufactured products and must obtain executed Buy America certifications from vendors or obtain a waiver from FTA.

With implementation of the general waiver for small purchases effective July 24, 1995, Buy America requirements do not apply to procurements (of less than \$100,000) of small buses and vans. Thus, many of the vehicles procured through the Section 5310 and 5311 programs are no longer subject to the Buy America requirements.

SOURCES OF INFORMATION

On site, discuss the state's procedures for incorporating Buy America provisions in procurements and obtaining certifications from vendors. Select a sample of procurements and review state procurement files for evidence that Buy America

requirements have been met. Focus should be on procurements of vehicles and other procurements of steel, iron or manufactured products greater than \$100,000. Review invitations for bids to determine if Buy America provisions are included. Examine bid responses and executed contracts to determine if properly executed Buy America certifications have been obtained.

Also review the state's standard terms and conditions for contracts, which should be incorporated in the sample of procurements reviewed. Review state documentation of procurement procedures applicable to the Section 5310 and 5311 programs, if available.

DETERMINATION

If the state includes Buy America provisions in applicable solicitations and obtains signed certifications from vendors, the state is not deficient. If the state does not include Buy America provisions in solicitations or does not obtain signed Buy America certifications from vendors, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must revise its procurement procedures to include Buy America provisions in solicitation documents and to obtain signed certifications from vendors when procuring steel, iron or manufactured products not subject to a general waiver. The state must submit documentation of the revised procedures to the FTA regional office.

For procurements in progress, the state must obtain signed Buy America certifications.

DOCUMENTATION

Note the procurement documents (solicitations and contracts) examined and whether the Buy America provisions were incorporated. Indicate where contractors' executed certifications exist.

- 2. What process is used by the state to ensure subrecipients' compliance with Buy America requirements? Have subrecipients included Buy America provisions in all direct procurements of steel, iron, and manufactured products, except for products subject to a general waiver? Have subrecipients obtained Buy America certifications from vendors?*

EXPLANATION

Buy America requirements flow through to the state's subrecipients. When subrecipients use Section 5310 or 5311 funds to directly procure vehicles or steel, iron, or manufactured products that are not subject to a general waiver, the products must be produced in the United States. The subrecipients must include Buy America provisions in such procurement solicitations and must obtain executed Buy America certifications from vendors or obtain a waiver from FTA.

The state is responsible for passing through the Buy America requirements to subrecipients and for ensuring that subrecipients comply with the requirements when procuring vehicles or other equipment directly. The state must have a system in place for ensuring that subrecipients include Buy America provisions in applicable procurements and obtain Buy America

certifications from contractors or obtain a waiver from FTA.

Where subrecipients procure vehicles directly, the state has varying levels of involvement in the procurement process, i.e., developing specifications, recommending standard contract terms and conditions, or reviewing evaluation and selection of vendors. Some states review subrecipients' procurements and ascertain that the Buy America certifications have been properly executed. The state that does not review each procurement must have a system in place for spot-checking procurements on a regular basis to ensure compliance.

Buy America requirements apply to Section 5311 subrecipients' procurements made with operating funds. However, with the July 24, 1995, public interest waiver for small purchases, most Section 5311 subrecipients will not procure equipment or supplies with operating funds that exceed the threshold. Further, many small buses and vans purchased by Section 5310 and 5311 sub-subrecipients fall below the small purchase threshold and therefore are not subject to the Buy America requirements as a result of the small purchase waiver.

SOURCES OF INFORMATION

Review the state management plan, standard subrecipient agreement(s), and other documentation of procurement procedures and requirements for information on the Buy America requirements and the responsibilities of the state and subrecipients in the procurement process. On site, discuss with state staff the mechanisms used to monitor subrecipients' compliance with Buy

America requirements. Ask if subrecipients make any procurements above \$100,000.

If the state reviews subrecipients' vehicle procurements and has bid and/or contract documents on file, review a sample of subrecipient procurement documents for inclusion of Buy America provisions and signed Buy America certifications.

DETERMINATION

The state is not deficient if it has appropriate systems in place for informing subrecipients of the Buy America requirements and monitoring subrecipients' direct procurements to ensure that subrecipients comply when procuring vehicles and other products subject to the requirements. The state is deficient if it does not have systems in place for passing the Buy America requirements through to subrecipients and for monitoring subrecipients' compliance with the requirements.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for informing subrecipients of the requirements and for monitoring subrecipients' direct procurements of vehicles and other products subject to the Buy America requirements to ensure compliance. The state must submit documentation of these procedures to the FTA regional office.

DOCUMENTATION

Document the state's processes for informing subrecipients of the Buy America requirements and for monitoring subrecipients' direct procurements to ensure

that Buy America requirements are met. Note subrecipients' procurement documents reviewed and indicate whether the Buy America provisions were incorporated and executed certifications were obtained.

3. *Have the state or subrecipients requested or been granted any Buy America waivers?*

EXPLANATION

In addition to the general waivers, the FTA Administrator is empowered to waive Buy America requirements if their application would be inconsistent with the public interest, if materials or products being procured are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality, or if the inclusion of domestic items or material increases the cost to a grantee by more than 25 percent.

States and subrecipients may request Buy America waivers from the appropriate regional office.

The state must have procedures in place for ensuring that subrecipients request and obtain waivers when unable to procure equipment or materials meeting Buy America requirements.

SOURCES OF INFORMATION

The regional office should have information on Buy America waivers. Generally, the Regional Counsel would have knowledge of requests for waivers. Review correspondence regarding Buy America waivers that may be filed in grant files or

separate procurement or Buy America files and discuss with regional office staff.

On site, discuss Buy America waivers with the state and review applicable correspondence.

Review a sample of state procurement files to determine whether the state has received Buy America certifications.

DETERMINATION

A request for a waiver is only necessary if the state or its subrecipients have procured non-domestic steel, iron, and manufactured products.

If the state or subrecipients have obtained Buy America waivers when non-domestic steel, iron, or manufactured products have been procured, the state is not deficient. If the state or subrecipients have procured non-domestic steel, iron, or manufactured products that are not subject to a general waiver and a waiver has not been obtained, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for requesting Buy America waivers when it procures steel, iron or manufactured products and is unable to obtain a certification of Buy America compliance from the vendor. The state must submit documentation of the procedures to the FTA regional office.

The state must develop and implement procedures to ensure that subrecipients request and obtain waivers when unable to obtain a certification of Buy America

compliance from the vendor. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Indicate whether the state or subrecipients have requested Buy America waivers. Specific requests should be noted, although it is not necessary to record all such requests. If known, indicate specific instances where the state or subrecipients have procured non-domestically produced steel, iron or manufactured products and have not obtained a Buy America waiver.

- 4. *Does the state have on file certifications from subrecipients directly procuring revenue rolling stock that they will conduct pre-award and post-delivery reviews? What mechanism is used to obtain the certifications?***

EXPLANATION

Under regulations issued September 24, 1991, any grantee purchasing revenue service rolling stock with funds obligated by FTA on or after October 24, 1991, must certify to FTA that it has or will conduct or cause to be conducted pre-award and post-delivery reviews to ensure compliance with its bid specifications, Buy America, and FMVSS.

Through the FTA's Annual Certifications and Assurances the state makes its certification to FTA for rolling stock purchases on behalf of subrecipients (Category V) and also assures FTA that each subrecipient has submitted or will submit the

pre-award and post-delivery review certification for direct procurements (Categories XIV and XV).

Subrecipients directly procuring revenue service rolling stock must certify to the state. The state must have a process for obtaining subrecipients' certifications and must maintain subrecipients' certifications on file to support its certifications and assurances to FTA.

Generally states obtain the certifications from subrecipients through the application process or execution of the subrecipient agreement.

SOURCES OF INFORMATION

Review the Section 5310 and 5311 subrecipient grant applications and standard agreements for inclusion of the certification. On site, review the certifications on file for a sample of subrecipients that have directly procured revenue service rolling stock.

DETERMINATION

The state is not deficient if it has a process for obtaining the Pre-Award and Post-Delivery Review Certification from subrecipients directly procuring vehicles and has signed certifications on file. The state is deficient if it does not require subrecipients directly procuring vehicles to submit the certification or does not have certifications on file for the sample of subrecipients reviewed.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for obtaining certifications from

Section 5310 and 5311 subrecipients directly procuring revenue service rolling stock and for maintaining the certifications on file. The state must implement the procedures in the next application cycle. The state must submit documentation of the procedures to the FTA regional office.

The state must obtain the certification from any subrecipients with procurements of rolling stock in progress.

DOCUMENTATION

Describe the state's process for obtaining a pre-award and post-delivery review certification from subrecipients directly procuring revenue service rolling stock with FTA funds. Indicate the subrecipients sampled, the grants under which vehicles have been or are being purchased, and the dates of the subrecipients' certifications. Indicate the location of the signed certifications.

5. *Has the state purchased or planned a purchase of rolling stock with Federal funds obligated on or after October 24, 1991? Does the state have on file pre-award and post-delivery Buy America certifications, purchaser's requirement certifications, and manufacturer's certifications of FMVSS applicability and compliance for each applicable procurement of rolling stock?*

EXPLANATION

Under regulations issued September 24, 1991, any grantee purchasing revenue service rolling stock with funds obligated by FTA on or after October 24, 1991, must

conduct or cause to be conducted pre-award and post-delivery reviews verifying compliance with Buy America provisions, purchasers requirements, and FMVSS. The grantee is required to keep records, including pre-award and post-delivery certifications that show that the regulations have been followed.

The pre-award review is required before a recipient enters into a formal contract with a supplier. The post-delivery review must be completed before a bus title is transferred to the recipient or before a bus is placed into revenue service, whichever is first.

The reviews require the recipient to complete three certifications at the pre-award stage and three certifications at the post-delivery stage.

Buy America

At the pre-award stage, the recipient must complete:

- 1) A compliance certification verifying that the rolling stock will contain a minimum of 60 percent domestic products, by cost, and that final assembly will take place in the United States; or
- 2) An exemption certification indicating that FTA has granted a waiver exempting the rolling stock from the Buy America requirement.

Proper documentation for the certification includes noting the final assembly location and a listing of the manufacturers of the component and subcomponent parts, the cost (actual or percent of total) of such

components and subcomponents, and the country of origin.

The recipient must complete similar certifications at the post-delivery stage, based on the actual vehicles delivered.

The recipient or an independent third party must conduct the Buy America reviews. The review may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

Effective July 24, 1995, FTA issued a general public interest waiver from Buy America requirements for small purchases (less than \$100,000) made with capital, operating, or planning funds. Thus, small buses and vans costing less than \$100,000 purchased after July 24, 1995, are not subject to the Buy America requirements, including pre-award and post-delivery reviews. However, the recipient must complete a certification that the rolling stock is exempt from the Buy America requirement.

Purchaser's Requirements

The recipient must complete a pre-award purchaser's requirements certification verifying that the manufacturer's bid specifications comply with the recipient's solicitation requirements and that the proposed manufacturer is responsible and capable of building the bus to the solicitation specifications. The pre-award certification may be based on the recipients' determination that the vendor is responsive and responsible.

The recipient must complete a post-delivery purchaser's requirements certification

verifying that the buses delivered meet the contract specifications. The post-delivery certification is based on the recipient's visual inspections and road tests and, if more than 10 buses or modified vans are purchased, the resident inspector's monitoring of the final assembly process and final report of construction activities. The resident inspector may not be an agent or employee of the manufacturer. If the recipient is purchasing ten or fewer buses or modified vans, or any number of primary manufacturer standard production unmodified vans, the resident inspector is not required. The exception applies to procurements by the state on behalf of Section 5310 or 5311 subrecipients when ten or fewer vehicles are purchased for each subrecipient.

FMVSS

The recipient must complete, at both the pre-award and post-delivery stages, a certification that the recipient has obtained the manufacturer's self-certification that the buses will comply with FMVSS or that the buses are not subject to FMVSS.

SOURCES OF INFORMATION

On site, discuss the state's process for completing the pre-award and post-delivery review requirements and certifications for procurements of vehicles for Section 5310 or 5311 subrecipients.

As part of the review of state procurement files, examine the pre-award and post-delivery review certifications and supporting documentation for a recent procurement of rolling stock.

DETERMINATION

If the state has procured vehicles with funds obligated after October 24, 1991, and has on file pre-award and post-delivery Buy America, purchaser's requirements, and FMVSS certifications and the manufacturer's certifications of FMVSS applicability or compliance, the state is not deficient. If any of these documents are missing, the state is deficient.

If the state procured small buses or vans costing less than \$100,000 after July 24, 1995, and has on file the purchasers' requirements and FMVSS certifications and certifications that the Buy America requirements do not apply, the state is not deficient. If the state procured vehicles after July 25, 1995 which cost less than the small purchase threshold, but does not have the purchasers' requirements certifications, FMVSS certifications, or certifications that the Buy America requirements do not apply on file, it is deficient.

If the state has conducted the required reviews and documented procedures but has not completed the required certifications, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to complete the applicable pre-award and post-delivery reviews and make the appropriate certifications. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

For each procurement of revenue rolling stock reviewed, record the contract number

and date and the date and location of each of the pre-award and post-delivery review certifications. Indicate instances where a certification does not provide the required information or where the appropriate supporting documentation is lacking.

- 6. *What process did the state use to ascertain the domestic content of product, components, and subcomponents in procurements of revenue rolling stock?*

EXPLANATION

Unless subject to a general waiver, rolling stock procured with Federal funds must contain a minimum of 60 percent domestic products, by cost, and final assembly must take place in the United States. The recipient must complete Buy America certifications at the pre-award and post-delivery stages that it is satisfied that the proposed (pre-award) and delivered (post-delivery) vehicles meet these requirements (see question 5). To make the certification, the recipient must review itself, or contract with an independent party to review, documentation provided by the manufacturer including:

- Component and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin, and costs; and
- The location of final assembly for the rolling stock including a description of the activities at the final assembly point and the cost of the final assembly.

While the recipient is not required to review the detailed source documents to ascertain the veracity of the manufacturer's documentation, it should investigate any information that seems questionable.

SOURCES OF INFORMATION

On site, discuss the process used by the state to ascertain domestic content of rolling stock to support the pre-award and post-delivery Buy America certifications. Identify the information required of the manufacturer and the parties responsible for ascertaining domestic content, i.e., state staff, subrecipient staff, or independent third-party contractors to the state or subrecipient.

For the sample of vehicle procurements reviewed, examine the information provided by the manufacturer on the component and subcomponent parts and final assembly. Examine state documentation of analysis of the manufacturer's information.

DETERMINATION

The state is not deficient if it has an appropriate process for ascertaining domestic content of rolling stock to support its pre-award and post-delivery Buy America certifications. The process must include:

- 1) Obtaining manufacturers' information on the components and subcomponents of the vehicles and the final assembly location, for the vehicle proposed at the pre-award stage and for the actual vehicles delivered at the post-delivery stage, and

- 2) Independently reviewing the manufacturer's information (either in-house or through a contract with an independent third party contractor) to confirm the domestic content and final assembly.

The state is deficient if it does not have an appropriate process for obtaining or independently reviewing the manufacturer's information to ascertain domestic content. The state is deficient if it has procured vehicles subject to the Buy America requirement and has not independently ascertained the domestic content of the vehicle based on the manufacturer's information.

SUGGESTED CORRECTIVE ACTION

The state must develop a process for obtaining and reviewing rolling stock manufacturers' information to ascertain the domestic content of the rolling stock. The state must submit documentation of the process to the FTA regional office.

DOCUMENTATION

Document the process used to ascertain domestic content. Indicate whether the review is done by the state, the subrecipient, or an independent third party. Identify rolling stock procurements reviewed, indicating the information submitted by the manufacturer and the state's review.

7. *Has the state purchased more than ten buses for any subrecipient in a single procurement? If so, were in-plant inspectors present during rolling stock manufacture?*

EXPLANATION

Recipients of Federal financial assistance must certify that rolling stock procured with Federal funds comply with the bid specifications (pre-award and post-delivery purchaser's requirements certifications). FTA requires recipients to have an in-plant inspector at the manufacturer site for any procurements of ten or more buses or any number of rail cars. The inspector may not be an agent or employee of the manufacturer.

The inspector must prepare a report providing accurate records of all vehicle construction activities and summarizing how the construction of the vehicles and their operational characteristics met (or did not meet) the contract specifications.

Upon delivery of the vehicles and following receipt and review of the inspector's report, if applicable, the recipient must make a visual inspection and road test the vehicles.

The recipient must complete the appropriate post-delivery purchaser's requirements certification on the basis of the in-plant inspector's report and/or the visual inspection and road test. (See question 4) The post-delivery purchaser's requirements certification must certify that 1) an on-site inspector was present throughout the manufacture period and produced a report for the grantee that provides accurate records of construction activities and how construction and operation of the vehicle meets specifications and 2) that following receipt of the inspector's report, the grantee visually inspected and road tested the rolling stock prior to acceptance.

FTA does not require in-plant inspectors for procurements of 10 or fewer buses or any number of unmodified vans manufactured by the automobile companies. The exception also applies to subrecipients purchasing 10 or fewer vehicles under a larger statewide procurement. FTA requires only a visual inspection and road test after delivery for such procurements.

This question applies for any state that procures vehicles for Section 5310 or 5311 subrecipients. Where subrecipients procure vehicles directly, question 8 applies.

SOURCES OF INFORMATION

In the regional office, review programs of projects for recent grants to determine the type and quantity of vehicles procured for subrecipients. On site, discuss with state staff the vehicles procured over the last several years and the need for in-plant inspectors for procurements of more than 10 buses for a subrecipient.

If the state has procured more than 10 buses for a subrecipient through a single procurement, discuss how the requirement for an in-plant inspector was fulfilled. Identify the organization providing the in-plant inspector, e.g., the state, the subrecipient, or third-party contractor to the state or subrecipient. For applicable procurements, review the post-delivery purchaser's requirements certification.

DETERMINATION

If the state has procured more than 10 vehicles for a subrecipient and has provided for an independent (not agent or employee

of manufacturer) in-plant inspector during construction of the vehicles and preparation of a report of the construction of the vehicles, the state is not deficient. If the state has procured more than 10 vehicles for a subrecipient but has not provided for an independent in-plant inspector during manufacture of the vehicles or has not prepared a report documenting the construction of the vehicles and how they meet the bid specifications, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for providing, or requiring subrecipients to provide, in-plant inspectors during the construction of 10 or more vehicles. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Identify procurements during the last three years that have required the use of in-plant inspectors during the construction stage. Indicate how the state has fulfilled the requirement. If the state has not procured 10 or more vehicles for a subrecipient requiring the use of in-plant inspectors, indicate so on the worksheet.

- 8. *How does the state ensure subrecipients have complied with pre-award and post-delivery review requirements? Have subrecipients directly procuring rolling stock completed pre-award and post-delivery Buy America, purchaser's requirements, and FMVSS***

certifications? What process was used to ascertain the domestic content of product, components, and subcomponents? Have subrecipients procuring more than 10 vehicles provided an in-plant inspector?

EXPLANATION

Pre-award and post-delivery review requirements for rolling stock procurements flow through to the state's subrecipients. When subrecipients use Section 5310 or 5311 funds to directly procure vehicles, the subrecipient must conduct or cause to be conducted the pre-award and post-delivery reviews and prepare the required Buy America, purchaser's requirements, and FMVSS certifications (see question 5). To support the pre-award and post-delivery Buy America certifications, subrecipients must review, or contract with an independent party to review, documentation provided by the manufacturer on the cost and country of origin of components and subcomponents and the location of final assembly (see question 6). Subrecipients procuring more than 10 vehicles must have an in-plant inspector at the manufacture site to monitor the vehicle construction activities and prepare a report documenting how the construction of the vehicles and their operational characteristics met (or did not meet) the contract specifications (see question 7).

The state is responsible for ensuring that subrecipients comply with the pre-award and post-delivery review requirements when procuring rolling stock directly with FTA assistance. The state must have systems in place for informing subrecipients of the requirements and for monitoring

subrecipients to ensure that they conduct the pre-award and post-delivery reviews and complete and maintain the required certifications.

Some states review each subrecipient procurement of rolling stock or require subrecipients to submit copies of the required certifications to the state. The state that does not review each procurement or require submission of the certifications must have a system in place for spot-checking procurements on a regular basis to ensure compliance.

When the state procures the vehicles on behalf of the subrecipient, the responsibility for conducting the pre-award and post-delivery reviews may be shared between the state and subrecipients. (See question 5)

SOURCES OF INFORMATION

The state management plan may provide information on the state's procurement procedures and the responsibilities of the state and subrecipients in procurements. On site, discuss with state staff the processes used to inform subrecipients directly procuring vehicles about the pre-award and post-delivery review requirements and the procedures for monitoring subrecipients' compliance with the pre-award and post-delivery review requirements.

If the state requires subrecipients to submit the certifications to the state, review the documentation for a sample of subrecipient direct procurements.

If the state has subrecipients' documentation of direct procurements of rolling stock on

file, review a sample of subrecipient procurements of revenue rolling stock for the appropriate pre-award and post-delivery certifications.

DETERMINATION

If the state has appropriate systems in place for informing subrecipients of the pre-award and post-delivery review requirements and for monitoring subrecipients' compliance with the review requirements for direct procurements of vehicles, the state is not deficient. If the state does not pass the requirements through to subrecipients or monitor subrecipients' direct vehicle procurements to ensure compliance with pre-award and post-delivery review requirements, it is deficient.

This question is not applicable for the state that procures vehicles on behalf of the subrecipients and is, therefore, responsible themselves for conducting the reviews.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for passing the pre-award and post-delivery review requirements through to subrecipients and for monitoring subrecipients direct procurements of vehicles to ensure that the pre-award and post-delivery reviews are conducted and certifications are completed and maintained. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's process for informing subrecipients of the pre-award and post-delivery review requirements. Document

the state's process for monitoring subrecipients' direct procurements of vehicles to ensure that the pre-award and post-delivery review requirements are met.

Identify subrecipients' direct procurements of vehicles reviewed on site and indicate the existence of the required pre-award and post-delivery review certifications.

11. DEBARMENT AND SUSPENSION

BASIC REQUIREMENT

To prevent fraud, waste, and abuse in Federal transactions, persons or entities, which by defined events or behavior, potentially threaten the integrity of federally administered non-procurement programs are excluded from participation in FTA assisted programs. FTA grantees are required to inform FTA when they are excluded from federally assisted transactions and to ensure that none of their principals, subrecipients, or third-party contractors or subcontractors are debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions.

In its grant agreements with FTA, the state is obligated to comply with 49 CFR Part 29.

SPECIFIC REQUIREMENTS

Unless otherwise permitted by law, any person that is debarred, suspended, or voluntarily excluded may not take part in any covered transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion.

Compliance Regarding Debarment, Suspension, and Other Matters **[49 CFR 29.300;**

FTA Master Agreement Subsection 3(b)]

The state agrees to comply, and assures the compliance of Section 5310 and 5311 subrecipients and third-party contractors and subcontractors, with 49 CFR Part 29, which applies to grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 and to applies any contract or subcontract (at any level) for federally

required auditing services. The state must verify that those with whom they do business in covered transactions are not excluded or disqualified. This can be done by:

- Checking the General Services Administration (GSA) Excluded Parties List System (EPLS), or;
- Collecting a certification from that party, or;
- Adding a clause or condition to the covered transaction with that party.

Section 5310 and 5311 subrecipients must provide their certifications to the state, if requested under 49 CFR 29.300(b). Third-party contractors and subcontractors must provide their certifications to the contracting entity (i.e., the state or subrecipient), if requested under 49 CFR 29.300(b).

Duty to Pass Down Requirements **[49 CFR 29.330]**

Each tier is required to comply with each requirement of Subpart C and to pass down those requirements to the lower tier.

Continuing Duty to Disclose **[49 CFR 29.350 and 29.365]**

The state must provide immediate written notice to FTA if at any time it learns that its circumstances have changed (new personnel, indictments, convictions, etc.). Each subrecipient must provide such notice to the state and each contractor or subcontractor must provide such notice to the state, subrecipient or contractor.

QUESTIONS FOR THE REVIEW

1. *Has the state learned that the exclusion status for any of its principals has changed? If so, has the state provided written notice to FTA? Has the state taken any exception to debarment, suspension, or other responsibility matters?*

EXPLANATION

The state must verify that its personnel are not debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

If the state takes exception to any exclusion, an explanation must be provided. This may be the case, for example, if a member of the state's management staff or a key supervisory employee is under indictment for fraud or a criminal offense as detailed in the suspension.

The state must review and update its status as new principal personnel become involved or circumstances cause the information to become erroneous.

FTA requires a continuing duty for disclosure. The state must provide immediate written notice to FTA if it learns that a principal is excluded.

SOURCES OF INFORMATION

If applicable, written notice that an exclusion has occurred should be on file in the regional office. Discuss with regional office staff.

On site, discuss with state staff the status of any excluded person to determine whether the exclusion is valid. If the situation indicates that the exclusion is valid, review the written notice submitted to FTA.

DETERMINATION

If the state can verify that any of the principals in a covered transaction are excluded, and written notification has been transmitted to FTA, the state is not deficient. If written notification has not been transmitted to FTA, the state is deficient.

If the state has taken exceptions but has not provided an explanation, the state is deficient. If the state provides an explanation on site for any exceptions taken, it is not deficient but required to formally notify the FTA regional office of the explanation.

SUGGESTED CORRECTIVE ACTION

The state must submit written notification if it has learned that an exclusion has occurred. The state must submit the required explanatory documentation if it takes exception to any exclusion.

DOCUMENTATION

If the state indicates its exclusion information is now erroneous, note the date of the notice provided to FTA. Briefly explain the reason(s) the information is erroneous.

If the state has taken exception to the certification, note the date and location of the written explanation to FTA and briefly document the explanation. Include a copy

of an explanation provided at the site visit in the review file.

- 2. Has the state verified the non-exclusion of principals from all Section 5310 and 5311 subrecipients? Have any subrecipients taken exceptions to any exclusions? Has the state verified the non-exclusion of principals from its contractors?***

EXPLANATION

The state must verify that its subrecipients and contractors are not debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

The state must inform each of its subrecipient and contractors of the duty to review and update its own personnel information as new principals become involved or circumstances cause the information to become erroneous. Each subrecipient must notify the state if any of their personnel becomes excluded. The state must also inform them of the duty to pass down requirements to the next lower tier.

If a subrecipient takes exception to any exclusion, it must provide an explanation, e.g., a member of the subrecipient's management staff is under indictment for fraud or a criminal offense.

SOURCES OF INFORMATION

Review the state's Section 5310 and 5311 application packages and the state's standard subrecipient agreements for inclusion of the debarment and suspension requirements. On site, discuss with state staff the process for

verifying subrecipients and contractors. Inquire whether any subrecipient has taken exception to any of its personnel being excluded or has notified the state that any of its personnel have been excluded.

DETERMINATION

The state is not deficient if it has done the appropriate verification for the non-exclusion of the principals of its subrecipients and contractors.

If the state has not done the required checks to comply with Federal regulations, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement an appropriate process for verifying the exclusion status of each principal for its Section 5310 and 5311 subrecipients and its contractors to comply with 49 CFR Part 29. The state must submit documentation of the process to the FTA regional office.

DOCUMENTATION

Describe the state's process for verifying subrecipients' and contractors' status regarding debarment and suspension.

- 3. How does the state monitor subrecipients' compliance with requirements regarding debarment and suspension? Since entering into a covered transaction, has any subrecipient informed the state that any of its contractors' status were erroneous or have become erroneous by reason of changed circumstances?***

EXPLANATION

Each Section 5310 and 5311 subrecipient must verify that its contractors are not debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

Section 5310 and 5311 subrecipients must... in contracts paid using Federal funds and must ...from contractors and subcontractors.

The state is responsible for informing subrecipients of the requirements and for ensuring that subrecipients fulfill the requirements in covered contracts (over \$25,000). The state must have a system in place for ... in solicitations (over \$25,000) and ... from third party contractors and subcontractors (with contracts over \$25,000).

Some states review subrecipients' transactions, particularly for vehicles and equipment, and can use this mechanism to ascertain that the verification checks have been made. A state that does not review each procurement must have a system in place for spot-checking verification documents on a regular basis to ensure subrecipients are complying with requirements regarding debarment and suspension. This can be accomplished through periodic site visits.

The state must have a process for obtaining and maintaining on file subrecipients' actions to verify persons with whom they conduct business in covered transactions. These actions, as described in 49 CFR 29.300, can be checking GSA's EPLS, obtaining a certification from the lower tier

contractor, or adding a clause or condition as a part of the covered transaction.

Subrecipients are also subject to the continuing duty for disclosure. A subrecipient must provide immediate written notice to the state if it learns that a person involved in a covered transaction has been excluded. The state must then provide written notice to FTA.

Subrecipients are also required to pass these requirements down to any lower tier contractor.

SOURCES OF INFORMATION

The reviewer must first understand the state's procedures for procurements involving Section 5310 and 5311 funds and the responsibilities of the state and subrecipients in the procurement process. (Refer to Competitive Procurement) If the state procures vehicles and other equipment on behalf of its subrecipients, the subrecipients may not have participated in any transactions that meet the threshold for debarment and suspension verification.

Review the state management plan, the state's Section 5310 and 5311 subrecipient agreements, and other documentation for discussion of the requirements. On site, discuss with state staff the mechanisms used to monitor subrecipients' compliance with requirements regarding debarment and suspension. If the state routinely reviews subrecipients' verification documents, determine which types of transactions are reviewed and whether debarment and suspension is part of the review. If the state reviews such transactions during periodic site visits, determine how frequently site visits are made and the types of transactions reviewed.

If the state requires subrecipients to submit documentation to the state for review, examine a sample of those documents to ascertain the sufficiency of the documentation. Discuss with subrecipient staff, if appropriate.

Indicate whether the state reviews all subrecipient debarment and suspension verification documents or, if the state spot-checks them for compliance, the frequency of such checks. Indicate the sample of subrecipient contracts reviewed, if applicable, and note the date. If applicable, note where the state's monitoring activities are documented.

DETERMINATION

The state is not deficient if it has an appropriate process in place for informing subrecipients of the requirements and for monitoring subrecipients' direct procurements to ensure their compliance with the requirements regarding debarment and suspension.

If the state does not require subrecipients to comply with Federal regulations or does not have an appropriate process for monitoring compliance, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement an appropriate process for monitoring each Section 5310 and 5311 subrecipient for compliance with 49 CFR Part 29. The state must submit documentation of the process to the FTA regional office.

The state must implement the process and ensure compliance by subrecipients with the next application cycle.

DOCUMENTATION

Indicate which subrecipients' transactions that exceed the purchase threshold (\$25,000) during the review period. Describe the state's process for monitoring subrecipients' compliance with the requirements regarding debarment and suspension.

12. RESTRICTIONS ON LOBBYING

BASIC REQUIREMENT

Recipients of Federal grants and contracts exceeding \$100,000 must certify that they have not and will not use Federal appropriated funds to pay for influencing or attempting to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant, cooperative agreement or any other Federal award (P.L. 101-121, Section 319, Restrictions on Lobbying). State agencies administering the Section 5310 and 5311 programs certify to FTA. Section 5310 and 5311 subrecipients certify to the state. In addition, the state and its subrecipients must impose the lobbying restrictions on their third party contractors and obtain certifications.

SPECIFIC REQUIREMENTS

Certification of Restrictions on Lobbying **[49 CFR 20.110]**

Recipients of grants exceeding \$100,000 must certify that Federal financial assistance will not be used to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any covered action, i.e., the making of a Federal contract, grant or cooperative agreement. The state makes the certification to FTA through the FTA's Annual Certifications and Assurances. Section 5310 and 5311 subrecipients certify to the state.

Third party contractors and subcontractors are required to complete certifications for contracts or subcontracts exceeding \$100,000. Certifications are filed to the next higher tier.

Covered Actions **[49 CFR 20.105]**

Specific contracts, grants, or cooperative agreements are actions covered by the restrictions on lobbying. The restrictions on lobbying do not apply to influencing policy issues, only to specific grants or contracts. Examples of prohibited activities include seeking support for a particular application or seeking a Congressional earmark.

Disclosure of Lobbying Activities with Non-Federal Funds on Std Form LLL **[49 CFR 20.110]**

States, subrecipients, contractors, and subcontractors receiving in excess of \$100,000 in Federal funds must complete Standard Form LLL, "Disclosure Form to Report Lobbying," if non-Federal funds have been used to support lobbying activities in connection with a covered action. The form should be filed 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.

Disclosure forms are forwarded from tier to tier until received by the state for forwarding to FTA.

QUESTIONS FOR THE REVIEW

1. *Does the state have on file signed restrictions on lobbying certifications from all Section 5310 and 5311 subrecipients for subgrants of \$100,000 or more? What mechanism is used to obtain the certifications?*

EXPLANATION

Recipients of FTA funds are prohibited from using Federal financial assistance to influence any member of Congress or an officer or employee of any agency in connection with the making of any Federal contract, grant, or cooperative agreement. State recipients of grants exceeding \$100,000 must certify that Federal funds will not be used in lobbying activities in connection with a covered Federal action. The state certification is made through the FTA's Annual Certifications and Assurances.

Restrictions on lobbying requirements flow through to the state's Section 5310 and 5311 subrecipients. Each subrecipient must submit to the state a certification of restrictions on lobbying for each subgrant exceeding \$100,000. Section 5310 subrecipients with grants exceeding \$100,000 must sign the certification regardless of whether they procure the vehicles directly or the state procures the vehicles on their behalf.

The state must have a process for obtaining and maintaining on file subrecipients' certifications of restrictions on lobbying. States generally require the certification

either with the application or as part of the subrecipient agreement.

SOURCES OF INFORMATION

In the regional office, review programs of projects for recent grants to determine which subrecipients, if any, received subgrants exceeding \$100,000 and would be required to submit the certification to the state.

Review the state's Section 5310 and 5311 application packages and the state's standard subrecipient agreements for inclusion of the restrictions on lobbying requirements and certifications. On site, discuss with state staff the process for obtaining certifications from subrecipients. Inquire whether the state has a signed certification on file for each subrecipient receiving a grant of \$100,000 or more. Review the certifications filed with the state for a sample of subrecipients.

DETERMINATION

The state is not deficient if it has a process in place for obtaining signed restrictions on lobbying certifications from subrecipients receiving more than \$100,000 and review of the sample of subrecipients indicates that the state has received and maintains on file the subrecipients' certifications. If the state does not require subrecipients receiving more than \$100,000 to submit certifications or does not have a process for receiving signed certifications, the state is deficient. If the state does not have signed certifications on file for the sample of subrecipients reviewed, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a process for obtaining signed certifications from each Section 5310 and 5311 subrecipient with every grant exceeding \$100,000. The state must submit documentation of the process to the FTA regional office.

The state must implement the process and obtain the required certifications from subrecipients beginning with the next application cycle.

DOCUMENTATION

Note the state's process for obtaining signed certifications from subrecipients receiving grants of \$100,000 or more. Identify subrecipients meeting the threshold for submission of a certification in the last few Section 5310 and 5311 grants. Identify the subrecipients sampled and note the date and location of the certifications on file with the state.

- 2. Has the state included the restrictions on lobbying certification in its procurement documents where appropriate? Has the state obtained signed certifications from contractors and subcontractors in receipt of \$100,000 or more that no Federal funds have been or will be used for lobbying activities in connection with the making of any Federal contract, grant, or cooperative agreement?*

EXPLANATION

The state is required to impose the restrictions on lobbying on contractors and

subcontractors receiving \$100,000 or more. The state must include the restrictions on lobbying requirements in solicitation documents and require all contractors and subcontractors in receipt of \$100,000 or more to complete the certification.

Lobbying certifications must be filed to the next higher tier: contractors must submit certifications to the state; subcontractors must submit certifications to the contractor.

The state must have a process for obtaining signed certifications from contractors. Generally, the certifications are required with submission of the bid and are necessary for the bid to be considered responsive and responsible. Certifications may be required at the time of contract execution.

SOURCES OF INFORMATION

On site, as part of the review of procurement documents, review solicitations and contract files for the restrictions on lobbying certification. Discuss with state staff the process for obtaining signed certifications from contractors.

DETERMINATION

The state is not deficient if it has an appropriate process for obtaining signed certifications from contractors and review of a sample of procurements indicates that it has included the requirement in solicitations and obtained signed certifications from contractors.

If the state does not have an appropriate process for obtaining signed certifications from contractors, it is deficient.

If review of a sample of procurement documents indicates that the state has not included the restrictions on lobbying requirements in its solicitations or has not obtained signed certifications from contractors receiving \$100,000 or more, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must revise its standard solicitation and contract terms and conditions to include the restrictions on lobbying requirement and certification and implement procedures for obtaining executed certifications from contractors receiving more than \$100,000. The state must retain the certifications of contractors in its files. The state must submit documentation of its process for obtaining the restrictions on lobbying certification from contractors to the FTA regional office.

For applicable procurements in progress, the state must obtain the required certification.

DOCUMENTATION

Document the state's process for receiving certifications from contractors. Note on the worksheet the solicitation documents and contract files examined. Note the presence or absence of the requirement in solicitation documents and the dates and locations of signed contractors' certifications.

- 3. How does the state monitor subrecipients' compliance with restrictions on lobbying requirements? Have any Section 5310 or 5311 subrecipients had procurements that exceeded \$100,000? Have***

subrecipients included the restrictions on lobbying certification in procurement documents where appropriate? Have subrecipients obtained signed certifications from contractors and subcontractors awarded contracts in excess of \$100,000 that no Federal funds have been or will be used for lobbying activities in connection with a covered action?

EXPLANATION

Restrictions on lobbying requirements flow through to the state's Section 5310 and 5311 subrecipients, who must impose the restrictions on lobbying on contractors and subcontractors receiving in excess of \$100,000. Subrecipients must include the restrictions on lobbying requirements in solicitations expected to exceed \$100,000 and must require all contractors and subcontractors receiving more than \$100,000 to complete the restrictions on lobbying certification. The certifications are filed to the next higher tier; contractors submit their certifications to the subrecipient and subcontractors submit their certifications to the contractor.

The state is responsible for informing subrecipients of the requirements and for ensuring that subrecipients fulfill the requirements in applicable direct procurements (> \$100,000). The state must have a system in place for monitoring subrecipients to ensure that they include the restrictions on lobbying requirements in direct procurement solicitations (expected to exceed \$100,000) and obtain signed certifications from contractors.

Some states provide standard terms and conditions, which include the restrictions on lobbying requirements, for subrecipients to incorporate in their direct procurements.

Some states review subrecipients' direct procurements, particularly for vehicles and equipment, and can use this mechanism to ascertain whether the certification has been obtained if required. The state that does not review each procurement must have a system in place for spot checking procurements on a regular basis to ensure subrecipients are complying with restrictions on lobbying requirements. This can be accomplished through periodic site visits.

SOURCES OF INFORMATION

At the regional office, examine programs of projects in grant files to determine to identify subrecipients receiving more than \$100,000. In the review of competitive procurement (see Section 9), identify the state's procurement process and the roles/responsibilities of the state and subrecipients in procurements. For the state that procures vehicles and other equipment on behalf of subrecipients, the subrecipients may not have direct procurements that meet the threshold for lobbying requirements (exceed \$100,000).

Review the state management plan, the state's Section 5310 and 5311 subrecipient agreements, and other documentation of procurement requirements for discussion of the restrictions on lobbying requirement.

On site, discuss with state staff the mechanisms used to inform subrecipients and monitor subrecipients' compliance with lobbying requirements. If the state reviews

subrecipients' procurements, determine the types of procurements reviewed and whether the lobbying certification is part of the review.

Discuss with state staff the nature of subrecipients' direct procurements and, for procurements meeting the \$100,000 threshold, whether the subrecipients have included the certification in solicitations, required contractors and subcontractors to sign certifications, and obtained signed certifications from contractors. Examine a sample of subrecipient procurement documents, if available in the state offices, to ascertain the presence or absence of the certification.

DETERMINATION

The state is not deficient if it has an appropriate process in place for informing subrecipients of the restrictions on lobbying requirements and for monitoring subrecipients' direct procurements to ensure subrecipients' compliance with the requirements. The state is deficient if it does not have a system in place for informing or monitoring subrecipients' compliance with restrictions on lobbying requirements.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for informing subrecipients of the restrictions on lobbying requirement and for monitoring subrecipients' direct procurements to ensure compliance. The state must implement the procedures with the next grant cycle. The state must submit documentation of these procedures to the FTA regional office.

DOCUMENTATION

Describe the state's process for informing subrecipients and monitoring their compliance with restrictions on lobbying requirements. Indicate whether the state reviews subrecipient procurements. If the state spot checks procurements for compliance, indicate the frequency of such checks. If applicable, note where the state's monitoring activities are documented.

Document whether subrecipients had any contracts exceeding \$100,000 during the review period and whether the subrecipients included restrictions on lobbying certifications in their procurement documents and obtained signed certifications from contractors. Identify subrecipient procurements reviewed, if available, noting the date and location of the restrictions on lobbying certifications.

- 4. *Have the state, its subrecipients, contractors or subcontractors used non-Federal funds for lobbying in connection with a covered action? Has the state submitted Standard Form LLL to FTA? Have quarterly reports been submitted as required? Does the state have a process by which subrecipients, contractors, and subcontractors pass all disclosure forms (LLL) to the state for reporting to FTA?***

EXPLANATION

The restrictions on lobbying requirements prohibit states, their subrecipients, contractors, and subcontractors from using

Federal funds for lobbying in connection with a covered Federal action. States, subrecipients, contractors, and subcontractors may, however, use non-Federal funds for lobbying activities in connection with a covered Federal action.

If the state, its subrecipients, contractors, or subcontractors use non-Federal funds to procure lobbying services in connection with a covered Federal action, the state must disclose the lobbying activities to FTA using Standard Form LLL. The state must submit updates to the Standard Form LLL 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 state.

Such 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.

All subrecipients, contractors, and subcontractors in receipt of grants or contracts exceeding \$100,000 are subject to the disclosure requirement. All certifying entities must submit quarterly disclosure forms from tier to tier until received by the state for forwarding to FTA.

The state must have a process for receiving the disclosure forms from subrecipients and contractors and passing the forms on to the FTA regional office.

SOURCES OF INFORMATION

Discuss with regional office staff and review regional office files for the Standard Form LLL and quarterly reports, if applicable.

Review the state management plan, standard subrecipient agreements, procurement procedures, and other documents to determine whether the state requires subrecipients to complete disclosure forms for lobbying in connection with a covered Federal action.

On site, discuss with state staff any lobbying activities in connection with covered Federal actions conducted with non-Federal funds. The discussion should include activities of the state, its subrecipients, and contractors and subcontractors to the state or subrecipients. Discuss the state's process for receiving and forwarding the disclosure statements to the regional office.

DETERMINATION

The state is not deficient if neither it nor any of its subrecipients, contractors or subcontractors receiving more than \$100,000 have used non-Federal funds for lobbying in connection with a covered Federal action. The state is not deficient if it, its subrecipients, contractors, or subcontractors receiving more than \$100,000 have used non-Federal funds for lobbying in connection with a covered Federal action and have submitted the required Standard Form LLL and quarterly

reports and the state has forwarded the forms to the FTA regional office.

The state is deficient if lobbying activities have occurred with non-Federal funds or if there has been a material change in the status of the previous disclosure and the state has not submitted the Standard Form LLL or the quarterly reports to FTA. The state is deficient if it does not have a process for receiving and forwarding to FTA the disclosure forms of subrecipients, contractors and subcontractors.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for preparing and submitting disclosure forms and quarterly reports to FTA when non-Federal funds are used for lobbying activities in connection with a covered Federal action. The procedures must include a process for obtaining disclosure forms from subrecipients and contractors and subcontractors (to itself or its subrecipients) receiving subgrants or contracts exceeding \$100,000 and forwarding the disclosure forms and quarterly reports to the regional office. The state must submit documentation of the procedures to the regional office.

DOCUMENTATION

Note whether the state, its subrecipients, contractors or subcontractors have used non-Federal funds for lobbying activities during the review period, and if so, the dates and locations of the Standard Form LLL and the quarterly reports.

Describe the state's process for receiving and filing the disclosure forms of

subrecipients and contractors and subcontractors.

Document any procedures the state uses to determine whether subrecipients use non-Federal funds to lobby in connection with a covered Federal action.

13. PLANNING AND COORDINATION

BASIC REQUIREMENT

The state must include Section 5310 and 5311 projects in the statewide transportation improvement program (STIP). The governor shall provide for public involvement in development of the STIP.

The state must cooperate with MPOs in the selection of Section 5310 and 5311 projects. MPOs must include Section 5310 and 5311 projects in transportation improvement programs (TIPs).

Both Section 5310 and Section 5311 require maximum feasible coordination with transportation services assisted by other Federal sources.

SPECIFIC REQUIREMENTS

Statewide Transportation Improvement Program

[23 CFR 450.216;

FTA C. 9040.1E Ch IV, sec 2;

FTA C. 9070.1E Ch III, sec 1]

The state must include all Federal funds programmed for transit projects in a STIP. Projects not included in the federally approved STIP are not eligible for funding with Federal transit funds. For purposes of the STIP, the state may aggregate its planned expenditures of Section 5310 and 5311 funds into statewide projects. The governor shall provide for public involvement in development of the STIP.

Transportation Improvement Program

[23 CFR 450.324; 49 CFR Part 613; FTA C. 9040.1E Ch IV, sec 2;

FTA C. 9070.1E Ch III, sec 1]

The metropolitan planning organization (MPO), in cooperation with the state and affected transit operators, must develop a transportation improvement program (TIP) for the area for which such organization is designated. The TIP must include all proposed Section 5310 and 5311 projects within an MPO's planning area. MPOs may aggregate planned expenditures of Section 5310 and 5311 funds into regional projects. The TIP must include all transferred STP funds. The metropolitan planning process shall provide for proactive public involvement and the MPO must provide for public involvement in the development of the TIP before it is approved.

MPO Involvement in Project Selection

[49 USC 5304 (c)(1)(B) and 5305(d)(1)(B); 23 CFR 450.332; FTA C. 9040.1E Ch IV, sec 2]

The state must cooperate with MPOs in selecting projects using Federal transit funds.

Transit Operator Involvement in Project Selection

[23 CFR 450.222]

The state must cooperate with local transit operators when selecting projects using Federal transit funds.

Coordination

[49 USC 5310(c) and 49 USC 5311(b)(1); FTA C. 9040.1E Ch IV, sec 2; FTA C. 9070.1E Ch III, sec 1]

The state must provide for maximum feasible coordination of public transportation services assisted by Sections 5310 and 5311 with transportation services assisted by other Federal sources.

QUESTIONS FOR THE REVIEW

1. *Does the state include the program of projects for Section 5310 and Section 5311 in the STIP? Which unit is responsible for preparation of Section 5310 and 5311 data for inclusion in the STIP? How are Section 5310 and Section 5311 programs of projects included in the STIP?*

EXPLANATION

The state must include in the STIP Federal funds programmed for Section 5310 and 5311 projects. FTA does not require the state to include a detailed project listing by subrecipient (the program of projects submitted with grant applications) in the STIP. Instead, the state may:

- Aggregate planned Section 5310 expenditures into the statewide project or projects such as vehicle acquisition and state administration; and
- Aggregate planned Section 5311 expenditures into the statewide project or projects such as vehicle acquisition for rural and small urban transportation services, operating assistance, intercity bus projects, facility construction, state administration, and training and technical assistance.

SOURCES OF INFORMATION

Review the STIP on file in the regional office for inclusion of Section 5310 and 5311 projects.

The state management plan, in the section on roles and responsibilities, may discuss what unit is responsible for the preparation of Section 5310 and 5311 data for inclusion in the STIP. The plan may also include an organizational chart.

On site, discuss with the state how it includes Section 5310 and 5311 projects in the STIP.

DETERMINATION

If the state includes Section 5310 and 5311 programs of projects in the STIP, it is not deficient. If the state does not include Section 5310 and 5311 programs of projects in the STIP, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to include Section 5310 and 5311 programs of projects in the STIP. The state must submit the procedures to the FTA regional office.

DOCUMENTATION

Document whether and how the state includes Section 5310 and 5311 projects in the STIP. Include relevant pages of the most recent STIP in the review files. Document which unit within the state agency is responsible for preparing Section 5310 and 5311 data for inclusion in the STIP.

2. *How does the state coordinate with MPOs in the selection of Section 5310 and 5311 projects? Do MPOs include Section 5310 projects and, where*

applicable, Section 5311 projects in TIPs?

Section 5310 and 5311 projects and whether MPOs include Section 5310 and 5311 projects in TIPs.

EXPLANATION

The state must coordinate with MPOs in the selection of 5310 and 5311 projects in their planning areas. Some states involve MPOs in the selection of Section 5310 and 5311 projects by requiring applicants to ask the MPO to approve or endorse the application or by requiring applicants to demonstrate that they have coordinated with the MPO in developing the projects. Others involve MPOs in the evaluation of projects during project selection. Others allocate Section 5310 funds to MPOs and allow them to select projects.

TIPs must include all proposed Section 5310 projects and, if applicable, Section 5311 projects within an MPO's current planning area. MPOs may list in TIPs Section 5310 and 5311 projects individually or in aggregate. The state must provide MPOs with estimates of available Federal and state funds, which MPOs use in developing TIPs. Governors must not approve TIPs unless they include Section 5310 and 5311 projects.

SOURCES OF INFORMATION

Review the state management plan for a discussion of how the state coordinates with MPOs in selecting projects and including projects in TIPs. Review subrecipient applications for requirements for coordinating with MPOs. Review TIPs on file in the regional office for inclusion of Section 5310 and 5311 projects.

On site, discuss with state staff procedures for involving MPOs in the selection of

DETERMINATION

The state is not deficient if it coordinates with MPOs in the selection of Section 5310 and 5311 projects and in metropolitan planning areas, the state considers funding only for those projects that are included in the MPO TIP. The state is deficient if it does not coordinate with MPOs in the selection of Section 5310 and 5311 projects.

The state is not deficient if it provides MPOs with Section 5310 and 5311 funding information and only considers for funding those projects in planning areas that MPOs have included in TIPs. The state is deficient if it does not provide MPOs with Section 5310 and 5311 funding information or funds projects in planning areas that MPOs have not included in TIPs.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for giving funding consideration only to metropolitan planning area projects that are included in the MPO TIP. The state must send documentation of the procedures to the FTA regional office.

The state must develop and implement procedures for providing MPOs with Section 5310 and 5311 funding information to include in TIPs. The state must send documentation of the procedures to the FTA regional office.

The state must develop and implement procedures for only considering projects in planning areas that are included in TIPs.

The state must send documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document how the state coordinates with MPOs in the selection of Section 5310 and 5311 projects.

Document whether and how (individually or in aggregate) MPOs include Section 5310 and 5311 projects in TIPs. Note TIPs reviewed in the regional office.

- 3. How do interested parties, including private providers, participate in the development of the Section 5310 and Section 5311 programs of projects? Have any private providers filed complaints with the state or FTA?***

EXPLANATION

FTA requires each state to provide an opportunity for public involvement in the development of the Section 5310 and 5311 programs of projects. The state may have the state-level public participation process for the development of the Section 5310 and 5311 programs of projects; rely on the public participation process required for the development of the statewide transportation plan, the STIP, and the TIPs; or require local public involvement processes.

FTA specifically requires an opportunity for public comment for the Section 5310 and 5311 programs in three instances--when public bodies apply for Section 5310 funds, when Section 5311 subrecipients apply for capital assistance, and when the state makes significant changes to the state management plan. These requirements are addressed in

Selection and Eligibility of Subrecipients and Projects.

SOURCES OF INFORMATION

Review the state management plan and the Section 5310 and 5311 subrecipient application packages for discussion of public involvement processes and requirements in development of the program of projects.

At the regional office, review the STIP for a discussion of the public involvement process. Ask if any private providers have filed complaints regarding the Section 5310 and 5311 programs.

On site, discuss with state staff how it meets public participation requirements and how it involves private providers. Ask if any private providers have filed complaints with the state.

DETERMINATION

If the state has a public involvement process, it is not deficient. If the state does not have a public involvement process, it is deficient. A finding of deficiency will be rare as FTA (and FHWA) approve the public involvement process for the STIP as part of the approval of the STIP every two years.

SUGGESTED CORRECTIVE ACTION

The state will develop a public involvement process that involves interested parties, including private providers, in the development of the Section 5310 and Section 5311 programs of projects. The state will implement the program during the development of the next program of projects. The state will submit

documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's policies and procedures for providing public involvement in the development of the program of projects.

- 4. How does the state define and ensure maximum feasible coordination with transportation services assisted from other Federal sources? What requirements does the state place on subrecipients to ensure maximum feasible coordination with recipients of other Federal funds?***

EXPLANATION

The state must provide for maximum feasible coordination of public transportation services assisted by Section 5310 and 5311 with transportation services assisted by other Federal sources.

In 1986, the U.S. Department of Transportation (DOT) signed an interagency agreement with the U.S. Department of Health and Human Services (DHHS) to improve the coordination of transportation programs funded by the two departments. Since that time, a joint Federal coordinating council on human service transportation has met twice a year to oversee implementation of the objectives of the agreement and regional Federal officials have established working groups to undertake a series of regional initiatives addressing specific areas of coordination.

The states are encouraged to participate in these regional initiatives and to encourage

local recipients of Section 5307, 5310, and 5311 funds to participate in coordinated systems at the local level along with recipients of funds from DHHS. Section 5311, RTAP (Section 5311(b)(2)), and Section 5313(b) funds may be used to support eligible expenses involved in the development and administration of coordinated activities at the state and local level.

Many states require applicants for Section 5310 assistance to contact all local transportation providers, including human service agencies and the transit operator, to request letters of support for the projects. Applications must include letters of support and public involvement in the development of Section 5310 and 5311 programs of projects. The state may have the state-level public participation process for the development of Section 5310 and 5311 programs of projects; rely on the public participation process required for the development of the statewide transportation plan, the STIP, and the TIPS; or require local public involvement process.

Some states require Section 5310 and 5311 subrecipients to participate in local transportation coordinating councils. These states may require applicants for Section 5310 assistance to submit their applications to the local council, which forwards the application with comments to the state.

Most states use coordination efforts as a factor for evaluating applications for Section 5310 assistance.

SOURCES OF INFORMATION

The state management plan must describe coordination requirements and efforts.

Review the state management plan and the Section 5310 and 5311 subrecipient application packages for discussion of coordination requirements. On site, discuss coordination efforts with the state.

DETERMINATION

If the state has procedures for providing maximum feasible coordination with transportation services assisted by other Federal sources and the procedures are documented in the state management plan, the state is not deficient.

If the state has procedures for providing maximum feasible coordination with transportation services assisted by other Federal sources and the current procedures are not documented in the state management plan, the state is deficient.

If the state does not have procedures for providing maximum feasible coordination with transportation services assisted by other Federal sources, the state is deficient.

If the state does not have procedures for ensuring Section 5310 subrecipients coordinate with the local transit provider, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for providing maximum feasible coordination between Section 5310 and 5311 subrecipients and transportation services assisted by other Federal sources. The state will include the procedures in the state management plan and will submit the updated plan to the FTA regional office.

The state will update the state management plan to include its current procedures for ensuring maximum feasible coordination by Section 5310 and 5311 subrecipients with transportation services assisted by other Federal sources. The state will submit the updated plan to FTA.

DOCUMENTATION

Document the state's procedures for ensuring maximum feasible coordination with transportation services assisted by other Federal sources. Document any procedures that differ from those in the state management plan.

14. TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

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.

Each public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

SPECIFIC REQUIREMENTS

Certifications

[49 CFR 27.9]

The state must submit to the FTA regional office an Assurance of Nondiscrimination on the Basis of Disability prior to the award of a grant. The state must assure FTA that each Section 5310 and 5311 subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability. The state must submit the assurances as part of FTA's Annual Certifications and Assurances.

Acquisition of Accessible Vehicles

[49 CFR 37.71, 37.73, 37.77 (Public Entities); 37.101, 37.103 (Private Entities); Part 38, Accessibility Specs - Transportation Vehicles]

In general, public and private entities must acquire accessible vehicles. Under certain

circumstances, non-accessible vehicles can be acquired.

Public entities:

- Fixed route systems
 - All new vehicles must be accessible unless a waiver has been obtained from the FTA Administrator.
 - All used vehicles must be accessible unless, after demonstrated good faith efforts to obtain an accessible vehicle, the public entity cannot do so.
- Demand Response systems for the general public
 - All new vehicles must be accessible unless equivalent service is provided.

Private entities primarily engaged in the provision of transportation:

- Fixed route systems
 - All new vehicles (except automobiles, vans with capacity < 8, including driver, and over-the-road buses) must be accessible.
 - All new vans with capacity < 8, including the driver, must be accessible unless equivalent service is provided.
 - All new over-the-road buses must be accessible consistent with 49 CFR 37.183.
- Demand response systems
 - All new vehicles (except automobiles, vans with seating capacity < 8, including the driver, and over the road coaches) must

be accessible unless equivalent service is provided

- All new vans with capacity < 8, including the driver, must be accessible unless equivalent service is provided

Private entities not primarily engaged in the provision of transportation:

- Fixed route systems:
 - All vehicles (new or used) with capacity > 16, including the driver, must be accessible.
 - All vehicles (new or used) with capacity < 16, including the driver, must be accessible unless equivalent service is provided.
- Demand response systems:
 - All vehicles (new or used) with capacity > 16, including the driver, must be accessible unless equivalent service is provided.

Facility Accessibility - Public Entities
[49 CFR 37.9, 37.41, 37.43, App. A]

Public entities constructing new facilities or altering existing facilities to be used for the provision of designated public transportation service must make the facility or alterations readily accessible to and useable by individuals with disabilities.

Facility Accessibility - Private Entities
[49 CFR 37.45; 28 CFR 36, Subparts C, D]

In constructing and altering transit facilities, private entities must comply with the regulations of the Department of Justice implementing Title III of the ADA.

Complementary Paratransit Service
[49 CFR 37, Subpart G]

Each public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

Complementary Paratransit Plan
[49 CFR 37, Subpart G;
FTA C. 9040.1E Ch IX, sec 7a]

Each public entity required to provide complementary paratransit service must develop a paratransit plan with annual updates annually by January 26. Entities that are in full compliance with the requirements of Subpart F may submit a certification in lieu of a plan update. Section 5311 subrecipients that are public entities operating fixed route service must submit the plan and updates to the state. State agencies administering the Section 5311 program must comment on the plans and transmit them to FTA by April 1 each year.

Provision of Service
[49 CFR 37, Subpart G and App. D]

States directly providing service and subrecipients, both public and private entities, must comply with the following service provisions:

- # Maintenance of accessible features
- # Procedures to ensure lift availability (public entities only)
- # Lift and securement use
- # Announcements on vehicles of stops on fixed route systems
- # Vehicle identification mechanisms
- # Service animals
- # Use of accessibility features
- # Public information/communications

- # Lift deployment at any designated stop
- # Service to persons using respirators or portable oxygen
- # Adequate time for vehicle boarding/disembarking
- # Training

QUESTIONS FOR THE REVIEW

1. *Does the state have on file a signed Assurance of Nondiscrimination on the Basis of Disability for each Section 5310 and 5311 subrecipient?*

EXPLANATION

In accordance with 49 CFR 27.9, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", the state must assure FTA that no person with a disability will, solely on the basis of the disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal financial assistance administered by the FTA or any entity within U.S. DOT.

The state must also assure FTA that each Section 5310 and 5311 subrecipient has provided an Assurance of Nondiscrimination on the Basis of Disability to the state.

The state makes the assurances to FTA through the FTA's Annual Certifications and Assurances for all grants for which the state would apply.

The state generally requires subrecipients to submit the assurance as part of the grant application process or through the grant agreement.

SOURCES OF INFORMATION

Review the Section 5310 and 5311 subrecipient application packages and the state's standard Section 5310 and 5311 subrecipient agreements for inclusion of the assurance. Discuss the process for obtaining the assurance with state staff on site. Review the assurances on file with the state for a sample of subrecipients.

DETERMINATION

The state is not deficient if it has a process for obtaining and maintaining on file an Assurance of Nondiscrimination on the Basis of Disability from each Section 5310 and 5311 subrecipient. The state is deficient if it does not have a process for obtaining or maintaining the subrecipients' assurances. The state is deficient if it does not have on file the assurances for the sample of subrecipients reviewed.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to obtain and maintain on file the Assurance of Nondiscrimination on the Basis of Disability from every Section 5310 and 5311 subrecipient on an annual basis. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Indicate the state's process for obtaining and filing the assurance from Section 5310 and 5311 subrecipients. Identify the subrecipients sampled on site and indicate the location of the assurance.

2. *As a provider of public transportation, has the state received any complaints of discrimination due to disability? What is the status of the complaints?*

EXPLANATION

A history or pattern of complaints of discrimination on the basis of disability, either employment or service related, may be an indication that the state is not implementing the requirements of the ADA.

SOURCES OF INFORMATION

Discuss the existence of disability related complaints with the regional Civil Rights Officer and/or regional Counsel. On site, discuss with state staff the existence and status of any disability related discrimination complaints received.

DETERMINATION

This question generally does not lead to a finding.

If the state has disability related discrimination complaints pending, the state may be found deficient depending on the nature and number of complaints.

SUGGESTED CORRECTIVE ACTION

If the state has disability related discrimination complaints pending, it must advise the FTA regional office of the results.

DOCUMENTATION

Identify complaints of discrimination on the basis of disability that the state has received

during the review period and the status of the complaints.

3. *How has the state identified Section 5311 public operators of fixed route service? How has the state ensured ADA complementary paratransit plans and/or updates have been prepared and submitted annually by January 26? Has the state annually received and reviewed ADA complementary paratransit compliance plans from Section 5311 operators of fixed route service? Has the state submitted comments to FTA on subrecipients' complementary paratransit plans annually by April 1?*

EXPLANATION

Each public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. A complementary paratransit system must meet the requirements of Subpart F 37.123 - 37.133 to be deemed comparable.

Each public entity required to provide complementary paratransit service was also required to develop a complementary paratransit plan, providing for full compliance no later than January 26, 1997. Initial paratransit plans were required by January 26, 1992, with annual updates due each succeeding January 26. An operator in full compliance with the service provisions may submit a certification in lieu of an update. Section 5311 subrecipients that are

required to provide complementary paratransit service must submit their plan and annual updates to the state agency administering the program.

Two or more public entities with overlapping or contiguous service areas or jurisdictions may develop and submit a joint plan providing for coordinated paratransit service.

The state is responsible for:

- Ensuring that plans are received from subrecipients
- Certifying to FTA that all plans have been received
- Reviewing each plan and developing comments which address the following:
 - Timeliness of submission of the plan
 - Reasonableness of the plan
 - Circumstances that affect the subrecipient's ability to carry out the plan
 - Consistency of the plan with statewide planning activities
 - Accuracy of the estimate of financial and capital resources identified
- Forwarding the certification and comments on the plan to FTA by April 1 of each year

The state must establish a system for identifying Section 5311 subrecipients that are public entities providing fixed route service, informing such subrecipients of the requirement to develop and submit to the

state a complementary paratransit plan updates by January 26 of each year, ensuring the receipt of plans on time, reviewing and developing comments on the plans, and submitting the certification of receipt of the plan and comments on the plan to the FTA regional office by April 1 of each year.

SOURCES OF INFORMATION

The regional office should have on file the state's submission of certifications of receipt and comments on the complementary paratransit plans of all Section 5311 public operators of fixed route service in the state. At the desk review, identify Section 5311 subrecipients for which the state has submitted comments on complementary paratransit plans. Review submissions of comments. Discuss with regional office staff.

Review the state management plan, the standard Section 5311 subrecipient agreement, and other documentation for discussion of the state's requirements and processes for carrying out its responsibilities with regard to the submission of and review and comment on subrecipients' complementary paratransit plans.

On site, discuss with state staff the subrecipients that are public operators providing fixed route service. Discuss the state's processes and assignment of responsibility for informing subrecipients of the requirement to submit complementary paratransit plans to the state; monitoring the receipt of subrecipients' complementary paratransit plans and updates by January 26 of each year; reviewing and developing comments on the subrecipients' plans; and

submitting the certification and comments to the FTA regional office by April 1 of each year.

Select a sample of Section 5311 subrecipients and examine their complementary paratransit plans and the state's comments to FTA on the plans. Also examine logs or other tracking mechanisms that may be used by the state to monitor subrecipients' compliance with the requirement to submit complementary paratransit plans.

DETERMINATION

The state is not deficient if it has an appropriate process in place for receiving complementary paratransit plans from each Section 5311 public operator of fixed route service by January 26 of each year, reviewing and commenting on the plans, and submitting the certification of receipt and comments on the plans to the FTA regional office by April 1 of each year and has submitted comments to the FTA regional office on the complementary paratransit plans for each Section 5311 subrecipient, as required. The state is deficient if it has not received and commented on the complementary paratransit plans for each Section 5311 public operator of fixed route service or does not have an appropriate process in place for receiving plans, reviewing and commenting on plans, or submitting the required certification and comments to FTA.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for identifying Section 5311

public operators of fixed route service, informing subrecipients of the requirement to submit a complementary paratransit plan, ensuring the receipt of complementary paratransit plans from all Section 5311 public operators of fixed route service, reviewing and preparing comments on the plan addressing the five points required, and submitting the certification of receipt and comments to the FTA regional office by April 1 of each year. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Identify the state's Section 5311 subrecipients that are public entities and provide fixed route service. Indicate whether the state has received the complementary paratransit plans of each subrecipient by January 26 of each year and submitted the required certification of receipt and comments on the complementary paratransit plans of each subrecipient by April 1 of each year.

Describe the state's process for identifying Section 5311 public operators of fixed route service, informing subrecipients of the requirement to submit complementary paratransit plans to the state, ensuring the receipt of complementary paratransit plans by January 26 of each year, reviewing and commenting on the plans, and submitting the certification of receipt and comments on each plan to the FTA regional office. Identify documentation of the state's process in the state management plan or other document.

4. *Has the state, on behalf of its Section 5310 or 5311 subrecipients, acquired vehicles since the previous review that are not accessible? Are non-accessible vehicles acquired consistent with the exceptions allowable under Part 37? Have subrecipients met specific conditions that permit the acquisition of non-accessible vehicles?*

EXPLANATION

Part 38 contains accessibility standards for all types of transportation vehicles. Part 37 includes specific requirements for the acquisition of accessible vehicles by public entities, private entities primarily engaged in transportation, and private entities not primarily engaged in transportation. The Section 5310 and 5311 programs generally encompass transportation providers in all three categories.

Acquisition of accessible vehicles by public entities (Part 37, Subpart D)

For public entities' solicitations to purchase or lease vehicles, the following requirements apply:

- New vehicles for fixed route service must be accessible unless a waiver has been received from the FTA Administrator
- Used vehicles for fixed route service must be accessible unless, after demonstrated good faith efforts to obtain an accessible vehicle, the public entity is unable to do so

- New vehicles for demand response service must be accessible unless the public entity certifies that the service, when viewed in its entirety, is equivalent to the service provided to other individuals

In general, all **new vehicles acquired by public entities operating fixed route service** must be accessible (must comply with Part 38 accessibility standards). A public entity operating fixed route service may acquire new non-accessible vehicles only after obtaining a waiver from the FTA Administrator. The public entity must hold at least one public hearing prior to requesting a waiver. The FTA Administrator may grant a waiver if the public entity demonstrates that the initial solicitation specified the buses were to be lift equipped, lifts for the buses could not be provided by any qualified lift manufacturer, and any further delay in purchasing the buses would significantly impair transportation services in the community.

In general, all **used vehicles acquired by public entities operating fixed route service** must be accessible (must comply with Part 38 accessibility standards). A public entity operating fixed route service may purchase or lease a used bus that is not accessible only if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

Good faith efforts include, at a minimum:

- An initial solicitation for used vehicles specifying that the vehicles are to be lift equipped and otherwise accessible

- A nationwide search for accessible vehicles
- Advertising in trade publications and contacting trade associations

The public entity must retain documentation of its good faith efforts for three years from the date the vehicles were purchased.

Public entities that have vehicles remanufactured to extend their useful lives for five or more years or purchase or lease vehicles which have been remanufactured to extend their useful life must ensure that the vehicles are readily 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.

In general, all **new vehicles acquired by public entities operating a demand responsive system** must be accessible, unless a public entity may purchase or lease a new non-accessible vehicle for use in its demand responsive service only if it can demonstrate that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including individuals who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. A demand response system may be considered to provide equivalent service if it is provided in an integrated setting and is equivalent with respect to:

1) response time, 2) fares, 3) geographic area of service, 4) hours and days of service,

5) restrictions or priorities based on trip purpose, 6) availability of information and reservations capability, and 7) constraints on capacity or service availability.

Before procuring a non-accessible vehicle for use in its demand response system, the public entity subrecipient must file with the state a certification that it provides equivalent service. The certification is valid for no more than one year.

Acquisition of accessible vehicles by private entities primarily engaged in the provision of transportation service (Part 37, Subpart E)

For private entities primarily engaged in the provision of transportation service, the following requirements apply to solicitations to purchase or lease vehicles:

- For solicitations to purchase or lease **new vehicles for fixed route service**, vehicles must be accessible, except automobiles, vans with capacity < 8 including the driver, and over the road coaches.
- For solicitations to purchase or lease **new vehicles for demand response service**, vehicles must be accessible unless the subrecipient certifies that the service, when viewed in its entirety, is equivalent to the service provided to other individuals, except automobiles, vans with capacity < 8 including the driver, and over the road coaches.
- For solicitations to purchase or lease **new vans with capacity < 8 including the driver**, the vehicle must be accessible unless the subrecipient

certifies to the state that the service, when viewed in its entirety, is equivalent to the service provided to other individuals.

Acquisition of accessible vehicles by private entities not primarily engaged in the provision of transportation service

For private entities not primarily engaged in the provision of transportation service, the following requirements apply to solicitations for acquisition of vehicles:

- # For **fixed route systems, vehicles with capacity >16, including the driver**, must be accessible.
- # For **fixed route systems, vehicles with capacity <16, including the driver**, must be accessible unless the subrecipient certifies to the state that the service, when viewed in its entirety, is equivalent to the service provided for other individuals.
- For **demand response systems, vehicles with capacity <16, including the driver**, are not specifically required to ensure that new vehicles are accessible to individuals with wheelchairs. The subrecipients are required to ensure that their systems, when viewed in their entirety, meet the equivalent service requirements of 49 CFR 37.171 and 37.105, regardless of whether or not they purchase a new vehicle.
- # For **demand response systems, vehicles with capacity >16, including the driver**, must be accessible unless the subrecipient

certifies to the state that the service, when viewed in its entirety, is equivalent to the service provided to non-disabled individuals, meeting the standard for equivalent service of 49 CFR 37.105.

SOURCES OF INFORMATION

Review programs of projects in grant files at the regional office to determine the types of vehicles acquired by subrecipients.

On site, discuss with state staff each instance in which a subrecipient acquired a non-accessible vehicle during the last three years. For each non-accessible vehicle acquired determine:

- 1) The category of subrecipient, i.e., public entity, private entity primarily engaged in transportation service, or private entity not primarily engaged in transportation service,
- 2) The type of service provided, i.e., fixed route or demand response, and
- 3) The type of vehicle acquired, i.e., new, used, van, seating capacity, etc. Based on the type of entity, type of service, and type of vehicle, identify the applicable requirements for acquiring a non-accessible vehicle. Review the supporting documentation for each acquisition -- waiver from FTA Administrator, documentation of good faith efforts to obtain an accessible vehicle, or certification of equivalent service.

DETERMINATION

Determination of compliance is made for Section 5310 and 5311 vehicles acquired by the state on behalf of its Section 5310 and 5311 subrecipients. Compliance with respect to vehicles acquired directly by subrecipients is addressed in Question 5,

The state is not deficient if all vehicles it has acquired on behalf of its Section 5310 and 5311 subrecipients comply with Part 38 accessibility standards. If the state has acquired non-accessible vehicles on behalf of its subrecipients and the conditions allowing the acquisition of non-accessible vehicles have been met, the state is not deficient:

- The state obtained a waiver from the FTA Administrator to acquire new non-accessible vehicles for a public entity subrecipient providing fixed route service
- The state acquired a non-accessible used vehicle on behalf of a public entity subrecipient only after demonstrating good faith efforts to obtain an accessible used vehicle and being unable to do so
- The state acquired a new non-accessible vehicle for a public entity operating demand response service after obtaining a certification of equivalent service from the subrecipient

The state is deficient if it has acquired non-accessible vehicles on behalf of a Section 5310 or 5311 subrecipient and the

conditions permitting the acquisition of a non-accessible vehicle have not been met.

SUGGESTED CORRECTIVE ACTION

The state must submit documentation to FTA that the applicable conditions have been met which permit the acquisition of the non-accessible vehicle(s) (i.e., depending on the category of subrecipient, type of service, and type of vehicle acquired -- a waiver from the Administrator, good faith efforts to obtain an accessible vehicle, or certification of equivalent service). If the state is unable to demonstrate that the required conditions have been met, FTA could declare the purchase ineligible for Federal assistance and require the state to refund the Federal share.

The state must procure accessible vehicles for subrecipients in the future unless the subrecipients meet the required conditions for acquiring non-accessible vehicles.

DOCUMENTATION

Identify each instance in which the state has acquired a non-accessible vehicle on behalf of a subrecipient during the review period, indicating the grant number, the subrecipient, the type of vehicle, and the conditions applicable. Document the existence of the appropriate supporting documentation:

- The date of the waiver from the FTA Administrator
- Documentation of good faith efforts including initial solicitation and advertising

- The dates of the initial certification of equivalent service and each subsequent annual certification.

5. *What are the state's procedures to ensure vehicles purchased directly by subrecipients comply with Part 38 accessibility standards, if required? How does the state monitor subrecipients to ensure that the required conditions have been met before acquiring non-accessible vehicles? How does the state monitor subrecipients' requests for waivers from the Administrator? How does the state monitor subrecipients' (that are public entities operating fixed route service) good faith efforts to acquire accessible used vehicles? How does the state monitor claims of equivalent service being provided by subrecipients acquiring non-accessible vehicles?*

EXPLANATION

The state is responsible for ensuring that all vehicles acquired (purchased or leased) directly by Section 5310 or 5311 subrecipients comply with Part 38 accessibility standards unless specific conditions have been met that permit acquisition of non-accessible vehicles. (See question 4 for detailed explanation of conditions in which a subrecipient may acquire a non-accessible vehicle.)

The state must have a mechanism for informing Section 5310 and 5311 subrecipients of the requirements to acquire accessible vehicles and, if it permits

subrecipients to acquire non-accessible vehicles, the specific conditions that must be met in order to acquire a non-accessible vehicle. The state must have procedures in place for monitoring subrecipients' direct procurements of vehicles and ensuring that vehicles meet Part 38 accessibility standards or that required conditions have been met when subrecipients acquire non-accessible vehicles.

The conditions under which non-accessible vehicles may be acquired differ by type of subrecipient (e.g., public entities, private entities primarily engaged in providing transportation, and private entities not primarily engaged in providing transportation), the type of service provided (fixed route or demand response), and the type of vehicle (new or used, seating capacity of van etc.).

Conditions that must be met in order to acquire a non-accessible vehicle include:

- **Waiver from the FTA Administrator** - Public entities providing fixed route service must obtain a waiver from the FTA Administrator to acquire a new vehicle that is not accessible.
- **Documentation of good faith efforts** - Public entities providing fixed route service may acquire a non-accessible used vehicle if, after good faith efforts to obtain an accessible vehicle, the entity is unable to do so.
- **Certification of equivalent service** - In the following circumstances, subrecipients

may acquire non-accessible vehicles if they can demonstrate that the service, 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:

- A public entity acquiring a new non-accessible vehicle for use in demand response service
- A private entity primarily engaged in the provision of transportation services and:
 - o Acquiring a new vehicle for demand response service (except automobiles, vans with capacity < 8 including the driver, and over the road coaches)
 - o Acquiring a new van with capacity < 8 including the driver for demand response or fixed route service
- A private entity not primarily engaged in the provision of transportation service and:
 - o Acquiring any vehicle for fixed route service with capacity <16 including the driver
 - o Acquiring any vehicle for demand response service with capacity >16 including the driver

The subrecipient must file a certification of equivalent service with the state.

Most states are involved in a technical assistance or oversight capacity when subrecipients directly procure vehicles with Section 5310 or 5311 assistance. Many states assist subrecipients in preparing vehicle specifications or review and approve vehicle specifications prepared by subrecipients. Some states provide standard terms and conditions for subrecipients to use or review subrecipients' procurement documents for inclusion of Federal requirements. The state must have procedures for monitoring subrecipients direct procurements of vehicles to ensure that accessibility requirements, set forth in Part 37, are incorporated in the procurement process. If the state does not review each procurement of vehicles, it must periodically spot check procurements to ensure compliance.

The state must have established procedures for monitoring subrecipients that acquire non-accessible vehicles to ensure that they meet the conditions that permit the acquisition of non-accessible vehicles. The state must monitor public entity subrecipients' good faith efforts to acquire accessible used vehicles for fixed route service. The state must have a system in place for requiring subrecipients to submit certifications of equivalent service, when required, and for monitoring subrecipients' claims of equivalent service if they acquire non-accessible vehicles.

SOURCES OF INFORMATION

Review the state management plan, subrecipient Section 5310 and 5311 application packages, the state's standard Section 5310 and 5311 subrecipient

agreements, and other documentation of procurement requirements and procedures that the state imposes on subrecipients for discussion of the requirement to acquire accessible vehicles and the conditions that must be met if non-accessible vehicles are acquired.

On site, discuss the state's procedures for requiring subrecipients to acquire vehicles that comply with Part 38 accessibility standards, informing subrecipients of the specific conditions that must be met if non-accessible vehicles are to be acquired, and for monitoring subrecipients to ensure that the conditions have been met. Discuss what documentation of good faith efforts the state requires for public entities acquiring non-accessible used vehicles for fixed route service. Discuss how the state monitors subrecipients' claims of equivalent service.

If subrecipients have acquired non-accessible vehicles, review a sample of supporting documentation including procurement documents, waivers, documentation of good faith efforts to acquire accessible vehicles, or certifications of equivalent service, as required.

DETERMINATION

The state is not deficient if it has appropriate systems in place for requiring Section 5310 and 5311 subrecipients to acquire accessible vehicles, as required by Part 37, and for ensuring that subrecipients acquire accessible vehicles or meet the conditions that permit acquisition of non-accessible vehicles.

The state is deficient if it does not have a system in place for passing the requirements for accessible vehicles through to subrecipients and ensuring that subrecipients acquire accessible vehicles or meet the conditions that permit acquisition of non-accessible vehicles. If subrecipients have acquired non-accessible vehicles and the state does not have supporting documentation, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for requiring subrecipients to acquire accessible vehicles and for monitoring subrecipients direct procurements of vehicles to ensure that the vehicles are accessible or that the specific required conditions have been met which permit the acquisition of non-accessible vehicles. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's process for requiring subrecipients to procure accessible vehicles and for monitoring subrecipients direct procurements to ensure that accessible vehicles are acquired. Document how the state informs subrecipients of the conditions under which non-accessible vehicles may be acquired and the specific requirements that must be met. Document the state's procedures for monitoring subrecipients to ensure that the requirements have been met when acquiring non-accessible vehicles.

6. *How does the state ensure that subrecipients have complied with the applicable ADA-required service provisions?*

EXPLANATION

The ADA regulations (37 CFR Subpart G) identify specific service requirements applicable to public entities and private entities providing transportation service:

- **Maintenance of Accessible Features.** All providers of transportation service must maintain in operative condition the features required to make facilities and vehicles accessible to individuals with disabilities. These features include lifts, ramps, securement devices, elevators, signage, and systems to facilitate communication. All accessibility features must be repaired promptly.
- **Procedures to Ensure Lift Availability.** Public entities operating non-rail vehicles must establish a system of regular maintenance checks for lifts. If a lift is inoperative, the vehicle must be removed from service before the next day unless an exception applies. Alternative service to persons with disabilities is required if a vehicle with an inoperable lift is used on a fixed route and the headway to the next accessible vehicle exceeds 30 minutes.
- **Lift and Securement Use.** Public and private entities providing transportation service must have a securement system for wheelchairs. Grantees may require that wheelchair users permit their wheelchairs to be secured, but may not deny service on the grounds that a wheelchair cannot be secured. Grantees may not require a wheelchair user to transfer to another seat. Staff must provide assistance upon request or as necessary with lifts, ramps, and securement systems. Grantees must permit individuals with disabilities who do not use wheelchairs to use the vehicle's lift or ramp.
- **Announcements on Vehicles.** On fixed route systems, grantees must announce stops at transfer points, major intersections and destination points, at adequate intervals along a route, and an individual stop upon request.
- **Vehicle Identification Mechanisms.** If vehicles for more than one route serve the same stop, the grantee must provide a mechanism for a disabled person with a visual impairment or other disability to identify the proper vehicle to enter or be identified as a person seeking a ride on a particular route.
- **Service Animals.** Grantees must permit service animals to accompany individuals with disabilities in vehicles and facilities.
- **Use of Accessibility Features.** Vehicle operators and other personnel must make use of required

accessibility-related equipment and features.

- **Public Information/ Communications.** Grantees must make service information available in accessible format.
- **Lift Deployment at Any Designated Stop.** Grantees must not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers.
- **Service to Persons Using Respirators or Portable Oxygen.** Grantees may not deny service to individuals using respirators or portable oxygen.
- **Adequate Time for Vehicle Boarding/ Disembarking.** Grantees must ensure adequate time for individuals with disabilities to board or disembark a vehicle.
- **Training.** Grantees must provide training to operators of fixed route and demand responsive service including training for the safe operation of the vehicles and accessibility equipment and the proper treatment of persons with disabilities.

The state must pass through the ADA service provision requirements to subrecipients. The state is responsible for

informing Section 5310 and 5311 subrecipients of the ADA required service provisions and for monitoring subrecipients' compliance with the applicable required service provisions. The state must document its methods for monitoring subrecipients' compliance with ADA requirements in the state management plan.

The state may include the ADA service provision requirements in the standard Section 5310 and 5311 subrecipient agreements.

FTA does not prescribe specific monitoring activities. The state must develop and implement their own systems for monitoring subrecipients' compliance with the ADA required service provisions. The state may require subrecipients to document how they comply with ADA required service provisions in the application for assistance or through another reporting mechanism. Periodic site visits to observe facilities, equipment and service are the most effective means for monitoring subrecipients' compliance with ADA requirements.

SOURCES OF INFORMATION

Review the state management plan, standard Section 5310 and 5311 subrecipient agreements, and other documentation provided to subrecipients for discussion of the ADA service provision requirements and the state's mechanisms for monitoring and ensuring subrecipients' compliance with the requirements.

On site, discuss with state staff the methods used to inform subrecipients of the service provision requirements of the ADA and to monitor subrecipients service to ensure that

the service meets the ADA service provision requirements.

DETERMINATION

The state is not deficient if it has an appropriate system in place for 1) informing Section 5310 and 5311 subrecipients of the ADA-required service provisions, and 2) monitoring the subrecipient-provided service to ensure that it meets the requirements.

The state is deficient if it does not have an appropriate system in place for informing subrecipients of the requirements and monitoring subrecipients to ensure that the requirements are met.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for informing subrecipients of the ADA required service provisions and monitoring subrecipients' service to ensure compliance with the ADA required service provisions. The state must submit documentation of these procedures to the FTA regional office.

The state must revise its state management plan to address its monitoring of ADA requirements.

DOCUMENTATION

Describe the state's methods for informing subrecipients of the ADA service provision requirements and monitoring subrecipients' compliance. Note the existence of specific

guidelines provided to subrecipients and include copies in the review file.

Note the known instances where subrecipients are not complying with the requirements.

- 7. Are Section 5311 subrecipients' facilities accessible? Has any Section 5311 subrecipient constructed any new facilities or altered any existing facilities used for providing designated public transportation regardless of the source of FTA funds? Do contracts related to such changes include reference to ADA requirements? How does the state ensure that subrecipients have complied with the ADA requirements for facility accessibility?***

EXPLANATION

Any new transportation facility constructed by a public entity must be readily accessible to and usable by individuals with disabilities in accordance with the standards in 49 CFR 37, Appendix A. A facility is considered "new" if construction began after January 25, 1992.

If a public entity alters an existing facility, the altered portions of the facility must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities. The path of travel to the altered area must also be accessible.

An exception may be made if the cost of making the facility accessible is disproportionate to the overall alteration (cost exceeds 20 percent of the cost of the

alteration). The regulation provides guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessible features.

Private entities must comply with the regulations of the Department of Justice implementing Title III of the ADA (28 CFR Part 36).

The state is responsible for ensuring that subrecipients comply with the ADA facility accessibility requirements when constructing new transportation facilities or altering existing facilities. The state must have a system in place for requiring subrecipients to comply and for monitoring subrecipients' compliance. The state should include facility accessibility requirements in its agreement with subrecipients to fund transportation facility construction or alteration projects. The state must have procedures for monitoring subrecipients' contracting activities to ensure that accessibility requirements are incorporated. Some states review subrecipients' procurements and may include adherence to ADA facility accessibility requirements as part of the review.

SOURCES OF INFORMATION

At the regional office, review programs of projects in grant files to identify facility construction or rehabilitation projects started after January 26, 1992. Review annual progress reports for construction projects.

On site, confirm with state staff all Section 5311 subrecipients that have constructed or altered existing facilities since January 26,

1992. Discuss the state's procedures for passing the ADA facility accessibility requirements through to subrecipients and the mechanisms the state uses to ensure that subrecipients comply with the requirements. Review subrecipient agreements and procurement documents for architectural/engineering services if available at the state for inclusion of ADA requirements.

Identify subrecipients that have not made altered facilities accessible on the basis that the costs were disproportionate. If subrecipients have undertaken alterations, but have not made altered facilities accessible due to the costs, examine documentation of the cost calculations.

DETERMINATION

The state is not deficient if it has implemented procedures to require public entity subrecipients to comply with ADA facility accessibility requirements and to monitor subrecipients' compliance when providing Section 5311 assistance for facility construction or alteration projects. The state is deficient if Section 5311 subrecipients have constructed or altered transportation facilities since January 26, 1992 and the state has not implemented procedures for passing through the requirements and ensuring subrecipients' compliance. If subrecipients have not made altered facilities accessible because the cost of making the facility accessibility was disproportionate to the cost of the overall alteration and the state has not implemented procedures to monitor the subrecipient's claim of disproportionate cost, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for passing through to public entity subrecipients the ADA facility accessibility requirements and for ensuring subrecipients' compliance when constructing or altering transportation facilities after January 26, 1992. The state must submit documentation of the procedures to the FTA regional office.

If public entity subrecipients have used Section 5311 funds to construct or alter a transportation facility and have not made the facility accessible, the state must require the subrecipient to make the necessary modifications to bring the facility into compliance.

DOCUMENTATION

Document the state's procedures for passing the ADA facility accessibility requirements through to subrecipients and for monitoring subrecipients' compliance when constructing or altering transportation facilities after January 26, 1992. Indicate subrecipients that have constructed or altered facilities after January 26, 1992. Note contract documentation reviewed.

Identify instances where subrecipients have altered facilities but have not made them fully accessible because of disproportionate costs. Document the existence of documentation to support the claim of disproportionate costs.

QUESTIONS 8 - 12 FOR A STATE DIRECTLY OPERATING OR CONTRACTING FOR SERVICE

8. *Do all new buses acquired (purchased or leased) by the state for use in fixed route service comply with Part 38 accessibility standards? If not, has the state obtained a waiver from the FTA Administrator?*

EXPLANATION

Part 38 contains accessibility standards for all types of transportation vehicles. Part 37, Subpart D sets forth the requirements for acquisition of accessible vehicles by public entities.

In general, all new vehicles acquired by public entities operating fixed route service must be accessible (must comply with Part 38 accessibility standards). A public fixed route operator may acquire new non-accessible vehicles only after obtaining a waiver from the FTA Administrator. The public operator (state) must hold at least one public hearing prior to requesting a waiver. The FTA Administrator may grant a waiver if the public operator (state) demonstrates that the initial solicitation specified the buses were to be lift equipped, lifts for the buses could not be provided by any qualified lift manufacturer, and any further delay in purchasing the buses would significantly impair transportation services in the community.

SOURCES OF INFORMATION

Review programs of projects in grant files at the regional office to determine the types of vehicles acquired by the state for directly operated or contracted service. On site, discuss with state staff the acquisition of new vehicles in the last three years. Identify any new vehicles acquired that are not accessible and review documentation of the waiver from the FTA Administrator.

DETERMINATION

The state is not deficient if all new vehicles purchased or leased for fixed route service are accessible. The state is not deficient if it has obtained a waiver from the FTA Administrator to purchase or lease new vehicles that are not accessible for use in fixed route service.

The state is deficient if it has acquired new vehicles for fixed route service that are not accessible but has not obtained a waiver from the FTA Administrator.

SUGGESTED CORRECTIVE ACTION

If the state has purchased or leased new non-accessible vehicles for fixed route service and has not obtained a waiver from the Administrator, the state must retrofit the vehicles or procure replacements that comply with Part 38, unless the state can obtain a waiver. The state must report quarterly to the regional office until it has come into full compliance.

DOCUMENTATION

Indicate on the worksheet any new vehicles acquired by the state for use in fixed route

service that do not comply with Part 38 accessibility standards. Indicate the date of the waiver granted by the FTA Administrator and the location of the waiver and supporting documentation.

- 9. *Has the state acquired for fixed route service used vehicles that are not accessible? If so, does the state have documentation of good faith efforts to obtain an accessible vehicle?***

EXPLANATION

In general, all used vehicles acquired by public entities (states) operating fixed route service must be accessible (must comply with Part 38 accessibility standards). A public entity (state) may purchase or lease a used bus that is not accessible only if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

Good faith efforts include, at a minimum:

- An initial solicitation for used vehicles specifying that the vehicles are to be lift equipped and otherwise accessible
- A nationwide search for accessible vehicles
- Advertising in trade publications and contacting trade associations

The public entity (state) must retain documentation of its good faith efforts for three years from the date the vehicles were purchased.

Public entities that have vehicles remanufactured to extend their useful lives for five or more years or purchase or lease vehicles which have been remanufactured to extend their useful life must ensure that the vehicles are readily 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.

SOURCES OF INFORMATION

Review programs of projects in regional office grant files to identify vehicle acquisitions.

On site, discuss with state staff the acquisition of used vehicles for directly operated or contracted fixed route service. Review procurement documents for inclusion of ADA requirements. Identify any used vehicles acquired by the state for use in fixed route service that do not comply with Part 38 accessibility standards. Examine documentation of good faith efforts to obtain accessible vehicles.

DETERMINATION

The state is not deficient if all used vehicles purchased or leased for fixed route service are accessible in accordance with Part 38. The state is not deficient if it has acquired non-accessible used vehicles for use in directly operated or contracted fixed route service and has adequate documentation of good faith efforts. The state is deficient if it has acquired non-accessible used vehicles but cannot demonstrate that it has made

good faith efforts to acquire accessible vehicles.

SUGGESTED CORRECTIVE ACTION

The state must submit documentation to the FTA regional office that it made good faith efforts to obtain an accessible used vehicle and was unable to do so. If the state is unable to demonstrate that it made good faith efforts, the state must retrofit the vehicles or procure replacements that comply with Part 38.

DOCUMENTATION

Identify any non-accessible used vehicles acquired by the state for use in fixed route service during the review period, including the type of vehicle and the grant under which it was acquired. Document the location of records of good faith efforts. Copy, if feasible, for inclusion in the review files.

- 9. If the state operates a demand responsive system and purchases non-accessible vehicles, has the state filed the required certification of equivalent service with the FTA regional office?***

EXPLANATION

In general, all new vehicles acquired by public entities operating a demand responsive system must be accessible. A public entity may purchase or lease a new non-accessible vehicle for use in its demand responsive service only if it can demonstrate that the system, when viewed in its entirety, provides a level of service to persons with

disabilities, including individuals who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. A demand response system may be considered to provide equivalent service if it is provided in an integrated setting and is equivalent with respect to 1) response time, 2) fares, 3) geographic area of service, 4) hours and days of service, 5) restrictions or priorities based on trip purpose, 6) availability of information and reservations capability, and 7) constraints on capacity or service availability.

Before procuring a non-accessible vehicle for use in its demand response system, the public entity (state) must file with the FTA regional office a certification that it provides equivalent service. The certification is valid for no more than one year.

SOURCES OF INFORMATION

At the regional office, review programs of projects in grant files to identify vehicle acquisitions. On site, discuss with state staff all vehicles acquired for use in directly operated or contracted demand responsive service. Identify non-accessible vehicles acquired. Review the state's certifications of equivalent service and supporting documentation.

DETERMINATION

The state is not deficient if all vehicles acquired for demand-response service meet Part 38 accessibility standards. The state is not deficient if it has acquired non-accessible vehicles for its demand response service and has properly filed a certification of equivalent service with the FTA regional

office. If the state acquired a non-accessible vehicle for use in its demand response service but has not filed a certification of equivalent service with the FTA regional office, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit a certification of equivalent service to the FTA regional office. If the state is unable to certify that its service, when viewed in its entirety, provides a level of service equivalent to that provided to persons without disabilities, FTA could require the state to refund the Federal share. The state must submit the certification when acquiring non-accessible vehicles for demand response service in the future.

DOCUMENTATION

Identify any non-accessible vehicles acquired by the state for use in demand response service during the review period, including the type of vehicle and the grant under which it was acquired. Document the dates and location of the state's certification of equivalent service.

10. *Has the state implemented the service provisions required by the ADA regulations?*

EXPLANATION

The ADA regulations (37 CFR Subpart G) identify specific service requirements applicable to public entities (states) providing transportation service:

- **Maintenance of Accessible Features.** The state must maintain in operative condition the features required to make facilities and vehicles accessible to individuals with disabilities. These features include lifts, ramps, securement devices, elevators, signage, and systems to facilitate communication. All features must be repaired promptly.
- **Procedures to Ensure Lift Availability.** The state must establish a system of regular maintenance checks for lifts on non-rail vehicles. If a lift is inoperative, the state must remove the vehicle from service before the next day unless an exception applies. Alternative service to persons with disabilities is required if a vehicle with an inoperable lift is used on a fixed route and the headway to the next accessible vehicle exceeds 30 minutes.
- **Lift and Securement Use.** The state must have a securement system for wheelchairs. The state may require wheelchair users to permit their wheelchairs to be secured, but may not deny service on the grounds that a wheelchair cannot be secured. The state may not require a wheelchair user to transfer to another seat. Staff must provide assistance upon request or as necessary with lifts, ramps, and securement systems. The state must permit individuals with disabilities
 - who do not use wheelchairs to use the vehicle's lift or ramp.
- **Announcements on Vehicles.** On fixed route systems, stops must be announced at transfer points, major intersections and destination points, at adequate intervals along a route, and upon request.
- **Vehicle Identification Mechanisms.** If vehicles for more than one route serve the same stop, the state must provide a mechanism for a disabled person with a visual impairment or other disability to identify the proper vehicle to enter or be identified as a person seeking a ride on a particular route.
- **Service Animals.** The state must permit service animals to accompany individuals with disabilities in vehicles and facilities.
- **Use of Accessibility Features.** Operators and other personnel must make use of required accessibility-related equipment and features.
- **Public Information/Communications.** The state must make service information available in accessible format.
- **Lift Deployment at Any Designated Stop.** The state must not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, or will be damaged if it is deployed, or

temporary conditions preclude the safe use of the stop by all passengers.

- **Service to Persons Using Respirators or Portable Oxygen.** The state may not deny service to individuals using respirators or portable oxygen.
- **Adequate Time for Vehicle Boarding/Disembarking.** The state must ensure adequate time for individuals with disabilities to board or disembark a vehicle.
- **Training.** The state must provide training to operators of fixed route and demand responsive service including training for the safe operation of the vehicles and accessibility equipment and the proper treatment of persons with disabilities.

The state that directly operates fixed route or demand response service with Section 5310 or 5311 assistance must implement the ADA service provisions. The state is not required to have policies and procedures in writing. The state directly contracting for service must pass the ADA service provision requirements through to the transportation providers.

SOURCES OF INFORMATION

On site, discuss with state staff how the state has implemented each of the applicable service provisions. Examine maintenance standards for documentation of maintenance practices for accessibility features. Examine public information materials for details on

communications in alternative formats. Review operating, training, and maintenance manuals for information or procedures pertinent to the regulations.

If the state directly contracts for service, review purchase of service contracts for inclusion of the ADA service provisions.

DETERMINATION

The state is not deficient if the ADA required service provisions are in effect and training has been conducted. If the state is in the process of implementing the service provisions, or if any procedures are not being addressed, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop a plan and schedule for implementing all required service provisions and training. The state must submit documentation of the plan to the FTA regional office and report quarterly on progress until in full compliance.

DOCUMENTATION

Document how the state is complying with the required training and each of the service provisions. Reference or include copies in the review files of relevant maintenance, operating, and training procedures, as well as public information materials.

- 11. *Since January 26, 1992, has the state constructed any new facilities or altered any existing facilities used for providing designated public***

transportation? Do contracts related to such changes include reference to ADA requirements?

alteration of existing transportation facilities.

EXPLANATION

Any new transportation facility constructed by a public entity (state) must be readily accessible to and usable by individuals with disabilities in accordance with the standards in 49 CFR 37, Appendix A. A facility is considered "new" if construction began after January 25, 1992.

If a public entity (state) alters an existing facility, the altered portions of the facility must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities. The path of travel to the altered area must also be accessible.

An exception may be made if the cost of making the facility accessible is disproportionate to the overall alteration (cost exceeds 20 percent of the cost of the alteration). The regulation provides guidance to define disproportionate costs, specifies what costs may be counted, and provides a priority listing for accessible features.

The state providing general or special transportation service to the general public on a regular and continuing basis must comply with the ADA requirements for accessibility of newly constructed or altered transportation facilities. The state must specifically reference the ADA accessibility requirements in solicitations and contracts related to the construction of new or

SOURCES OF INFORMATION

Review programs of projects in regional office grant files to identify facility construction or rehabilitation projects. On site, discuss with state staff any construction of new facilities or alterations made to existing transportation facilities since January 26, 1992.

If the state has constructed a new facility or altered an existing facility since January 26, 1992, examine procurement documents for inclusion of the ADA requirements. If the state altered a facility and did not make it fully accessible due to disproportionate costs, review the documentation of costs. As part of the site visit, tour the new or renovated facilities.

DETERMINATION

The state is not deficient if all new facilities constructed and alterations to existing facilities since January 26, 1992 are accessible to individuals with disabilities. The state is not deficient if the costs of the alteration were disproportionate, but the facility was made accessible to the maximum extent feasible.

The state is deficient if it has constructed a new facility that is not accessible to and useable by individuals with disabilities. The state is deficient if it has altered an existing facility and the alteration is not accessible to and useable by individuals with disabilities, unless it has documentation that the costs of making the alterations accessible were

disproportionate to the overall cost of the alteration.

The state is deficient if contracts related to new facility construction or alteration of existing facilities do not address the ADA accessibility requirements.

SUGGESTED CORRECTIVE ACTION

The state must develop a plan and schedule for making the necessary modifications to make the facility or alterations accessible. The state must submit documentation of the plan and schedule to the FTA regional office and report quarterly until full compliance is attained.

DOCUMENTATION

Identify any new facilities constructed or alterations to existing facilities after January 26, 1992 and indicate whether the facility or alteration is accessible. Identify facilities examined and construction contracts reviewed. Include copies of any relevant documentation regarding disproportionate costs.

15. CIVIL RIGHTS

BASIC REQUIREMENT

The state and subrecipients 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, denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through the Section 5310 and 5311 programs.

SPECIFIC REQUIREMENTS

Documentation

[FTA C. 9040.1E Ch IX, sec 2;

FTA C. 9070.1E Ch VI, sec 1a]

The state must document how it meets Federal Title VI, Disadvantaged Business Enterprise, and Equal Employment Opportunity requirements and monitors subrecipient compliance with these requirements in the state management plan.

Title VI--Nondiscrimination in the Provision of Service

[49 CFR Part 21; FTA C. 9040.1E Ch IX, sec 4; FTA C. 9070.1E Ch VI, sec 1c; FTA Annual Certification and Assurances]

Basic Requirement

The state must ensure that they and their subrecipients comply with Title VI requirements:

- To ensure that FTA assisted benefits and related services are made available and are equitably distributed without regard to race, color, or national origin
- To ensure that the level and quality of FTA assisted transit services are

sufficient to provide equal access and mobility for any person without regard to race, color, or national origin

- To ensure that opportunities to participate in the transit planning and decision-making processes are provided to persons without regard to race, color, or national origin
- To ensure that decisions on the location of transit services and facilities are made without regard to race, color, or national origin
- To ensure that corrective and remedial action is taken to prevent discriminatory treatment of any beneficiary based on race, color, or national origin

Section 5310 and 5311 Requirements

The state must evaluate and select projects without regard to race, color, or national origin; identify and assist providers, including those that are minority organizations or serve minority populations, in applying for assistance; and ensure that subrecipients provide service without regard to race, color, or national origin. The state management plan must document these efforts.

Annually, the state must submit with the Section 5310 grant application a record of approved and rejected Section 5310 funding requests that identifies applicants that are minority organizations or that provide assistance to minority communities.

Nondiscrimination Assurance

The state and its subrecipients must sign a nondiscrimination assurance. States submit the assurance to FTA as part of the FTA's Annual Certifications and Assurances. Subrecipients submit a signed assurance to the state.

Reporting

The state must maintain for their subrecipients the following information:

- List of active lawsuits or complaints, including: date the lawsuit or complaint was filed, summary of the allegation, status of the lawsuit or complaint including whether the parties to a lawsuit entered into a consent decree.
- Summary of all civil rights compliance review activities conducted in the last three years.
- For construction projects not covered by a categorical exclusion under the National Environmental Protection Act, an assessment of the projects' effects on minority communities.

Subrecipients should submit the information with every grant application or at least once every three years. The information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part. The state and its subrecipients must make the data available to FTA on request.

Disadvantaged Business Enterprise (DBE)
[49 CFR Part 26; FTA C. 9040.1E Ch IX, sec 6; FTA C. 9070.1E Ch VI, sec 1f]

Basic Requirement

The state must ensure that it and its subrecipients do not discriminate against DBEs, as defined in 49 CFR Part 26, in the awarding and administration of FTA assisted contracts. This program also seeks to achieve several other objectives:

- Create a level playing field on which DBEs can compete fairly
- Ensure that the DBE program is narrowly tailored in accordance with applicable law
- Ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs
- Help remove barriers to participation of DBEs in FTA-assisted contracts
- Assist development of firms that can compete successfully outside the DBE program
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs

DBE Program

The state and any subrecipients that receive funds from FTA for planning, capital, or operating assistance in excess of \$250,000 to award in prime contracts, exclusive of funds for transit vehicle purchases, in a given Federal fiscal year must prepare a DBE program.

Subrecipients submit their programs to states and states submit their programs to FTA. Except in the case of significant changes, plan updates are not required to be

submitted once approval is obtained, so long as the state or subrecipient remains in compliance.

Annual Goals

The state that retains for its own direct use total FTA assistance for planning, capital, or operating assistance in excess of \$250,000 to award in prime contracts, excluding transit vehicle purchases, must submit annual goals to FTA for the utilization of DBEs. Subrecipients meeting the same criterion also must submit to the state annual DBE goals. Goals do not apply to transit vehicle procurements. The state may elect to limit the base for computation of its overall goal to contracting opportunities for itself and for subrecipients that receive FTA assistance in excess of the threshold.

If authorized by FTA, the state may, in lieu of or in addition to the annual goal, establish a goal for a particular grant, project, or group of grants or projects. The state submits a project-specific goal to FTA with the grant application. The state and its subrecipients may set contract-specific goals without approval from FTA. FTA requires the state and subrecipients to set a goal for each prime contract with subcontracting possibilities.

Reporting

The state must provide semiannual reports (June 1 and December 1) to FTA on the DBE contracting activities of itself, if it receives FTA assistance in excess of the threshold in a fiscal year, and of its subrecipients that receive FTA assistance in a Federal fiscal year in excess of the threshold in a Federal fiscal year. The state must report annually on its own contracting activities if it does not receive FTA assistance in a Federal fiscal year in excess

of the threshold and on the activities of subrecipients that do not receive FTA assistance in a Federal fiscal year in excess of the threshold.

Equal Employment Opportunity (EEO) ***[49 CFR 27; FTA C. 4704.1; FTA C. 9040.1E Ch IX, sec 5; FTA C. 9070.1E Ch VI, sec 1d]***

Basic Requirement

The state must ensure that they and their subrecipients comply with the requirements of EEO:

- Do not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or handicap
- Take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, creed, national origin, sex, or age
- Post in conspicuous places and make available to employees and applicants for employment notices setting forth an EEO policy

EEO Plans

State DOTs that do not operate mass transportation services submit EEO programs to FHWA, which has the lead responsibility for reviewing and approving them. FTA reviews these programs to ensure that the state is providing EEO to the transit-related work force. State DOTs and other state agencies that operate mass transportation services submit EEO plans to FTA.

QUESTIONS FOR THE REVIEW

TITLE VI--NONDISCRIMINATION IN THE PROVISION OF SERVICE

1. *Who is responsible for monitoring Section 5310 and 5311 subrecipients to ensure that they do not discriminate in the provision of service? What is the relationship of this individual to the state's or the department's civil rights function?*

EXPLANATION

The assignment of responsibility for monitoring Section 5310 and 5311 subrecipients to ensure that they do not discriminate in the provision of service differs among the states. Usually, the units that administer the Section 5310 and 5311 programs are responsible for monitoring subrecipients, while a departmental civil rights office provides them technical assistance.

SOURCES OF INFORMATION

Review the state management plan for a discussion of the assignment of monitoring responsibility.

In the regional office, review the Title VI plan or any other documents in the grant or civil rights files for a discussion of the office or position responsible for monitoring subrecipients for nondiscrimination in the provision of service. Ask the civil rights officer.

On site, discuss the assignment of monitoring responsibilities.

DETERMINATION

There is no determination of deficient or not deficient. The purpose of the questions is to obtain background information on monitoring efforts.

SUGGESTED CORRECTIVE ACTION

There is no corrective action associated with these questions.

DOCUMENTATION

Document the unit and specific position responsible for monitoring subrecipients for nondiscrimination in the provision of service.

2. *Does the state have on file from each subrecipient a signed nondiscrimination assurance? What is the mechanism used to obtain the certification?*

EXPLANATION

The state must have on file from each subrecipient a signed nondiscrimination assurance. The nondiscrimination assurance replaced the DOT Title VI and FTA civil rights assurances when FTA instituted the annual certification and assurance process in FY95. The assurances are required on a one-time basis. Typically, the state obtains the certification annually with its grant applications.

SOURCES OF INFORMATION

Review the state grant application packages for subrecipients for the assurance.

On site, ask the state if it has the assurance on file for each subrecipient. Review the files for the subrecipients that will be visited for the signed assurance.

DETERMINATION

If the state has on file a signed nondiscrimination assurance from each subrecipient, it is not deficient. If the state does not have on file the required assurance, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must obtain signed nondiscrimination assurances from each subrecipient with the next application cycle and must develop and implement procedures to obtain the assurance from future subrecipients. The state must submit documentation of the procedures for obtaining signed certifications to the FTA regional office.

DOCUMENTATION

Document whether and how the state obtains the assurances from subrecipients.

Document which assurances it requires.

Document whether the state had the assurances on file for the subrecipients visited.

- 3. *Does the state have on file the required Title VI general reporting information for its Section 5311 subrecipients? What is the mechanism used to obtain the information?***

EXPLANATION

The state must have on file the following Title VI general reporting information for their Section 5311 subrecipients:

- A concise description of any active lawsuits or complaints alleging discrimination in service delivery.
- The statement of the status or outcome of lawsuits or complaints.
- A summary of all civil rights compliance review activities conducted by subrecipients in the last three years. The summary should include: the purpose or reason for the review, the organization conducting the review (i.e., a city civil rights office, MPO, or consultant), a summary of the findings and recommendations of the review, and a report on the status or disposition of findings.
- An assessment of the effects of the project on minority communities (for construction projects that are not categorical exclusions).

Section 5311 subrecipients must file the information with the state and update it at least every three years. The information should be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part. The state and its subrecipients must make the data available to FTA on request.

Many states require the information with annual applications for Section 5311 assistance. Other states require subrecipients to submit the information every three years.

SOURCES OF INFORMATION

Review the state grant application packages for Section 5311 subrecipients for requests for the required Title VI information. Review copies of reports that are required from Section 5311 subrecipients.

On site, review the files for the Section 5311 subrecipient that will be visited for the Title VI information. Discuss with the state how it collects the Title VI information from Section 5311 subrecipients.

DETERMINATION

If the state obtains the required Title VI information from Section 5311 subrecipients at least once every three years, the state is not deficient. If the state does not obtain the required Title VI information from subrecipients at least once every three years, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to obtain the required Title VI information from Section 5311 subrecipients at least once every three years. The state must send documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document whether and how the state collects the required Title VI information.

- 4. Does the process to evaluate and select Section 5310 projects ensure that projects are selected without regard to race, color, or national origin? How does the state assist organizations, especially those that are minority***

organizations or serve primarily minority populations are eligible, in applying for Section 5310 assistance? Are these efforts documented in the state management plan?

EXPLANATION

Title VI requires that each state:

- Evaluate and select Section 5310 projects without regard to race, color, or national origin.
- Identify and assist Section 5310 providers, including those that are minority organizations or serve minority populations, in applying for assistance.

The state management plan must document these efforts.

Most states evaluate Section 5310 applications using criteria such as need for the vehicle, coordination efforts, managerial and fiscal capability, the condition and age of the replacement vehicle, and income of population served. Some states give a slight preference to applicants that serve minority populations. Both ways are acceptable. Several states include representatives of minority organizations, such as the NAACP, on their selection committees.

Each state routinely provides technical assistance to applicants for Section 5310 funds, including applicants serving minority communities. Most provide assistance to applicants over the phone. A few conduct site visits to assist applicants in completing applications. Others have outreach programs targeted at nonprofit organizations located in and serving minority communities. The

outreach efforts may consist of sending annual notices, conducting workshops on how to apply for Section 5310 funds, and placing notices regarding the availability of Section 5310 assistance in newspapers, including those serving minority communities.

SOURCES OF INFORMATION

Review the state management plan for a discussion of selection and eligibility and technical assistance efforts. Review subrecipient application packages and instructions.

At the regional office, discuss Title VI issues with the civil rights officer.

On site, discuss the state's selection criteria and technical assistance efforts.

DETERMINATION

The state is not deficient if it evaluates and selects projects without regard to race, color, or national origin and identifies and assists providers, including those that are minority organizations or serve minority populations, in applying for assistance.

The state is deficient if it does not evaluate and select projects without regard to race, color, or national origin or does not identify and assist providers, including those that are minority organizations or serve minority populations, in applying for assistance.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for selecting Section 5310 projects that ensure that providers that are minority organizations or serve primarily

minority populations are eligible. The state must submit documentation of the procedures to the FTA regional office.

The state must develop and implement procedures for assisting applicants, including those that are minority organizations or that serve primarily minority communities, in applying for Section 5310 assistance. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's efforts to ensure that providers that are minority organizations or serve primarily minority populations are eligible, the state's efforts to assist applicants, and the state's efforts to monitor Section 5310 subrecipients for nondiscrimination in the provision of service. Include in the file copies of any application evaluation forms, site visit questionnaires, or required reports.

- 5. How does the process used to develop the program of projects ensure the fair and equitable distribution of funds, especially to Native America tribes? How does the state assist subrecipients, especially providers that are minority organizations or serve primarily minority populations are eligible, in applying for Section 5311 assistance? How does the state ensure that Section 5311 subrecipients do not discriminate in the provision of service? Does the state management plan document these efforts?***

EXPLANATION

Section 5311 requires that the annual program of projects provide for fair and equitable distribution of funds within the state, including Indian reservations. Title VI requires that the state:

- Evaluate and select Section 5311 projects without regard to race, color, or national origin
- Identify and assist Section 5311 providers, including those that are minority organizations or serve minority populations, in applying for assistance.
- Ensure that Section 5311 subrecipients provide service without regard to race, color, or national origin.

The state management plan must document these efforts.

Each state typically distributes Section 5311 operating funds using an established formula and distribute capital funds based on the age of and the need for vehicles. Most subrecipients were in operation before the start of the program or started operations in the early years of the program. The state accepts new providers based on criteria such as projected ridership and managerial and financial capacity. Many states limit eligibility to public entities. Few, if any, consider race as a factor when allocating Section 5311 assistance.

Some states set aside Section 5311 funds for new systems but others, because of limited financial resources, restrict Section 5311 funding to current subrecipients. Limiting Section 5311 applicants to existing providers because of funding constraints does not lead to a finding of noncompliance.

Each state routinely provides technical assistance to applicants for Section 5311 funds, including applicants serving minority communities. Most provide assistance to applicants over the phone. A few conduct site visits to assist applicants in completing applications. Some states with large Native American populations have outreach programs targeted at tribal governments.

Procedures for monitoring Section 5311 subrecipients to ensure that they do not discriminate in the provision of service vary. At a minimum, the state should review the general reporting requirements information on complaints and lawsuits that subrecipients submit at least every three years and should investigate complaints filed directly with the state.

SOURCES OF INFORMATION

Review the state management plan for a discussion of selection and eligibility, technical assistance efforts, and monitoring efforts. Review subrecipient application packages and instructions.

At the regional office, discuss Title VI issues with the civil rights officer.

On site, discuss the state's selection criteria, technical assistance efforts, and monitoring efforts.

DETERMINATION

The state is not deficient if it uses a process to distribute funds that is fair and equitable; evaluates and selects projects without regard to race, color, or national origin; and identifies and assists providers, including those that are minority organizations or serve minority populations, in applying for

assistance. Make no determination on the adequacy of the state's monitoring of subrecipients.

The state is deficient if it does not use a process to distribute funds that is fair and equitable; does not evaluate and select projects without regard to race, color, or national origin; or does not identify and assist providers, including those that are minority organizations or serve minority populations, in applying for assistance.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a process to distribute funds that is fair and equitable. The state must send documentation of the procedures to the FTA regional office.

The state must develop and implement procedures to ensure that it evaluates and selects projects without regard to race, color, or national origin. The state must send documentation of the procedures to the FTA regional office.

The state must develop and implement procedures for assisting applicants, including those that are minority organizations or that serve primarily minority communities, in applying for Section 5311 assistance. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's efforts to ensure that funds are distributed fairly and equitably; to ensure that providers that are minority organizations or serve primarily minority populations are eligible; to assist applicants,

including those that are minority organizations or serve primarily minority populations; and to monitor Section 5311 subrecipients for nondiscrimination in the provision of service. Include in the file copies of any application evaluation forms, site visit questionnaires, or required reports.

6. *Does the state submit with its annual Section 5310 grant application a record of approved and rejected funding requests that identifies applicants that are minority organizations or that provide assistance to minority communities?*

EXPLANATION

The state must submit annually with its Section 5310 grant application a record of approved and rejected Section 5310 funding requests that identifies applicants that are minority organizations or that provide assistance to minority communities. The state may submit a list of every accepted and rejected applicant or may submit totals, such as total applications received, total applications rejected, total applications from minority providers received, and total applications from minority providers rejected.

SOURCES OF INFORMATION

At the regional office, review the grant and civil rights files for a record of approved and rejected Section 5310 funding requests that identifies applicants that are minority organizations or that serve minority communities

On site, discuss whether the state submits the required reports. Obtain a copy of the

most recent report if it was unavailable at the regional office.

DETERMINATION

If the state submits to FTA with grant applications a record of approved and rejected funding requests that identifies applicants that are minority organizations or that provide assistance to minority communities, it is not deficient. If the state does not, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit for the past grant year a record of approved and rejected Section 5310 applications that identifies applicants that are minority organizations or that provide assistance to minority communities. The state must develop procedures to ensure that it submits with all future Section 5310 grant applications a record of approved and rejected Section 5310 applications that identifies applicants that are minority organizations or that provide assistance to minority communities. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document whether the state submits the required report in the workbook. Include a copy of the most recent submittal in the review files.

7. *Are there any Title VI complaints filed with the state or its subrecipients concerning the Section 5310 or 5311 programs? What is the status of complaints?*

EXPLANATION

The number, nature, and status of Title VI complaints may indicate that the state or one of its subrecipients is not administering the Section 5310 and 5311 program as required by Title VI. Few states and subrecipients have Title VI complaints filed against them concerning the Section 5310 and 5311 programs.

SOURCES OF INFORMATION

At the regional office, ask the civil rights officer whether there are Title VI complaints filed against the state or any of its subrecipients. Discuss the number, nature, and status of the complaints.

On site, discuss with the state the nature and status of any Title VI complaints that are filed with it or its subrecipients.

DETERMINATION

If there are no Title VI complaints filed with the state or its subrecipients concerning the Section 5310 and 5311 programs, the state is not deficient.

If there are Title VI complaints against the state concerning the Section 5310 and 5311 programs and the state has not acted to investigate and resolve the complaints, the state is not deficient with follow up required.

If there are Title VI complaints filed against any subrecipients and the nature and number of complaints indicate that the state needs to improve its monitoring, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must resolve all outstanding Title VI complaints filed against it and must

advise the FTA regional office of the resolution of the complaints.

The state must develop and implement procedures for improved monitoring of compliance by subrecipients with Title VI requirements. The state must send documentation of the new procedures to the FTA regional office.

DOCUMENTATION

Document the number, nature, and status of any Title VI complaints. Indicate whether there is a pattern to the complaints.

DBE

- 8. *Does the state receive from FTA more than \$250,000 to award in prime contracts exclusive of rolling stock purchases? If yes: Were current fiscal year transit goals submitted to FTA by August 1? What does the state use as the base for computation of the goal? Did the state submit a DBE program to FTA? Has that program been approved by FTA?***

EXPLANATION

The state that retains for itself FTA assistance for planning, capital, or operating assistance in excess of \$250,000 for awarding in prime contracts (excluding transit vehicle purchases) is required to submit to FTA for approval a DBE program.

The state that does not meet that threshold is not required to submit an overall DBE goal and DBE program to FTA.

The state may include in its goals direct contracting opportunities and contracting opportunities of all subrecipients, including those that do not receive FTA assistance in excess of the threshold. The state also may restrict the goal to itself and entities that receive FTA assistance in excess of the threshold. The state may submit separate goals for each entity receiving FTA assistance in excess of the threshold. The state must submit goals for subrecipients in receipt of FTA assistance in excess of the threshold, even if the state does not retain for its own direct use FTA assistance in excess of the threshold.

Semiannually (Jun 1 and Dec 1), the state submits a contracting activity report that documents whether the state and its subrecipients achieved their DBE goals.

SOURCES OF INFORMATION

At the regional office, review TEAM grant information and grant files to determine whether the state retains for its own use FTA assistance in any given year in excess of the threshold. Do not limit the review to Section 5310 and 5311 grants.

Discuss DBE issues with the civil rights officer.

On site, discuss DBE issues with the state. Ask the state what base it uses for computing the goal.

DETERMINATION

If the state retains for itself FTA assistance in excess of threshold amounts and has submitted current fiscal year goals by August 1 and an FTA approved DBE program, the state is not deficient. If the

state retains for itself FTA assistance in excess of threshold amounts and has not submitted its current fiscal year goal or if DBE program approval is pending, it is deficient.

If the state's annual goal(s) cover all entities that receive FTA assistance in excess of the threshold, it is not deficient. If not, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit current fiscal year DBE goals to FTA. The state must develop and implement procedures to ensure that it submits the annual goal to FTA. The state must submit documentation of the procedures to the FTA regional office.

The state must submit the requested information for goals pending approval to the FTA regional office.

The state must develop and implement procedures to submit an annual goal for all entities receiving FTA assistance in excess of the threshold. The state will submit documentation of the procedures to the FTA regional office.

The state must develop and implement procedures to submit a DBE program for approval. The state will submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document whether the state exceeds the thresholds, has a DBE goal for the current fiscal year and an FTA approved DBE plan. Document how the state submits its annual goal(s) and whether it includes in the goal(s)

all entities that receive FTA assistance in excess of the threshold.

- 9. Do any subrecipients receive total planning, capital, or operating assistance of more than \$250,000 for awarding in prime contracts, excluding rolling stock purchases? If yes: Have those subrecipients submitted DBE programs and annual DBE goals to the state? Did FTA allow a project-specific DBE goal and program in lieu of an annual goal and program for any subrecipients?**

EXPLANATION

Subrecipients who in a given year receive from FTA for awarding in prime contracts funds above the threshold amount must submit to the state a DBE program and set annual DBE goals. FTA C 4716.1A details the contents of the program. The state must have a process for identifying subrecipients who must prepare DBE programs, receiving the DBE programs and goals, and approving the DBE programs.

In lieu of or in addition to the annual goal, the state may establish a goal for a particular grant, project, or group of grants or projects. Many states elect to establish a goal and develop a DBE program for large, one-time projects, such as construction of a facility, for subrecipients who otherwise do not exceed the threshold. The state must obtain FTA approval if the goal or the project-specific program is in lieu of an annual goal or DBE program.

SOURCES OF INFORMATION

At the regional office, review the programs of projects in grant files to identify subrecipients that exceed the threshold. Review the grant files and the civil rights files for project-specific DBE goals. Ask the civil rights officer whether the state asked for approval for establishing a project-specific DBE goal in lieu of an annual DBE goal for a subrecipient.

On site, discuss with the state whether it has on file DBE programs and annual goals for subrecipients who exceed the thresholds and whether it developed and FTA approved a project-specific goal and program in lieu of an annual goal and program for any subrecipients.

DETERMINATION

If the state has on file DBE programs and annual goals for subrecipients who exceed the thresholds or received FTA approval for project-specific goals and programs in lieu of an annual goal and program the state is not deficient.

If the state does not have on file DBE programs and annual goals for subrecipients who exceed the thresholds or has not received FTA approval for project-specific goals and programs the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must obtain DBE programs and goals from subrecipients who exceed the threshold or must establish and obtain FTA approval for project-specific goals and programs. The state must submit the programs and goals to the FTA regional office.

The state must develop and implement procedures to ensure that it obtains DBE programs and goals from subrecipients who exceed the threshold. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the subrecipients who exceeded the thresholds during the review period. Document whether the state has on file DBE programs and annual DBE goals from these subrecipients or whether the state established and FTA approved project-specific goals for these subrecipients. Document whether subrecipients achieved DBE goals during the review period.

10. *Has the state filed contracting activity reports on itself and its Section 5311 subrecipients at the required intervals?*

EXPLANATION

The state must provide DBE contracting activity reports to FTA on itself and Section 5311 subrecipients. FTA requires the reports semiannually for subrecipients that exceed the threshold and for the state if it exceeds the threshold. FTA requires the reports annually for subrecipients that do not exceed the threshold and for the state if it does not exceed the threshold. The state submits the reports to the regional offices. Previously, the state submitted the reports to headquarters.

Section 5311 subrecipients must track and report to the state DBE participation levels achieved for reporting to FTA.

Some regional offices require the quarterly reports to include data on all FTA programs, including funds retained by the state for the Section 5310 and 5311 programs.

SOURCES OF INFORMATION

At the regional office, ask the civil rights officer (CRO) whether the state has submitted contracting activities reports and whether the region requires each state to report on itself quarterly or as prescribed by the Section 5310 and 5311 circulars (semiannually and annually). Check the civil rights files to see if the state submitted the reports.

On site, ask the state whether it has submitted the contracting activities reports in the intervals required by the regional offices.

DETERMINATION

If the state submits all the required reports at the required intervals, the state is not deficient.

If the state does not submit the required reports at the required intervals, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit any missing reports for the current year and must develop and implement procedures to ensure that it submits the required reports at the required intervals. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document whether the state submits the DBE contracting activity reports at the required intervals.

11. What does the state do to monitor Section 5311 subrecipients for compliance with DBE requirements and ensure that subrecipients fulfill their DBE?

EXPLANATION

The state must monitor Section 5311 subrecipients for compliance with FTA DBE requirements, including ensuring that all subrecipients, regardless of whether they meet the threshold for a DBE program and annual goals, ensure nondiscrimination in the award and administration of FTA assisted contracts, which may include:

- Identify contracting opportunities associated with FTA assistance
- Analyze DBE availability (known and projected) to provide the products or services identified for contracting
- Establish contract goals for all FTA assisted contracts based on the availability analysis
- Use good faith efforts to achieve the contract goals established
- Use certified DBE firms
- Maintain records and reports sufficient for verifying steps taken and participation achieved

Local subrecipients should maintain sufficient documentation to substantiate good faith efforts undertaken to meet these obligations. The state may require subrecipients to report these efforts or may review the records during periodic site visits. At a minimum, monitoring efforts should include review of contracting activity reports.

SOURCES OF INFORMATION

Review the state management plan for a discussion of DBE monitoring activities.

At the regional office, review the grant and civil rights files for documentation of DBE monitoring activities.

On site, discuss with the state its DBE monitoring activities.

DETERMINATION

There is no determination of compliance. The purpose of the question is to document monitoring efforts for the regional civil rights officer.

SUGGESTED CORRECTIVE ACTION

There is no corrective action associated with this question.

DOCUMENTATION

Document how the state monitors subrecipients for compliance with DBE requirements. Include in the files copies of any reports or site visit questionnaires.

12. Are there any DBE complaints filed with the state or its Section 5311

subrecipients concerning FTA programs? What is the status of complaints?

EXPLANATION

The number and nature of DBE complaints may indicate that the state or one of its Section 5311 subrecipients is not administering the Section 5311 program to comply with DBE requirements. Few states and Section 5311 subrecipients have DBE complaints filed with them concerning FTA programs.

SOURCES OF INFORMATION

At the regional office, ask the civil rights officer whether the state or any of its Section 5311 subrecipients has DBE complaints filed with it. Discuss the nature and status of complaints.

On site, discuss the nature and status of complaints with the state that are filed with it or its subrecipients.

DETERMINATION

If there are no DBE complaints filed with the state or its Section 5311 subrecipients concerning FTA programs, the state is not deficient.

If there are DBE complaints filed against the state concerning FTA programs and the state has not acted to investigate and resolve the complaints, the state is deficient.

If there are DBE complaints filed against any Section 5311 subrecipients and the nature and number of complaints indicate that the state needs to improve its monitoring, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must resolve all outstanding DBE complaints filed against it and must advise the FTA regional office of the resolution of the complaints.

The state must develop and implement procedures for improved monitoring of compliance by subrecipients with DBE requirements. The state must send documentation of the new procedures to the FTA regional office.

DOCUMENTATION

Document the number, nature, and status of any DBE complaints. Indicate whether there is a pattern to the complaints.

13. *Who is responsible for ensuring that 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

The state must designate a DBE Officer and adequate staff to administer the DBE program. The DBE Officer must have direct and independent access to the transit manager 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

DBE Officer on a collateral duty basis, there is a potential conflict of interest.

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 the reporting relationships. A job description for the DBE Officer can confirm responsibilities and reporting relationships.

DETERMINATION

If the state has a designated DBE Officer and adequate staff to administer the DBE Program and there are no potential conflicts of interest with this assignment, the state 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 transit manager, the state is deficient.

SUGGESTED CORRECTIVE ACTION

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

DOCUMENTATION

Review the state transit office's organizational chart. Determine the lines of responsibility and reporting for the DBE Officer.

14. *Did the state distribute a signed and dated DBE policy statement and circulate it throughout the state and to the DBE and non-DBE business communities that perform work on FTA assisted contracts? What efforts has the state made concerning DBE financial institutions?*

EXPLANATION

The state must distribute a signed and dated policy statement that expresses a commitment to the DBE program, states its objectives, and outlines responsibilities for its implementation. The statement must be circulated throughout the state and to the DBE and non-DBE business communities that perform work on FTA assisted contracts. This requirement can be met for the business community by including the policy statement in all procurements involving FTA funds.

States 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. The state is also required to encourage prime contractors to use such institutions.

SOURCES OF INFORMATION

Documentation of the distribution of the policy statement and efforts concerning the use of DBE financial institutions can be obtained at the site visit.

DETERMINATION

If the state has issued a policy statement and has made reasonable efforts to use DBE financial institutions, the state is not deficient.

SUGGESTED CORRECTIVE ACTION

The state needs to show evidence that it has issued its policy statement and to document its efforts to utilize DBE financial institutions.

DOCUMENTATION

Locate and obtain copy of the state's signed and dated policy statement. Review the process the state followed for investigating the full extent of services offered by DBE financial institutions.

15. *Is the state's DBE certification process consistent with the standards of Subpart D of 49 CFR Part 26? Is the state participating in a Unified Certification Program (UCP)? Does the state 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 DBE continues to meet the eligibility criteria of the regulation?*

EXPLANATION

Any state 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 certifying site visit was conducted prior to the 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. The certification procedures help to reduce fraud and insure that only eligible DBEs are certified and participate in the DBE program.

SOURCES OF INFORMATION

The state should provide a copy of its DBE application and instructions (if applicable) to demonstrate compliance with these requirements. At the site visit, the state should also make available DBE certification files (if applicable) for a random sample of two or three DBE firms to demonstrate that the certification procedures are in place. The application process 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 state should give information regarding its participation in a UCP. States should have copies of the agreements they have signed to participate in the UCP.

DETERMINATION

If the state'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 state is not deficient. If the state is not using the criteria or has not followed the procedures, the state is deficient.

If the state is not participating in the UCP, the state is deficient.

SUGGESTED CORRECTIVE ACTION

Direct the state to implement standards and procedures to determine initial and continued DBE eligibility in accordance with 49 CFR Part 26, Subpart D and Subpart E and provide evidence of the corrective action to the Regional CRO. Direct the state to submit a description of how it will participate in the UCP.

DOCUMENTATION

Document how the state certifies DBEs meet and continue meeting eligibility requirements. Include in the files copies of standards and procedures.

EEO

16. Do any subrecipients receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more

transit-related employees? Do the subrecipients have on file with FTA an approved EEO plan?

EXPLANATION

Subrecipients that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit-related employees must submit to FTA an EEO plan. Very few subrecipients meet these thresholds.

SOURCES OF INFORMATION

During the desk review at the regional office, review the program of projects to determine whether any subrecipient receives capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000. Ask the civil rights officer if those receiving funds in excess of threshold amounts have 50 or more transit-related employees. Ask if the subrecipients have approved EEO plans on file with FTA.

DETERMINATION

If subrecipients who meet threshold requirements have an approved EEO plan on file with FTA, the state is not deficient.

If subrecipients who meet threshold requirements do not have an approved EEO plan on file with FTA, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state will develop and implement procedures to identify subrecipients that meet threshold requirements and to notify FTA of such subrecipients. The state will notify the subrecipient of FTA requirements

and will withhold the approval of future subgrants until it receives notification from FTA that FTA has approved its EEO plan.

DOCUMENTATION

Document in the workbook whether any subrecipients exceed threshold requirements and whether those that do have on file with FTA approved EEO plans.

17. How does the state monitor subrecipients' compliance with EEO requirements?

EXPLANATION

FTA requires that subrecipients:

- Not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or handicap
- Take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, creed, national origin, sex, or age
- Post in conspicuous places and make available to employees and applicants for employment notices setting forth an EEO policy

The state must monitor subrecipients for compliance with these requirements. During site visits, the state may check bulletin boards and human resource information for information on Federal EEO requirements. At a minimum, the state should review the general reporting requirements information on complaints and lawsuits that

subrecipients submit at least every three years and should investigate complaints filed directly with the state.

SOURCES OF INFORMATION

Review the state management plan for a discussion of state monitoring activities.

At the regional office, review the grant or civil rights files for a discussion of EEO monitoring activities. Discuss the issue with the civil rights officer.

On site, discuss with the state its EEO monitoring efforts.

DETERMINATION

There is no determination of compliance. The information is provided for the regional civil rights officer.

SUGGESTED CORRECTIVE ACTION

There is no corrective action associated with this question.

DOCUMENTATION

Document how the state monitors subrecipient for compliance with EEO. Include in the files any copies of reports or site visit questionnaires. Document whether and where the state has documented its monitoring efforts.

18. *Are there any EEO-related complaints filed with the state or subrecipients concerning staff administering the Section 5310 and 5311 programs? What is the status of complaints?*

EXPLANATION

The number and nature of EEO complaints may indicate that the state or one of its subrecipients is not administering the Section 5310 and 5311 programs to comply with EEO. Few states and subrecipients have EEO complaints filed against them concerning the Section 5310 and 5311 programs.

SOURCES OF INFORMATION

At the regional office, ask the civil rights officer whether the state or any of its subrecipients has EEO complaints filed with it. Discuss the nature of the complaints.

On site, discuss with the state any EEO complaints that are filed with it or its subrecipients. Determine the nature of the complaints and the state's or subrecipients' responses to them.

DETERMINATION

If there are no EEO complaints filed with the state or its subrecipients concerning the Section 5310 and 5311 programs, the state is not deficient.

If there are EEO complaints filed against the state concerning the Section 5310 and 5311 programs and the state has not acted to investigate and resolve the complaints, the state is deficient.

If there are EEO complaints filed against any subrecipients and the nature and number of complaints indicate that the state needs to improve its monitoring, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must resolve all outstanding EEO complaints filed against it and must advise the FTA regional office of the resolution of the complaints.

The state must develop and implement procedures for improved monitoring of compliance by subrecipients with DBE requirements. The state must send

documentation of the new procedures to the FTA regional office.

DOCUMENTATION

Document the number, nature, and status of any EEO complaints. Indicate whether there is a pattern to the complaint.

16. FTA DRUG AND ALCOHOL PROGRAM AND DRUG-FREE WORKPLACE

BASIC REQUIREMENT

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing to be performed in the various transportation industries regulated by the Department of Transportation, including the mass transit industry. The Act specifically mandates: (1) privacy in collection techniques; (2) compliance with DHHS mandatory guidelines for drug testing and comparable safeguards for alcohol testing; (3) quantified confirmation of any positive screening result; (4) collection of split samples of body fluid specimens; and (5) a scientifically random selection of safety sensitive employees to be tested.

Under the FTA regulations, the state directly operating service must have a drug and alcohol program in place. Section 5311 subrecipients must also have drug and alcohol testing programs in place. The programs must cover all "safety sensitive" employees. Contractors of Section 5311 subrecipients with safety sensitive employees (except maintenance contractors) must also have drug and alcohol programs in place by January 1, 1996. Section 5310 subrecipients are not required by FTA to have drug and alcohol testing programs, but are subject to FMCSA regulations, which cover CDL holders.

Under the Drug-Free Workplace Act of 1988, any state receiving FTA funding is

required to notify its employees that the use, manufacture, distribution, or possession of a controlled substance is prohibited in the workplace. Employees must be informed of actions that will be taken against them for violations of the policy. Employees are required to report in writing any conviction for a violation of a criminal drug statute that occurred in the workplace. The Drug-Free Workplace requirements apply to direct recipients of FTA funds only and do not flow through to Section 5310 or Section 5311 subrecipients.

SPECIFIC REQUIREMENTS

Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations
[49 CFR Part 655;
FTA C. 9040.1E CH X, sec 11]

Procedures for Transportation Workplace Drug and Alcohol Testing Programs
[49 CFR Part 40]

The state directly operating service must have drug and alcohol testing programs in place. Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) must also have drug and alcohol testing programs in place. The programs must cover marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol.

Testing is required in the following situations:

- Pre-employment (drugs testing only)

- Reasonable Suspicion
- Random
- Post Accident
- Return to Duty/Follow-Up

All safety-sensitive employees are subject to the testing program including:

- Operators of revenue vehicles.
- Operators of non-revenue vehicles holding a CDL.
- Revenue vehicle maintenance workers (except contract maintenance workers for Section 5311 subrecipients).
- Employees controlling the movement of vehicles.
- Firearm-bearing police and security personnel.
- First-line supervisors whose responsibilities include safety sensitive functions.

Written Drug and Alcohol Policy
[49 CFR 655.15-655.16]

The state directly operating service, its contractors with safety sensitive employees, and Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) must have written drug and alcohol policies detailing the provisions of their drug and alcohol testing programs. Policies must be adopted by governing boards and distributed to each covered employee prior to the start of the testing. Employees subsequently hired or

transferred to covered positions must be given copies of the policies.

At a minimum, the drug and alcohol policies must include the following provisions:

- Identification of the person designated to answer employee questions about the anti-drug and alcohol program.
- Categories of employees subject to the provisions of the drug and alcohol testing regulations.
- Specific information concerning behavior prohibited by the regulations.
- Specific circumstances under which a covered employee will be tested for prohibited drugs and alcohol.
- Procedures that will be used to test for the presence of drugs and alcohol, protect the employee and the integrity of the testing processes, safeguard the validity of test results, and ensure test results are attributed to the correct employee.
- The requirement that a covered employee submit to drug and alcohol testing in accordance with Parts 40 & 655.
 - An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences (refusal to take drug test constitutes a verified positive drug test result).
 - The consequences of a verified positive drug or alcohol test (or refusal to submit to a drug test), including the mandatory immediate

removal from the safety-sensitive function and evaluation by a substance abuse professional as required by 49 CFR Part 40.

- The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- If employer implements elements of an anti-drug program that are in addition to the regulations, specific information concerning which provisions are mandated and which are not.
- An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this Part.

Training
[49 CFR 655.14]

The state directly operating service, its contractors with safety sensitive employees, and Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) must establish an employee education and training program for all covered employees. Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment and on the signs and symptoms that may indicate prohibited drug use. The training is required one time only.

Supervisors who make reasonable suspicion determinations must receive one hour of training on the physical, behavioral, and performance indicators of probable alcohol misuse and one hour of training on the

physical, behavioral, and performance indicators of probable drug abuse. The training is required one time only.

Record keeping
[49 CFR 655.71-655.72]

The state directly operating service, its contractors with safety sensitive employees, and Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) must maintain a variety of records to document compliance with the drug and alcohol testing program. Procedures should be in place detailing which records are to be kept, what duration for retention of these records, and under what circumstances individual employee records may be released. Records should be kept in a secure location with controlled access and retained as outlined below:

Five Years:

- Alcohol Test Results greater than 0.02
- Records of Verified Positive Drug Test Results
- Documentation of Refusals to Take a Drug or Alcohol Test
- Covered Employee Referrals and Evaluations
- Calibration Documentation for EBTs
- Alcohol and Drug Testing MIS Reports

Two Years:

- Records Related to Collection Process
- EBT Records

- Employee Training Documents

One Year:

- Alcohol Test Results less than 0.02
- Records of Negative Drug Test Results
- Negative pre-employment tests should be maintained indefinitely.

MIS Reporting

[49 CFR 655.72;

49 CFR Part 40, Appendix H]

The state is required to collect and submit to FTA annual MIS reports from Section 5311 subrecipients and each of their contractors with safety sensitive employees (except maintenance contractors). Each subrecipient and each contractor must prepare the One-DOT Drug and Alcohol MIS form. Each report submitted must cover a calendar year and be prepared using one of the standard US DOT reporting forms. The preferred method is on-line reporting. The closing date for data is December 31 and reports are due to FTA by March 15 of the following year.

Subrecipients collect and submit their contractors' reports with their own reports to the state or reports directly to the FTA. The state must not combine reports or in any way summarize the data submitted by the subrecipients or their contractors.

The state directly operating service must submit to FTA annual MIS reports covering its drug and alcohol testing programs as well as the programs of its contractors with safety sensitive employees.

Drug and Alcohol Testing Certification [49 CFR 655.81-655.83]

The state must certify annually on behalf of Section 5311 subrecipients and their contractors with safety sensitive employees that the requirements of the rules have been met. In so doing, the state shall ensure that each subrecipient and contractor with safety sensitive employees (except maintenance contractors) is complying with the requirements.

The state must obtain annual certifications from each Section 5311 subrecipient that they and their contractors with safety sensitive employees are complying with the drug and alcohol testing requirements.

Drug-Free Workplace Certification

[49 CFR Part 32;

FTA C. 9070.1E Ch VI, sec 3]

The state must certify annually that it is meeting the requirements of the Drug-Free Workplace Act. The certification is made through the FTA's Annual Certifications and Assurances.

Drug-Free Awareness Program

[49 CFR Part 32]

The state is required to publish the statement notifying employees that the unlawful, manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. The statement must specify the actions that will be taken against employees for violations. In addition, the state is required to have an on-going drug free awareness program that informs employees of the dangers of drug abuse.

Reporting Convictions of and Employee Sanctions for Criminal Drug Offenses in the Workplace

[49 CFR Part 32]

The state must provide written notice of the conviction of an employee for violation of a criminal drug statute that occurred in the workplace to FTA within ten calendar days of the time when the state learned of the conviction. Within 30 days of receiving notice of a conviction, the state must take appropriate action against the employee or require the employee to participate in a drug abuse assistance or rehabilitation program.

QUESTIONS FOR THE REVIEW

1. *Has the state filed with the FTA Regional Office an annual certification of compliance with the drug and alcohol testing regulations by January 1? Does the certification indicate that Section 5311 subrecipients and their contractors with safety sensitive employees are not deficient with the drug and alcohol testing regulations, including training requirements?*

EXPLANATION

The state must submit an initial certification to FTA indicating that Section 5311 subrecipients and their contractors with safety sensitive employees are not deficient with the drug and alcohol testing regulations. A list of specific subrecipients covered by the certification must be attached. After this initial certification, an annual certification is made through the FTA's Annual Certifications and Assurances.

SOURCES OF INFORMATION

Review the certification on file at the FTA regional office.

DETERMINATION

If the certification was filed, was signed by an authorized official, and indicated that Section 5311 subrecipients and their contractors using safety sensitive employees are not deficient with the drug and alcohol regulations, the state is not deficient. If the certification was not filed on time, was unsigned or did not include all of the

required subrecipients and contractors, the state is deficient.

SUGGESTED CORRECTIVE ACTION

If a certification has not been filed with FTA for the current year, the state must submit the certification within 30 days. Certifications for each succeeding year must be filed by January 1.

DOCUMENTATION

Indicate the date the certification was made. Note any incorrect information on the certification.

2. *Has the state collected annual calendar year Management Information System (MIS) reports for each Section 5311 subrecipient summarizing drug and alcohol test results as requested by FTA? If Section 5311 subrecipients use contractors with safety-sensitive employees, has the state collected MIS reports for each of those contractors? Were the reports, when requested, submitted to John A. Volpe Center? Were the reports filed by March 15? Were the results filed on current "Management Information System" (MIS) forms as required by FTA?*

EXPLANATION

The state must collect annual MIS reports from Section 5311 subrecipients and their contractors with safety sensitive employees summarizing drug and alcohol program testing results. The MIS reports must be submitted to the FTA Office of Safety and Security by March 15th following the

calendar year for which the reports were prepared.

There is one standard US DOT MIS form and on-line access to reporting will be provided by the Volpe Center annually. Some subrecipients may not be required to submit on a particular year but they do need to compile the results regardless.

The MIS form must be used "as-is"; they may not be combined or modified.

The state must have a system in place for obtaining MIS reports from Section 5311 subrecipients and their contractors with safety sensitive employees and for submitting the forms to FTA by March 15th.

SOURCES OF INFORMATION

On site, discuss the state's process for obtaining MIS reports from Section 5311 subrecipients and their contractors with safety sensitive employees and ensuring the reports are forwarded to FTA by March 15th.

Copies of the MIS reports must be retained by the state and are also maintained on a database by the FTA Office of Safety and Security. Review the MIS reports for a sample of subrecipients.

DETERMINATION

If the state submitted MIS reports to FTA for each of its Section 5311 subrecipients and their contractors with safety sensitive employees by March 15th using the standardized forms, the state is not deficient. If the MIS reports were not filed by March 15th, or they contained inaccurate or

incomplete information, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit the MIS forms for Section 5311 subrecipients and their contractors with safety sensitive employees. The state must ensure that subrecipients and their contractors resubmit any MIS forms which were incorrect or improperly submitted.

DOCUMENTATION

Document the state's procedures for obtaining and submitting the MIS reports to FTA.

The worksheets should indicate the dates the MIS reports were submitted and any missing MIS reports.

- 3. Has the state obtained signed anti-drug program certifications and alcohol testing certifications from each Section 5311 subrecipient? What is the process used to obtain the certifications?***

EXPLANATION

The state must annually obtain and maintain on file an anti-drug certification and an alcohol testing certification from each Section 5311 subrecipient to support its assurance to FTA. The state generally requires the certifications with the application or as part of the subrecipient agreement.

SOURCES OF INFORMATION

Review the Section 5311 subrecipient application package and the standard Section 5311 subrecipient agreement for inclusion of the certifications. Discuss the process for obtaining the certifications from subrecipients with state staff on site. Review the assurances on file with the state for a sample of subrecipients.

DETERMINATION

If the state obtains signed certifications from Section 5311 subrecipients annually and maintains them on file, it is not deficient. If the state does not obtain and maintain on file certifications from Section 5311 subrecipients, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to obtain and maintain on file an anti-drug certification and an alcohol testing certification annually from each Section 5311 subrecipient. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's process for obtaining and maintaining on file anti-drug and alcohol testing certifications from Section 5311 subrecipients. Identify the subrecipient files reviewed on site and indicate the date of their certifications.

- 4. *How does the state ensure that Section 5311 subrecipients and their contractors with safety sensitive***

employees have written drug and alcohol policies as required by FTA? How does the state ensure that the policies contain the required elements?

EXPLANATION

Each Section 5311 subrecipient and contractor with safety sensitive employees must have a drug and alcohol policy or policies detailing the provisions of the testing programs. At a minimum, the drug and alcohol policy (or policies) must include the following provisions:

- Identification of the person designated to answer employee questions about the anti-drug and alcohol program
- Categories of employees subject to the provisions of the drug and alcohol testing regulations
- Specific information concerning behavior prohibited by the regulations
- Specific circumstances under which a covered employee will be tested for prohibited drugs and alcohol
- Procedures that will be used to test for the presence of drugs and alcohol, protect the employee and the integrity of the testing processes, safeguard the validity of test results, and ensure test results are attributed to the correct employee.
- The requirement that a covered employee submit to drug and alcohol tests and the attendant consequences.

- An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences (refusal to take drug test constitutes a verified positive drug test result).
- The consequences of a verified positive drug or alcohol test (or refusal to submit to a drug test), including the mandatory immediate removal from the safety-sensitive function and evaluation by a substance abuse professional (drug testing).
- The consequences for covered employees found to have a blood alcohol concentration of 0.02% up to 0.04%.
- If employer implements elements of an anti-drug program that are in addition to the regulations, specific information concerning which provisions are mandated and which are not

The state should incorporate the requirement for the policy in its standard Section 5311 subrecipient agreement.

The state must have a system in place for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) have written drug and alcohol policies and that the policies include the required information. The state could require Section 5311 subrecipients to certify that the policies are in place as part of the application process or could require Section 5311 subrecipients to submit copies of the written policies for review. If the state does not routinely obtain and review copies of subrecipients' policies, it must have procedures for periodically spot-checking subrecipients' compliance during site visits.

The state must also have procedures in place for ensuring that Section 5311 subrecipients pass the requirement through to contractors with safety sensitive employees (except maintenance contractors). The state could require its subrecipients to incorporate specific language in their operating contracts or require subrecipients to submit copies of their contracts to the state for review.

SOURCES OF INFORMATION

On site, discuss the state's procedure for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees have written drug and alcohol policies and that the policies contain the required information. If the state obtains copies of subrecipients' drug and alcohol policies, review the policies for a sample of subrecipients.

DETERMINATION

If the state has procedures in place for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees have written drug and alcohol policies and that the policies contain the required information, the state is not deficient. If the state does not have appropriate procedures in place, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees have written drug and alcohol policies and that the policies contain the required information. The state

must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Indicate the state's process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees have written drug and alcohol policies and that the policies contain the required information. Identify the subrecipient policies reviewed.

- 5. How does the state ensure that Section 5311 subrecipients and their contractors with safety sensitive employees are performing the required types of drug and alcohol testing and that the testing covers the required substances?***

EXPLANATION

Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) must perform six types of testing: pre-employment (drugs only); random; post-accident; reasonable suspicion; and return to duty/follow-up testing.

In addition to these six types of testing, blind performance testing must be performed as a quality assurance measure for the drug-testing laboratory.

Section 5311 subrecipients and their contractors with safety sensitive employees (except maintenance contractors) are required to test for marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol.

FTA permits Section 5311 subrecipients and their contractors with safety sensitive employees to include additional employees or additional elements in their testing program. The inclusion of additional employees or elements beyond the requirements of 49 CFR 655 must be clearly differentiated as occurring under the subrecipient's or contractor's authority rather than FTA's authority. An employer may not include provisions that frustrate any provisions of Part 655.

The state must have procedures in place for monitoring subrecipients to ensure that they are performing the required types of drug and alcohol testing and that the testing covers the required employees.

SOURCES OF INFORMATION

On site, discuss the state's process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees are performing all of the required types of drug and alcohol testing and that the testing covers the required substances.

DETERMINATION

If the state has a process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees are performing all of the required types of drug and alcohol testing and that the testing covers the required substances, it is not deficient. If the state does not have a process in place, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a process for ensuring that Section 5311 subrecipients and their contractors with

safety sensitive employees are performing all of the required types of drug and alcohol testing and that the testing covers the required substances. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the process the state uses to ensure that Section 5311 subrecipients and their contractors with safety sensitive employees are performing all of the required types of drug and alcohol testing and that the testing covers the required substances.

- 6. How does the state ensure that Section 5311 subrecipients and their contractors with safety sensitive employees provide the required training to employees and supervisors?***

EXPLANATION

All covered employees under the drug testing program must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment and on the signs and symptoms which may indicate prohibited drug use. The training is required one time only.

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 two hours and the training may be recurrent although it is not required to be so.

The state must have procedures in place for ensuring that Section 5311 subrecipient provides the required training for all current and new covered employees. The state could require subrecipients to submit evidence of the training program and attendees to the state. If the state does not routinely require submittal of information on subrecipients' training programs, it must have procedures for periodically spot-checking the program during site visits.

SOURCES OF INFORMATION

On site, discuss the state's process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees are providing the required training to employees and supervisors.

DETERMINATION

If the state has a process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees are providing the required training to employees and supervisors, it is not deficient. If the state does not have a process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees are providing the required training to employees and supervisors, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement a process for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees are providing the required training to employees and supervisors. The state must submit documentation of the process to the FTA regional office.

DOCUMENTATION

Describe the process by which the state monitors compliance with drug and alcohol training requirements by Section 5311 subrecipients and their contractors with safety sensitive employees.

7. *How does the state ensure that Section 5311 subrecipients and their contractors with safety sensitive employees are complying with the FTA drug and alcohol regulations regarding retention of records and controlled access of records?*

EXPLANATION

Section 5311 subrecipients and their contractors with safety sensitive employees must maintain specific records concerning their testing programs for specific periods of time:

- At least one year:
 - Records of alcohol test results less than 0.02
 - Records of verified negative drug test results
- At least two years:
 - Records related to the collection process for alcohol testing (except calibration of evidentiary breath testing devices)
 - Records related to the collection process for drug testing
 - Records related to alcohol education and training
 - Records related to drug education and training
- At least five years:

- Alcohol test records with alcohol readings of 0.02 or greater.
- Drug test records with verified positive results.
- Calibration documentation of evidentiary breath testing devices.
- Substance Abuse Professional evaluations and referrals of employees for alcohol misuse.
- Employee compliance with recommendations of the Substance Abuse Professional for drug use and/or alcohol misuse, including results of return to duty and follow-up testing.
- Substance Abuse Professional evaluations and referrals of employees for drug use
- MIS reports
- Refusals

If a Section 5311 subrecipient or a contractor with safety sensitive employees uses a consortium to administer the testing program, the consortium may maintain some or all of the records. It is not necessary, under this circumstance, for the subrecipient or contractor to maintain a duplicate set of records.

Records must be maintained in a secure location with controlled access. FTA regulations go to great length to ensure employee privacy and confidentiality in the drug and alcohol testing process.

The state must have a system in place for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees comply with FTA drug and alcohol regulations concerning record retention and controlled access to records.

SOURCES OF INFORMATION

On site, discuss with state staff.

DETERMINATION

The state is not deficient if it has a process for ensuring that Section 5311 subrecipients and their contractors are complying with FTA regulations concerning record retention and controlled access to drug and alcohol testing records. If the state does not have a process in place for ensuring subrecipients' compliance, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for ensuring that Section 5311 subrecipients and their contractors with safety sensitive employees comply with FTA drug and alcohol regulations concerning record retention and controlled access to records. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Indicate on the worksheets the process the state uses to ensure that Section 5311 subrecipients and their contractors with safety sensitive employees are complying with the FTA drug and alcohol regulations concerning record retention and controlled access to records.

- 8. *How does the state monitor subrecipients to ensure that their drug and alcohol testing programs are in accordance with the regulations with respect to:***

- *Use of approved evidential breath testing device*
- *Training for Breath Alcohol Technician*
- *Use of approved drug and alcohol testing forms*
- *Use of certified drug testing laboratories*
- *Referral to Substance Abuse Professional*
- *Licensing and qualifications of Substance Abuse Professional*
- *Licensing and training of Medical Review Officer*
- *Release of test results*

EXPLANATION

Section 5311 subrecipients and their contractors with safety sensitive employees must comply with specific requirements including:

- **Use of approved Evidential Breath Testing Device.** The grantee must utilize a NHTSA approved Evidential Breath Testing (EBT) device for initial and confirmation testing.
- **Training of Breath Alcohol Technicians.** Each Breath Alcohol Technician must be trained with a NHTSA approved course of instruction on the methodology, operation, and calibration of the specific EBT(s) being used by the grantee.

- **Use of approved drug testing and alcohol testing forms.** The grantee must use the most recently approved U.S. DOT Drug Testing Custody and Control Form the most recently approved U.S. DOT Breath Alcohol Testing Form.
- **Use of certified drug testing laboratories.** All grantees conducting drug testing under 49 CFR Part 655 must use drug-testing laboratories certified by the Department of Health and Human Services (DHHS). A second, separate laboratory certified by DHHS must be used to test split-sample specimens.
- **Qualification of Medical Review Officer.** The Medical Review Officer must be a licensed physician (medical doctor or doctor of osteopathy) with appropriate medical training and knowledge of substance abuse disorders.
- **Qualifications of Substance Abuse Professional.** The Substance Abuse Professional must be a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors' Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders. Qualification training requirement must be met as of 12/30/03 or before performing SAP functions after that date.
- **Referral to SAP for evaluation.** Employees who have a verified positive

drug test result or a breath alcohol concentration of 0.04 or greater must be referred to an SAP for evaluation, even if they are to be terminated.

- **Release of Test Results.** The grantee must clearly define to whom test results may be released:
 - The testing laboratory may only release test results to the Medical Review Officer
 - The Medical Review Officer and breath alcohol technician (BAT) may only release test results to the designated program manager or consortium program manager and to the employee who was tested.
 - The grantee must obtain the employee's permission before releasing records (except to the MRO, Substance Abuse Professional, or program manager.)

The state must have procedures in place to monitor Section 5311 subrecipients to ensure that they comply with these aspects of the drug and alcohol testing requirements. Periodic on site reviews of subrecipients' implementation of the drug and alcohol testing requirements and examination of documentation is the most effective method for ensuring that subrecipients are complying with the requirements.

SOURCES OF INFORMATION

Review the state management plan for discussion of the state's monitoring of Section 5311 subrecipients' compliance with drug and alcohol testing requirements. On site, discuss the state's monitoring mechanisms with state staff.

DETERMINATION

The state is not deficient if it has appropriate procedures in place for monitoring subrecipients' compliance with these drug and alcohol testing program requirements. If the state does not have procedures in place to review subrecipients' implementation of drug and alcohol testing programs that specifically address these requirements, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to monitor subrecipients' implementation of the drug and alcohol testing requirements to ensure that these specific requirements are met. The state must submit documentation of the monitoring procedures to the FTA regional office.

DOCUMENTATION

Document the state's procedures for monitoring Section 5311 subrecipients' compliance with the drug and alcohol testing requirements.

QUESTIONS 9 THROUGH 23 APPLY ONLY TO A STATE DIRECTLY OPERATING SERVICE

9. *Does the state have a drug and alcohol policy as required by the FTA drug and alcohol regulations? Did the governing board approve the policy?*

EXPLANATION

Each state directly operating service must have a drug and alcohol policy approved by the governing board detailing the provisions of its drug and alcohol program. The policy should detail all aspects of the drug and alcohol program, but at a minimum, must cover the following provisions:

- Identification of the person designated to answer employee questions about the anti-drug and alcohol program
- Categories of employees subject to the provisions of the drug and alcohol testing regulations
- Specific information concerning behavior prohibited by the regulations
- Specific circumstances under which a covered employee will be tested for prohibited drugs and alcohol
- Procedures that will be used to test for the presence of drugs and alcohol, protect the employee and the integrity of the testing processes, safeguard the validity of test results, and ensure test results are attributed to the correct employee
- The requirement that a covered employee submit to drug and alcohol tests and the attendant consequences
- An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences (refusal to take drug test constitutes a verified positive drug test result)
- The consequences of a verified positive drug or alcohol test (or refusal to submit to a drug test), including the mandatory

immediate removal from the safety-sensitive function and evaluation by a substance abuse professional (drug testing)

- The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04 (alcohol only).
- If employer implements elements of an anti-drug program that are in addition to the regulations, specific information concerning which provisions are mandated and which are not

SOURCES OF INFORMATION

At the site visit, review the drug and alcohol policy. Review any accompanying educational and training material.

DETERMINATION

If the policy contains the required provisions, the state is not deficient. If the policy neglects any aspect required by the regulations, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must incorporate all required provisions in the policy and recommunicate the revised policy to all affected employees. The state must submit a copy of the revised policy to the FTA regional office.

DOCUMENTATION

Indicate the date the policy went into effect as well as the date of any revisions. Identify any required provisions that are not

addressed in the policy. Include a copy of the policy in the review file.

- 10. *Does the state conduct the following types of drug and alcohol testing: Pre-Employment, Random, Post-Accident, Reasonable Suspicion, Return to Duty, Follow-up, and Blind Performance (for drugs)? Does the state test for marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol?***

EXPLANATION

Each state directly operating service must perform six types of testing: pre-employment (drugs only); random; post-accident; reasonable suspicion; and return to duty/follow-up testing. In addition to these six types of testing, blind performance testing must be performed as a quality assurance measure for the drug-testing laboratory.

The state directly operating service is required to test for marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol.

FTA permits any state directly operating service to include additional employees or additional elements in their testing program. The inclusion of additional employees or elements beyond the requirements of 49 CFR 655 must be clearly differentiated as occurring under the state's authority rather than FTA's authority.

Fifty percent of covered employee positions must be tested for drugs and 10 percent must be tested for alcohol.

SOURCES OF INFORMATION

Review the state's drug and alcohol policy to determine when and under what circumstances employees will be tested for drugs and alcohol and the policies and procedures for each type of testing. On site, confirm with state staff. Employee records may not be examined.

Review MIS reports to determine if the random testing satisfies the testing rate requirements as outlined by FTA

DETERMINATION

If the state's drug and alcohol policy outlines the policies and procedures for testing and the MIS reports indicate that the required testing rate has been met, the state is not deficient. If the policy is deficient or the MIS reports indicate that required testing rate has not been met, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must revise its program to perform the required types of testing at the required levels and update its drug and alcohol policy. If the policy is changed, the state must recommunicate the policy to all affected employees within 30 days. The state must submit documentation of the revised program and policy to the FTA regional office.

DOCUMENTATION

Indicate the types of drug and alcohol testing covered by the state's policy. Indicate if the state conducts additional testing under its own authority. Note the percentage of employees tested to date.

- 11. *Has the state filed annual calendar year Management Information System (MIS) reports with FTA summarizing test results? Were the reports filed by March 15 of the year following the calendar year to which they apply? Were the results filed on current "Management Information System" (MIS) forms as required by FTA?***

EXPLANATION

The state directly operating service must submit annual reports to FTA summarizing their drug and alcohol program testing results.

The MIS reports must be submitted to the FTA Office of Safety and Security by March 15th following the calendar year for which the reports were prepared.

There are four standardized MIS forms to be used when reporting drug and alcohol test results, two alcohol testing results forms and two drug testing results forms:

- The **FTA Alcohol Testing MIS Data Collection Form** is used by employers who have alcohol test results of 0.02 or greater.
- The **FTA Alcohol Testing MIS "EZ" Data Collection Form** is used by employers who have no alcohol test results of 0.02 or greater to report.
- The **FTA Drug Testing MIS Data Collection Form** is used by employers who have verified positive drug test results to report.

- The **FTA Drug Testing MIS "EZ" Data Collection Form** is used by employers who have no verified positive drug test results to report.
- The standard One-DOT MIS form was changed for 2004 and the preferred method is on-line reporting.

The standard MIS report that must be used is contained in 49 CFR Part 40 (Appendix H) The MIS form must be used "as-is"; they may not be combined or modified by the state.

SOURCES OF INFORMATION

Review the MIS reports. Copies of the MIS reports must be retained by the state and are also maintained on a database by the FTA Office of Safety and Security.

DETERMINATION

The state is not deficient if MIS reports were submitted to FTA by March 15th using the standardized forms. If the MIS reports were not filed by March 15th, or they contained inaccurate or incomplete information, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must submit MIS forms or resubmit incorrect or improperly submitted MIS forms.

DOCUMENTATION

Indicate the dates the MIS reports were submitted and any missing MIS reports.

12. *If the state uses contractors with safety-sensitive employees, has the state filed MIS forms for each of those contractors?*

EXPLANATION

The state directly operating service with Section 5311 funds is responsible for submitting annual MIS reports to FTA on their contractors with safety-sensitive employees covered by FTA regulations.

The state must have a system in place for obtaining MIS reports from contractors with safety sensitive employees and for submitting the forms to FTA by March 15th. The state should include the drug and alcohol testing requirements in its contracts with contractors performing safety sensitive functions.

SOURCES OF INFORMATION

On site, discuss the state's process for obtaining MIS reports from contractors with safety sensitive employees (except maintenance contractors) and ensuring the reports are forwarded to FTA by March 15th.

Obtain a list of contractors performing safety sensitive functions for the state. Review the MIS reports for contractors with safety sensitive employees and compare the MIS reports submitted to the list of contractors. Copies of the MIS reports must be retained by the state and are also maintained on a database by the FTA Office of Safety and Security.

DETERMINATION

The state is not deficient if it has a process in place for receiving MIS reports from all

contractors with safety sensitive functions and MIS reports were submitted to FTA for all contractors with safety sensitive employees by March 15th using the standardized forms. If the state does not have a process for receiving the reports or MIS reports were not filed by March 15th, or they contained inaccurate or incomplete information, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for obtaining and submitting the MIS reports to FTA. The state must submit documentation of the procedures to the FTA regional office.

The state must submit missing MIS forms or resubmit incorrect or improperly submitted MIS forms.

DOCUMENTATION

Identify the state's contractors performing safety sensitive functions.

Document the state's procedures for obtaining and submitting the MIS reports to FTA.

In subsequent years, indicate the dates the MIS reports were submitted and any missing MIS reports.

13. *Does the state use drug testing laboratories that are certified by the Department of Health and Human Services?*

EXPLANATION

The state conducting drug testing under 49 CFR Part 655 must use drug-testing laboratories certified by the Department of Health and Human Services (DHHS). A second, separate laboratory certified by DHHS must be used to test split-sample specimens. There are literally thousands of laboratories capable of conducting urine drug testing across the United States. Only about 80 of these have been certified by the DHHS to conduct drug testing for grantees regulated by 49 CFR Part 655.

Regarding Part 40.91, as of 11/1/04, labs are required to perform specimen validity testing to determine if urine specimens have been adulterated or substituted. Also, labs needed to modify substituted and diluted specimen criteria.

SOURCES OF INFORMATION

Ask the state which laboratories are being used. The use of these laboratories can be verified by reviewing contracts between the state and the laboratories. A list of DHHS certified laboratories is published in the Federal Register on a monthly basis. Use the most current list to determine if the state is not deficient. It is important that this list be checked frequently because laboratories routinely lose or give up their certification.

DETERMINATION

If the state is using laboratories on the most current list of DHHS certified laboratories, it is not deficient. If the state is using laboratories that are not on the list, the state is deficient. Laboratory name changes, which occur often, do not revoke a laboratory's certification.

SUGGESTED CORRECTIVE ACTION

The state must discontinue its use of uncertified laboratories. The state must submit documentation indicating new laboratories (to replace uncertified laboratories) to the FTA regional office.

DOCUMENTATION

Indicate the name, address, phone number and dates of services for the primary laboratory and any back-up laboratories. Identify laboratories used that are not certified.

- 14. *Is the state's Medical Review Officer a licensed physician (medical doctor or doctor of osteopathy) with appropriate medical training and knowledge of substance abuse disorders?***

EXPLANATION

The state directly operating service must utilize the services of one or more Medical Review Officers (MRO) to review drug-testing results and to confer with employees who initially test positive. Not all medical doctors or doctors of osteopathy are qualified to perform the functions of a Medical Review Officer. Medical doctors or doctors of osteopathy must also have appropriate medical training and knowledge of substance abuse disorders to be qualified to perform the functions of a Medical Review Officer.

MRO qualification training is required by 1/31/03, or before performing MRO duties after that date per 40.121. 12 hours of continuing education medical units (CEM) must be completed by 8/1/04.

SOURCES OF INFORMATION

Review state files containing documentation (e.g., copies of medical degrees or training certificates) of the qualifications of the Medical Review Officer. If no documentation exists, a verbal description of the qualifications of the Medical Review Officer will generally be sufficient to answer this question.

DETERMINATION

If the state is utilizing the services of a qualified Medical Review Officer, it is not deficient. If the state does not use a Medical Review Officer or the Medical Review Officer is not properly qualified, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must contract for the services of a qualified Medical Review Officer and advise the FTA regional office of the new MRO's qualifications.

DOCUMENTATION

Note the name and qualifications of the Medical Review Officer.

- 15. *Is the state's Substance Abuse Professional a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors' Certification Commission), with knowledge of and clinical experience in the diagnosis***

and treatment of drug and alcohol related disorders?

advise the FTA regional office of the name and qualifications of the new SAP.

EXPLANATION

The state directly operating service must utilize the services of one or more Substance Abuse Professionals (SAP) to evaluate employees who have violated portions of 49 CFR Part 653 and 654. The Substance Abuse Professional must have knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders. The state's Medical Review Officer can serve as the Substance Abuse Professional if these requirements are met.

DOCUMENTATION

Note the name and qualifications of the Substance Abuse Professional.

16. *Does the state utilize a NHTSA approved Evidential Breath Testing (EBT) device for initial and confirmation testing?*

SOURCES OF INFORMATION

Review state files containing documentation (copies of appropriate degrees or certifications) of the qualifications of the Substance Abuse Professional. If no documentation exists, a verbal description of the qualifications of the Substance Abuse Professional will generally be sufficient to answer this question.

EXPLANATION

All states conducting breath alcohol testing must use a National Highway Traffic Safety Administration (NHTSA) approved EBT for both the initial testing and the confirmation breath alcohol testing. NHTSA approved EBTs appear in a Conforming Products List that is periodically updated and printed in the Federal Register. The April 20, 1994, Federal Register contains the most recent Conforming Products List.

DETERMINATION

If the state is utilizing the services of a qualified Substance Abuse Professional, it is not deficient. If the state does not use a Substance Abuse Professional or the Substance Abuse Professional is not properly qualified, it is deficient.

Many companies manufacture breath alcohol testing devices that are neither EBTs nor approved by NHTSA. Similarly, many companies who manufacture NHTSA approved EBTs also manufacture other breath alcohol testing devices not approved by NHTSA.

SUGGESTED CORRECTIVE ACTION

The state must contract for the services of a qualified Substance Abuse Professional and

SOURCES OF INFORMATION

The state's drug and alcohol policy may indicate if the EBT is NHTSA approved. If the EBT used by the state is available it should be compared to the EBTs named on the Conforming Products List. If the EBT is

not physically at the site, the state may often have documentation indicating which breath alcohol testing device is being used. The state may use more than one type of EBT.

DETERMINATION

If the state uses a NHTSA approved EBT it is not deficient. If the breath alcohol-testing device is not an NHTSA-approved EBT, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must conduct its breath alcohol testing using a NHTSA approved EBT.

DOCUMENTATION

On the worksheets, indicate which EBT(s) are in use, their location, and whether they are approved by NHTSA.

- 17. *Has each Breath Alcohol Technician been trained with a NHTSA approved course of instruction on the methodology, operation, and calibration of the specific EBT(s) being used by the state?***

EXPLANATION

Each Breath Alcohol Technician (BAT) who conducts breath alcohol testing using a NHTSA- approved EBT must be trained by a NHTSA- approved course of instruction for that specific EBT. Different EBTs have different operating procedures. If the state purchases new EBTs or has a variety of EBTs, Breath Alcohol Technicians using those EBTs must be trained specifically on the use of each model.

SOURCES OF INFORMATION

The state is required to maintain training records for their BATs. Examine these records during the site visit to determine if the training course corresponds to the NHTSA approved curriculum.

DETERMINATION

If the documentation indicates that the Breath Alcohol Technicians have attended NHTSA approved courses of instruction for the specific EBTs they operate, the state is not deficient. If the Breath Alcohol Technicians are using EBTs for which they were not specifically trained or the training was not NHTSA approved, the state is deficient.

SUGGESTED CORRECTIVE ACTION

Breath Alcohol Technicians must be trained on the specific operating procedures of each EBT they use to conduct breath alcohol testing. The state must document to the FTA regional office that the required training has been provided.

DOCUMENTATION

Indicate the names of Breath Alcohol Technicians using EBTs for which they were not properly trained.

- 18. *Does the state utilize the most recently approved U.S. DOT Drug Testing Custody and Control Form? Does the state use the most recently approved***

U.S. DOT Breath Alcohol Testing Form?

EXPLANATION

A standardized form has been developed for the drug testing specimen collection process to document the custody and control of the specimen from collection through testing. The seven-part form is titled "U.S. DOT Drug Testing Custody and Control Form". (66 fr 41950, 8/9/01) This form must be used. No variations of this form are acceptable.

A standardized form has been developed for recording breath alcohol testing information as well. The three-part form is titled "U.S. Department of Transportation (DOT) Breath Alcohol Testing Form" (66 FR 41954, 8/9/01). This form must be used. No variations of this form are acceptable.

SOURCES OF INFORMATION

At the site visit, compare the blank drug testing specimen custody and control forms used by the state to the U.S. DOT Drug Testing Custody and Control Form. Compare the state's blank breath alcohol testing form to the U.S. DOT Breath Alcohol Testing Form. This will indicate if the correct forms are being used or if the forms have unauthorized modifications. The reviewer is not permitted to review copies of the forms that have information indicating who was tested and for what reasons. Reviewers are only permitted to review blank forms.

DETERMINATION

If the correct forms are being used and they have not been modified, the state is not

deficient. If different forms are being used or modifications have been made to the forms, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must discontinue using unauthorized forms and begin using the approved U.S. DOT Drug Testing Custody and Control Form and the U.S. DOT Breath Alcohol Testing Form.

DOCUMENTATION

Note the forms used by the state. Indicate whether unauthorized or modified forms are used.

19. Are employees who have a verified positive drug test result or a breath alcohol concentration of 0.04 or greater referred to a Substance Abuse Professional 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 Substance Abuse Professional even if they are to be terminated. The Substance Abuse Professional evaluates the employee to determine if the employee is in need of assistance in resolving problems associated with prohibited drug or alcohol use. The Substance Abuse Professional will recommend a course of action to the employee.

The state is not required to provide rehabilitation or to offer to return the employee to service after rehabilitation. The state is not required to refer to the Substance Abuse Professional those applicants for safety-sensitive positions who fail to pass a pre-employment drug or alcohol test.

SOURCES OF INFORMATION

Review the state's drug and alcohol policy for discussion of the procedures the Substance Abuse Professional will take when evaluating employees. Discuss with state staff.

DETERMINATION

If employees who have a verified positive drug test result, a breath alcohol concentration of 0.04 or greater, or who refuse to be tested, are referred to a Substance Abuse Professional, the state is not deficient. If employees are not referred to a Substance Abuse Professional, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must revise its drug and alcohol policy to reflect proper referral and evaluation by a Substance Abuse Professional and recommunicate the new procedures to all covered employees. The state must submit documentation of the new procedures to the FTA regional office.

DOCUMENTATION

Note any improper referrals or evaluations by the Substance Abuse Professional.

20. *Has the state clearly defined to whom test results may be released? Does the state ensure that the testing laboratory*

only releases test results to the Medical Review Officer? Does the state ensure that the Medical Review Officer and breath alcohol technician (BAT) only release test results to the designated program manager or consortium program manager and to the employee who was tested? Does the state obtain the employee's permission before releasing records (except to the Medical Review Officer, Substance Abuse Professional, or program manager)?

EXPLANATION

FTA regulations go to great length to ensure employee privacy and confidentiality in the drug and alcohol testing process. Only the testing laboratory, the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional, and the program manager are allowed access to drug and alcohol testing records without the employee's permission. Those individuals should have access only to those records pertinent to their positions. For example, the Breath Alcohol Technician should not have access to drug test results.

Under certain circumstances, people other than the testing laboratory, the MRO, the BAT, the SAP and the program manager may be allowed access to an employee's test records without the employee's consent. This includes the Secretary of Transportation or a DOT agency with regulatory authority over the employer, the state agency authorized to oversee fixed guideway systems, the National Transportation Safety Board as part of an accident investigation, or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual.

SOURCES OF INFORMATION

The state's drug and alcohol policy must clearly document the circumstances under which drug and alcohol testing records will be released and to whom they will be released. Review the drug and alcohol policy to determine if the correct confidentiality procedures are in place. Discuss the procedures with state staff while on-site.

DETERMINATION

If the state has clearly defined its procedures and they meet the confidentiality requirements, the state is not deficient. If the procedures are not clearly defined or are incorrect, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must revise its drug and alcohol policy to bring it into compliance with the confidentiality requirements and recommunicate the revised policy to all affected employees. The state must submit documentation to the FTA regional office.

DOCUMENTATION

Describe the record release procedures followed by the state.

21. *Are drug and alcohol program records kept in a secure location with controlled access? Are records kept for the minimum required time?*

EXPLANATION

The state must maintain specific records concerning its drug and alcohol-testing program for specific periods of time:

- At least one year:
 - Records of alcohol test results less than 0.02
 - Records of verified negative drug test results
- At least two years:
 - Records related to the collection process for alcohol testing (except calibration of evidentiary breath testing devices)
 - Records related to the collection process for drug testing
 - Records related to alcohol education and training
 - Records related to drug education and training
- At least five years:
 - Alcohol test records with alcohol readings of 0.02 or greater
 - Drug test records with verified positive results
 - Calibration documentation of evidentiary breath testing devices
 - Substance Abuse Professional evaluations and referrals of employees for alcohol misuse
 - Employee compliance with recommendations of the Substance Abuse Professional for drug use and/or alcohol misuse, including results of return to duty and follow-up testing
 - Substance Abuse Professional evaluations and referrals of employees for drug use,
 - MIS reports

- Refusals

FTA regulations allow the state to maintain additional records if they so choose. Although not required to do so, the state may dispose of the records after the minimum retention times have been met.

If the state uses a consortium to administer its testing program, the consortium may maintain some or all of the records. It is not necessary under this circumstance, for the state to maintain a duplicate set of records. It is the state's responsibility, however, to ensure that the records kept by the consortium are accurate and current and that they fully comply with FTA regulations.

The drug and alcohol program records must be maintained in a secure location with controlled access.

SOURCES OF INFORMATION

The drug and alcohol policy may describe the state's record retention procedures. Discuss with state staff where the records are located. They may be located at the state's offices, the consortium, or a third-party administrator's facilities. For confidentiality purposes, reviewers may not ask to look at specific employee testing records.

DETERMINATION

If the record retention requirements are met, the state is not deficient. If the state fails to maintain the records, or fails to retain the records for the required minimum length of time, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must implement and maintain a comprehensive record management program meeting the requirements. The state must submit documentation to the FTA regional office.

DOCUMENTATION

Describe the record retention procedures followed by the state.

22. *Has the state provided to its safety-sensitive employees 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

All safety sensitive employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment and on the signs and symptoms which may indicate prohibited drug use. The training is required one time only. Newly hired safety sensitive employees must receive the training as well.

The state is required to maintain records for all safety-sensitive employees indicating that they have been properly trained.

SOURCES OF INFORMATION

Review state training records during the site visit to determine if all safety-sensitive employees have been properly trained

including safety-sensitive employees hired after the initial training session.

DETERMINATION

If all safety-sensitive employees have received 60 minutes of training including the elements described above, the state 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 state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must provide training to all safety-sensitive employees who have not been properly trained. The state must submit documentation to the FTA regional office.

DOCUMENTATION

Describe the training provided to safety-sensitive employees. Note any missing information or deficiencies in the training. Indicate whether there are any safety sensitive employees who have not been trained.

23. *Has the state provided at least 60 minutes of training in physical, behavioral, speech, and performance indicators of probable alcohol misuse; and at least 60 minutes of training in the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms which may indicate prohibited drug use to its supervisors who determine whether reasonable*

suspicion exists to require a safety-sensitive employee to undergo alcohol and/or drug testing ?

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 two hours and the training may be recurrent although this is not required.

FTA regulations require the state to maintain training records of supervisors who are designated to make reasonable suspicion determinations.

SOURCES OF INFORMATION

On site, examine training records to determine if all supervisors who make reasonable suspicion determinations have been properly trained. Discuss with state staff.

DETERMINATION

If all supervisors who make reasonable suspicion determinations have received the required amount of training, the state is not deficient. If any supervisor making reasonable suspicion determinations has not received the required 120 minutes of training, or if the training provided did not involve the required information, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must provide training to all supervisors who make reasonable suspicion

determinations. The state must submit documentation to the FTA regional office.

DOCUMENTATION

Describe the training provided to supervisors who make reasonable suspicion determinations. Note any missing information or deficiencies in the training. Indicate whether there are supervisors who make reasonable suspicion determinations that have not been trained.

DRUG FREE WORKPLACE (49 CFR PART 32)

- 1. Does the state have a written policy as prescribed by the Drug-Free Workplace Act? Does the policy specify that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace? Are specific actions that will be taken against employees for violating the policy described? How has the state disseminated the policy to its employees? Has the state established an ongoing drug-free awareness program?***

EXPLANATION

The state must have a written drug-free workplace policy specifying: the workplace is drug-free; the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace; and the specific actions that will be taken against employees for violating the prohibitions.

Employees must be notified of the drug-free workplace policy. They must be informed of actions that will be taken against them for violations of the policy.

In addition to disseminating the policy to employees, the state may have notifications posted on bulletin boards, in employee handbooks, or in letters sent to employees. Some state may require employees to sign statements that they have received notification of the drug-free workplace policy.

SOURCES OF INFORMATION

On site, obtain and review a copy of the state's drug-free workplace policy. Ask how the state notifies employees of the drug-free workplace policy.

DETERMINATION

If the state has a written policy including all required elements, and has provided written notification of the policy to employees, it is not deficient. If the state does not have a written policy or the policy does not contain the required elements, the state is deficient. If employees have not been notified of the drug-free workplace requirements and the specific actions that may be taken against them as a result of a violation, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop a written drug-free workplace policy. The must notify employees of the drug-free workplace requirements and the specific actions that may be taken against them as a result of a violation.

DOCUMENTATION

Indicate the existence of the drug-free workplace policy and whether it incorporates the required elements. Describe the method used to notify employees of the drug-free workplace requirements. Copies of the drug-free workplace policy, employee handbooks, and/or letters to employees can be included in the state management review file.

- 2. Has the state informed employees of the dangers of drug abuse and of any available drug counseling,***

rehabilitation, and employee assistance programs?

EXPLANATION

In addition to establishing an on-going drug-free workplace environment, the state must establish a program that informs employees about the dangers of drug abuse in the workplace and the availability of assistance programs.

SOURCES OF INFORMATION

On site, discuss with state staff and review the written drug-free workplace policy, employee handbooks, posters, employee assistance program information, and other material distributed to employees.

DETERMINATION

If the state has informed employees of the dangers of drug abuse and the availability of assistance programs, it is not deficient. If the state has not informed employees of the dangers of drug abuse or the availability of assistance programs, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must establish a program that informs employees about the dangers of drug abuse in the workplace and the availability of assistance programs.

DOCUMENTATION

Indicate the process by which the state informs employees about the dangers of drug abuse and the availability of assistance of programs. Include in the files copies of any informative materials obtained.

- 3. *Has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? Was FTA given timely notice of the conviction? What action was taken against the employee?***

EXPLANATION

The state must inform all employees that if convicted for a violation of a criminal drug statute occurring in the workplace, they are to report the conviction to the state within five calendar days. If the state receives such notice, it has ten calendar days to report the conviction to the FTA Regional Office. The employee's position and title must be included in the notification to FTA as well as the grants in which the employee was involved.

Within 30 days of receiving notice of a conviction, the state must take appropriate personnel action up to and including termination or require the employee to participate in a drug abuse assistance or rehabilitation program.

SOURCES OF INFORMATION

At the desk review, examine files to determine if any report of a conviction has been made by the state to FTA. On site, discuss with state staff.

DETERMINATION

If the state indicates that no convictions have occurred and no reports have been made to FTA, it is not deficient. If the state indicates that a conviction has occurred, FTA has been notified, and appropriate personnel action has been taken, the state is not deficient.

If at the site visit the state indicates that a conviction has occurred, but FTA has not been notified and/or personnel action was not taken, the state is deficient. If the state has reported a conviction to FTA, but not within the appropriate time period, it is deficient. If the state has taken personnel actions that are not within the appropriate time period, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must report any outstanding convictions to FTA.

DOCUMENTATION

Indicate where and when any convictions occurred. Document the dates the state notified FTA and identify personnel action taken.

17. CHARTER BUS PROTECTION

BASIC REQUIREMENT

The state and its Section 5311 subrecipients are prohibited from using FTA funded equipment or facilities to provide charter service except on an incidental basis and then only when one or more of the seven exceptions set forth in the charter service regulation in 49 CFR Section 604.9(b) apply. The charter prohibition does not apply to Section 5310 subrecipients.

SPECIFIC REQUIREMENTS

Charter Prohibition

[49 CFR 604.9(b);

FTA C. 9040.1E Ch X, sec 4]

The state and its Section 5311 subrecipients are prohibited from providing any charter service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the service that the state or subrecipient proposes to provide. There are seven exceptions to this prohibition:

1. Direct service to customers when there are no willing and able private charter operators
2. Under contract to provide FTA funded vehicles or service to a private operator to satisfy a capacity need or a need for accessible equipment
3. In a nonurbanized area, direct service to customers when the service provided by willing and able operator(s) creates a hardship on the customer due to minimum duration requirements or distance between

charter origin and operator location (by petition to FTA)

4. Direct service to customers for special events (by petition to the FTA Administrator)
5. Under contract to a private, nonprofit organization or a governmental entity providing a trip that is consistent with its purpose and that:
 - i) has as its passengers a significant number of persons with disabilities;
 - ii) is a qualified social service agency under appendix A of 49 CFR part 604, or;
 - iii) receives public welfare assistance funds and may require the transportation of a group of transit-advantaged or transit-dependent persons
6. In a nonurbanized area, under contract to a government entity or a private, nonprofit organization that certifies more than 50 percent of passengers will be elderly
7. Direct service to customers through formal agreements with all private charter operators

The state and its Section 5311 subrecipients may provide charter service with locally owned equipment housed and maintained in non-FTA funded facilities only if they create a separate company or division operated exclusively with local funds.

Incidental Charter Service

[49 CFR 604.9(e)]

Any charter service which the state or Section 5311 subrecipient is permitted to

provide under any of the exceptions must be incidental to the provision of mass transportation service. FTA defines

incidental charter service as charter service that does not interfere with or detract from the provision of the mass transportation service for which the equipment or facilities were funded under the Acts or shorten the mass transportation life of the equipment or facilities. Incidental charter service may only be performed during non-peak hours and must recover its fully-allocated costs.

Charter Bus Agreement
[49 CFR 604.7; FTA Annual
Certifications and Assurances]

State applicants for FTA assistance under 49 U.S.C. 5311 to acquire buses must submit to FTA a charter bus agreement, indicating that the state and all its recipients will provide charter service using equipment or facilities acquired with Federal assistance only to the extent that there are no private charter service operators willing and able to provide the service, unless one or more of the exceptions apply. The state must also assure FTA that each Section 5311 subrecipient has certified to the state that it will comply with 49 CFR Part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance. The state must submit the charter bus agreement and assurance on behalf of subrecipients through the FTA's Annual Certifications and Assurances. Section 5311 subrecipients must certify to the state.

QUESTIONS FOR THE REVIEW

1. *Does the state have on file signed charter bus agreements from all Section 5311 subrecipients? What is the mechanism used to obtain the certifications?*

EXPLANATION

As part of the FTA's Annual Certifications and Assurances, the state must assure FTA that each Section 5311 subrecipient has certified to the state that it will comply with 49 CFR Part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance. The state must have a process for obtaining, and maintaining on file, signed charter bus agreements from all Section 5311 subrecipients to support its assurance to FTA that charter service will only be provided to the extent there are no private operators willing and able to provide the service unless one or more of the exceptions apply.

The state generally obtains signed charter bus agreements from subrecipients through the application process or through the executed subrecipient agreement.

SOURCES OF INFORMATION

On site, discuss the state's process for obtaining signed charter bus agreements from Section 5311 subrecipients. Review the state's subrecipient application package for Section 5311 assistance and the standard Section 5311 subrecipient agreement.

Review the state's files for a sample of Section 5311 subrecipients to determine the existence of the signed charter bus agreement.

DETERMINATION

The state is not deficient if it has an appropriate system in place for obtaining and maintaining on file Section 5311 subrecipients' charter bus agreements. If the state does not have an appropriate system in place for obtaining subrecipients charter bus agreements, the state is deficient. If, at the time of the site visit, the state does not have signed charter bus agreements on file for the sample of Section 5311 subrecipients reviewed, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must implement procedures to obtain charter bus agreements from each Section 5311 subrecipient and maintain the agreements on file. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's process for obtaining and maintaining charter bus agreements from Section 5311 subrecipients. Note the subrecipients' sampled and indicate the date and location of their charter bus agreements.

2. *How does the state ensure that Section 5311 subrecipients only provide charter service with FTA funded equipment or facilities in accordance with one of the seven allowable exceptions?*

EXPLANATION

Section 5311 subrecipients are prohibited from using FTA funded equipment or facilities to provide charter service unless one or more of the seven exceptions apply.

- **Exception 1 - "no willing and able private operators"**
- **Exception 2 - provision of FTA funded vehicles or service to private operators to satisfy a capacity need or a need for accessible equipment**
- **Exception 3 - in a nonurbanized area, the service offered by willing and able operators creates a hardship due to minimum duration requirements or distance between charter origin and operator location**
- **Exception 4 - special events where private operators are not capable of providing the service**
- **Exception 5 - contract with a private, nonprofit organization or governmental entity wherein the trip is for a majority of disabled persons, the organization is a social service agency in receipt of funds (primarily HHS) as noted in 49 CFR 604, Appendix A, or is an organization eligible to receive public welfare assistance funds and is transporting a transit-dependent group**
- **Exception 6 - in a nonurbanized area, contract with a government entity or private, nonprofit organization that**

certifies more than 50 percent of passengers will be elderly

- **Exception 7 - formal agreement with all willing and able private charter operators**

The charter regulations prescribe the procedures that a subrecipient must follow in order to provide charter service under each exception.

Exception 1, "no willing and able private operator"

A Section 5311 subrecipient may provide incidental charter service if it determines on an **annual basis** that there are no private charter operators willing and able to provide the service. The subrecipient must conduct an annual public participation process, review evidence submitted by private operators, and make a determination that there are no willing and able private operators to provide the service.

The determination process must include a published notice that describes the charter service that the subrecipient proposes to provide. The notice must instruct any operator who wishes to be considered willing and able to submit the statement of its desire and capability to provide the proposed service and proof of its legal authority. The notice must also be sent to known local private operators and to bus industry trade associations. Any evidence submitted to the subrecipient must be reviewed within 30 days. Within 60 days, the subrecipient must notify each private charter operator who submitted evidence of the results of the review.

If no willing and able private charter operators exist, the subrecipient may provide charter service for that year. If at least one willing and able private charter operator exists, the subrecipient may only provide charter service under one of the other allowable exceptions.

Exception 2, FTA funded vehicles or service provided to a private operator to satisfy a capacity need or a need for accessible equipment

A Section 5311 subrecipient may provide FTA funded vehicles or services to a private operator to satisfy a capacity need or a need for accessible service. The subrecipient must enter into an agreement with the private operator for the specific service; the subrecipient may not enter into an agreement directly with the charter customer.

The private charter operator is responsible for the direction and control of the subrecipient's equipment while the charter service is being provided. All equipment or services leased under this exception must be incidental service (i.e., non-peak period and priced to recover fully-allocated costs).

The subrecipient may not have an exclusive arrangement with one private operator; the subrecipient must respond equitably to requests from all private operators.

Exception 3, in a nonurbanized area, the service offered by willing and able operators creates a hardship due to minimum duration requirements or distance between charter origin and operator location

A Section 5311 subrecipient may provide incidental charter service directly to the customer if the service offered by willing and able operator(s) creates a financial hardship on the customer. Hardships may be caused by state required minimum durations or deadheading charges when the distance between the charter origin and the location of the private operator is significant.

The subrecipient must petition the FTA Chief Counsel for approval on a case-by-case basis. The subrecipient must provide notice of its request for an exception to all private operators determined to be willing and able, with at least 30 days to respond.

Exception 4, special events where private operators are not capable of providing the service

A Section 5311 subrecipient may petition the FTA Administrator to provide incidental charter service directly to customers for special events. The subrecipient must submit the petition 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. If granted, the exception is valid only for the event specified.

Exception 5, contracts with a private, nonprofit organization or with a governmental entity wherein the trip is for a majority of disabled persons, the organization is a social service agency in receipt of funds (primarily HHS) as noted in 49 CFR 604, Appendix A, or is an

organization eligible to receive public welfare assistance funds transporting a transit-dependent group

A Section 5311 subrecipient may execute a contract to provide incidental charter service directly to a government entity or private, nonprofit organization that is exempt from taxation if one of the following conditions applies:

- # A significant number of disabled persons will be passengers on the charter trip
- # The entity is a qualified social service agency or
- # The entity receives or is eligible to receive directly or indirectly from the state or local government body public welfare assistance funds for purposes whose implementation may require transportation.

The subrecipient must obtain a certification from the entity or organization that:

- The organization is a government entity or organization exempt from taxation;
- One of the above conditions applies;
- The charter trip is consistent with the function and purpose of the entity or organization; and
- The charter trip will be organized and operated not deficient with Title VI of the Civil Rights Act and

Section 5332 of the Federal Transit Act.

The subrecipient must obtain the required certification for each incidental charter trip made under this exception.

Exception 6, in a nonurbanized area, contracts with a government entity or private, nonprofit organization that certifies more than 50 percent of passengers will be elderly

A Section 5311 subrecipient may execute a contract to provide incidental charter service directly to a government entity or private, nonprofit organization after obtaining a certification from the entity or organization that:

- The organization is a government entity or organization exempt from taxation;
- More than 50 percent of the passengers on the charter trip will be elderly;
- The charter trip is consistent with the function and purpose of the entity or organization;
- The charter trip will be organized and operated not deficient with Title VI of the Civil Rights Act and Section 5332 of the Federal Transit Act.

Exception 7, formal agreement with all willing and able private charter operators

A Section 5311 subrecipient may provide incidental charter service directly to the customer if it has executed a formal agreement with all private charter operators

determined to be willing and able to provide service.

The agreement must specifically allow the subrecipient to provide the particular type of charter trip. The subrecipient must provide for the agreement in its annual public participation process. The subrecipient must ensure that all willing and able private operators identified through the annual public participation process are valid parties to the agreement.

The state is responsible for ensuring that any Section 5311 subrecipient providing charter service is operating the service in accordance with one of the allowable exceptions. The state must require subrecipients to submit certifications that they will comply with the regulations (see question 1). The state must have a system in place for looking behind the subrecipients' certifications. FTA does not prescribe specific monitoring activities. The state must, however, have an appropriate system in place for passing through the requirements to subrecipients and monitoring subrecipients' charter activities to ensure that the service is provided in accordance with the charter regulations. The state should have procedures for requiring subrecipients to inform the state of charter activities and the exception under which charter service is provided. Periodic site visits to observe subrecipients' facilities and equipment and examine charter records and documentation supporting the charter exception is the most effective means of ensuring that subrecipients are complying with the charter regulations.

SOURCES OF INFORMATION

Review the state management plan, the Section 5311 subrecipient grant application package, and the standard Section 5311 subrecipient grant agreement for a description of the state's procedures for monitoring subrecipients' compliance with charter bus regulations. On site, discuss the state's procedures for passing through the charter bus requirements to Section 5311 subrecipients, monitoring subrecipients' provision of charter service, and ensuring that all charter service operated is in accordance with one of the allowable exceptions. Review any guidance provided by the state to subrecipients regarding the provision of charter service.

DETERMINATION

The state is not deficient if it has an appropriate system in place for monitoring Section 5311 subrecipients' charter activities and verifying that any charter service provided is in accordance with one of the allowable exceptions. If the state does not have an appropriate system in place for monitoring Section 5311 subrecipients' charter activity, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to inform Section 5311 subrecipients of FTA's charter regulations and the specific requirements that must be met to provide charter service under an allowable exception. The state must develop and implement procedures requiring subrecipients to disclose charter activity and to monitor subrecipients' charter activity to ensure that all charter activity is conducted in accordance with one of the allowable exceptions. The state must submit

documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's mechanism for monitoring Section 5311 subrecipients' charter activity and ensuring that all charters are provided in accordance with one of the seven exceptions. Indicate how the state informs subrecipients of the restrictions on charter service and the exceptions under which incidental charter service may be provided. Note reporting requirements that the state imposes on subrecipients for disclosing charter activity. Include a copy of required reporting forms in the file. Indicate if the state monitors compliance with charter bus regulations during site visits.

- 3. How does the state ensure that all charter service provided by Section 5311 subrecipients is incidental, i.e., service that does not interfere with or detract from the provision of mass transportation services, does not shorten the mass transit life of the equipment or facilities, and recovers fully-allocated costs?***

EXPLANATION

Any charter service provided with FTA funded equipment or facilities under one of the allowable exceptions must be incidental. Charter service is considered incidental if it does not interfere with or detract from the provision of mass transportation service and does not shorten the mass transportation life of equipment or facilities. Incidental charter service must:

- Be performed during non-peak hours

- Recover its fully-allocated costs

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 (e.g., free service to an economically disadvantaged group when there is no willing and able provider).

The state is responsible for ensuring that all charter service provided by Section 5311 subrecipients is incidental to the provision of mass transportation service. The state must have procedures for monitoring subrecipients' charter activities to ensure that the service is incidental and that subrecipients have appropriate documentation on file. The state should impose record-keeping requirements on Section 5311 subrecipients that provide the information necessary to determine that charter service is incidental (e.g., time of day, equipment, charges). The state may require subrecipients to report charter activity periodically or review charter records during periodic site visits.

SOURCES OF INFORMATION

Review the state management plan, the subrecipient grant application package, and the standard subrecipient grant agreement for a description of the state's procedures for ensuring charter service provided by Section 5311 subrecipients is incidental. Discuss the procedures with state staff while on site.

DETERMINATION

The state is not deficient if it has an appropriate system in place for monitoring Section 5311 subrecipients' charter activity to ensure that all charter service provided is incidental. If the state does not have an appropriate system in place for monitoring subrecipients' charter activity, it is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for ensuring that all charter service provided by Section 5311 subrecipients is incidental. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's process for ensuring that all charter service provided by Section 5311 subrecipients is incidental. Indicate how the state informs subrecipients of the requirement. Note reporting requirements that the state imposes on subrecipients and include a copy of required reports in the review file. Indicate whether the state reviews charter activity during site visits.

- 4. Have any complaints been filed alleging that the state or subrecipients are operating charters in violation of the regulations? What is the status of the complaints? Has the FTA Chief Counsel issued a decision upholding a complaint? If so, is the state or subrecipient operating in compliance with the order as stated in the decision?***

EXPLANATION

Any interested party who believes that the state or Section 5311 subrecipient is in violation of the charter regulations may submit a written complaint to the FTA Chief Counsel. The regulations specify how complaints will be processed. If the Chief Counsel determines that a charter violation has occurred, appropriate remedies may be ordered.

The state should be aware of complaints filed against subrecipients and should monitor subrecipients' adherence to orders resulting from a complaint determination.

SOURCES OF INFORMATION

Review documentation of complaints on file in the FTA regional office and discuss with the Regional Counsel. On site, discuss with state staff how remedies are being implemented and how the state is monitoring subrecipients' implementation of remedies, if applicable.

DETERMINATION

The state is not deficient if no complaints have been received, or if the state or subrecipient is operating not deficient with any orders resulting from a complaint determination. If a complaint is in process, follow-up is required to report on the implementation of the Chief Counsel's decision and remedies ordered.

The state is deficient if a violation has occurred but has not been remedied as ordered by the Chief Counsel.

SUGGESTED CORRECTIVE ACTION

The state must immediately implement remedies as directed by the FTA Chief Counsel and report to the FTA regional office when pending complaints are resolved.

The state must develop and implement procedures to monitor Section 5311 subrecipients' compliance with remedies resulting from a violation determination by FTA Chief Counsel. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document charter complaints filed with FTA, the status of the complaints, the actions the state or subrecipient has taken to remedy violations, and the procedures implemented by the state to monitor subrecipients' implementation of the FTA Chief Counsel's orders.

- 5. *How does the state monitor Section 5311 subrecipients' charter service with locally owned vehicles to ensure that the service is allowable? Do any subrecipients provide charter service with locally owned vehicles? Where are the vehicles stored and maintained? Was the subrecipient's facility constructed with FTA assistance?***

EXPLANATION

Section 5311 subrecipients may provide charter service with locally owned equipment housed and maintained in non-FTA funded facilities only if the subrecipient creates a separate company

operated exclusively with local funds or if it keeps its charter accounts completely separate from its mass transit division.

Section 5311 subrecipients may not provide charter service with locally owned equipment out of a FTA funded facility. Many states do not fund facility construction through the Section 5311 program because of limited funds. However, some Section 5311 subrecipients have directly received Section 5307 funds for facility construction or rehabilitation.

The state must have procedures in place for ensuring that subrecipients operating charter service with locally funded vehicles meet the requirements:

- Locally funded vehicles used for charter are not operated from or maintained in a FTA funded facility; and
- The charter operations are handled through a separate company or through separate accounts.

The state should require subrecipients to identify charter activity with locally funded equipment and should review charter service as part of periodic site visits.

SOURCES OF INFORMATION

On site, discuss the state's procedures for addressing subrecipients' provision of charter service with locally funded vehicles. Inquire whether subrecipients operate charter service with locally funded vehicles and, if so, whether they are operating from a FTA funded facility. Discuss the state's procedures for determining whether subrecipients are providing charter service

with locally funded equipment and ensuring that such service is not provided out of FTA funded facilities and that separate accounts are maintained. Identify state imposed reporting requirements.

During the subrecipient site visit, look for indications that charter service is operated and discuss the use of locally owned vehicles, whether the facility was funded in part with FTA assistance, and the subrecipient's accounting systems.

DETERMINATION

The state is not deficient if it has procedures in place for identifying subrecipients' provision of charter service with locally funded vehicles and for ensuring that subrecipients providing charter service with locally funded vehicles are not operating the vehicles from a FTA funded facility and have established a separate accounting system for the operation and maintenance of the vehicles. The state is deficient if it does not have procedures for ensuring that subrecipients using locally funded vehicles for charter service are not operating out of a FTA funded facility and have established a separate accounting system.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to require subrecipients to disclose charter service provided with locally funded equipment and facilities and for monitoring subrecipients to ensure that the accounting for such service is separate from the accounting for mass transit. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document how the state monitors Section 5311 subrecipients' provision of charter service with locally funded vehicles and ensures that the service is not operated out of a FTA funded facility and the accounting for such service is separate.

Identify any Section 5311 subrecipients that are providing charter service with locally funded equipment. Identify charter activity observed during the site visit to the Section 5311 subrecipient, indicate whether the service is operated out of a FTA funded facility, and how the charter books are maintained.

QUESTION 6 - 8 FOR A STATE DIRECTLY OPERATING OR CONTRACTING FOR SERVICE

- 6. Does the state operate charter service with FTA funded equipment or facilities? Under what exception? Has the state met the requirements for providing charter service under the exception?*

EXPLANATION

The state directly operating rural service with FTA assistance is prohibited from using federally funded equipment and facilities to provide charter service unless one or more of the seven exceptions apply. The charter regulations prescribe the procedures that the state must follow in

order to provide charter service under each exception.

Exception 1: no willing and able private operator

The state may provide incidental charter service if it determines on an annual basis that there are no private charter operators willing and able to provide the service. The state must conduct an annual public participation process, review evidence submitted by private operators, and make a determination that there are no willing and able private operators to provide the service.

The determination process must include a published notice that describes the charter service that the state proposes to provide. The notice must instruct any operator who wishes to be considered willing and able to submit the statement of its desire and capability to provide the proposed service and proof of its legal authority. The notice must also be sent to known local private operators and to bus industry trade associations. The state must review any evidence submitted within 30 days and must notify each private charter operator who submitted evidence of the results of the review within 60 days.

If no willing and able private charter operators exist, the state may provide charter service for that year. If at least one willing and able private charter operator exists, the state may only provide charter service under one of the other allowable exceptions.

Exception 2: FTA funded vehicles or service provided to a private operator to satisfy a capacity need or a need for accessible equipment

The state may provide FTA funded vehicles or services to a private operator to satisfy a capacity need or a need for accessible service. The state must enter into an agreement with the private operator for the specific service; it may not enter into an agreement directly with the charter customer.

The private charter operator is responsible for the direction and control of the state's equipment while the charter service is being provided. All equipment or services leased under this exception must be incidental service (i.e., non-peak period and priced to recover fully- allocated costs).

The state may not have an exclusive arrangement with one private operator; it must respond equitably to requests from all private operators.

Exception 3: in a nonurbanized area, the service offered by willing and able operators creates a hardship due to minimum duration requirements or distance between charter origin and operator location

The state may provide incidental charter service directly to the customer if the service offered by willing and able operator(s) creates a financial hardship on the customer. Hardships may be caused by state required minimum durations or deadheading charges when the distance between the charter origin and the location of the private operator is significant.

The state must petition the FTA Chief Counsel for approval on a case-by-case basis. The state must provide notice of its

request for an exception to all private operators determined to be willing and able, with at least 30 days to respond.

Exception 4: special events where private operators are not capable of providing the service

The state may petition the FTA Administrator to provide incidental charter service directly to customers for special events. The state must submit the petition at least 90 days prior to the event, describing the event, explaining how it is special, and explaining 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. If granted, the exception is valid only for the event specified.

Exception 5: contracts with a private, nonprofit organization or with a governmental entity wherein the trip is for a majority of disabled persons, the organization is a social service agency in receipt of funds (primarily HHS) as noted in 49 CFR Part 604, Appendix A, or is an organization eligible to receive public welfare assistance funds transporting a transit-dependent group

The state may execute a contract to provide incidental charter service directly to a government entity or private, nonprofit organization that is exempt from taxation if one of the following conditions applies:

- A significant number of disabled persons will be passengers on the charter trip;

- The entity is a qualified social service agency; or
- The entity receives or is eligible to receive directly or indirectly from the state or local government body public welfare assistance funds for purposes whose implementation may require transportation.

The state must obtain a certification from the entity or organization that:

- The organization is a government entity or organization exempt from taxation;
- One of the above conditions applies;
- The charter trip is consistent with the function and purpose of the entity or organization; and
- The charter trip will be organized and operated not deficient with Title VI of the Civil Rights Act and Section 5332 of the Federal Transit Act.

The state must obtain the required certification for each incidental charter trip made under this exception.

Exception 6: in a nonurbanized area, contracts with a government entity or private, nonprofit organization that certifies more than 50 percent of passengers will be elderly

The state may execute a contract to provide incidental charter service directly to a government entity or private, nonprofit organization after obtaining a certification from the entity or organization that:

- The organization is a government entity or organization exempt from taxation;
- More than 50 percent of the passengers on the charter trip will be elderly;
- The charter trip is consistent with the function and purpose of the entity or organization;
- The charter trip will be organized and operated not deficient with Title VI of the Civil Rights Act and Section 5332 of the Federal Transit Act.

Exception 7: formal agreement with all willing and able private charter operators

The state may provide incidental charter service directly to the customer if it has executed a formal agreement with all private charter operators determined to be willing and able to provide service.

The agreement must specifically allow the state to provide the particular type of charter trip. The state must provide for the agreement in its annual public participation process. The state must ensure that all willing and able private operators identified through the annual public participation process are valid parties to the agreement.

The state operating charter service must have on file documentation of charter activity and the exception under which it is provided. The state must be able to demonstrate that it has met the required conditions for operating charter service under an exception.

SOURCES OF INFORMATION

Review the state management plan and other documentation of charter procedures. On site, discuss the state's charter activity and the exception under which it is operated. Review charter records and documentation supporting charter exceptions, including the annual public notice and determination of no willing and able private operators, correspondence with FTA, and contracts with private charter operators.

DETERMINATION

If the state directly operates service and provides charter service under one of the allowable exceptions, the state is not deficient. If the state provides charter service without documentation of a qualified exception, it is deficient.

SUGGESTED CORRECTIVE ACTION

If directly operating charter service in violation of the regulations, the state must cease the provision of illegal charter service and confirm to FTA its intent to comply with the charter regulations in the future.

DOCUMENTATION

Identify the state's charter activity and indicate the exception under which it is operated. Note documentation supporting the exception, such as annual public notices, contracts with private charter operators, correspondence with the FTA Administrator, etc.

Include a copy of charter procedures in the review file, if applicable.

7. *Is all charter service operated by the state incidental, i.e., service that does*

not interfere with the provision of mass transportation service and recovers fully-allocated costs?

EXPLANATION

Any charter service provided with FTA funded equipment or facilities under one of the allowable exceptions must be incidental. Charter service is considered incidental if it does not interfere with or detract from the provision of mass transportation service and does not shorten the mass transportation life of equipment or facilities. Incidental charter service must:

- Be performed during non-peak hours
- Recover its fully-allocated costs

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 (e.g., free service to an economically disadvantaged group when there is no willing and able provider).

The state should maintain records of charter activity to demonstrate that charter service is incidental (e.g., time of day, equipment, charges).

SOURCES OF INFORMATION

Review the state management plan and documentation of charter procedures. On site, discuss the state's procedures for recording charter activity and review charter logs and reports.

DETERMINATION

The state is not deficient if it has documentation to show that any charter service provided in accordance with an allowable exception is incidental to the provision of mass transportation service. If the state does not have documentation of charter activity demonstrating that the service is incidental, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must cease the provision of charter service that is not incidental to the provision of mass transportation service and confirm to the FTA regional office its intent to comply with the charter regulations in the future.

The state must develop and implement procedures to record charter activity and submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Document the state's procedures for recording charter activity. Include copies of charter logs and reports in the review file. Indicate any instances of charter activity that does not meet the criteria for incidental service.

8. *Does the state operate charter service with locally owned vehicles? Where are the vehicles stored and maintained? Was the state's facility constructed with Federal assistance?*

EXPLANATION

The state may provide charter service with locally owned equipment housed and maintained in non-FTA funded facilities

only if it creates a separate company operated exclusively with local funds or if it keeps its charter accounts completely separate from its mass transit division.

The state may not provide charter service with locally owned equipment out of a FTA funded facility. Although most states do not fund facility construction through the Section 5311 program because of limited funds, some facilities may have been constructed or rehabilitated with Section 5307 funds.

The state must have procedures in place to ensure that charter service operated with locally funded vehicles meet the requirements:

- Locally funded vehicles used for charter are not operated from or maintained in a FTA funded facility; and
- The charter operations are handled through a separate company or through separate accounts.

SOURCES OF INFORMATION

On site, discuss the state's charter activity with locally owned vehicles. Determine whether there is Federal interest in the state's facility. Review the separate accounting records maintained by the state for provision of charter service with locally owned vehicles.

DETERMINATION

The state is not deficient if it does not operate charter service with locally funded equipment. If the state operates charter service with locally owned vehicles out of a locally funded facility and has established a

separate company for the provision of charter service or maintains separate accounting records for the charter service, the state is not deficient. If the state operates charter service with locally funded vehicles out of a FTA funded facility, the state is deficient. If the state operates charter service with locally funded vehicles but has not set up a separate company or separate accounting system for the charter service, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must cease the provision of charter service with locally owned vehicles out of FTA funded facility. The state must cease the provision of charter service if it has not established a separate company or separate accounting system for the charter service.

DOCUMENTATION

Document the state's charter activity with locally owned vehicles. Indicate whether the state's facility was constructed or rehabilitated with Federal assistance. Identify the accounting procedures for the charter service and include a copy of charter records in the review file.

18. SCHOOL BUS PROTECTIONS

BASIC REQUIREMENT

The state and its Section 5310 and 5311 subrecipients are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. In no case can federally funded equipment or facilities be used to provide exclusive school bus service. Head Start is considered a human service program and transportation to Head Start programs is not defined as school bus service.

SPECIFIC REQUIREMENTS

School Bus Agreement

[49 CFR Part 605; 49 USC 5323(f)]

Each recipient of FTA assistance must certify that it will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators. The state makes the certification through the FTA's Annual Certifications and Assurances and also certify that Section 5310 and 5311 subrecipients have made the certification. Section 5310 and 5311 subrecipients must certify to the state.

School Bus Service Exemptions

[49 CFR 605.11; 49 USC 5323(f)]

The state and its Section 5310 and 5311 subrecipients are prohibited from providing exclusive school bus service unless qualified under specified exemptions. To operate exclusive school bus service under an exemption from the FTA Administrator, the state or subrecipient must demonstrate that:

- # It operates a school system in the area and also operates a separate and exclusive school bus program for the school system
- # Existing private school bus operators in the area are unable to provide adequate, safe service at reasonable rates
- # It is the state or local public body and it or its predecessors were engaged in school bus service prior to August 13, 1973. (In the case of a grant for facilities, it was engaged in bus service prior to November 26, 1974.)

When operating exclusive school bus service under an allowable exemption, no federally funded equipment, vehicles, or facilities may be used.

School Tripper Service

[49 CFR Part 605.13;

FTA C. 9040.1E Ch X, sec 5]

The prohibition against the use of federally funded vehicles, equipment, or facilities does not apply to tripper service. The state and its Section 5310 and 5311 subrecipients may provide school tripper service. Tripper service is regularly scheduled mass transportation service open to the public, which is designed or modified to accommodate the needs of school students and personnel. Such service must be open to the public, must serve regular transit stops, and must be delineated on route schedules and maps. School signs must not be displayed on the vehicles or give any

other indications that could deter the general public from using the bus.

QUESTIONS FOR THE REVIEW

1. *Does the state have on file certifications of compliance with school bus requirements for all Section 5310 and 5311 subrecipients? What is the mechanism used to obtain the certifications?*

EXPLANATION

FTA recipients are prohibited from engaging in school bus operations in competition with private school bus operators. The state must certify to FTA that it will comply with the requirements of 49 CFR Part 605, specifically that it and all its recipients will not engage in school bus operations in competition with private school bus operators.

Through the FTA’s Annual Certifications and Assurances, the state certifies its compliance with school bus requirements (Category VIII) and also assures FTA that each Section 5310 and 5311 subrecipient has certified to the state (Categories XIV and XV).

Each Section 5310 and 5311 subrecipient must certify to the state that it will comply with 49 CFR Part 605. The state must have a process for obtaining subrecipients' certifications and must maintain subrecipients' certifications on file to support its certifications and assurances to FTA.

Generally, the state obtains the certifications from subrecipients as part of the application process or through execution of the subrecipient agreement.

SOURCES OF INFORMATION

Review the Section 5310 and 5311 subrecipient applications and standard agreements for inclusion of the school bus agreement. On site, discuss the state's process for obtaining the certification from Section 5310 and 5311 subrecipients. Review the agreements on file for a sample of subrecipients.

DETERMINATION

The state is not deficient if it has a process for obtaining the certification from all Section 5310 and 5311 subrecipients and has signed certifications on file. The state is deficient if it does not require subrecipients to submit the certification, does not have a process for obtaining the certifications, or does not have certifications on file for the sample of subrecipients reviewed.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures for obtaining certifications from Section 5310 and 5311 subrecipients and for maintaining the certifications on file. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's process for obtaining the school bus certification from subrecipients. Indicate the subrecipients sampled and the date and location of the certifications.

2. *Do any Section 5310 or 5311 subrecipients operate exclusive school*

bus service? How does the state ensure that any exclusive school bus service operated by subrecipients qualifies and is approved by the FTA Administrator under one of the statutory exemptions? How does the state ensure that exclusive school bus service operated under one of the statutory exemptions is provided only with locally owned equipment and is operated and maintained out of a non-federally funded facility?

EXPLANATION

There are three statutory exemptions under which a Section 5310 or 5311 subrecipient may operate exclusive school bus service:

- The subrecipient operates a school system in the area and operates a separate and exclusive school bus service for that school system
- Existing private school bus operators are unable to provide adequate, safe transportation
- The subrecipient (local public body) has operated the service prior to August 12, 1973 or a grantee for facilities prior to November 26, 1974

A subrecipient wishing to engage in school bus operations must provide an opportunity for public comment including:

- Providing written notice to all private school bus operators
- Publishing notice in the local newspaper

The FTA Administrator makes the determination whether to permit a recipient (subrecipient) to operate exclusive school bus service under one of the statutory exemptions. Upon notice of approval by the Administrator, the subrecipient enters into an agreement with the Administrator.

Exclusive school bus service operated under an approved exemption must use locally owned vehicles that may not be housed or maintained in a federally funded facility. FTA funded equipment and facilities cannot be used for exclusive school bus service under any circumstances.

The state is responsible for ensuring that any subrecipient providing exclusive school bus service does so under one of the statutory exemptions and does not involve federally funded equipment or facilities. The state must have a system in place for informing subrecipients of the requirements and monitoring subrecipients to ensure compliance.

Subrecipients are required to certify compliance to the state. The state may not rely solely on subrecipients' certifications of compliance, however. The state should require subrecipients to disclose exclusive school bus service and provide or have available documentation of the FTA Administrator's approval. Periodic site visits to observe subrecipients' facilities and equipment are the most effective means for monitoring subrecipients' compliance with school bus requirements.

SOURCES OF INFORMATION

Review the state management plan, the Section 5310 and 5311 grant application packages, and the standard Section 5310 and

5311 subrecipient agreements for a description of school bus requirements.

On site, discuss the state's procedures for informing subrecipients of the requirements, identifying subrecipients operating exclusive school bus service, and ensuring that subrecipients only operate exclusive school bus service under an allowable exemption and with non-Federally funded equipment and facilities. Discuss information the state requires subrecipients to provide regarding exclusive school bus service.

Ask the state to identify any subrecipients operating exclusive school bus service and discuss the exemption under which the service is operated. Review the documentation of the public process and the Administrator's approval of the exclusive school bus service, if available in the state's files.

During the subrecipient site visits, look for indications that exclusive school bus service is operated and discuss the equipment and facilities used for such service.

DETERMINATION

The state is not deficient if it has a system in place for informing subrecipients of school bus requirements and monitoring subrecipients to ensure that exclusive school bus service is only provided in accordance with one of the statutory exemptions and that federally funded equipment and facilities are not used to provide or support exclusive school bus service.

If the state does not have a system in place for informing subrecipients of the

requirements or monitoring subrecipients' compliance, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to inform subrecipients and to monitor subrecipients' compliance with school bus requirements. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's procedures for informing subrecipients and monitoring subrecipients' compliance with exclusive school bus requirements.

Note on the worksheet any exclusive school bus service provided by subrecipients. Specify the exemption under which the service operates and the equipment and facilities used for the service.

- 3. *Do any Section 5310 or 5311 subrecipients provide school "tripper service"? How does the state ensure that subrecipients' school tripper service meets FTA requirements?***

EXPLANATION

Section 5310 and 5311 subrecipients are permitted to provide school tripper service. School tripper service must be open to the public, must serve regular transit stops, and must be delineated on route schedules and maps. School bus signs cannot be displayed on the vehicles. School tripper service should operate and look like all other regular service.

The state is responsible for ensuring that school tripper service operated by subrecipients is open to the public, serves regular transit stops, and is included on route schedules and maps, and that school bus signs or any other indications that could deter the general public from using the bus are not displayed.

FTA does not prescribe specific monitoring activities. However, the state must have systems in place for informing subrecipients of the requirements, identifying subrecipients' school tripper service, and monitoring subrecipients to ensure compliance.

The state may require subrecipients to identify school tripper service as part of their application for assistance and to provide supporting documentation such as route maps, brochures and timetables. Periodic site visits to observe subrecipients' facilities and equipment and examine route maps and timetables are the most effective means for monitoring subrecipients' compliance with school bus requirements.

SOURCES OF INFORMATION

On site, discuss the state's processes for informing subrecipients of the requirements for providing school tripper service and for monitoring subrecipients' compliance.

Have state staff identify subrecipients that operate school tripper service. Examine supporting documentation on file with the state such as route maps, brochures and timetables.

DETERMINATION

The state is not deficient if it has a system in place for informing subrecipients of requirements for operating school tripper service and monitoring subrecipients to ensure that school tripper service meets the requirements to be open to the public, serve regular transit stops, and be delineated on route maps and schedules.

If the state does not have a system in place for informing subrecipients of the requirements for school tripper service or monitoring subrecipients' compliance, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must develop and implement procedures to inform subrecipients and to monitor subrecipients' compliance with requirements for school tripper service. The state must submit documentation of the procedures to the FTA regional office.

DOCUMENTATION

Describe the state's procedures for informing subrecipients of FTA's requirements for school tripper service, identifying subrecipients providing school tripper service, and monitoring subrecipients' compliance with FTA requirements for school tripper service.

Note on the worksheets subrecipients providing school tripper service. Include copies of route maps, brochures, and timetables in the review files, if available.

QUESTIONS 4 - 5 FOR A STATE DIRECTLY OPERATING OR CONTRACTING FOR SERVICE

4. *Does the state operate exclusive school bus service? If so, does the service qualify for one of the statutory exemptions? Has the state received approval from the FTA Administrator? Does the service operate only with non-federally funded equipment and facilities?*

EXPLANATION

The state may operate exclusive school bus service only under one of the statutory exemptions:

- The state operates a school system in the area and operates a separate and exclusive school bus service for that school system
- Existing private school bus operators are unable to provide adequate, safe transportation
- The state has operated the service prior to August 12, 1973 or has received a grant for facilities before November 26, 1974

The state must provide an opportunity for public comment including:

- Providing written notice to all private school bus operators
- Publishing notice in the local newspaper

The FTA Administrator makes the determination whether to permit the state to operate exclusive school bus service under one of the statutory exemptions. Upon notice of approval by the Administrator, the

state enters into an agreement with the Administrator.

Exclusive school bus service operated under an approved exemption must use locally owned vehicles, which may not be housed or maintained in a federally funded facility. FTA funded equipment and facilities cannot be used for exclusive school bus service under any circumstances.

SOURCES OF INFORMATION

On site, discuss exclusive school bus service with the state. If the state operates exclusive school bus service, discuss the exception under which the service is operated. Review the documentation of the public process and the Administrator's approval of the exclusive school bus service. Identify the equipment and facilities used in the provision of exclusive school bus service and determine whether Federal funds were used.

DETERMINATION

The state is not deficient if it does not operate exclusive school bus service. The state is not deficient if it operates exclusive school bus service that qualifies and is approved by the Administrator under one of the statutory exemptions and is operated with locally funded equipment and facilities. If the state operates exclusive school bus service that is not approved by the Administrator, for one of the statutory exemptions, the state is deficient. If the state uses FTA funded equipment or facilities in exclusive school bus service, whether or not the service qualifies for a statutory exemption, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must immediately cease providing exclusive school bus service that violates the statute, i.e., has not been approved by the Administrator (even if it does qualify, must still be approved) or uses FTA funded equipment or facilities.

DOCUMENTATION

Note on the worksheet any exclusive school bus service provided by the state. Specify the exemption under which the service operates and the equipment and facilities used for the service.

5. *Does the state provide school "tripper service"? Does the service meet the requirements?*

EXPLANATION

The state is permitted to provide school tripper service to accommodate the needs of school students and personnel. School tripper service must be open to the public, must serve regular transit stops, and must be delineated on route schedules and maps. School bus signs or other indications that could deter the general public from using the bus cannot be displayed on the vehicles. School tripper service should operate and look like all other regular service.

SOURCES OF INFORMATION

On site, discuss school tripper service with state staff. If the state operates school tripper service, examine route maps, brochures and timetables for inclusion of the service.

DETERMINATION

The state is not deficient if all school tripper service is open to the public, serves regular transit stops, and is delineated on route schedules and maps and if school bus signs are not displayed. If the state operates any school tripper service that does not meet these requirements, the state is deficient.

SUGGESTED CORRECTIVE ACTION

The state must discontinue directly operated school tripper service not meeting the requirements or modify the service to comply with FTA requirements. The state must submit documentation of compliance to the FTA regional office, including revised timetables, route maps, and brochures.

DOCUMENTATION

Note on the worksheets school tripper service provided by the state. Include copies of route maps, brochures, and timetables in the review files.

19. STATE SAFETY OVERSIGHT – RAIL FIXED GUIDEWAY SYSTEMS

BASIC REQUIREMENT

The state is required to oversee the safety of rail fixed guideway systems not regulated by the Federal Railroad Administration. The state must designate an entity to oversee the safety of these rail fixed guideway systems. The oversight agency must develop a system safety program standard, require the transit agency to develop a system safety program plan, require the transit agency to conduct safety audits and annually report, conduct on-site safety reviews every three years, and require the transit agency to report the occurrence of accidents and unacceptable hazardous conditions for investigation.

The oversight agency must submit to FTA the names and addresses of the transit agencies within its jurisdiction and a written description of the oversight program including a copy of the system safety program standard, procedures for reviewing and approving transit system safety program plans, investigatory procedures, and procedures for ensuring that appropriate corrective actions have been taken by the transit agency to correct, eliminate, minimize or control investigated hazardous conditions.

The oversight agency must certify to FTA that it has complied with CFR Part 659.

The following states are subject to the safety oversight requirement:

California	New Jersey
Colorado	New York
Florida	Ohio
Georgia	Oregon
Illinois	Pennsylvania
Louisiana	Tennessee
Maryland	Texas
Massachusetts	Washington
Michigan	Virginia
Missouri	District of Columbia
Arkansas	Wisconsin
Minnesota	

SPECIFIC REQUIREMENTS

Designation of the Oversight Agency **[49 CFR 659.21]**

The state must designate an agency of the state to act as the oversight agency of rail fixed guideway systems operating within the state that are not regulated by the Federal Railroad Administration. If the rail system operates in more than one state, The state may designate a single entity with oversight responsibility.

Role of the Oversight Agency **[49 CFR 659, Subpart C]**

The oversight agency is responsible for:

- Developing a system safety program standard;
- Reviewing and approving transit agency system safety program plans;

- Reviewing annual safety audit reports prepared by the transit agency;
- Conducting on-site safety reviews and preparing safety review findings;
- Establishing investigation procedures, conducting investigations, and reviewing corrective action plans; and
- Preparing initial and annual submissions to FTA.

System Safety Program Standard
[49 CFR 659.31]

The oversight agency must develop and adopt a system safety program standard. This document establishes the relationship between the oversight agency and the transit agencies it is regulating and specifies the procedures the transit agencies must follow. The system safety program standard must comply with the American Public Transit Association's "Manual for the Development of Rail Transit System Safety Program Plans" and must require the rail fixed guideway system to address the personal security of its passengers and employees.

Transit Agency System Safety Program Plans
[49 CFR 659.33]

The oversight agency must require the transit agency to develop a system safety program plan that complies with the oversight agency's system safety program standard. The oversight agency must review and approve the transit agency's system safety program plan and the transit agency must implement the plan. The oversight agency must approve, and the transit agency must implement, the "security provisions" of the system safety program plan. Thereafter,

the oversight agency must review the system safety program plan and require the transit agency to update its system safety program plan as necessary.

On-site Safety Reviews
[49 CFR 659.37]

At least every three years, the oversight agency must conduct an on-site safety review of the transit agency's implementation of its system safety program plan. The oversight agency must prepare and issue a report containing findings and recommendations.

Investigations
[49 CFR 659.41]

The oversight agency must establish procedures to investigate accidents and unacceptable hazardous conditions. Unless the National Transportation Safety Board has investigated or will investigate an accident, the oversight agency must investigate accidents and hazardous conditions. Once a hazardous condition has been discovered, the oversight agency must require the transit agency to correct or eliminate it.

Reporting
[49 CFR 659.45]

Initial Submission

The oversight agency must submit to FTA the names and addresses of the transit agencies within its jurisdiction and a written description of the oversight program including a copy of the system safety program standard, procedures for reviewing and approving transit system safety program plans, investigatory procedures, and procedures for ensuring that appropriate corrective actions have been taken by the transit agency to correct, eliminate,

minimize or control investigated hazardous conditions.

Annual Submission

By January 1, the state oversight agency must submit to FTA a publicly available report summarizing its oversight activities for the past year.

Certification of Compliance
[49 CFR 659.49]

On January 1, and annually thereafter, the state oversight agency must verify to FTA that it has complied with the requirements of Part 659.

QUESTIONS FOR THE REVIEW

1. *Is the state aware that FTA has issued the final rule on State Safety Oversight for Rail Fixed Guideway System (Federal Register Vol. 60, No. 248, December 27, 1995)?*

EXPLANATION

FTA issued the final rule on State Rail Fixed Guideway Systems: State Safety Oversight in the Federal Register, Volume 60, No. 248, on December 27, 1995. This question is to determine whether the state is aware of and has obtained a copy of the final rule.

SOURCES OF INFORMATION

Discuss with the state on site.

DETERMINATION

This question is for informational purposes only and does not result in a finding.

SUGGESTED CORRECTIVE ACTION

No corrective action is required.

DOCUMENTATION

Indicate whether the state was aware of the final rule on state safety oversight for rail fixed guideway systems.

2. *What agency has (or will) the state designated with responsibility for*

overseeing the rail fixed guideway system's safety practices?

EXPLANATION

The state must designate an entity or entities to oversee the safety of the rail fixed guideway systems within the state that are not regulated by the Federal Railroad Administration. When the rail fixed guideway system operates only within a single state, the entity must be an agency of the state. When the fixed guideway system operates in more than one state, the affected The state may designate a single entity to oversee the system.

SOURCES OF INFORMATION

Discuss with the state on site.

DETERMINATION

No determination is made.

SUGGESTED CORRECTIVE ACTION

No corrective action is required.

DOCUMENTATION

Identify the oversight agency if one has been designated. If an agency has not yet been designated, note the status of the state's efforts to designate the oversight agency.

3. *What actions has the state taken to comply with the regulations?*

EXPLANATION

The oversight agency is responsible for developing a system safety program standard, reviewing and approving transit agency system safety program plans,

reviewing annual safety audit reports prepared by the transit agency, conducting safety reviews and preparing safety review findings, establishing investigation procedures, conducting investigations and reviewing corrective action plans, and preparing initial and annual submissions to FTA.

The oversight agency must certify to FTA that it has complied with the requirements of Part 659 and submit to FTA its initial report. This report must include:

- The name and address of the oversight agency;
- The name(s) and address (es) of the transit agency or agencies subject to the oversight agency's jurisdiction;
- A copy of the system safety program standard;
- The oversight agency's procedures for reviewing and approving the transit agency's system safety program plan;
- The oversight agency's investigatory procedures; and
- The oversight agency's procedures for ensuring that appropriate corrective actions have been taken by the transit agency to correct, eliminate, minimize, or control investigated hazardous conditions.

SOURCES OF INFORMATION

On site, discuss the actions the state has taken to comply with the regulations.

Examine any documentation that has been prepared by the state.

DETERMINATION

No determination is made.

SUGGESTED CORRECTIVE ACTION

No corrective action is required.

DOCUMENTATION

Note on the worksheets any steps the state has taken towards compliance with the regulations. If documentation has been prepared by the state, include a copy in the review file.