SUMMARY OF CHANGES

OVERALL CHANGES

Removed the guidance to eliminate questions (or note "not reviewed") if a specialty review has occurred or is scheduled.

Limited the discussion in the determination section to what leads to a deficiency. Much of the information that was noted as leading to "not deficient" is either captured in the reverse for leading to a deficiency or in the Explanation section.

Addition of subrecipient oversight to most areas. Sections 5316 and 5317 have increased the potential for subrecipients in many areas, in addition to historical subrecipients in the Sections 5307 and 5309 program activities.

Included useful web links in many sections.

Updated references to FY2010 Master Agreement, FY2010 Certifications and Assurances, and Office of Safety and Security (new URL).

1. LEGAL

Questions 1-4

- Added information on designations for Section 5316 and 5317
- Updated information on supplemental agreements to reflect TEAM-Web
- Added question on source of authority for the official from the designated recipient official who PINs the supplemental agreement

2. FINANCIAL

Funds Management

- Added Question 7 on grantee's internal financial management systems
- Added deficiency code for ineligible expenses charged to grant
- Clarified how to determine what is eligible for the capital costs of ADA complementary paratransit in small urbanized areas
- Added Question 12 on Section 5316 and 5317 administration costs
- Clarified what is eligible for local match
- Moved FSR (now FFR) question to Technical to accompany MPR/progress reports questions

Audits

- Added question on SF-SAC and other submittals to Question #13
- Added question on subrecipient A-133 audits

3. TECHNICAL

Grant Administration

- Added Section 5316 and 5317 progress reporting to Questions 2and 3
- Added Question 4 on new FFR
- Added Question 5 on Section 5316 and 5317 performance reporting
- Included additional grant management strategies and information to Question 6 on grant closeouts

Project Management

- Added Question 7 on ineligible services
- Added information on preventative maintenance force account plans to Question 8
- Revised Question 9 on leasing to reflect the new requirements of 5010.1D
- Revised Question 10 to focus on oversight of projects other than major capital projects covered by PMOCs
- Narrowed focus of Question 11 on oversight of contractors to oversight of service contractors

4. SATISFACTORY CONTINUING CONTROL

- Clarified requirements as they apply to states and subrecipients of states
- Separated questions regarding real property and equipment
- Added Question 8 on leasing equipment to private operators
- Added disposition of supplies to Question 10 regarding disposition of equipment
- Added Question 11 on use of insurance proceeds
- Clarified in Question 12 that the 20 percent spare ratio requirement only applies to urban fixed route service

5. MAINTENANCE

- Added subsection headers
- Separated discussion of maintenance of ADA accessibility equipment on vehicles and facilities
- Changed process so that ADA maintenance deficiencies appear in ADA
- Require written maintenance plans regardless of whether the grantee, contractor or subrecipient maintains the equipment

6. PROCUREMENT

- Updated question on written procedures to reference 4220.1F

- Incorporated selection procedures question into Question 6 on solicitation elements to align with 4220.1F
- Added more information on protest procedures in Question 8
- Added elements to be included in written record of procurement history into Question 10
- Added Question 16 on independent cost estimate
- Added Question 18 on responsibility determinations
- Added eligibility information to change order Question 19
- Added information from 4220.1F on sole source justifications (Question 21)
- Added question on evaluating option prices when exercising options (Question 23)
- Added information on crediting liquidated damages to the project in Question 26
- Updated Exhibits 6.1 and 6.2, deleted Exhibit 6.3 on bus testing and included reference to testing website

7. DBE

- Reorganized to ask questions on threshold first, allowing reviewer to skip questions that don't apply if threshold not met by grantee
- Eliminated question on financial institutions
- Revised Question 7 to focus on how good faith effort determinations are being made
- Added information to Question 8 for appropriate prompt return of retain options (also added prompt payment and return of retainage clause to procurement checklist)
- Separated monitoring question to ask how grantee is ensuring that first tiers (subrecipients and prime contractors) are monitored for their commitments (Question 9) and that DBEs are actually performing the work (Question 10)
- Added clarifications for TVM certifications (Question 11)
- Gave more instructions on what to look for in UCPs agreements and certifications (Questions 12 and 13)
- Added protests to complaints Question 14

8. BUY AMERICA

- Added Questions 2 and 6 regarding oversight
- Clarified in Question 3 that purchaser's requirements and FMVSS applies to purchases under $100,000

9. DEBARMENT AND SUSPENSION

- Added Question 2 on checking EPLS.gov
- Added within Question 2 information about principals, officers, etc. of the grantee as being covered by debarment and suspension also
- Added Question 4 on oversight

10. LOBBYING

No significant changes

11. PLANNING/POP

- Eliminated questions that are addressed during Planning Certification Reviews
- Clarified Sources of Information and Determination as these relate to MPO agreements that precede TEA-21 or SAFETEA-LU
- Expanded discussion of requirements for selection of Section 5316 and 5317 projects
- Eliminated question regarding oversight of Section 5316 and 5317 subrecipients

12. TITLE VI

- Added emphasis in Questions 4-7 for how (not if) a grantee's Title VI program is being implemented
- Added Question 9 on oversight
- Added emphasis in Questions 10-12 for how (not if) a grantee's Title VI program is being implemented

13. FARE INCREASES AND MAJOR SERVICE REDUCTIONS

- Clarified that grantees must solicit public comment for all fare increases, not just changes in the basic fare structure
- Added Question 3 on oversight

14. HALF-FARE

- Clarified that half fare requirements apply to fixed routes services for which the grantee has not defined peak hours
- Clarified that peak hours can be seasonal
- Added Question 5 on oversight

15. ADA

- Added subsection headers
- Added questions regarding oversight
- Added Question 6 regarding use of accessible buses for contracted fixed route service
- Added questions to Question 7 regarding equivalent service
- Added explanatory information to Question 9 regarding accessibility requirements of modified facilities
- Added questions to Question 11 relating to lift and securement use

- Separated questions regarding maintenance of accessibility features from question regarding maintenance of lifts and ramps
- Added questions 18-21 regarding commuter service, university service and deviated fixed route service
- Added questions on conditional eligibility and service for appeals not decided within 30 days to Question 22 regarding the eligibility process
- Added clarifying information on fares to Question 23
- Added questions to Question 32 regarding a no-show policy

16. CHARTER BUS

- Consolidated questions regarding provision of charter service into one question
- Clarified that service exempt from the regulation is not charter service
- Add Question 5 regarding oversight

17. SCHOOL BUS

Added oversight Questions 3 and 4

18. NATIONAL TRANSIT DATABASE

- Deleted questions on timely submissions
- Added information on “complete” reporting in Question 2
- Added information on subrecipient reporting to Question 3
- Deleted declaration and auditor’s statement questions
- Added Question 4 on passenger mile data

19. SAFETY AND SECURITY

Added information on FTA’s Bus Safety Website

20. DRUG FREE WORKPLACE

No substantive changes

21. DRUG AND ALCOHOL PROGRAM

- Added clarifying information and references for applicability for off duty police officers to Question 2
- Revised Question 7 on post accident testing to address only conducting this testing under FTA authority in appropriate instances
- Added information in Question 10 on MIS reports requiring FTA funded ferry operations to submit reports
- Added Question 12 on oversight of private operators

22. EQUAL EMPLOYMENT OPPORTUNITY

- Added clarifying information on meeting goals in Question 4
- Added subrecipient threshold Question 5

23. ITS ARCHITECTURE

Added Question 2 on project scope changes for ITS projects and related systems engineering analysis

24. ARRA

- Added the review area
- Added question to ensure listing of 100 percent Federal share for property/equipment purchased with ARRA funds

WORKBOOK

FY2010 Triennial Review Workshops

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

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INTRODUCTION

BACKGROUND

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

The review currently examines 24 areas. In addition to helping evaluate grantees, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements and aids FTA in reporting to the Secretary, Congress, other oversight agencies, and the transit community on the Urbanized Area Formula Program.

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

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

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

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

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

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

Beginning with the reviews for FY2001, FTA also added questions in the Safety and Security area for which a finding of advisory comment is made. Beginning in FY2010, FTA added questions in the ARRA area.

This workbook provides an overview of FTA requirements. It does not replace FTA guidance. If there are any conflicts between this and other FTA guidance, the FTA guidance takes precedence. For additional details, refer to the statutes, regulations, or FTA circulars cited in the "Reference" sections. This workbook is not a substitute for these primary reference documents, but is a portable summary for the grantees' use. Grantees should periodically consult FTA's website (http://www.fta.dot.gov) for the most recent policies and directives.

REVIEW SCOPE

The triennial review is a comprehensive review of compliance with FTA requirements that is conducted of Section 5307 grantees at least every three years. Even though the review is conducted of Section 5307 grantees, it addresses all FTA programs for which the grantee is the direct recipient of funds, including Sections 5307, 5309, 5316, and 5317 and American Recovery and Reinvestment Act (ARRA). It addresses the implementation by the grantee and the grantee's oversight of, subrecipients, operations contractors, or lessees who perform activities that are subject to Federal requirements covered by the triennial review.

TRIENNIAL REVIEW PROCESS

The triennial review involves the following major steps:

- Conduct the desk review
- Schedule the site visit
- Prepare the review package for regional office distribution to the grantee
- Contact the grantee
- Review grantee input and begin preparation of the draft report
- Finalize site visit schedule
- Conduct the site visit
- Prepare the final report
- Finalize review package and source documents
- Provide technical assistance
- Close out corrective actions

Conduct the desk review. The desk review provides an opportunity to review information systems such as TEAM-Web, NTD and the internet, gather documents on file in the regional office and to discuss specific issues with the regional staff. The reviewers begin to complete the triennial review package at this time. Information available in the regional office varies with the size and complexity of the grantee, but in general, the reviewers can access:

- TEAM-Web data to obtain information on open grants, including budgets, balances remaining, disbursement activity, financial status and progress reports and Certifications and Assurances
- Civil rights files
- Audit reports, if available, including any pertinent Government Accountability Office (GAO) or Office of Inspector General (OIG) audits
- Planning files, including key documents and results of the most recent planning certification review
- Complaints regarding civil rights, charter bus service, school bus service, etc.
- Project management oversight quarterly reports for major capital projects
- Buy America waiver requests
- Prior triennial review reports, findings, and files
- Other oversight reports and findings (Financial Management Oversight reports, Procurement System Reviews, etc.).

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

Schedule the site visit. During the desk review, a contractor or regional staff member contacts the grantee to identify a convenient date for the site visit. Typically. the site visit takes about one and one-half to two days for a small to mid-sized grantee, and several days for a larger, multi-modal grantee.

Prepare the review package. The review team prepares a package for the region to mail and email to the grantee giving detailed information about the site visit. The package includes a cover letter, preliminary site visit schedule, information regarding the grantee profile, a list of documents required for the review, and the questions that remain to be answered. The site visit schedule addresses the order in which the review areas will be covered and the time of day at which the topics will be addressed.

The cover letter is signed by the Regional Administrator or the Director of the Office of Operations and Program Management. It is typically addressed to the chief executive officer with a carbon copy to the grantee's triennial review point of contact. The package is sent to the regional office at least eight to 10 weeks prior to the site visit to allow time for the regional office to send the package and the grantee to gather the requested documentation, prepare written answers to the questions, and send the materials to the review team.

The list of documents assigns each item to one of two catagories: information that should be sent to the review team leader in advance of the site visit and documents that the grantee should have available on site. The documents requested in advance are due four to six weeks prior to the site visit. Grantees are encouraged to submit the requested information electronically (e.g., on CD or flash drive) whenever possible. Grantees are requested to complete the review package, i.e., provide written answers to the questions, four to six weeks prior to the site visit.

Contact the grantee. The grantee is contacted seven to 14 days after the regional office sends the review package. This contact serves several purposes. It is a courtesy for the reviewer to introduce the team before arriving at the grantee's office. The reviewer can confirm that the agenda package arrived and ask the

grantee if there are any questions about the items to be reviewed. The reviewers also can remind the grantee to send the materials and written answers to the questions by the due date. The reviewers can obtain directions to the grantee's office and get advice on other necessary logistics, such as software compatability and printer availability for printing the draft report.

Review grantee input and prepare draft report. The reviewer will examine the materials and written answers to the questions that the grantee submits. After completing this step, the reviewer will notify the grantee if any items require follow-up before the site visit. This may be necessary if the grantee did not submit all of the requested information and/or did not provide complete answers to the questions. After all the input provided by the grantee is reviewed, the reviewer will prepare as much of the draft report as possible.

Finalize site visit schedule. The reviewer will finalize the site visit schedule and a list of grantee/contractor facilities and subrecipients to be visited after reviewing the grantee's input. Reviewers will not visit a Section 5316 or 5317 subrecipient unless the subrecipient also receives other FTA funds. Any areas that do not require follow-up will be closed during the site visit. The reviewer will Indicate to the grantee which ECHO draws, procurements, equipment and facilities have been selected for examination during the site visit. The reviewer will email the review package with the final schedule and follow-up items to the grantee at least seven days before the site visit date.

Conduct the site visit. The following procedures will be conducted during the site visit:

- Conduct entrance conference. The site visit begins with an entrance conference with management and staff. The entrance conference consists of a reiteration of the purpose of the review, a discussion of the findings of the desk review, and a summary of the steps in the preparation of the draft and final reports. Regional office staff participate in the entrance conference either in person or by telephone. While senior staff is assembed at the entrance conference, the reviewer will go over the schedule for the site visit and confirm the expected time for the exit conference.

- Review each area. Following the entrance conference, the reviewer discusses the outstanding questions in each review area. At the end of the questioning, the reviewer may invite further questions from other members of the team. When the review of an area is complete, the reviewer will move on to the next area.

- Visit facilities and inspect records. The reviewer should have selected the grantee/contractor facilities to be visited in advance of the site visit. The reviewer will verify that facilities and equipment are in transit use, observe the condition of the facility and equipment, review preventive maintenance records for a sample of FTA funded revenue vehicles and facilities, and verify that the grantee has equipment control procedures. If the contractor administers FTA funded procurements on the grantee's behalf, contractor procurement files also will be reviewed.

- Visit subrecipients and inspect records. The reviewer should have selected the subrecipient(s) to be visited in advance of the site visit. The reviewer will verify that facilities and equipment are in transit use, observe the condition of the facility and equipment, review preventive maintenance records for a sample of FTA funded revenue vehicles and facilities, verify that the grantee has equipment control procedures, review procurement files and other documentation to confirm that the grantee has effective and comprehensive oversight procedures.

- Complete the draft report and transmittal letter. At the end of the review but prior to the exit conference, reviewers will ask the grantee for answers to any remaining questions not yet resolved. Grantees may close deficiencies during the site visit. Deficiencies closed before an agreed upon deadline before the exit conference do not appear in the report, but will be documented in the review package.

- Receive input from regional staff. Reviewers will confer separately with regional staff about the findings in each area. Usually, the regional staff member on site will review the draft report and may sign a transmittal letter if one is to be issued. If no regional staff members are present at the site visit, the draft report and the transmittal letter is e-mailed to the region for approval before the exit conference.

- Conduct exit conference. The site visit concludes with an exit conference. The regional office staff participate in the exit conference either in person or by telephone. The reviewer will discuss each deficiency and the timeframe for corrective actions, review of the draft report (seven calendar days from the exit conference) and issuance of the final report (30 calendar days from the exit conference). Grantees should limit comments to corrections of misstatement of fact and a confirmation of or a request for an extension of the deadlines for the corrective actions.

Corrective actions completed within the seven days will appear as closed the final report.

Distribute the draft report to program offices. As soon as possible after issuing the draft report, the reviewer will distribute the draft report to the designated contact in headquarters for deficiencies in the following areas:

- Financial
- Procurement
- DBE
- Title VI
- ADA
- Charter Bus
- Safety and Security (all reports)
- Drug and Alcohol Program
- EEO

Prepare the final report. The grantee has seven calendar days to review the draft report and provide comments to the region and the reviewer. The regions have another seven calendar days to prepare comments for the review team. Within 14 calendar days of the site visit, the regional office should submit all comments on the draft report to the reviewer. If the grantee submits documentation to close a deficiency; the documentation will be reviewed and a course of action will be recommended to the regional office. Deficiencies closed within the seven days appear in the final report as closed. Any requests for additional time for a corrective action require approval by the regional office. The reviewers finalize the report within 21 calendar days of the site visit and transmit the final report file and cover letter to the region. Typically, the cover letter will be addressed to the chief executive officer. The regional office will issue the final report to the grantee within 30 days after the site visit.

Finalize the review package and files. Once the final report is issued, the review package is finalized and submitted to the regional office along with any files.

Provide technical assistance. Reviewers can provide technical assistance to the grantees to close deficiencies on an “as needed” basis for up to 90 days after the site visit. The triennial review contractor’s project manager, with input from the reviewers, will coordinate with the regional staff to identify follow-up technical assistance needs and the timeframe.

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

REVIEW PACKAGE, SOURCES OF DOCUMENTS, AND FILES

The triennial review package aids reviewers in the organization and completion of the work assignment and provides support for the findings made during the review. Packages are completed by reviewers electronically. The package should include the name of the reviewer, the dates that the site visit was conducted, and the sources of the information used to develop findings and conclusions. The package should include citations of documents found in the regional office and in the grantee’s files. Although the grantee will be entering information into the package prior to the site visit, it is the reviewer’s responsibility to vet this information so that it provides an accurate record of the review.

Supporting documents that are provided by the grantee in advance of the site visit or made available on site are organized into a folder for each area. The following table lists suggested documents by review area. The actual file contents will vary, depending on the size and complexity of the grantee.

File Name	Applicable Contents
1. Legal	- Authorizing Resolution - Delegation of Authority
2. Financial	- Capital and Operating Budget - Financial Statements for the Past Three Years - Three to Five Year Capital and Operating Financial Plan - List of ECHO Drawdowns examined - Audit reports with findings related to the grantee
3. Technical	- Organization Chart - Grant Management Procedures - Grant Close-Out Schedule - Cost-effectiveness Evaluation for Capital Leases
4. Satisfactory Continuing Control	- Sample of property leases - Excess Real Property Inventory/Utilization Plan - Sample of property records of federally funded equipment - Proof of inventory and inventory reconciliation
5. Maintenance	- Maintenance plans - Sample of maintenance requirements for contracted services (e.g., contracts and/or RFPs) - List of buses and rail cars for the PM inspection sample
6. Procurement	- Procurement policies - List of FTA procurements
7. DBE	- Proof of UCP Agreement - DBE complaints

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

When submitting electronic files, grantees should create a folder for each review area, place all files for that area in the folder, and name the files according to the list of documents in the package. The following example shows the naming convention that should be used when organizing electronic files:

Example: Folder/File Naming Convention

Review Area/ Document	Folder/File Name
2. Financial	2_Financial
a. Capital and Operating Budget for the Current Fiscal Year	2a_FY10 Budget.doc
b. Financial Statements for the Past Three Years	2b1_FY09 FinStmts.doc
	2b2_FY08 FinStmts.doc
	2b3_FY07 FinStmts.doc
c. Three to Five Year Capital and Operating Financial Plan	2c_Financial Plan.doc

If a particular file is relevant to more than one area, either create a shortcut to that file or include a duplicate. Give the shortcut a name that corresponds to the list of documents in the site visit package as shown in the example above.

FRAUD DETECTION AND REPORTING

The Office of Inspector General (OIG) of the United States Department of Transportation works within the Department of Transportation to promote effectiveness and head off, or stop waste, fraud and abuse in departmental programs. This is done through audits and investigations. OIG also consults with the Congress about programs in progress and proposed new laws and regulations.

If a reviewer detects or becomes aware of fraudulent activities involving FTA grant funds during a triennial review, he or she will contact the FTA as soon as possible.

1. LEGAL

BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. ***Designation of Recipient/ Supplemental Agreements***
2. ***Source of Authority***
3. ***Annual List of Certifications and Assurances***
4. ***Changes in Law and Litigation Affecting Recipient Status***

REFERENCE

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307
2. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions"
3. FTA Master Agreement
4. Annual List of Certifications and Assurances
5. FTA Team-Web

QUESTIONS FOR THE REVIEW

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

EXPLANATION

By law, funding for the Section 5307 program is provided to the "designated recipient" as defined by 49 USC 5307(a)(2).

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

The designations remain in effect until amended or rescinded.

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

- For areas with a population of 200,000 or more, concurrence by the Governor or agent with authority delegated by the Governor; concurrence of publicly owned operators of mass transportation in the area; certified resolution of the officials authorized to establish policy for the MPO concurring in the designation; and an opinion of counsel.
- For areas with a population under 200,000, a letter from the Governor to FTA and an opinion of counsel.

For Section 5316 and 5317 funds, the requirements for designating a recipient for areas with a population of 200,000 or more are the same as those for Section 5307. For areas with a population under 200,000, the state is the designated recipient.

If the grantee is not a designated recipient of Section 5307 funds, the designated recipient PINs the supplemental agreement in FTA's Transportation Electronic Award and Management web-based system (TEAM-Web) before the grantee can execute the grant.

REFERENCE

49 USC 5307(a)(2)
49 USC 5316(a)(3)
49 USC 5317(a)(1)
FTA C 9030.1C, Ch. II
FTA C 9045.1, Ch. III
FTA C 9050.1, Ch. III
FTA TEAM-Web

SOURCES OF INFORMATION

The desk review will confirm the selection of the designated recipient. TEAM-Web will be reviewed to ensure that a supplemental agreement has been PINned for Section 5307 grants if the grantee is not the designated recipient.

DETERMINATION

If the grantee is not a designated recipient and there is no supplemental agreement, it is deficient.

If a supplemental agreement has not been PINned for an applicable grant, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to obtain designated recipient status, or obtain an appointment as the Governor's designee, or enter into a supplemental agreement with the designated recipient.

2. *What is the definition and source of the authority of officials acting on behalf of the grantee? Of the designated recipient? Is the authority properly delegated and executed?*

EXPLANATION

Officials acting on behalf of the grantee and the designated recipient must have appropriate authority as required by state or local law or by the grantee's governing body. The authority must be delegated properly by an authorized official of the agency. For example, authority must be properly delegated to the official who PINs in TEAM-Web. If the grantee is not a designated recipient of Section 5307 funds, an authorized official of the designated recipient must PIN the supplemental agreement in TEAM-Web before the grantee can execute the grant.

REFERENCE

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

SOURCES OF INFORMATION

The Designation of Signature Authority for the Transportation Electronic Award & Management Process form will be reviewed. Provide documentation indicating the source of authority of officials acting on behalf of the grantee and designated recipient. The source of authority may be

state or local laws, an authorizing resolution, or by-laws. If applicable, TEAM-Web will be reviewed to determine the identity of the official that PINned the supplemental agreement for the most recent Section 5307 grant awarded to a direct recipient.

DETERMINATION

If the grantee cannot demonstrate that the person acting on behalf of the grantee has the authority to act on its behalf, it is deficient. If the official who PINned the supplemental agreement on behalf of the designated recipient is not authorized to act on behalf of the designated recipient, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to provide sufficient authority for the appropriate individual(s) to take official actions on its behalf. The grantee will be directed to work with the designated recipient to ensure that the official who PINs the supplemental agreement is authorized to do so.

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

EXPLANATION

The certifications and assurances required of FTA grantees are compiled in a single record published annually in the *Federal Register*, either before or in conjunction with the publication of FTA's annual apportionment notice. Once each year, a grant applicant or a grantee with open grants must file the certifications and assurances. FTA expects the grantee to record its certifications and assurances in TEAM-Web and provide the appropriate electronic signatures. Should it become necessary for the grant applicant to provide paper certifications and assurances, the *Federal Register* notice includes a signature page that may be signed by the grant applicant's authorized official and its attorney and submitted to the appropriate regional office.

The grantee must make the requisite certifications and assurances by: 1) selecting, from a list provided, those certifications and assurances that will apply to all grants for the fiscal year; 2) PINning in TEAM-Web or submitting the signature page signed by the authorized representative and by the legal counsel; and 3) submitting properly signed certifications and assurances on time.

Certifications and assurances are due with the first grant application in the fiscal year or within 90 days from the date of the publication of the notice in the *Federal Register*, whichever comes first. The Fiscal Year 2010 certifications and assurances were published October 19, 2009.

They require two signatures or electronic PINs: one from an authorized official and another from an attorney. The individual signing or PINning the certifications and assurances must have the authority to do so. If the attorney does not PIN in TEAM-Web, he or she must sign a hard copy of the affirmation and the grantee must maintain the hard copy in the file.

REFERENCE

49 USC 5307(d)(1)
FTA C 9030.1C, Ch. V and Appendix G
Annual List of Certifications and Assurances

SOURCES OF INFORMATION

TEAM-Web will be reviewed to ensure that the grantee has submitted the Annual List of Certifications and Assurances on time. The Designation of Signature Authority for the Transportation Electronic Award & Management Process form will be reviewed . If the attorney has not PINned directly in TEAM-Web, provide a hard copy of the signed affirmations for certifications and assurances submitted since the last review.

DETERMINATION

If someone other than an authorized individual has PINned on behalf of the grantee, the grantee is deficient.

The grantee is deficient if it has not submitted the annual certifications and assurances or has submitted them late.

The grantee is deficient if the attorney has not affirmed the legal authority of the grantee either by PINing in TEAM-Web or signing a hard copy of the certifications and assurances.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to either properly delegate the authority, develop procedures to submit the annual certifications and assurances on time, develop procedures to ensure that the attorney affirms the grantee's legal status, and/or submit corrected certifications and assurances for the current year.

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

EXPLANATION

The grantee is required to notify the regional counsel of any change in local or state law and/or pending

litigation that may significantly affect the grantee's ability to perform the projects in accordance with the terms of the Master Agreement.

REFERENCE

FTA Master Agreement, Sections 2.g. and 54.a.

SOURCES OF INFORMATION

The reviewer will determine if the grantee has notified the regional counsel of any changes in local or state laws and/or litigation in a timely manner. This type of notification may be in the form of a letter or an e-mail correspondence. Authorizing legislation will be reviewed to determine whether the grantee's legal status has changed or will change.

DETERMINATION

The grantee is deficient if it has not notified FTA of changes in local or state laws.

The grantee is deficient if it has not notified FTA of pending litigation that may significantly affect the grantee's ability to perform the projects in accordance with the terms of the Master Agreement.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit the applicable information in writing to the regional counsel and to develop a process to ensure timely notification in the future.

2. FINANCIAL

BASIC REQUIREMENT

The grantee must demonstrate the ability to match and manage FTA grant funds, cover cost increases and operating deficits, financially maintain and operate FTA funded facilities and equipment, and conduct and respond to applicable audits.

AREAS TO BE EXAMINED

1. ***Financial Capacity***
   a. Documentation of financial condition
   b. Multi-year financial plan
   c. Operating and capital budgets

2. ***Funds Management***
   a. Financial management systems
   b. ECHO process
   c. Operating assistance calculation
   d. Indirect costs
   e. Capital cost of ADA paratransit operations
   f. Program administration costs

3. ***Audits/Oversight Reports***
   a. Annual Single Audits
   b. OIG/GAO Audits
   c. Internal/State/Local Audits

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws

2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. FTA Circular 5010.1D, "Grant Management Requirements"

4. FTA Circular 7008.1A, "Financial Capacity Policy"

5. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions"

6. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"

7. OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"

8. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations"

9. FTA Master Agreement

10. Single Audit Act Amendment of 1996

USEFUL WEB LINKS

Guidance for Transit Financial Plans

Flexible Funds: FHWA and FTA Programs

ECHO Web User Manual for FTA and FAA Grantees

Federal Audit Clearinghouse

QUESTIONS FOR THE REVIEW

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

EXPLANATION
FMOs and FCAs are oversight mechanisms of FTA. Even if such a review is scheduled for the current fiscal year or has been recently conducted, all questions in this section are still asked. If a review has been recently conducted, obtain a copy of the most recent report (draft or final) for input into the triennial review.

REFERENCE
None

SOURCES OF INFORMATION
Review OTrak. During the desk review, discuss with the regional office and obtain any FMO or FCA reports.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part A. Financial Capacity

2. *What are the grantee's sources of non-FTA funding for operating and capital expenses?*

3. *Is there any pending legislation or "sunset" provision in existing legislation that could affect the grantee's sources of state or local funding or financial capacity?*

4. *In the next few years, does the grantee anticipate any significant changes in the levels of local funding for transit, the sources of local funding for transit, or the current transit service levels?*

5. *Does the grantee have a financial plan that projects revenue and expenses for the next three to five years?*

6. *Has the grantee had unfunded operating or capital deficits or liabilities? If so, what are the amounts, nature, and forecast of these deficits/liabilities?*

EXPLANATION
Grantees should make capital investment plans on the basis of current and projected capability to maintain and operate current assets, and to operate and maintain new assets. Grantees should have adequate financial capacity to provide at least the same level of service, for at least one replacement cycle of such assets or 20 years, as appropriate.

Grantees generally have three basic sources of local funding: a perpetual or permanent local tax (e.g., a sales tax, income tax, or property tax); a limited or "sunset" source of funding that expires at some future date; and/or annual appropriations from local, regional, and state governments. FTA does not require a dedicated funding source. A grantee's financial condition, future financial capacity, and ability to match FTA funds could be affected greatly if one of its sources of non-FTA funding is impacted by pending legislation or "sunset" provisions in current legislation.

Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves, and the present status of depreciation accounts. Grantees shall have multi-year financial plans (three to five years) that project operating and capital revenues and expenses. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects. Revenue sources must be stable and reliable enough to meet future capital and operating costs. Any sign of major decreases in service levels or operations must be explained. If grantees are involved in a New Starts project, the financial plan must have a 20-year horizon.

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

the transportation improvement program (TIP), and/or adequately maintain and operate FTA-funded assets at the current level of service.

REFERENCE
49 USC 5307(d)(1)(a)
FTA Circular 7008.1A
FTA Master Agreement, Section 5
FTA Circular 5010.1D, Ch. VI, Section 4

SOURCES OF INFORMATION
Annual audit reports, budgets, local or state legislation, multi-year financial plans, National Transit Database (NTD) reports, and the TIP for information on local funding sources will be reviewed. Other information may include: description concerning projected grant activity, the current year's budget, including capital and operating expenses, and multi-year financial projections for financial condition and capacity. The grantee also will be asked about pending legislation or "sunset" provisions in current legislation.

DETERMINATION
If local sources of revenue are not sufficient, the grantee is deficient. If there is pending legislation that could impact local funding sources negatively, the grantee may be deficient, depending on its ability to continue to provide local match for Federal funding or to maintain FTA funded assets. Where the source of local funding is dependent upon an election, action by local governmental body, or other event, a determination may need to await such an event.

If the grantee does not have a multi-year financial plan, it is deficient.

SUGGESTED CORRECTIVE ACTION
If the grantee has a "sunset" provision in current local funding legislation or if there is pending legislation that will affect local funding negatively, the grantee will be directed to submit a plan for responding to the change in financial circumstances.

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

If a grantee does not have a multi-year financial plan, the grantee will be directed to develop one.

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

Part B. Funds Management

7. *Do the grantee's financial management systems enable it to track grant balances accurately? Are there any discrepancies between TEAM-Web and grantee grant balances?*

EXPLANATION
The grantee's financial management systems must meet standards for financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management. The systems must enable the grantee to track grant balances, request drawdowns of Federal funds, report financial data to FTA in Federal financial reports (FFR), and close out grants.

Some grantees have not effectively tracked grant activity, particularly for older grants. In some cases, a grantee's grant balances may not reconcile with those in TEAM-Web. Discrepancies in grant balances have delayed grant close outs.

Direct access to TEAM-Web may help the grantee improve the tracking of grant balances. Both the grantee's program and accounting staffs should have TEAM-Web access. Frequent reconciling of internal grant balances with those in TEAM-Web helps the grantee to identify and address any discrepancies quickly and prevent discrepancies from delaying grant close outs.

REFERENCE
49 CFR 18.20
FTA C 5010.1D, Ch. VI

SOURCES OF INFORMATION
Reviewers will discuss the grantee's financial management systems and grant accounting with regional office staff. The regional office may know when a grantee's grant balances differ through review of FFRs and processing of ECHO rejections. TEAM-Web current grant balances will also be reviewed and discussed with staff on-site.

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and implement a plan to reconcile the differences between the balances in TEAM-Web and its accounting system and to identify and correct the procedures that allow differences to develop. The grantee also must submit the plan to the FTA regional office.

8. *What is the process for receiving and disbursing FTA funds? Do records support ECHO requests and the disbursement of funds? Are draw requests signed by an authorized official other than the individual who requests the payment? Are funds disbursed within three business days of receipt?*

EXPLANATION

Grantees request Federal funds through the U.S Department of Treasury Electronic Clearinghouse Operation (ECHO). The grantee's records must support ECHO requests. The information should be traced back to an invoice for goods or services or timesheets, and be supported by information from the grantee's accounting system. Either the individual who is the registered ECHO approving official or a person to whom this person has delegated the authority in writing must approve each ECHO request. The approving official must not draw the funds.

The grantee may initiate draws only when cash is needed for immediate reimbursement and must disburse the funds within three business days. Note that disbursement means that the grantee no longer controls the money (e.g., a check has been sent to a vendor). If the funds are not disbursed within three business days, for non-state grantees FTA can charge interest beginning on day four. In most cases, grantees request funds on a reimbursement basis (after expenses have been incurred and paid). In some cases (e.g., large bus procurements), grantees request funds prior to issuing a check. This procedure is acceptable as long as the funds are disbursed within three business days.

Grantees may only request funds for expenses that are eligible under the grant. For example, a grant project for preventive maintenance entitles a grantee to draw funds for 80 percent of the preventive maintenance expenses accrued at the time the draw is conducted. FTA defines preventive maintenance expenses as all maintenance expenses (i.e., those items that meet the NTD definition of maintenance expenses). Fuel is not an eligible preventive maintenance expense. Similarly, funds in a grant project to purchase vehicles may not be used to purchase bus shelters.

REFERENCE

49 CFR 18.21
FTA Master Agreement, Section 9.b
FTA C 5010.1D, Ch. VI, Section 9

SOURCES OF INFORMATION

A sample of ECHO draws will be reviewed to ensure that documentation supports the draws, an authorized official approved the draw, and funds are disbursed within three business days. In cases where FTA funds were requested in advance of payment to a vendor or contractor, checks must be mailed within three business days. The approving official should not be the person who draws the funds. Reviewers will ensure that the approving official printed on the ECHO payment request form approves the draw or has delegated that authority in writing to the person who approves the draw. Reviewers also will ensure that the purpose of the draw is eligible under the grant and check to ensure that indirect costs are charged at the current rate, if applicable. The annual financial audit will be examined to see if there are ECHO process findings.

DETERMINATION

If the grantee does not maintain documentation adequate to support the ECHO draws, it is deficient.

If the grantee held FTA funds for four or more business days after FTA funds were received, it is deficient. If the grantee drew more funds than were allowed, it is deficient. If such situations have occurred but corrective actions have been implemented, the grantee is not deficient. However, if the grantee has repeated instances of requesting incorrect amounts through ECHO, it is deficient.

If funds were drawn down for expenses not eligible under the grant, the grantee is deficient.

If an authorized official does not approve the ECHO draws, the grantee is deficient. If the approving official draws the funds, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop procedures for documenting ECHO draws. In certain cases, the regional office may require the grantee to submit ECHO requests to them for prior approval until further notice. The grantee will be directed to work with the regional office to reimburse the Federal Treasury if interest is owed. The grantee will be directed to submit a process documenting that an authorized official approves each ECHO request. The grantee may need to update the authorizing official in ECHO or have the authorizing official delegate authority to the person approving the requests. Procedures must ensure that someone other than the approving official request ECHO funds.

9. *Does the grantee receive Section 5307, 5316 or 5317 operating assistance? If yes, is the amount eligible for operating assistance calculated appropriately?*

EXPLANATION

Section 5307 operating assistance is available to grantees in urbanized areas with populations under 200,000. Section 5316 and 5317 operating assistance is available to all urbanized areas. It is the responsibility of the grantee to calculate net eligible operating costs properly. The amount of funds requested for operating assistance must be no more than half the operating expenses, after fare revenues are credited and ineligible costs (such as costs for charter, school bus, sightseeing service, and lobbying activities) are deducted to arrive at the net project cost. FTA C 9030.1C Appendix D provides a worksheet for calculating eligible operating expenses. Note that interest charges on long term debt are considered eligible operating expenses, with certain limitations as described in FTA C 9030.1C Appendix H. However, payments to principal are considered ineligible expenses.

The FTA share of any operating assistance project shall not exceed the lesser of: a) the local match, b) the currently available apportionment to the urbanized area plus any carryover funds available from past years, or c) 50 percent of the net project cost incurred on an accrual basis in the provision of transit services during the period. The remainder must be paid for through the grantee's local share. SAFETEA-LU permits the use of the following as local share: cash (or in-kind contribution), non-Federal funds, contract revenue from state or local social service organizations or private social service organizations, non-farebox revenues from transit operations (e.g., advertising and concession revenues), real property integral to the project, and toll credits. Additionally, for Sections 5310, 5311, 5316 and 5317, non-DOT Federal funds, such as block grant, Title III and Medicaid funds can be used for local match if authorized by the originating program to be used for transportation. For all FTA programs, service agreements funded with Section 5310 funds cannot be used as local match as they are derived from a DOT program.

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

REFERENCE

FTA C 9030.1C, Appendices D and H
FTA C 9040.1F, Ch. III Section 3.d

SOURCES OF INFORMATION

Detailed operating budgets for the past three years showing operating expenses eligible for operating assistance funding will be reviewed. During the site visit, the reviewer will discuss how the amount eligible for operating assistance is calculated.

DETERMINATION

If the documentation is lacking or shows ineligible project costs included in the calculation of operating expenses, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop procedures to calculate net eligible project costs for operating assistance funds properly. If an inappropriate payment or an overpayment of operating assistance has occurred, the grantee will be directed to work with the FTA regional office for reimbursement.

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

EXPLANATION

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

- The grantee has made a change in its accounting system, thereby affecting the previously approved cost allocation plan/indirect cost rate and its basis of application.
- The grantee's proposed cost allocation plan/ indirect cost rate exceeds the amounts approved previously by more than 20 percent (e.g. if the previously approved rate is 10 percent, approval is needed once the rate exceeds 12 percent).
- The grantee changes the cost allocation plan/indirect cost rate proposal methodology.

REFERENCE
49 CFR 18.3
OMB C A-87
FTA C 5010.1D, Ch. VI, Section 6, and Appendix E

SOURCES OF INFORMATION
During the desk review, the reviewer will determine if the grantee has an FTA approved cost allocation plan. The A-133 annual audit may include information regarding the proper implementation of a cost allocation plan. The FFRs in TEAM-Web will be reviewed to see if the grantee has indicated whether it is charging indirect costs to the grant.

DETERMINATION
If the grantee has not taken action with regard to an audit finding relating to the cost allocation plan, it is deficient. If the grantee has not submitted an implemented or changed cost allocation plan to FTA or the cognizant agency for approval, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to change the administration of its program to correct any deficiencies and to obtain cognizant agency approval of the cost allocation plan.

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

EXPLANATION
TEA-21 expanded the definition of an eligible capital project to include the operating cost of ADA complementary paratransit service, under certain limitations. The 80/20 federal/local funding ratio is applicable for such projects as long as the grantee is in compliance with ADA requirements. Capital projects can include the provision of non-fixed-route paratransit transportation services in accordance with Section 223 of the ADA Act of 1990 for amounts not to exceed 10 percent of the annual Section 5307 or 5311 apportionment. Costs associated with non-ADA paratransit are not eligible for this funding option. For urbanized areas with more than one grantee, the MPO is responsible for working with operators to allocate the 10 percent of the area's apportionment that may be used for ADA paratransit purposes. For the Section 5307 governor's apportionment and Section 5311 funds, the state is responsible for allocating the 10 percent of the state's apportionment that may be used for ADA paratransit purposes.

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

REFERENCE
FTA C 9030.1C, Ch. III, Section 4.d

SOURCES OF INFORMATION
Grant budgets in TEAM-Web will be examined by the reviewer and the amount used for the capital cost of operating ADA complementary paratransit (FPC 08) will be compared to the annual apportionments.

DETERMINATION
If the grantee is classifying more than 10 percent of total annual apportionment funds as paratransit service expenditures, it is deficient.

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

12. *If the grantee is the designated recipient of Section 5316 and 5317 funds, is it using no more than 10 percent of the apportionment of funds for administration?*

EXPLANATION
Up to 10 percent of the grantee's total Section 5316 and 5317 apportionments may be used as the Federal share of program administration costs (FPC 06). Program administration costs may be funded at 100 percent Federal share. Program administrative costs cover the costs incurred by the grantee in implementing and managing the entire Section 5316 and 5317 programs, including previously funded projects. Administrative funds are not specific to one grant; they may pay the ongoing administrative costs of previous projects. Grantees may exceed the ceiling in a year if it has unused administrative funds from prior years. Carryover funds must be within their period of availability (year of apportionment plus two). Program administrative costs may include, but are not limited to, general administrative and overhead costs, staff salaries, office supplies, development of specifications for vehicles and equipment, and support for coordinated planning and competitive selection requirements.

REFERENCE
FTA C 9050.1, Ch. III, Section 10
FTA C 9045.1, Ch. III, Section 10

SOURCES OF INFORMATION
The Section 5316 and 5317 apportionments will be reviewed for the past three years. Programs of projects and budgets in TEAM-Web will be reviewed to determine the amount of Section 5316 and 5317 funds programmed for administration. For each of the last three years, the percentage of the Section 5316 and 5317 apportionments programmed for administration will be calculated.

DETERMINATION
If the grantee has spent more than 10 percent of the total Section 5316 or 5317 apportionment on administration costs, it is deficient.

SUGGESTED CORRECTIVE ACTION
For active grants, the grantee will be directed to adjust the amount of funds used for administration to within the 10 percent limit.

Part C. Audits

13. *Have annual single audits been conducted? Are there any unresolved audit issues relating to FTA programs? Has the grantee submitted the single audit reporting form (SF-SAC) and, if there are findings related to the FTA programs, the relevant sections of the single audit report and the management letter comments to FTA?*

EXPLANATION
Non-federal entities that expend $500,000 or more in Federal awards in a year are required to have annual audits in accordance with OMB Circular A-133. In the case of independent transit authorities, the audit will cover all aspects of that authority. Where the transit provider is a municipal department or part of a larger governmental organization, the audit may cover the entire organization, including the Federal funds used for transit.

The grantee must resolve independent audit findings promptly.

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

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

Audit reports are to be issued within the earlier of 30 days after receipt of the auditor's reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant agency.

REFERENCE
49 CFR 18.26
FTA C 5010.1D, Ch. VI, Section 8
Dear Colleague Letter, C-05-04, June 17, 2004
Single Audit Act Amendment of 1996

SOURCES OF INFORMATION
Reviewers will examine OTrak for information on A-133 audits and findings under its reporting function as well as audit reports or the Clearinghouse transmittal sheets that may be available at the regional office. If the reports or Clearinghouse forms are not available, these will be requested of the grantee prior to the site visit. If there are findings related to FTA programs, the audits and management letter comments must be available for review.

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

DETERMINATION
If the grantee has not had single audits conducted in accordance with OMB C A-133, it is deficient.

If the grantee has not submitted its audit reports or clearinghouse transmittal sheets to the regional office, it is deficient.

If the grantee has not taken appropriate action to resolve audit issues promptly, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to conduct annual single audits in accordance with OMB C A-133. The grantee will be directed to submit single audits, management letter comments and/or SF-SACs to the FTA regional office. The grantee must submit a schedule for resolving single audit findings and procedures for resolving the findings to the FTA regional office.

14. *Does the grantee ensure that single audits of subrecipients are conducted and findings resolved?*

EXPLANATION
The grantee is responsible for ensuring that subrecipients that expend $500,000 or more in Federal awards in a year have annual independent audits conducted in accordance with OMB C A-133. Items purchased by the grantee for a subrecipient count towards a subrecipient's single audit threshold. Single audits are an eligible grant expense only if the subrecipient meets the threshold. Financial audits are an eligible grant expense. The grantee must ensure that subrecipients resolve audit findings related to the FTA funded program and advise FTA of problems in the resolution of audit findings.

REFERENCE
49 CFR 18.26
Single Audit Act Amendment of 1996

SOURCES OF INFORMATION
The project/state management plan will be examined to identify the grantee's process for obtaining and reviewing audits and monitoring the resolution of findings related to the FTA funded program. On site, the process will be discussed with the grantee. Documentation of the subrecipients' single audit activities will be examined for those subrecipients visited during the site visit.

DETERMINATION
If the grantee does not obtain subrecipients' audits, it is deficient. If the grantee does not review audits and ensure that subrecipients resolve audit findings related to the FTA funded program, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee must submit to FTA procedures for reviewing subrecipients' single audits and monitoring and tracking the resolution of audit findings.

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

EXPLANATION
The GAO and OIG periodically conduct independent audits. Audits may be of a grantee, but often are programmatic audits addressing a national issue (e.g., spare ratios, extended warranties) where the grantee may have had a specific part of its operation audited. Audit findings should be resolved within one year.

REFERENCE
None

SOURCES OF INFORMATION
During the desk review, the reviewer will examine available GAO and OIG audits. If the documents are not available in the regional offices, copies will be requested from the grantee prior to the site visit. The reviewer will determine if proper follow-up actions have been taken to resolve findings.

DETERMINATION
If the grantee has not taken appropriate action to resolve GAO or OIG audit issues, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to resolve outstanding audit issues and submit evidence of resolution to the FTA regional office.

16. *Since the last review, have any internal, state or local governmental reviews or audits covered the grantee's transit program? If yes, were any findings related to FTA program requirements resolved?*

EXPLANATION
In addition to the external audits, some transit organizations and other forms of local or state government have internal auditors. Also, as most states provide transit assistance, the state may conduct audits or performance reviews of grantees. These audits may address FTA requirements.

REFERENCE
None

SOURCES OF INFORMATION
A list of reports will be requested before the site visit to determine if any of the reports address FTA requirements. During the site visit, the reviewer will discuss specific findings with the internal auditor or other staff.

DETERMINATION
If the grantee has not taken appropriate action to resolve internal, state, or local audit issues related to FTA requirements promptly, it is deficient.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to resolve open audit issues. These findings may relate to other sections of the triennial review.

3. TECHNICAL

BASIC REQUIREMENT

The grantee must be able to implement the FTA-funded projects in accordance with the grant application, Master Agreement, and all applicable laws and regulations, using sound management practices.

AREAS TO BE EXAMINED

1. ***Grant Reporting and Administration***
2. ***Section 5316 and 5317 Performance Reporting***
3. ***Eligible Grant Activities***
4. ***Force Account Activities***
5. ***Capital Leasing***
6. ***Technical Oversight of Capital Projects***
7. ***Oversight***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 49 CFR Part 639, "Capital Leases"
4. FTA Circular 5010.1D, "Grant Management Requirements"
5. FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects"
6. FTA Master Agreement

USEFUL WEBLINKS

Section 5316 Frequently Asked Questions

Section 5317 Frequently Asked Questions

Section 5316 and 5317 Performance Reporting

Construction Project Management Handbook

Project and Construction Management Guidelines (2003 Update)

Project Management Oversight Lessons Learned

Quality Assurance and Quality Control Guidelines

Handbook for Purchasing a Small Transit Vehicle

QUESTIONS FOR THE REVIEW

Part A: Grant Administration

1. *Who is responsible for grant administration?*

2. *Are Milestone/Progress Reports submitted for each open Section 5307 and 5309 grant at the required intervals (quarterly or annually) and on time? If the grantee is a designated recipient of Section 5316 or 5317 funds, are annual program status reports for each open grant submitted by October 31?*

3. *Do reports contain all required information?*

EXPLANATION

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

Milestone/Progress Reports (MPRs) are the primary written communication between Section 5307 and 5309 grantees and FTA, with regular progress reported up to four times a year. Grantees in small urbanized areas (i.e., populations less than 200,000) are required to submit MPRs annually, no later than 30 days after the end of the federal fiscal year (i.e., October 30). However, FTA, at its discretion, can require quarterly reporting. For Section 5309 grants that include facility construction projects, the reports are due quarterly. Grantees in large urbanized areas (i.e., populations of 200,000 or more) are required to submit MPRs 30 days after the end of each quarter. Quarters are based on the Federal fiscal year, beginning October 1. These reports should be submitted electronically using TEAM-Web.

The Common Rule (49 CFR Part 18) and FTA C 5010.1D detail the information that, at a minimum, must be included in these reports. Reports must include:

a) Current status of each open ALI within the active/executed grant
b) A narrative description of projects, status, problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and contract awards
c) Detailed discussion of all budget or schedule changes
d) The dates of expected or actual requests for bid, delivery, etc
e) Actual completion dates for completed milestones
f) Revised estimated completion dates when original estimated completion dates are not met accompanied by:
   - Explanation of why scheduled milestones or completion dates were not met
   - Identification of problem areas
   - Narrative on how the problems will be solved
g) Discussion of the expected impacts and the efforts to recover from the delays
h) Analysis of significant project cost variances using quantitative measures, such as hours worked, sections completed, or units delivered. Discussion of completion and acceptance of equipment and construction or other work, together with a breakout of the costs incurred and those costs required to complete the project.
i) A list of all outstanding claims exceeding $100,000, and all claims settled during the reporting period accompanied by a brief description, estimated costs, and the reasons for the claims
j) A list and brief description of all potential and executed change orders and amounts exceeding $100,000, pending or settled, during the reporting period
k) A list of claims or litigation involving third party contracts and potential third party contracts that:
   - Have a value exceeding $100,000
   - Involve a controversial matter, irrespective of amount
   - Involve a highly publicized matter, irrespective of amount
l) A list of all real property acquisition actions, including just compensation, property(s) under litigation, administrative settlements, and condemnation for each parcel during the reporting period
m) An annual transit enhancements report (4th quarter only) for designated recipients in urbanized areas of 200,000 or more who receive funds under Section 5307

If a grant includes only operating assistance, the reporting requirement is limited to the estimated and actual date when funding has been expended.

A grantee in an urbanized area with a population of at least 200,000 must submit a certification that it 1) will expend not less than one percent of the amount the

recipient receives each fiscal year under Section 5307 for transit enhancements, and 2) will submit with its 4th quarter MPR an annual report listing projects carried out in the preceding fiscal year with those funds. Where there is more than one Section 5307 grantee, an agreement can be reached among some or all of the grantees to certify that no less than one percent of Section 5307 funds apportioned by FTA to that urbanized area among those grantees will be used for transit enhancements. One recipient would then submit the report with the list of transit enhancement projects implemented by those grantees. The report must include:

- name of grantee(s) expending the enhancement funds,
- UZA name and number,
- FTA project number(s),
- transit enhancement category or categories for which enhancement funds were obligated,
- brief description of enhancement by Federal fiscal year of funding and progress towards project implementation,
- activity line item codes from the approved budget(s), and
- amount awarded by FTA for the enhancement.

Designated recipients of Section 5316 and 5317 funds must submit, in TEAM-Web, an annual program status report for each open Section 5316 and 5317 grant covering the 12 month period ending September 30. The reports must be submitted by October 31. Reports must include:

- updated program of projects for each active grant that contains active projects reflecting revised project descriptions, changes in projects from one category to another, and adjustments within budget categories,
- revised milestones for activity line items (ALIs) that require milestones with grant submission (vehicle procurements and construction projects) and, for revised estimated completion dates, an explanation for the revision,
- budget revisions for changes in line item budgets,
- significant civil rights compliance issues, and
- additional information requested by the regional office.

REFERENCE

49 CFR 18.40
FTA C 5010.1D, Ch. II, Section 3 and Ch. III, Section 3
FTA C 9045.1, Ch. VI, Section 16
FTC C 9050.1, Ch. VI, Section 16

SOURCES OF INFORMATION

Recently submitted reports in TEAM-Web will be reviewed to determine if they are submitted on time and include the required information. During the site visit, the grantee's procedures for grant administration and review will be discussed.

DETERMINATION

If the grantee's reports are consistently late, the grantee is deficient.

A grantee is deficient if it submits the reports on time but does not include sufficient detail about schedule delays or omits other required information.

SUGGESTED CORRECTIVE ACTION

If progress reports have not been submitted, the grantee will be directed to submit the delinquent report(s). If the reports are consistently late, the grantee will be directed to implement procedures for submitting reports on time. Where narrative is lacking in a progress report, the grantee will be directed to include missing narrative information in future reports, including the next one. The procedures will be submitted to the FTA regional office.

4. *Are Federal Financial Reports (FFR) submitted for each open grant at the required intervals (quarterly or annually) and on time? Is the form completed correctly for the following items:*

a. *Cash on Hand–if there is a positive balance reported, has the grantee included remarks?*

b. *Unliquidated Obligations–is this reported correctly?*

c. *Indirect Expense–if indirect costs are being charged to the grant, has the grantee completed this section of the FFR?*

EXPLANATION

Federal Financial Reports (FFR), or Financial Status Reports (FSR) for periods prior to October 1, 2009, accompany MPRs and program status reports. The FFR reports on the use of project funds using standard Office of Management Budget (OMB) forms. As with the MPRs, public transportation providers in small urbanized areas (i.e., populations less than 200,000) are required to submit FFRs annually, no later than 30 days after the end of the Federal fiscal year (i.e., October 30). However, FTA, at its discretion, can require quarterly reporting. For Section 5309 grants that include facility construction projects, the reports are due 30 days after the end of each

quarter. Public transportation providers in large urbanized areas (i.e., populations of 200,000 or more) are required to submit FFRs 30 days after the end of each quarter. Quarters are based on the Federal fiscal year, beginning October 1. These reports should be submitted electronically using TEAM-Web.

Effective October 1, 2009, the FSR was replaced by the FFR. The Office of Management and Budget instituted the change in order to consolidate the two most common financial reports, the FSR or SF–269/SF–269A, and the Federal Cash Transaction Report (FCTR or SF– 272/SF–272A), into a single form, SF-425. Beginning with the first quarter reports due January 2010, grantees will be entering "cash on hand" information into the FFR in TEAM-Web. This amount is derived by subtracting cumulative cash disbursements from cumulative cash receipts (separate entries on lines a and b, respectively, on the form). Unlike other entries, the amounts on these lines are reported on a cash, not an accrual, basis. The cash on hand amount should reflect immediate cash needs. If there is a positive balance of cash on hand, FTA requires an explanation describing why drawdowns were made early or other reasons for the excess cash, if any.

Unliquidated obligations are funding commitments that have been incurred, but for which outlays have not yet been recorded because goods and services have not been received. Examples of these are: a signed contract for bus purchases for which delivery of vehicles has not yet occurred, a contract for construction services not rendered, open purchase orders, contract retentions, and unexpended portions of signed subrecipient agreements. These types of unliquidated obligations should be accounted for on the FFR.

If indirect expenses are being charged to the grant, information on the rate and the amounts charged during the reporting period are to be entered on the FFR. The information should include the type of rate (whether it is provisional, predetermined, final or fixed), the rate being charged during the reporting period, the base amount to which the rate was applied, the indirect costs charged during the reporting period and the Federal share amount of the indirect costs charged.

REFERENCE
49 CFR 18.41
SF-425

SOURCES OF INFORMATION
FFRs will be reviewed in TEAM-Web to see if they are submitted timely at the required intervals. The reviewer will check to see if cash on hand, unliquidated obligations and indirect expense entries are completed as applicable. If there is a balance on the Cash on Hand line, an adequate explanation needs to be provided in the remarks section. If unliquidated obligations are not reported, progress reports will be reviewed to determine if they should be. The grantee may be asked how it defines unliquidated obligations. If the grantee charges indirect costs to grants, the rates and amounts must be entered into the FFR.

DETERMINATION
If the grantee is not submitting FFRs for each open grant or is not submitting the reports timely at the intervals required it is deficient.

If the grantee is not reporting cash on hand, or if there is an unexplained balance, the grantee is deficient. If the grantee is not reporting unliquidated obligations correctly, it is deficient. If the grantee is not entering indirect expense information correctly, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
If FFRs have not been submitted, the grantee will be directed to submit the delinquent report(s). If FFRs are consistently late, the grantee will be directed to implement procedures for submitting reports on time. Where information is missing, the grantee will be directed to include missing information in future reports, including the next one. The grantee must submit the procedures to the FTA regional office.

5. *Have designated and direct recipients of Section 5316 and 5317 funds with active projects during Federal fiscal years 2007 and 2008 submitted the performance report by August 7, 2009?*

EXPLANATION
Designated and direct recipients with active Section 5316 and/or 5317 projects, that is, projects that were "on the street" during Federal fiscal years 2007 or 2008, were required to report on their activities and the activities of their subrecipients, regardless of the grant year(s) of the funds. If recipients did not have active Section 5316 and/or 5317 services during those time periods, they were not required to report during this reporting cycle. Designated recipients could report information on behalf of their subrecipients or forward the reporting portal to their subrecipients to allow them to enter information themselves. Direct recipients of funds transferred from a designated recipient should have reported on their own behalf. Reports should have been submitted via FTA's JARC and New Freedom Report Support Center by August 7, 2009.

REFERENCE
FTC C 9050.1, Ch. VI, Section 16

FTA C 9045.1, Ch. VI, Section 16
JARC and New Freedom Report Support Center

SOURCES OF INFORMATION
The JARC and New Freedom Report Support Center lists information on recipients whose Section 5316 or 5317 grant status suggests that they may have active 5316 or 5317 services in FFY 2007/2008. Reviewers may discuss those services with the grantee during the site visit.

DETERMINATION
If the grantee did not report on its activities and the activities of subrecipients for FYs 2007 and 2008, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop a procedure for reporting active Section 5316 and 5317 projects.

6. *What procedures are followed to ensure that projects are completed and grants closed in a timely manner? What is the status of all open grants? Are any grants ready for closeout?*

EXPLANATION
FTA expects projects to be completed within a reasonable, specified time frame. For Section 5307 and 5309 projects, a good "rule of thumb" is to complete the project within the period of availability. Section 5307 funds are available the year of apportionment plus three. Section 5309 funds used for bus projects or new starts are available the year of apportionment plus two. Section 5309 formula funds (fixed guideway modernization) are available the year of apportionment plus three. For large, complicated construction projects, completing the project and closing the grant within the period of availability may not be feasible. Section 5316 and 5317 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.

The grantee should initiate closeout with FTA within 90 days after all work activities for a POP are completed. A final FSR, a final budget, and, for Section 5316 and 5317 grants, a revised POP are required at the time of closeout. It is not necessary to wait for the single audit before closing out a grant.

Sometimes a project may not require the amount of funds originally requested and obligated and therefore funds may remain after the project is completed. The grantee may reprogram remaining funds to other projects. However, it should not excessively prolong the life of the grant. Frequently, grantees allow small balances in completed projects to delay project closeout. The grantee should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects.

Examples of good grant management practices include:

- Spend oldest funds first for on-going expenses (state administration (Financial Purpose Code (FPC) 6), operating assistance (FPC 4), ADA complementary paratransit (FPC 8), and preventive maintenance (FPC 0)).
- Charge program administration funds to generic accounts instead of directly to grants.
- Tie third-party contracts to projects, not grants.
- Set project time limits (less than 2 years).
- Add new projects to older grants with available funds.
- Transfer small remaining balances to new line items.
- Deobligate project balances and reapply for funds (within period of availability).
- Regularly reconcile grant balances with those in TEAM-Web to the financial purpose code (FPC) level.
- When a project is funded out of multiple grants, develop a grant drawdown plan.
- When a project is funded out of multiple grants, charge retainage to the newest grant (and report it as an unliquidated obligation) to enable the closing of older grants.

FTA is placing a priority on closing out grants for which activity has ceased. Grants that have been inactive for a substantial length of time (more than six months) also should be closed unless the grantee has a good explanation, and activity is likely to resume soon. Grant inactivity may be a result of delays in project implementation or lack of resources. If a grant has been delayed for a substantial period of time and the grantee does not have a reasonable explanation, FTA may determine that the grant should be closed and the funds deobligated. Occasionally, a project may be delayed indefinitely because of factors beyond the grantee's control. If there is no realistic chance of a project's going forward, FTA will deobligate the grant funds and make them available for other projects that are ready to proceed.

REFERENCE
49 CFR 18.50
FTA C 5010.1D, Ch. III, Section 5
FTA C 9050.1, Ch. III, Section 7
FTA C 9045.1, Ch. III, Section 7
FTA C 9030.1C, Ch. I, Section 4
FTA C 9300.1B, Ch. III, Section 2, Ch. IV Section 3, Ch. V Section 2

SOURCES OF INFORMATION
Policies and procedures for documentation of grant administration and closeout processes will be reviewed. For on-going expenses such as operating assistance and preventive maintenance, the reviewer will determine whether the grantee draws from the oldest funds first. MPRs and program status reports in TEAM-Web are reviewed to identify major delays in projects. The reviewer may request a schedule for closing all open grants.

The reviewer will discuss grant administration procedures, the status of each open grant, reasons why older funds were not spent first, any significant delays in project completion, the reasons for such delays, recovery plans, and project close dates on site. Grantees should be able to identify remaining project activities and the projected dates for project completion and grant closeout.

DETERMINATION
If the grantee has inactive grants or projects are temporarily delayed, determine if the grants should be closed. If there are open grants that should be closed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to either revise the grant budgets so that funds can be spent and drawn or deobligate and close the grants. The grantee will be directed to submit to the FTA regional office procedures for spending older funds first, tracking projects, identifying project balances, reprogramming the unused project funds to other projects, and closing out the projects.

Part B: Project Management

7. *Does the service supported with FTA operating and capital assistance meet the definition of "public transportation?" Are ineligible activities incidental to the delivery of public transportation?*

EXPLANATION
FTA defines public transportation as transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include sightseeing, school bus, charter or intercity bus transportation or intercity passenger and intercity rail transportation provided by AMTRAK. Intercity bus services are eligible under Section 5311(f) and intercity bus stations and terminals are eligible under Section 5309 as part of a joint development project. A grantee may not use FTA operating assistance to support ineligible activities. A grantee may use FTA-funded equipment and facilities to support incidental activities that do not detract from the provision of public transportation. Unless required by regulation, classes of people, including residents of an area, cannot be given preferential treatment for service.

REFERENCE
49 USC 5302(a)(10)
FTA C 9030.1C, Ch. I, Section 2
FTA C 9300.1B, Ch. I, Section 5 and Ch. III, Section 4.
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION
The grantee's marketing materials may be reviewed and discussed during the site visit.

DETERMINATION
If the grantee uses FTA operating assistance to support ineligible services or if incidental use of FTA-funded equipment or facilities detracts from public transportation service, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to cease using FTA operating assistance to support ineligible services, and work with the regional office to determine if the grantee owes FTA funds back or if draws need to be recalculated. The grantee will be directed to implement controls to ensure that the incidental service does not interfere with the provision of public transportation. The grantee will be directed to lift restrictions on access to public transportation service.

8. *Is the grantee's or a subrecipient's work force used in the execution of capital grant projects? If yes:*

a. *If the force account work equals $10,000,000 or more, was a force account plan and justification submitted to FTA?*

b. *Is a plan on file for force account work of $100,000 or more but less than $10,000,000?*

EXPLANATION
Work performed by the grantee's work force, other than grant administration, that is included in an approved grant is "force account" work. Force account work may consist of design, construction, refurbishment, and inspection, and construction management activities. Incremental labor costs from flagging protection, service diversions or other activities directly related to a capital grant may also be defined as force account work. Force account work does not include grant or project administration

activities which are otherwise direct project costs. Force account can include major capital project work on rolling stock. An example is preventative maintenance activities.

Reimbursement of force account work is subject to a grantee's providing the force account plan and justification, including documentation equivalent to a sole source justification, stating the basis for a determination that no private sector contractor has the expertise to perform the work. Reimbursement of such expenses is subject to FTA's prior review of the grantee's force account plan and justification when the total estimated cost of force account work under the grant equals $10,000,000 or more. Justification may be on the basis of cost, exclusive expertise, safety and efficiency of operations, or union agreement. Reimbursement for force account projects below this threshold must be supported by a force account plan and justification, which are to be retained in the grantee's files. No plan or justification is required if the force account work to be performed under the grant is less than $100,000. Note that the amount of the project funded under a grant, not the total cost of the project, is used when determining whether the threshold is met for a force account plan.

To develop a force account plan for preventive maintenance activities, the grantee should add a budget and justification to its maintenance plan and update the plan annually. (Overall maintenance plan contents are discussed in Section 5. Maintenance.)

The grantee must ensure that subrecipients that have force account work of $100,000 or more under a grant have on file a force account plan and justification.

REFERENCE
FTA Master Agreement, Section 15.h
FTA C 5010.1D, Ch. IV, Section 4.d

SOURCES OF INFORMATION
Individual grant files for force account plans for work that equals $10,000,000 or more will be reviewed. Grantees should have force account plans available for work below this threshold but equal to or exceeding $100,000.

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and submit to the FTA regional office a force account plan and justification as detailed in FTA Circular 5010.1D for use of its own workforce on capital improvement projects. The grantee needs to ensure that subrecipients develop force account plans.

9. *During the review period, did the grantee use FTA capital assistance to finance the lease of any transit facilities or equipment? If yes, did the grantee submit the cost-effectiveness determination for FTA review prior to entering into the lease?*

EXPLANATION
A lease may qualify for capital assistance if it meets the following criteria:

- The capital asset to be acquired by lease is eligible for capital assistance
- There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect; and
- Leasing the capital asset is more cost-effective than purchase or construction of the asset.

Grantees shall obtain FTA review of the cost-effectiveness determination prior to entering into any capital lease. Grantees should refer to the guidance in OMB Circular A-94 and obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit.

REFERENCE
OMB Circular A-94
49 CFR 639
FTA C 5010.1D, Ch. IV, Section 3.j

SOURCES OF INFORMATION
The reviewer will determine if the grantee uses FTA funds to finance the lease of capital items and if the grantee submitted the cost-effectiveness evaluation for prior FTA review. Projects in TEAM-Web may be discussed with the grantee during the site visit.

DETERMINATION
The grantee is deficient if it did not submit the cost-effectiveness evaluation for prior FTA review.

SUGGESTED CORRECTIVE ACTION
The regional office will determine deficiencies related to capital leasing. The grantee may be required to conduct a cost-effectiveness comparison if one is not on file, but FTA will determine if corrective action is possible or if Federal participation in the project must be withdrawn.

10. *How does the grantee ensure adequate technical oversight of capital projects such as construction, rolling stock and technology projects?*

EXPLANATION

The grantee must have a mechanism to ensure continuous management of grant projects. Grantees are required to have a formal Project Management Plan (PMP) for all major capital projects. A major capital project is a project that: involves the construction, extension, rehabilitation, or modernization of a fixed guideway or New Starts project with a total project cost in excess of $100 million or the Administrator determines it to be a major capital project based on criteria in 49 CFR Part 633.

Grantees with smaller capital projects, such as construction projects, rolling stock procurements, and technology projects, should have a mechanism for technical oversight of the project. Regular meetings between the project manager and contractor(s) should be held to review project status. Even though not required, some grantees have project management plans, especially for construction projects.

Many grantees that do not have the technical expertise or internal resources to manage large projects hire an architectural/engineering (A/E) or other consultant to serve as project manager or provide technical oversight. A grantee that is a county or city may rely on the county or city engineer to manage a construction project. The transit system's own maintenance and operations directors typically oversee the inspection and acceptance of rolling stock, sometimes with consultant support. A grantee's information technology (IT) department may oversee technology projects, also sometimes with consultant support.

If project delays are the result of inadequate actions by the grantee or failure in performance by a contractor, there may be deficiencies in the grantee's technical oversight of projects. When delays are due to poor performance by contractors, examine how the grantee managed the delay and tried to improve performance by the contractor. Note that delays are not unusual in major construction and technology projects. For construction projects, land acquisition, zoning changes, environmental studies, weather, and other factors not under the complete control of the grantee may cause the delay.

FTA has published guidance manuals to assist grantees with project management:

- Construction Project Management Handbook
- Project and Construction Management Guidelines (2003 Update)
- Project Management Oversight Lessons Learned
- Quality Assurance and Quality Control Guidelines
- Handbook for Purchasing a Small Transit Vehicle

REFERENCE

49 USC Section 5327
FTA C 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4
FTA C 5800.1

SOURCES OF INFORMATION

Reviewers will check MPRs for discussions of delays and may ask for copies of project management plans and quality control procedures, if written. The grantee may be asked to describe its quality control procedures for construction projects, revenue rolling stock procurements, and technology projects. If the grantee contracts for such services, the scope of services of these contracts along with progress reports from the contractors may be reviewed.

DETERMINATION

The grantee is deficient if there is evidence that capital projects have proceeded without proper quality control procedures.

If the grantee has continuing problems with project delays, the grantee is deficient. This is especially true if the organizational structure and actions of the grantee contribute to the problem.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office project management procedures for existing or future projects to address deficiencies identified.

11. *How does the grantee monitor subrecipients, service contractors, and/or lessees to ensure compliance with FTA requirements?*

EXPLANATION

Many FTA requirements flow through the grantee to subrecipients, service contractors and lessees. The grantee is responsible for ensuring that these entities are aware of the FTA requirements and for ensuring that they comply with these requirements. Before expending any FTA funds on projects, the grantee certifies to FTA that it and others operating on its behalf (e.g., subrecipients, contractors and lessees) have met all statutory and program requirements. The grantee must have sufficient documentation to support the certifications to FTA.

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

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

- applications/requests for proposals
- monthly, quarterly or annual reports
- meetings
- site visits
- vehicle/facility inspections

Once an issue is discovered, FTA expects the grantee to follow up with the subrecipient, service contractor or lessee to ensure that corrective action is taken.

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

Large grantees may have written procedures for oversight of subrecipients, contractors, or lessees. Smaller grantees may have informal oversight mechanisms, such as periodic meetings. FTA expects grantees with a significant number of subrecipients, service contractors and/or lessees to have formal oversight mechanisms.

REFERENCE

49 CFR 18.37 and 18.40
FTA Master Agreement, Section 2.e
FTA C 5010.1D, Ch. II, Section 3

SOURCES OF INFORMATION

Sample subrecipient agreements, service contracts and leases, monthly, quarterly or annual reports and site visit checklists may be reviewed. Sample follow-up letters regarding compliance issues may also be reviewed and the grantee's procedures may be discussed.

DETERMINATION

If the grantee does not have in place appropriate systems for monitoring compliance with a broad range of requirements or is not applying the resources required to carry out an effective monitoring program, it is deficient. The grantee could be found deficient in its monitoring of a specific area but compliant under Technical. Similarly, it could be found deficient under Technical, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop procedures and assign staff to monitor other entities with responsibility for meeting FTA requirements and submit the procedures and staffing plan to the FTA regional office.

4. SATISFACTORY CONTINUING CONTROL

BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. *Real Property*

a. Incidental use
b. Excess real property
c. Dispositions

2. *Equipment*

a. Equipment records
b. Biennial physical inventory and reconciliation
c. Property control system
d. Control of FTA funded, contractor-operated equipment
e. Disposition
f. Insurance proceeds
g. Fixed route bus spare ratio
h. Contingency fleet
i. Rail fleet management plan

REFERENCE

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307

2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. FTA Circular 5010.1D, "Grant Management Requirements"

4. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions"

5. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"

6. FTA Master Agreement

APPLICABILITY

Under 49 CFR 18.32(b), a state will use, manage and dispose of equipment acquired under a grant by the state in accordance with state laws and procedures. Therefore, grantees that are a state or receive FTA funds as a subrecipient to a state follow state, not FTA equipment management procedures. If a triennial review is of a grantee that is a state agency, questions 4, 5, 6, 9 and 10 are not asked. Instead, the reviewer will ask the state to detail its procedures for maintaining satisfactory continuing control of FTA funded equipment and determine if the procedures are adequate to protect the FTA interest.

QUESTIONS FOR THE REVIEW

Part A: Real Property

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

EXPLANATION

Incidental use is defined as the authorized use of real property (and equipment) acquired with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Such use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project assets. FTA encourages grantees to make incidental use of real property when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. Examples of incidental use include the leasing of space in a station for a newspaper stand or coffee shop and the lease of air rights over transit facilities. (Note that licenses and leases of air rights are treated as incidental uses, not disposition of excess property.)

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

Unless constructed with Section 5311(f) funds, use of an intermodal terminal by an intercity bus operator is treated as incidental use, and the operator must pay rent to the grantee. The grantee is permitted to charge a nominal rent (e.g., $1.00). If grantees wish to charge more than a nominal amount, they may do so, up to fair market rates. The grantee should select the carriers afforded below market rents on the basis of a competitive selection process. The income from the incidental use may be applied to transit expenses, or the grantee may use the deduction method to reduce the FTA and grantee contributions of a capital project.

REFERENCE

49 CFR 18.25 (g)
49 CFR 18.31
FTA Master Agreement, Section 19
FTA C 5010.1D, Ch. I, Section 5.hh and Ch. IV, Section 2.i
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

During the desk review, the review will examine grantee files or TEAM-Web for correspondence regarding incidental use. Reviewers will also examine a sample lease agreement to ensure that it enables the grantee to maintain continuing control of the property. During the site visit, if incidental use of project property is observed, the grantee will be asked to provide documentation that FTA approved the incidental use. Budgets or financial reports will be reviewed to ensure that proceeds are used to support the transit program.

DETERMINATION

If FTA did not approve the incidental use, the grantee is deficient. If the incidental use interferes with transit purposes or the grantee otherwise does not maintain control, the grantee is deficient. If the grantee does not use revenues for transit purposes, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to obtain FTA approval for any incidental use and implement procedures for continuing control. The grantee must cease incidental uses that interfere with transit purposes. Revenues must be applied towards transit purposes.

2. *Since the last review, did the grantee notify FTA when real property was removed from the service originally intended at grant approval or when property was put to additional or substitute uses? Does the grantee or a subrecipient have any excess FTA funded real property? If yes, is there an excess real property inventory and utilization plan? Has the plan been updated, if necessary?*

3. *Since the last review, did the grantee or a subrecipient dispose of any FTA*

funded real property? If yes, did FTA provide prior concurrence in the method of disposition of real property? Was FTA reimbursed for its share of disposition proceeds, if required?

EXPLANATION
Grantees are required to notify FTA when property is removed from the service originally intended at grant approval and if property is put to additional or substitute uses. If FTA funded real property is no longer needed for any transit purpose, grantees are required to prepare or update an excess real property utilization plan. The grantee's plan should identify and explain the reason for excess property. FTA C 5010.1D describes that the inventory list should include such things as: property location; summary of any conditions on the title, original acquisition cost and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed. Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan should be retained by the grantee and made available upon request and during an FTA review.

The Common Rule (49 CFR Part 18), Master Agreement, and FTA C 5010.1D have requirements for removing assets from transit service. Grantees must request FTA instructions on proper procedures for disposition of real property. Depending on the approved method of disposition, the grantee may be required to reimburse FTA.

REFERENCE
49 CFR 18.31
Master Agreement, Section 19
FTA C 5010.1D, Ch. IV, Section 2.j

SOURCES OF INFORMATION
During the desk review, grant files for notification of change of use of real property and excess property utilization plans are examined. The reviewer will check previous review files for any unresolved issues. The reviewer will ask the grantee to provide a list of real property removed from the service originally intended or put to additional or substitute uses since the last review, and to provide excess property utilization plans and documentation of disposition of FTA funded property.

DETERMINATION
If the grantee did not notify FTA when real property was removed from the service originally intended or when property was put to additional or substitute uses, it is deficient. If the grantee or a subrecipient has excess real property and has not prepared a written plan for disposing of it or if the plan does not include all the elements required by FTA C 5010.1D, it is deficient. If the plan identifies disposition of real property or other actions that the grantee has not completed, the grantee is deficient.

If the grantee did not obtain prior FTA approval for the method of disposition of FTA funded property or did not reimburse FTA for its share of disposition proceeds, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to inform FTA of real property that has been removed from service or put to additional or substitute uses without prior FTA approval. The grantee must prepare a written excess real property utilization plan or implement the existing plan.

Part B: Equipment

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

EXPLANATION
FTA defines equipment as all tangible, nonexpendable, personal property that has a service life of more than one year and an acquisition and installation cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition includes at least all equipment defined above. A grantee must keep records of FTA funded equipment that include the following required information:

- description
- I.D. number
- acquisition date
- cost
- Federal percentage
- grant number
- location
- use and condition
- disposition action
- vested title
- useful life (for equipment placed in service on or after November 1, 2008)

It is strongly recommended, but not required, that grantees update their property records to include useful life for items put into service prior to the above date. A grantee's records must include equipment purchased or used by subrecipients.

Many grantees have computerized databases for property records. It is acceptable if no single report

shows all the required data as long as the grantee can demonstrate that the records are complete.

REFERENCE
49 CFR 18.32
FTA C 5010.1D, Ch. IV, Section 3.k

SOURCES OF INFORMATION
The reviewer will examine the grantee's written or computerized property records. Information on useful life may be included in grantee depreciation schedules or in other fixed asset accounting records.

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to update its records with the required information.

5. *Did the grantee conduct a physical inventory of FTA funded equipment in the past two years? Were the results of the inventory reconciled to equipment records?*

6. *What is the grantee's control system to prevent loss, damage or theft of FTA funded property? Does the grantee investigate and document any loss, damage or theft of FTA funded property?*

7. *How does the grantee maintain control of FTA funded contractor, lessee or subrecipient operated equipment?*

8. *Does the grantee lease FTA assets to private operators? If yes, was prior concurrence from FTA obtained? Do the leases include the required provisions?*

EXPLANATION
The Common Rule (49 CFR Part 18) and FTA C 5010.1D require grantees to conduct a physical inventory of equipment and to reconcile the results to equipment records at least once every two years. The grantee must have a control system to prevent loss, damage, or theft of property. Typically, grantees tag all FTA funded equipment with a property control number, but other systems can be used such as serial numbers or vehicle identification numbers. Tags are not required. Other procedures include secure storage and surveillance systems. Any loss, damage, or theft must be investigated and documented by the grantee.

FTA requires grantees to exercise control over FTA funded property leased by contractors, subrecipients and others and to ensure that they are used for general public transportation. The requirements for a biennial physical inventory and other control measures also apply to equipment that is leased or provided to a service contractor, lessee or subrecipient. Other potential control measures include vehicle use certifications, vehicle use reports, retention of or liens on titles, insurance requirements and site visits.

With prior written concurrence, FTA allows grantees to lease FTA funded assets to private operators. When FTA funded property is leased to a private operator, the lease should include the following provisions:

- A requirement for the lessee to operate the project property to serve the best interest and welfare of the grantee and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
- A requirement for the lessee to maintain project property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project equipment.
- A cross reference to a service agreement. A default under the lease is a default under the service agreement and vice versa.

REFERENCE
49 CFR 18.32
FTA C 5010.1D, Ch. II, Section 3 and Ch. IV, Sections 3.j(i) and 3.k
49 CFR Part 18

SOURCES OF INFORMATION
The grantee's records will be reviewed for evidence that the biennial inventory was completed and inventory results were reconciled to equipment records. The annual financial audit reports and any internal audit reports may also be reviewed to determine if any discrepancies have been identified. Financial reports will show any changes in the book value of property and may reflect adjustments for missing equipment. The grantee will be asked to describe and demonstrate the safeguards that are in place to prevent loss, damage, or theft. Review documentation of control over contractor, lessee and

subrecipient operated equipment. The reviewer will examine a lease of an FTA funded asset to a private operator to ensure that it includes the required provisions.

DETERMINATION

The grantee is deficient if it has not conducted a biennial physical inventory of all FTA funded equipment, including equipment operated by contractors, lessees and subrecipients, within two years of the site visit.

If a physical inventory has been conducted, but results have not been reconciled to records, the grantee is deficient.

The grantee is deficient if procedures, leases, subrecipient agreements and/or service agreements do not provide for property use and control. The grantee is deficient if it has not investigated and documented any loss, damage or theft of FTA funded property.

The grantee is deficient if it does not have FTA concurrence for leasing FTA funded assets to private operators or if the lease does not include the required provisions.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to complete the equipment inventory and document that the results have been reconciled. The grantee will be directed to develop an adequate control system to prevent loss, damage or theft of FTA funded property, and to investigate and document any loss, damage or theft of FTA funded property. If equipment operated by contractors, lessees or subrecipients is not monitored, the grantee must develop procedures for improved control. The grantee must resolve any lease issues with the regional office.

9. *Did the grantee notify FTA when it withdrew equipment with remaining useful life from project use or applied it to a different use?*

10. *Did the grantee or a subrecipient dispose of any FTA funded equipment or supplies during the past three years? If yes, did FTA provide prior concurrence in the method of disposition of equipment removed from service before the end of its service life? Has FTA been reimbursed for its share of proceeds, if required? For retained proceeds, did the grantee correctly apply the proceeds to reduce the gross project cost?*

11. *Did the grantee apply insurance proceeds to the cost of replacing damaged or destroyed project property or return to FTA an amount equal to its remaining interest in the lost, damaged or destroyed project property?*

EXPLANATION

The grantee must use project property for appropriate project purposes for the duration of the useful life of that property. If the grantee unreasonably delays or fails to use the project property during the useful life of that property, the grantee may be required to return the entire amount of the Federal assistance expended on that property. The grantee must notify FTA immediately when any project property is withdrawn from project use or when any project property is used in a manner substantially different from the representations the grantee made in the grantee agreement or cooperative agreement for the project.

Disposition of equipment before the end of its useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C 5010.1D Appendix D, must accompany the request. Service life for rolling stock and facilities is defined at the end of this section. The useful life in years refers to total time in service, not time spent otherwise unavailable for regular transit use. The grantee should have a mechanism to adjust the service life of any FTA funded vehicle for time not spent in regular transit use.

FTA is entitled to its share of the remaining Federal interest. The Federal interest is the greater of the FTA share of the straight line depreciated value (based on years or miles for rolling stock) or the sale price. The grantee may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

Equipment with a unit market value of $5,000 or less that has reached the end of its service life requires no FTA reimbursement. Equipment that has reached the end of its service life and for which the unit market value exceeds $5,000 requires reimbursement to FTA of the proportionate share of the fair market value or the net proceeds of the sale. Net proceeds are the amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and any necessary expenses associated with repairs to make saleable.

With prior FTA approval, the grantee can use sale proceeds to reduce the gross project cost of other FTA eligible capital transit grants. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital grant, and reduce the liability as the proceeds are applied to one or more FTA approved capital grants. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.

For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds $5,000, the grantee must compensate FTA for its share or transfer the sales proceeds to reduce the gross project cost of another capital project.

If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee must:

a) Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service, or
b) Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

Item	FTA-Defined Service Life
Rail vehicles	25 years
35'-40' heavy duty and articulated transit bus	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus	7 years or 200,000 miles
25'-35' light-duty transit bus (e.g., body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (e.g., small buses, regular and specialized vans)	4 years or 100,000 miles
Fixed guideway steel-wheeled trolley	25 years
Fixed guideway electric trolleybus	15 years
Passenger ferry	25 years
Other ferries without refurbishment	30 years
Other ferries with refurbishment	60 years
Railroad or highway structure	50 years
Most other buildings and facilities (concrete, steel and frame construction)	40 years

Note that the difference between a heavy-duty and medium duty transit bus is that a heavy-duty transit bus is built as a bus, whereas a medium-duty bus is built on a truck chasis.

REFERENCE

49 USC 5334 (h) (4), as amended by SAFETEA-LU.
49 CFR 18.31-18.32
FTA C 5010.1D, Ch. IV, Sections 3.l
FTA Master Agreement, Section 19

SOURCES OF INFORMATION

During the desk review, the reviewer will examine grant files for approval for like-kind exchange of rolling stock or retention of the proceeds from the sale of assets. The review will ask the grantee to provide a list of FTA funded equipment removed from transit service since the last review. Fleet availability reports or maintenance records may indicate buses that are out of service for an extended period; this unavailability may require an adjustment to a vehicle's service life. Sales records and financial reports also will be examined as well as documentation for how fair market value was established for any equipment not sold competitively.

DETERMINATION

The grantee is deficient if FTA funded equipment has been removed from service prematurely without FTA approval. The grantee is deficient if it has not reimbursed FTA proportionately for the depreciated value of items that have not yet reached the end of their service life and has not received permission for a like-kind vehicle exchange. The grantee is deficient if it has not reimbursed FTA proportionately for items valued greater than $5,000 that have reached the end of their service life and has not obtained approval for retaining the proceeds. The grantee is deficient if it has disposed of unneeded supplies with a total aggregate fair market value that exceeds $5,000 and has not reimbursed FTA proportionately and has not received approval for retaining the proceeds.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop procedures to notify FTA of any premature removal of equipment from service. The grantee may need to work with the regional office to reimburse FTA's share of disposed property or to obtain approval for retaining the proceeds to apply to another capital project.

12. *For fixed-route buses operated in urban service (NTD motorbus category) provide the following:*

a. Total number revenue vehicles = _____

b. Number of vehicles required for maximum service = _____

c. Actual number of spare vehicles = _____ ("a" – "b")

d. Actual spare ratio = _____ ("c"/ "b")

Does the spare ratio exceed FTA's 20 percent guideline for bus fleets of 50 or more revenue vehicles? For fleets of fewer than 50 buses, does the spare ratio appear reasonable?

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

EXPLANATION

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

The FTA recognizes two types of vehicles–active and contingency. For buses that are inactive and awaiting disposition, the grantee should have specific plans and dates for disposition.

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

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

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

REFERENCE

49 CFR 18.32
FTA C 9030.1C, Ch. V, Sections 9.a (5)-(6)
FTA C 5010.1D, Ch. IV, Section 3.i

SOURCES OF INFORMATION

The grantee will be asked to provide a rolling stock roster, pull-out logs and/or fueling logs to verify peak hour requirements and buses in service at the time of the site visit. A print out from the scheduling software or other dispatch records may also be examined to document the peak of the peak. If the grantee has a contingency fleet, the reviewer will ask for a copy of its contingency plan.

DETERMINATION

If the active fixed route bus fleet is 50 or more vehicles and the spare ratio is more than 20 percent of the peak fleet, the grantee is deficient. If the active fixed route bus fleet is less than 50 vehicles and the spare ratio is excessive, the grantee is deficient. If the grantee has excessive vehicles due to the arrival of new vehicles and has no plan for disposal, the grantee is deficient.

If the grantee has a contingency fleet but no current contingency plan, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If the spare ratio is excessive, the grantee will be directed to submit a plan for coming into compliance. For example, the grantee could dispose of equipment, increase its peak vehicle requirement, and/or establish a contingency fleet. If the grantee submits a plan for reducing its spare ratio that cannot be completed within 90 days and is to be implemented over several quarters, the grantee will need to report progress in Milestone/Progress Reports.

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

If the grantee has a contingency fleet but no contingency plan, the grantee will need to develop one.

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

EXPLANATION

Because rail transit operations tend to be distinct from grantee to grantee, FTA requires rail operators to develop fleet management plans. The plans must discuss:

- operating policies
- peak requirements
- maintenance/overhaul program
- system and service expansions
- railcar procurements/schedules
- spare ratio justification

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

REFERENCE

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

SOURCES OF INFORMATION

If a fleet management plan is on file in the regional office, it will be examined during the desk review. If it is not, the plan will be requested from the grantee.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

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

5. MAINTENANCE

BASIC REQUIREMENT

Grantees and subrecipients must keep Federally funded equipment and facilities in good operating order and maintain ADA accessibility features.

AREAS TO BE EXAMINED

1. *Vehicle Maintenance*

a. Maintenance plans
b. Preventative maintenance inspections
c. Maintenance of accessibility features

2. *Facility and Equipment Maintenance*

a. Maintenance plans
b. Preventative maintenance inspections
c. Maintenance of accessibility features

3. *Warranty Program*

4. *Oversight*

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. 49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)"
3. FTA Circular 5010.1D, "Grant Management Requirements"
4. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions"
5. FTA Master Agreement

QUESTIONS FOR THE REVIEW

Part A: Vehicle Maintenance

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

EXPLANATION

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

For vehicles under warranty, the grantee typically must perform a series of preventive maintenance actions if the warranty is to remain valid. If the grantee either does not perform these required maintenance routines, or performs them at greater intervals than the manufacturer's maximum intervals, the grantee runs the risk of invalidating vehicle warranty provisions. Some operators have relied on oil analysis to extend the interval between oil changes beyond the engine manufacturer's recommended interval. This is acceptable provided the grantee has a letter from the manufacturer of the vehicles' engines stating that this practice will not void the engine warranty.

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

REFERENCE

FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k and m
FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION

The grantee's vehicle maintenance plan(s) and/or program(s), the maintenance checklists, and the recommended maintenance procedures and updates of the manufacturer will be examined.

A bus system review will be performed to compare the interval for the change of engine oil and filters in the grantee's maintenance plan and checklists with the maximum interval specified in the maintenance plan.

A light or heavy rail system review will be performed to check that the maintenance plan prescribes a scheduled series of maintenance actions to be performed at predetermined intervals. The last state rail safety oversight organization inspection of the vehicles for safety compliance and a copy of that inspection report may be requested.

DETERMINATION

If the grantee does not have a plan, the grantee is deficient.

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

For vehicles under warranty, if the maintenance interval for oil changes is longer than the manufacturer's maximum interval defined for "urban transit service," the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit either a new or revised maintenance plan to the FTA regional office.

2. *What is the grantee's schedule for vehicle preventive maintenance (PM) inspections? Are they completed on time?*

EXPLANATION

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

taken place. Both take a toll on the grantee's resources and put FTA's investment at risk.

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

REFERENCE

FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k and m
FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION

The maintenance plan(s) for the interval (miles or operated hours) between preventive maintenance inspections will be reviewed. Preventive maintenance records will be examined to determine whether the grantee is performing inspections according to its maintenance plan.

Preventive maintenance inspection intervals will be examined through management reports used by the grantee for monitoring preventive maintenance inspections and by reviewing a selected sample of FTA funded vehicles.

For each vehicle chosen, the preventive maintenance history for the preceding 12 months is examined. Inspections that are no later than 10 percent of schedule or 500 miles, whichever is greater, are considered on time. For example, a scheduled 6,000 mile inspection would be considered "on time" if it was performed any time before 6,600 miles. If the grantee uses a different definition of an "on time" inspection, the grantee's definition will be used if deemed appropriate.

Most grantees schedule PM inspections based on relative miles (e.g., 6,000 miles since the last inspection). Others may chose absolute scheduling, based on the total lifetime miles. Grantees may choose whichever method they prefer.

For commuter rail locomotives and cars, Federal Railroad Administration (FRA) inspection records will be examined.

DETERMINATION

If less than 80 percent of the inspections for any mode, subfleet or particular vehicle occurred on time (more than 20 percent late), the grantee is deficient. Grantees are not penalized for early inspections, only late ones. For commuter rail locomotives and cars, the determination is based on compliance letters issued to the grantee by FRA.

SUGGESTED CORRECTIVE ACTION

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

3. *Does the grantee's vehicle maintenance program address maintenance procedures for wheelchair lifts and other accessibility features? Do maintenance records indicate regular and periodic maintenance checks for lifts? Do maintenance records indicate that other accessibility features (e.g., kneelers, ramps, public address systems, voice annunciation systems, etc.) are maintained in operative condition?*

EXPLANATION

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

REFERENCE

49 CFR 37.161-163

SOURCES OF INFORMATION

The grantee's maintenance plan and the maintenance checklists will be reviewed. Vehicle maintenance records also will be examined to ensure that accessibility features are maintained regularly and repaired promptly if out of order.

DETERMINATION
If records show that the grantee does not include maintenance of accessibility features in its maintenance plan, does not follow its program or does not maintain accessibility equipment properly, then the grantee is deficient in ADA requirements.

SUGGESTED CORRECTIVE ACTION
If the grantee does not have a preventive maintenance program for ADA accessibility equipment, the grantee will be directed to develop, implement and submit one to FTA. If the grantee failed to follow and/or fully implement its program, the grantee will be directed to revise or fully implement its program and submit evidence of implementation to FTA.

Part B: Facility and Equipment Maintenance

4. *Does the grantee have a current written maintenance program for its FTA funded facilities and facility-related equipment? Does the program include inspections and preventive maintenance activities to ensure that assets are protected from deterioration and reach their maximum useful life? Is the program consistent with manufacturers' minimum maintenance requirements for equipment under warranty? Does the program prescribe a record keeping system so that the maintenance history of facilities and equipment is permanently recorded? How is the program documented?*

EXPLANATION
Public transit requires a considerable investment in buildings, equipment, and machinery. As with vehicle maintenance, the proper maintenance of facilities, machinery and equipment is key to protecting the FTA investment and prolonging the useful life of the asset. A model program for FTA funded facilities should be written and include an organization and assignment of responsibility for facility and equipment maintenance, a series of inspections and routine maintenance actions designed to ensure proper care and maximize useful service life of facilities and equipment, and a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment. The facility/equipment maintenance program should identify specific items, such as buildings, elevators, escalators, parking lots, electric distribution and control equipment, plumbing systems, overhead doors, vehicle maintenance lifts, vehicle washers and wash water recycling systems, heating and/or air conditioning units, power substations, etc. The facility/equipment maintenance program should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Maintenance intervals might be measured in terms of time (daily, monthly, annually) or in terms of usage (hours of use).

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

REFERENCE
Master Agreement, Section 19.c
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION
The grantee's facility and equipment maintenance plan and/or program, the maintenance checklists, and preventive maintenance program will be examined.

DETERMINATION
If the grantee does not have a facility and equipment maintenance program that addresses the current mix of FTA funded assets, the grantee is deficient. If the program does not include a series of maintenance and inspection activities to be performed at appropriate intervals, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and submit a new or revised facility/equipment maintenance program.

5. *What is the grantee's schedule for facility and equipment preventive maintenance inspections? Does a spot check of the grantee's records indicate that it is complying with its maintenance program? Are facility and equipment preventive maintenance inspections completed on time?*

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

REFERENCE
Master Agreement, Section 19.c
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION
A sample of facility and equipment maintenance records or management reports used by the grantee for monitoring preventive maintenance inspections will be reviewed. For each item in the sample, the equipment/building maintenance history for the preceding 12 months will be examined. The grantee's definition of an "on-time" inspection will be compared with the actual results to determine if the inspection was in accordance with the grantee's facility and equipment maintenance plan.

DETERMINATION
If less than 80 percent of the inspections occurred on time (more than 20 percent late), the grantee is deficient. Grantees are not penalized for early inspections, only late ones.

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

6. *Does the grantee's facility maintenance program address maintenance procedures for accessibility features? Do maintenance records indicate that accessibility features are maintained in operating condition?*

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

REFERENCE
49 CFR 37.161

SOURCES OF INFORMATION
The grantee's maintenance program and the maintenance checklists will be reviewed. A sampling of facility maintenance records will be conducted to ensure that accessibility features are maintained regularly and repaired promptly if out of order.

DETERMINATION
If the grantee does not have a program to maintain accessibility features, it is deficient. If records show that the grantee either does not follow the system or does not maintain the accessibility equipment properly, the grantee is deficient in ADA requirements.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop, implement and submit to FTA a preventive maintenance program for those items not maintained.

Part C: Warranty Program

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

EXPLANATION
If the grantee has equipment under warranty, FTA requires that the grantee have a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the grantee and FTA. There should be clear procedures to identify warranty repairs, record the warranty claim, submit the claim to the manufacturer, and follow up on unpaid claims.

REFERENCE
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k
FTA C 9030.1C, Ch. V, Section 5.e

SOURCES OF INFORMATION
Identify if there are any vehicles or equipment currently under warranty. The grantee may be asked to explain how the preventive maintenance program meets or exceeds the manufacturer's recommended program.

The grantee may be asked for a copy of its warranty recovery program, or, if the program is not in writing, to describe the warranty recovery system. Warranty records and files for the program may be reviewed to learn how timely and aggressive the grantee has been in pursuing and collecting warranty claims.

DETERMINATION
If the grantee does not have a warranty recovery system in place, or if the records of the program are not available, the grantee is deficient. If the grantee has a written program but is not pursuing warranty claims diligently, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA a written system for managing warranty claims with a plan for implementation.

Part D: Oversight

8. *Does the grantee have FTA funded vehicles or facilities that are maintained by subrecipients, leased to service providers or maintained under contract by other than the grantee's employees? If yes, does the grantee have written maintenance standards? Do the standards address ADA requirements for maintenance of accessibility features? Does the grantee have or require written maintenance plans? How does the grantee ensure that subrecipients, contractors and lessees follow the required maintenance standards/ plans?*

EXPLANATION
FTA funded vehicles and facilities must be maintained regardless of who operates and maintains them. Subrecipients, third-party contractors and lessees "stand in the shoes" of the grantee as far as FTA maintenance requirements are concerned. The grantee must require subrecipients, contractors and lessees to follow acceptable maintenance standards. The subrecipient agreement, contract or lease should address maintenance standards or maintenance performance indicators. The grantee may have its own maintenance plan or require its subrecipients, contractors and lessees to develop their own maintenance plans.

The grantee must have an effective mechanism to monitor subrecipients', contractors' and lessees' maintenance activities. An acceptable program would consist of periodic written reports on maintenance activities submitted by the contractor to the grantee, supplemented by periodic inspections of the FTA funded vehicles and facilities.

REFERENCE
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k and m
FTA C 9030.1C, Ch. V, Section 5.e
FTA Master Agreement, Section 19.c

SOURCES OF INFORMATION
Subrecipient agreements, contracts and leases and maintenance plans will be reviewed for maintenance requirements. The grantee may be asked if it has assigned an employee with a maintenance background to assess the contractor's performance and judge how the contractor deals with maintenance issues. Subrecipients, contractors and/or lessees may be visited to visually inspect vehicles and facilities and to sample maintenance records.

DETERMINATION
If a grantee does not have or require a maintenance plan, it is deficient. If the grantee does not oversee the contractor's maintenance activities through periodic reports and inspections of facilities and vehicles, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to amend the subrecipient agreement or contract to include a maintenance plan and maintenance standards compatible with FTA requirements. The grantee will be directed to develop an oversight program and submit the information to FTA.

6. PROCUREMENT

BASIC REQUIREMENT

FTA grantees use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 49 CFR Part 18 (specifically Section 18.36) and FTA Circular 4220.1F, "Third Party Contracting Guidance."

AREAS TO BE EXAMINED

1. ***Procurement Policies and Procedures***
   a. Procurement policies and procedures
   b. Written standards of conduct
   c. Organizational conflicts of interest
   d. Prequalification
   e. Written procurement selection procedures
   f. Written procedures to handle and resolve protests
   g. Full and open competition for all procurements
   h. Written record of procurement history
   i. Contract administration system
   j. Monitoring procurements of private contractors and subrecipients

2. ***Third-Party Contracts***
   a. No geographic preferences
   b. Inclusion of required clauses and certifications
   c. Five-year limitation for rolling stock and replacement parts
   d. Independent cost estimates
   e. Cost or price analysis in conjunction with each procurement action
   f. Awards to only responsible contractors
   g. Change orders
   h. Time and materials type contracts
   i. Justification for non-competitive awards
   j. Piggybacking
   k. No "brand name" only specifications
   l. Evaluation and exercise of options
   m. Advance payments and progress payments
   n. Liquidated damage clauses

3. ***Bus Testing***
   a. Receipt of bus testing report or certification that no test was necessary

APPLICABILITY OF REQUIREMENTS

As a general rule, where FTA funds are used in procurements for services or supplies, or where FTA funded facilities or assets are used in revenue contracts, FTA C 4220.1F applies. FTA funds, even operating assistance, can be segregated from local funds. FTA C 4220.1F does not apply to wholly locally funded procurements.

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

- Provide full and open competition
- Include all applicable FTA clauses
- Comply with the Brooks Act
- Prohibit geographic preferences
- Comply with the five-year limitation on purchases of rolling stock or replacement parts
- Award only to responsible contractors

Instrumentalities of the state are considered state agencies. Regional transit authorities are not state agencies. If a triennial review is conducted of a state agency, the requirements in questions 2, 9, 13, 14, 18, 22, and 27 apply.

Procurements of art are beyond the scope of FTA C 4220.1F. FTA C 9400.1A, "Federal Transit Administration Design and Art in Transit Projects," provides guidance on the acquisition of art. In addition, FTA's "Best Practices Procurement Manual" includes extensive non-binding suggestions and advice on implementing FTA C 9400.1A and related provisions.

Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA C 4220.1F. Real property acquisition is addressed in 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." For further guidance,

see also FTA Circular 5010.1D, "Grant Management Requirements."

Note on the Best Practices Procurement Manual – The *Best Practices Procurement Manual* is a good resource for grantees to use in conducting FTA-assisted procurements. However, it is only a guidance document and is not the source of any FTA requirements. Grantees may refer to the BPPM as a guide for the procurement process, but should not rely solely on the BPPM for ensuring that FTA requirements will be met. FTA requirements are found in the following sources: U.S. Code and Public Laws, Code of Federal Regulations, FTA Circulars, Dear Colleague Letters and the Master Agreement.

REFERENCE

1. 49 USC Chapter 53, Federal Transit Laws

2. Transportation Equity Act for the 21st Century, Public Law No. 105-178

3. 49 CFR Section 18.36, "Procurement"

4. FTA C 4220.1F, "Third-Party Contracting Guidance"

5. FTA C 5010.1D, "Grant Management Requirements"

6. FTA C 9030.1C, "Urbanized Area Formula Program Grant Application Instructions"

7. FTA Master Agreement

USEFUL WEB LINKS

FTA's Best Practice Procurement Manual

FTA Procurement Frequently Asked Questions

FTA Procurement Helpline

QUESTIONS FOR THE REVIEW

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

EXPLANATION
As part of its oversight functions, FTA periodically conducts Procurement System Reviews (PSRs) of selected grantees.

Even if such a review is scheduled for the current fiscal year or has been recently conducted, all questions in this section are still reviewed. If a PSR review has been recently conducted, obtain a copy of the most recent report (draft or final) for input into the triennial review.

REFERENCE
49 CFR 18.36 (g)

SOURCES OF INFORMATION
Prior to conducting the desk review, the reviewer will check OTrak to determine if a PSR has occurred or has been scheduled. Findings and corrective actions from completed PSRs will be analyzed for input into the review process.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Does the grantee have written procurement policies and procedures?*

EXPLANATION
The Common Grant Rule for non-governmental recipients requires the grantee to have written procurement procedures, and by implication, the Common Grant Rule for governmental grantees requires written procurement procedures as a condition of self-certification. Grantees and subrecipients are required to use their own procurement policies and procedures that reflect applicable state and local laws and regulations, provided that they conform to applicable Federal law. These policies and procedures must be followed when procuring materials and/or services using FTA funds.

The procurement policies and procedures are not required to be part of a single document. As such, the reviewer should request from the grantee all materials that may be relevant to the procurement area (e.g., municipal ordinances, operations manuals, employee handbooks, etc.). Procurement procedures may be included in general operating procedures. FTA Circular 4220.1F includes items that it expects written procedures to cover, such as nonrestrictive specifications, necessity, procurement methods and resolution of third party contracting issues. Many of these items are addressed further in other questions within this section.

REFERENCE
49 CFR 18.36 (b)(1)
FTA C 4220.1F, Ch. III, Section 3.a

SOURCES OF INFORMATION
The grantee's procurement policies and procedures will be reviewed to gain an understanding of processes and personnel involved in third party procurement actions.

DETERMINATION
If the grantee does not have written procurement policies and/or procedures, the grantee is deficient.

If the grantee has policies and procedures, but has not followed them for FTA funded procurements, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide written procurement policies and procedures, along with a description of how they will be implemented. The grantee must cease immediately any practices that do not conform to applicable laws and regulations.

3. *Does the grantee have written standards of conduct that address personal conflicts of interest, gifts and disciplinary actions?*

EXPLANATION
Grantees and subrecipients are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards should:

- preclude any employee, officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the selection, award, or administration of a contract supported with FTA assistance. Such a conflict would arise when

any of those previously listed has a financial or other interest in the firm selected for award.

- include information that the grantee's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The grantee may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, agents, board members, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations

REFERENCE
49 CFR 18.36 (b)(3)
FTA C 4220.1F, Ch. III, Section 1

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

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office written standards of conduct which include all the required elements, along with evidence that the policy has been adopted and distributed to appropriate persons.

4. *Does the grantee analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest?*

EXPLANATION

An organizational conflict of interest occurs when any of the following circumstances arise:

- Lack of impartiality or impaired objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the grantee due to other activities, relationships, contracts, or circumstances.
- Unequal access to information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- Biased ground rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

FTA expects grantees to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and to avoid, neutralize, or mitigate potential conflicts before contract award.

REFERENCE
49 CFR 18.36 (c)(1)
FTA C 4220.1F, Ch. VI, Section 2 .h

SOURCES OF INFORMATION
The reviewer will examine procurement files to determine if there are any potential organizational conflicts of interest. Grantees' procurement policies and procedures may also discuss how organizational conflicts of interest are addressed. If a conflict of interest appears to exist in the procurement of goods or services, the reviewer will examine how the award was made.

DETERMINATION
If there is no process to anlayze potential organizational conflicts of interest, or a conflict of interest is identified, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will need to provide the FTA regional office procedures that describe how potential conflicts of interest will be avoided. If a potentially serious conflict of interest is identified, the regional counsel will be contacted for further guidance.

5. *Does the grantee require prospective bidders to prequalify for any of its procurements? If yes, how does the grantee ensure full and open competition?*

EXPLANATION
Grantees are not required to prequalify potential bidders. However, grantees that place such a requirement on potential bidders must adhere to FTA's requirements. If a grantee requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used

in acquiring goods and services are current and include enough sources to ensure full and open competition. Grantees must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).

Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.

REFERENCE
49 CFR 18.36 (c)(4)
FTA C 4220.1F, Ch. VI, Section 1.c

SOURCES OF INFORMATION
The reviewer will ask to see the grantee's list of prequalified persons, firms, and products at the site visit. The prequalification process will be discussed with those who are responsible for it. Solicitations will be reviewed to ensure that information related to prequalification is made available to potential bidders.

DETERMINATION
If the grantee's list of prequalified firms is out of date, to the extent that full and open competition is impeded, the grantee is deficient. If potential bidders are precluded from qualifying during the solicitation period, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will bed directed to submit to the FTA regional office documentation demonstrating that deficiencies identified in its prequalification process have been corrected.

6. *Do the grantee's procedures address required solicitation elements?*

EXPLANATION
Grantees and subrecipients must ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Descriptions must not contain features that unduly restrict competition. Detailed product specifications should be avoided. "Brand name or equal" descriptions should be avoided unless it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

REFERENCE
49 CFR 18.36 (c) (3)
FTA C 4220.1F, Ch. VI, Section 2

SOURCES OF INFORMATION
Procurement policies and procedures will be reviewed to determine if solicitation elements are addressed. During the site visit, the reviewer will select procurement files to review product specifications.

DETERMINATION
If the grantee uses noncompetitive specifications, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA regional office procedures to ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. The grantee must cease any practice that violates FTA requirements.

7. *Does the grantee have a procedure to review procurement requests to avoid duplicative or unnecessary purchases?*

EXPLANATION
Grantees' and subrecipients' procedures must provide for a review of procurements to avoid purchasing unnecessary or duplicative items. During such a review, consideration should be given to consolidating or breaking out procurements or any other appropriate means to obtain a more economical purchase. An adequate system usually restricts the authority to initiate purchases to relatively few individuals. Also, all purchase requests typically would be reviewed and/or approved by one person, designated as the purchasing agent for a given department in the case of large grantees, or for the entire organization, in the case of small grantees. The value of a purchase may determine the procedures that the grantee follows. The level of scrutiny would be expected to increase with the dollar value of the purchase.

REFERENCE
49 CFR 18.36 (b)(4)
FTA C 4220.1F, Ch. IV, Section 1.b

SOURCES OF INFORMATION
The grantee's or subrecipient's procurement procedures will be examined. During the site visit, the reviewer will discuss the grantee's procurement procedures to determine if an adequate level of review is given each procurement. Selected procurement files will be reviewed to verify that these procedures are being implemented.

DETERMINATION/DEFICIENCY CODE
If the grantee is lacking procedures for reviewing procurements, the grantee is deficient. If such procedures exist, but are not followed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide FTA procedures that include adequate review of procurements to avoid unnecessary or duplicative purchases. The grantee will need to provide FTA evidence that deficiencies in the implementation of such procedures have been corrected.

8. *Does the grantee have written protest procedures?*

EXPLANATION
Grantees and subrecipients must have written protest procedures to handle and resolve protests of award of its procurements. Recipients are to notify FTA when it receives a third party contract protest and keep FTA informed about the status of the protest. When a recipient denies a bid protest, and especially if an appeal to FTA is likely to occur, FTA expects the grantee to inform the FTA Regional Administrator for the region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly.

A protester must exhaust all administrative remedies before pursuing a protest with FTA. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the grantee's final decision. Information on this process should be provided to those bidding on grantee procurements.

REFERENCE
49 CFR 18.36 (b)(12)
FTA C 4220.1F, Ch. VII, Section 1

SOURCES OF INFORMATION
The grantee's procurement policies and procedures will bed examine to determine if there are written protest procedures. During the site visit, solicitation documents in the grantee's procurement files will be examined for written protest procedures. If there have been any protests during the review period, copies of all documentation described above (e.g., disclosure to FTA, written protest decisions, etc.) will be requested for examination.

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office written protest procedures and implement a process to provide FTA all information related to protests.

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

a. *Micro-Purchases ($3,000 or less)*
b. *Small Purchases (more than $3,000 but not more than $100,000)*
c. *Sealed Bids/Invitation for Bid (IFB)*
d. *Competitive Proposals/Request for Proposals (RFP)*
e. *Architectural and Engineering Services (A&E)*
f. *Revenue Contracts*

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

Micro-purchases may be made without obtaining competitive quotations if the grantee determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be split to avoid the requirements for competition above the micro-purchase threshold.

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

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

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

Architectural and Engineering services (including design-build procurements) must be procured using a qualifications-based process in accordance with the Brooks Act. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Unlike other two-step procurement procedures, in which price is an evaluation factor, an offeror's qualifiations are evaluated to determine contract award. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the grantee may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the grantee determines is fair and reasonable. Unless FTA determines otherwise in writing, a grantee may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property.

Revenue contracts are those in which the grantee or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the grantee should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the grantee is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the grantee to determine appropriate procedures, as necessary.

REFERENCE
49 CFR 18.36 (c)(1)
49 CFR 18.36 (d)(1)(2)(3)
FTA C 4220.1F, Ch. VI, Section 1
FTA C 4220.1F, Ch. VI, Sections 3.a-f
FTA C 4220.1F, Ch. II, Section 2(b)(4)

SOURCES OF INFORMATION
Before the site visit, the reviewer will examine the grantee's written procurement policies. During the site visit, the reviewer will examine procurement files, particularly legal notices and solicitation documents, to determine whether procurements have been conducted competitively. Particular attention will be paid to product specifications to ensure that "brand name" only specifications have been used appropriately (i.e., the grantee also must describe the product's salient characteristics in the specification). Records for phone solicitations may be examined when appropriate.

DETERMINATION
If the grantee has not provided for full and open competition (has placed restrictive requirements on prospective bidders), it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide revised procurement procedures that ensure full and open competition in all procurement transactions. The grantee must cease immediately any practice that is in violation of FTA regulations.

10. *Does the grantee maintain a written record of procurement history?*

EXPLANATION
Grantees and subrecipients must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- rationale for the method of procurement (i.e. request for proposals, invitation for bids, sole source)
- sole source justification for any purchase that is not competitive
- selection of contract type (i.e., fixed price, cost reimbursement)
- reason for contractor selection or rejection
- written responsibility determination for the successful contractor
- basis for the contract price. Each grantee must evaluate and state its justification for the contract cost or price.

The extent of documentation should be reasonable. Documents included in a procurement history should

be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements.

REFERENCE
49 CFR 18.36 (b)(9)
FTA C 4220.1F, Ch. III, Section 3 (d)(1)

SOURCES OF INFORMATION
Procurement files will be examined during the site visit for evidence of each of the items mentioned above. The procurement file should be the official record of the procurement history.

DETERMINATION
If the grantee's procurement records do not contain a significant history for each procurement that was examined, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA regional office evidence that the deficiencies identified in its recordkeeping process have been corrected.

11. *What is the grantee's system or procedures for administering contracts once awarded?*

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

Many FTA grantees assign contracting duties to technical, financial or management personnel. If the grantee lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the grantee, FTA expects the grantee to acquire the necessary services from sources outside the grantee's organization. When using outside sources, the grantee should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

Although a grantee may not have written procedures addressing contract administration specifically, overall procurement procedures combined with a grantee's business practices may ensure adequate contract administration.

REFERENCE
49 CFR 18.36 (b)(2)
FTA C 4220.1F, Ch. III, Section 3

SOURCES OF INFORMATION
Procurement policies and procedures will be reviewed to determine if there is an adequate contract administration system. The review of specific procurement files will verify that these procedures are being implemented. Correspondence between the grantee and its contractors may provide evidence of on-going contract administration.

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office documentation of an adequate contract administration system and/or evidence of remedial actions taken against contractors that have not performed in accordance with the terms and conditions of their contracts.

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

EXPLANATION
When a grantee has contracted out a portion of its Federally funded operation or has passed through funding to a subrecipient, competitive procurement requirements may apply to the contractor and/or subrecipient operations. In such circumstances, the procurement process of the contractor/subrecipient should meet Federal requirements contained in the Master Agreement, including Buy America, suspension/debarment, and lobbying requirements,

which are in other areas of the review. Furthermore, a grantee needs to have a mechanism to ensure contractor/subrecipient compliance. Requiring written procurement procedures, overseeing selected procurement processes, and auditing the contractor/ subrecipient annually are measures that a grantee could use.

Typically, this requirement would apply to any third-party agreement or subagreement in which the contractor or subrecipient performs primary project activities normally performed by the grantee directly.

REFERENCE
FTA Master Agreement, Sections 2.d-e

SOURCES OF INFORMATION
Contracts and subrecipient agreements will be reviewed to ensure that they contain FTA third-party procurement requirements. The reviewer will determine how applicable contract clauses are implemented and who on the grantee staff monitors the contractor/subrecipient operations, including procurement. Also, the reviewer will determine how the grantee monitors adherence to the requirements for contractors/subrecipients and will examine written reports or audit reports of the process.

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

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

13. *Has the grantee included geographic preferences in any of its procurements?*

EXPLANATION
Grantees are prohibited from specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA grantee from limiting its bus purchases to in-state dealers. Exceptions expressly mandated or encouraged by Federal law include the following:

- Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use did not restrict competition (i.e., the use of geographic preference left only one or two qualified firms to bid on the contract).
- Licensing. A state may enforce its licensing requirements, provided that those requirements do not conflict with Federal law.
- Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in an area affected by a major disaster or emergency.

REFERENCE
49 CFR 18.36 (c)(1)(2)
FTA C 4220.1F, Ch. VI, Section 2.a(4)(g)

SOURCES OF INFORMATION
The reviewer will examine procurement policies and procedures to see if there are requirements for geographic preferences. During the site visit, the reviewer will examine procurement files including solicitation documents to determine if procurements contain geographic preferences.

DETERMINATION
If the grantee has used geographic preferences in any procurement for other than one of the exceptions, it is deficient. If the use of geographic preferences in A&E procurements restricted competition, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide to the FTA regional office documentation of a revised procurement process, which prohibits the improper use of geographic preferences. The grantee must cease any practice that violates FTA regulations.

14. *Have applicable clauses been included in FTA funded procurements exceeding the micro-purchase limit and construction contracts over $2,000? In intergovernmental agreements and subrecipient agreements, if applicable?*

EXPLANATION

Grantees are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities) and subrecipient agreements. The Master Agreement identifies certain clauses that apply to third-party contracts. Clauses addressing lobbying, debarment/ suspension, DBE, and Buy America provisions are addressed in other sections of the triennial review.

FTA's *Best Practices Procurement Manual(BPPM)*, Appendix A, also includes a discussion of Federally required and other model contract clauses. However, reviewers must NOT refer to the contents of the BPPM as FTA requirements. The BPPM is a guidance document only. Additional guidance is provided through *FTA's Third Party Procurement Frequently Asked Questions website.*

Grantees may not modify their own contracts after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. Grantees may, however, modify the state GSA-type contracts to add Federal clauses when they issue orders against those state contracts.

Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract.

- *Small Purchases* – These are purchases that are more than $3,000 (or more than $2,000 if a construction project), but not more than $100,000. Small purchases must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA regulations is not sufficient to meet this requirement.
- *Procurements Over $100,000* – These procurements must include all clauses applicable to the particular type of procurement (e.g., professional services, A&E, construction, rolling stock purchase, etc.).

A separate checklist of required clauses is provided in Exhibit 6.1, Part A. The checklist provides a citation from the Master Agreement for each required clause. Part B of Exhibit 6.1 lists certifications, reports, and forms that are required for DBE, Buy America, and Lobbying. Part C lists other required items to assist in determining whether the grantee's policies and procedures are actually being followed.

The applicability of FTA clauses to different types of procurements is shown in Exhibit 6.2. Note that the construction of ferry vessels using Federal funds is considered a public works project and therefore, the clauses related to construction contracts are applicable.

REFERENCE

49 CFR 18.36 (i)(1-13)
49 CFR 18.36 (j-o)
Master Agreement
FTA C 4220.1F, Ch. IV, Section 2
FTA C 4220.1F, Appendix D
Best Practices Procurement Manual
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

The reviewer will examine written procurement procedures and procurement files for inclusion of required clauses.

DETERMINATION

If the grantee has not included any reference to FTA requirements or any FTA clauses, it is deficient. If the grantee missed some clauses that should have been included, the grantee is not deficient. However, refer the grantee to the matrix in Exhibit 6.2 and any other resource that may assist the grantee in determining the applicability of clauses in the future.

If a grantee is missing DBE, Buy America, Debarment and Suspension, or Lobbying certifications or clauses, it is documented as a deficiency only in those applicable review areas. It will not be a double finding in the procurement area.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to provide the FTA regional office revised procurement procedures that include all FTA-required third-party contract clauses.

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

EXPLANATION

Grantees must not enter into contracts for rolling stock and replacement parts with a period of performance exceeding five years inclusive of options, extensions, or renewals. The five-year rule does not mean the grantee must obtain delivery, acceptance, or even fabrication in five years. However, the maximum quantity specified in such multi-year contracts must represent the grantee's reasonably foreseeable need. Typically, grantees use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

Grantees may seek a waiver from the five-year requirement from FTA Headquarters. A copy of the

written approval for this waiver must be in the applicable contract file.

REFERENCE
49 USC 5307 (d)(1)(E)(i)
FTA C 4220.1F, Ch. IV, Section 2. e(10)

SOURCES OF INFORMATION
Procurement procedures will be reviewed before the site visit. During the site visit, the reviewer will examine procurement files for rolling stock and replacement part contracts to ensure that these meet the five-year contract term restriction.

DETERMINATION
If a contract represents more than five years' requirements, the grantee is deficient. If the grantee has a rolling stock and replacement parts contract with a period of performance exceeding five years and has not obtained prior FTA written approval, the grantee is deficient.

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

16. *Does the grantee perform an independent cost estimate before receiving bids or proposals?*

EXPLANATION
The independent cost estimate is a tool to assist in the determination of the reasonableness or unreasonableness of the bid or proposal being evaluated and is required for all procurements regardless of dollar amount. Independent cost estimates can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications and prior data. The word "independent" does not imply that it is performed by someone other than the grantee. This could be the case, however, if the grantee does not have the expertise for a large complex procurement.

The independent cost estimate is especially critical whenever there is no price competition (e.g., for architect-engineer procurements where only one price proposal is received), or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services). It is also useful in competitive procurements to alert the agency when all competitors are submitting unreasonably high cost proposals.

REFERENCE
49 CFR 18.36 (f)(1)
FTA C 4220.1F, Ch. VI, Section 6

SOURCES OF INFORMATION
Procurement files will be examined during the site visit to determine the extent to which the grantee conducts independent cost estimates. Particular attention is warranted in cases where the grantee has had a recent sole source procurement.

DETERMINATION
If the grantee has not conducted independent cost estimates, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office documentation that it has updated its procurement process to include development of independent cost estimates prior to receipt of bids or proposals.

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

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

REFERENCE
49 CFR 18.36 (f)(1)
FTA C 4220.1F, Ch. VI, Section 6

SOURCES OF INFORMATION
Before the site visit, the grantee's procurement policies will be reviewed. During the site visit, procurement files will be examined to determine the extent to which the grantee conducts cost and/or price analysis, paying particular attention to sole source procurements.

DETERMINATION
If the grantee has not conducted cost or price analyses for every procurement action, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office documentation that it has updated its procurement process to include cost and price analyses for every procurement action including contract modifications.

18. *What procedures does the grantee follow to ensure award to responsible contractors possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract?*

EXPLANATION
SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA assisted contract awards be made only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the grantee after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the grantee that it qualifies as "responsible" and that its proposed subcontractors also qualify as "responsible."

Factors to consider when making responsibility determinations include:

Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A)

Debarment and Suspension. Is neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4

Affirmative Action and DBE. Is in compliance with the Common Grant Rules' affirmative action and DOT's Disadvantaged Business Enterprise requirements

Public Policy. Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B)

Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D)

Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations

Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D)

Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities

Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments

Performance Record. Is able to provide a satisfactory current and past performance record.

REFERENCE
49 CFR 18.36 (b)(8)
49 USC Section 5325
FTA C 4220.1F, Ch. VI, Section 8 (b)

SOURCES OF INFORMATION
The reviewer will examine procurement policies and procedures for a discussion of responsibility determinations. Although a grantee may not have written procedures addressing these determinations specifically, overall procurement procedures combined with a grantee's business practices may ensure that adequate determinations are being made. During the review of specific procurement files the reviewer will verify that responsibility determinations are being made and note any correspondence between the grantee and its contractors for evidence of determinations.

DETERMINATION
If there is no evidence that grantees are making responsibility determinations prior to award, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office documentation of an implemented process to make adequate responsibility determinations prior to award of a contract.

19. *Since the last review, were there any change orders to FTA funded contracts? If yes, describe in terms of numbers of change orders and dollars. What approvals are required? Were all change orders approved by authorized officials? Were all change orders eligible for FTA assistance?*

EXPLANATION
A change order is an order authorized by the grantee directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Change orders must be approved by authorized grantee officials. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

To be eligible for FTA assistance under the recipient's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

REFERENCE
FTA C 5010.1D, Ch. III, 3.c
FTA C 4220.1F, Ch. VII, Section 2

SOURCES OF INFORMATION
The grantee's procurement procedures will be reviewed for change order procedures. Large grantees typically have written change order procedures while small grantees that have few procurements are less likely to have formal, written change order procedures. Procurement files will be reviewed for approvals and justifications for any change orders.

DETERMINATION
If change orders occurred and there is no adequate supporting documentation, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
If the grantee has a history of change orders without any apparent change order procedures, the grantee will be directed to develop a process. If required approvals and justifications are missing from the files, the grantee will be directed to prepare the documentation and develop a process to ensure that files are complete. The grantee must submit documentation of the implementation to the FTA regional office.

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

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

REFERENCE
49 CFR 18.36 (b)(10)
FTA C 4220.1F, Ch. VI, Section 2.c(2)(b)

SOURCES OF INFORMATION
The grantee's procurement procedures will be reviewed. If the grantee indicates that it has used time and materials contracts involving FTA funds, the procurement files for these contracts will be examined for documentation supporting the grantee's decision to use a time and materials contract. The contract must specify a ceiling price.

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

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide the FTA regional office evidence that it has updated its procurement process to include procedures for the proper use of FTA-assisted time and materials contracts.

21. *Has the grantee had any sole-source, single bid, or brand name or equal awards since the last review? If yes, identify. Do the files contain the appropriate justification and/or documentation for such awards?*

EXPLANATION
FTA requires full and open competition in procurements for goods and services and encourages grantees to award contracts to the lowest responsive and responsible bidder. However, sole-source, single-bid, and brand-name or equal awards can be used. In such situations, the grantee should have appropriate documentation for the award.

When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the grantee may make a sole source award. When the grantee requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified. The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
- Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the grantee's needs.

In the case of a sole-source award, the documentation should be a written sole-source justification, which includes a cost analysis.

With a single-bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, the grantee should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The grantee must identify the salient characteristics of the named brand that offerors must provide. When using a "brand name" specification, the grantee does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics.

A recurring problem has been the procurement of professional services. Often these services are procured with little or no competition. While such services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for professional services and the grantee needs to follow the requirements of FTA C 4220.1F when Federal funds are used to pay for these services.

REFERENCE
49 CFR 18.36 (d)(4)
FTA C 4220.1F, Ch. III, Section 3.a(1)(e)
FTA C 4220.1F, Ch. VI, Section 3.i

SOURCES OF INFORMATION
The reviewer will examine the grantee's procurement procedures. During the site visit, the reviewer will examine RFPs, IFBs, and other solicitation documents, bid evaluation files, and contracts. Additionally, policy board minutes may be examined for additional detail on these and other types of procurements. Although the grantee is not required to obtain prior FTA approval for a non-competitive award, the grantee's files must contain an appropriate level of justification for such awards.

DETERMINATION
If the grantee does not have the appropriate documentation in the files to support the basis for the award, it is deficient. In cases where professional services have not been bid competitively, the grantee is deficient. If the grantee has used "brand name" only specifications inappropriately, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA regional office evidence of an implemented policy to ensure that future sole source procurements are properly documented. FTA may also require a refund of Federal funds. Where contracts are ongoing, the grantee will be required not to exercise any options, possibly to terminate the existing contract for convenience, and to rebid for the required goods and services in accordance with Federal requirements. When procurements exceeding $100,000 have violated Federal requirements, the regional counsel will be advised.

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

EXPLANATION
A grantee may find that it has inadvertently acquired contract rights in excess of its needs. The grantee may assign those contract rights to other grantees if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Some refer to this process as "piggybacking." Although FTA does not encourage the practice, a grantee may find it useful to acquire contract rights through assignment by another recipient.

While it has become increasingly popular for grantees to acquire vehicles through this method of procurement, piggybacking can also occur for purchases of services and property. A grantee that obtains contractual rights through assignment may use them after first determining that the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The grantee need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the grantee to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

FTA expects the grantee seeking the assignment to review the original contract to be sure that the quantities the assigning grantee acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract. Otherwise, the purchase is a "tag-on" and is considered an improper sole source procurement.

Any changes in the vehicle must be within the original scope (i.e., no major changes in configuration or design). Although FTA has provided additional guidance in its *Best Practices Procurement Manual*, FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

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

REFERENCE

FTA C 4220.1F, Ch. V, Section 7.a (2)
Piggybacking Worksheet from FTA BPPM

SOURCES OF INFORMATION

The reviewer will examine files of a piggyback procurements. The contract and correspondence between the two agencies involved in the piggyback arrangement will be reviewed to ensure that the original procurement contains an assignability clause and meets FTA requirements (e.g., competitive award, includes required clauses, required certifications filed, cost/price analysis conducted, five year contract term, etc.). The grantee will be asked if any changes to the vehicle were required and determine if these were within the original scope.

DETERMINATION

If the grantee cannot document that the original award contains an assignability clause, that vehicles are still available for assignment, or that FTA requirements were met, it is deficient. If the grantee conducted a "tag-on" purchase, it is deficient. If the grantee's required changes were beyond the original scope, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If an improper piggyback purchase has been made, the grantee will be directed to provide the FTA regional office with piggybacking procedures that comply with FTA requirements. FTA also may require a refund of Federal funds. Where an improper piggyback procurement is in process, the grantee will need to provide revised procedures that address the requirements for a piggyback procurement and continue the process in accordance with Federal regulations or possibly terminate the agreement for convenience. When significant procurements (i.e., exceeding $100,000) have violated Federal requirements, the regional counsel will be advised.

23. *Has the grantee used option clauses? If yes, identify. Were options evaluated at the time of the initial bid? If yes, did the grantee evaluate the option price before it was exercised?*

EXPLANATION

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

A grantee also must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award, and the grantee must determine that the option price is better than prices available in the market or the option is the more advantageous offer at the time it is exercised.

Note: If the option quantities on a rolling stock or replacement parts purchase appear to exceed the grantee's reasonably foreseeable needs, the grantee may be in violation of the five-year limitation (see Question 15).

REFERENCE
49 USC 5307 (d)(1)(E)
FTA C 4220.1F, Ch. VI, Section 7.b and Ch. V, Section 7.a(1)

SOURCES OF INFORMATION
The reviewer will examine written procurement procedures prior to the site visit. At the site visit, the reviewer will examine contracts and other procurement documents to determine whether options and periods of contract exceed the limits and whether options were priced, evaluated and are exercisable. In some cases, the grantee may have assigned options on a vehicle procurement to another party (i.e., "piggy-backing"). In these cases, the reviewer will ensure that the options available to the grantee have been reduced by the number assigned to the other party.

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

SUGGESTED CORRECTIVE ACTION
Where options that violate the requirements have not been exercised, the grantee will be directed to provide to the FTA regional office a written assurance that it will not exercise the options unless FTA approval is granted. If the grantee has exercised options that were not evaluated and priced initially, or were assigned improperly to another grantee, the grantee must develop procedures for complying with FTA requirements when exercising options. FTA may require a refund of Federal funds.

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

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

EXPLANATION
FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A grantee may use its local share funds for advance payments. However, advance payments made with local funds before a grant has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.

FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. The grantee may use FTA assistance to support progress payments provided the grantee obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the grantee's financial interest in the progress payment.

REFERENCE
FTA C 4220.1F, Ch. IV, Sections 2.b(5)(b) and (c)

SOURCES OF INFORMATION
Before the site visit, the review will examine the grantee's written procurement procedures. During the site visit, the reviewer will discuss the procurement process with the grantee and examine procurement files.

DETERMINATION
If the grantee has used advance payments without prior FTA approval, it is deficient. Where progress payments have been used, but do not meet one of the requirements outlined above, the grantee is deficient. If the grantee has made progress payments but has not adequately protected FTA's interests, it is deficient.

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

26. *Has the grantee used liquidated damage clauses in any of its procurements? If yes, how is the damage rate specified in the contract? Were liquidated damages assessed in any FTA-funded contracts? If yes were they credited to the project account?*

EXPLANATION

Grantees are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion or if weight requirements are exceeded and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damage clauses may not be used to impose a penalty, limit or restrict competition, or in situations where delayed performance will not affect the grantee adversely. The rate and measurement of liquidated damages must be specified in the solicitation and contract. The procurement file should include a record of the calculation and rationale for the amount of the damages assessed.

The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. Any liquidated damages recovered should be credited to the project account involved unless FTA permits otherwise.

REFERENCE

49 USC 5307 (d)(1)(E)
FTA C 4220.1F, Ch. IV, Section 2.b(6)(b)1

SOURCES OF INFORMATION

During the desk review, the reviewer will determine if FTA has been credited for liquidated damages and review grant files. Before the site visit, the reviewer will examine the grantee's procurement procedures. During the site visit, the reviewer will examine procurement files (both solicitations and contract documents) for liquidated damage information. These types of clauses typically are found in large procurements of vehicles and equipment or in construction contracts.

DETERMINATION

If the damage rate is not specified in the contract or the grantee cannot provide a reasonable explanation regarding expected damages as a result of late completion, the grantee is deficient. If the grantee assessed liquidated damages, but did not credit these funds back to the project account, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to provide the FTA regional office a written procedure for correct use of liquidated damage clauses. If clauses are in existing contracts improperly, the grantee will be directed to modify the contract to eliminate the clause or provide a justification for the use and level of liquidated damages.

27. *Have buses been purchased or leased with FTA funds? If yes:*

a. What is the bus model(s)?

b. Has this model already been Altoona tested?

- *If yes, was a copy of the test report received prior to the expenditure of FTA funds?*
- *If no, was a certification from the manufacturer that the bus does not need to be tested received?*

EXPLANATION

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

REFERENCE

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

SOURCES OF INFORMATION

The reviewer will check the procurement procedures for a discussion of bus testing requirements. If the grantee has conducted a recent bus purchase, the reviewer will determine if the bus model was tested. A copy of the most recent list of models tested is available at the following web site: http://www.vss.psu.edu/BTRC/Reports/allbusses.pdf.

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

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit a certification, change its procurement procedures, and/or change its bus acceptance procedures and submit evidence of such to the FTA regional office. The grantee may be required to reimburse FTA.

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
All FTA-Assisted Third-Party Contracts and Subcontracts		
No Federal government obligations to third-parties by use of a disclaimer		§2.f
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§15.t
Federal changes		§2.c(1)
Civil Rights (EEO, Title VI & ADA)		§12
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§12.d
Incorporation of FTA Terms	Per FTA C 4220.1F	§15.a
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§12.d
Awards Exceeding $10,000		
Termination provisions	49 CFR Part 18	§11
Awards Exceeding $25,000		
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b
Awards Exceeding the Simplified Acquisition Threshold ($100,000)		
Buy America	When tangible property or construction will be acquired	§14.a
Provisions for resolution of disputes, breaches, or other litigation		§54
Awards Exceeding $100,000 by Statute		
Lobbying		§3.d
Clean Air		§25.b
Clean Water		§25.c
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§14.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§14.c

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Construction Activities		
Davis Bacon Act	Except for contracts <$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market	§24.a
Copeland Anti-Kickback Act	Contracts >$100,000	§24.a
Contract Work Hours & Safety Standards Act	Contracts >$100,000	§24.a
Bonding for construction activities exceeding $100,000	5% bid guarantee; 100% performance bond; and Payment bond equal to: • 50% for contracts < $1 M • 40% for contracts > $1 M, but < $5 M • $2.5 M for contracts > $5 M	§15.o(1)
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§23.e
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > $100,000	§24.b
Transit Operations		
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311 and 5316 projects	§24.d
Charter Service Operations		§28
School Bus Operations		§29
Drug and Alcohol Testing	Safety sensitive functions. Applies to Sections 5307, 5309 and 5311 projects.	§32.b
Planning, Research, Development, and Documentation Projects		
Patent Rights		§17
Rights in Data and Copyrights		§18
Miscellaneous Special Requirements		
Energy Conservation		§26
Recycled Products	Contracts for items designated by EPA, when procuring $10,000 or more per year	§15.k
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§12.g
Assignability Clause	Piggyback procurements	§15.n
Special Notification Requirements for States		
Special Notification Requirements for States		§38

Exhibit 6.1
B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§15.n(4)
TVM Certifications	Procurements of buses and modified mass produced vans	§12.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products > $100,000	§14.a
Pre-Award Audit	Rolling stock procurements	§15.n(3)
Pre-Award Buy America Certification	Rolling stock procurements>$100,000	§15.n(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§15.n(3)
Post-Delivery Audit	Rolling stock procurements	§15.n(3)
Post-Delivery Buy America Certification	Rolling stock procurements >$100,000	§15.n(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§15.n(3)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§15.n(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Rolling stock procurements	§15.n(3)
Lobbying Certification	Procurements > $100,000	§3.d(1)
Standard Form LLL and Quarterly Updates (when required)	Procurements > $100,000 where contractor engages in lobbying activities	§3.d(1)

Exhibit 6.1
C. OTHER REQUIRED ITEMS

REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3.d(1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8.b
Justification for Noncompetitive Awards	If applicable	Ch VI, §3.i(1)(b)

REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2.a(4)
No geographic preferences	Except for A&E services	Ch. VI, §2.a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7.b
Exercise of Options		Ch. V, §7.a

Exhibit 6.2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

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

Exhibit 6.2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
Bonding				>$100,000 (including ferry vessels)	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & Development				
Rights in Data and Copyrights requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring $10,000 or more per year		Contracts for items designated by EPA, when procuring $10,000 or more per year	Contracts for items designated by EPA, when procuring $10,000 or more per year
ADA Access	Architectural & Engineering	All	All	All	
Special Notification Requirements for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

7. DISADVANTAGED BUSINESS ENTERPRISE

BASIC REQUIREMENT

The grantee must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

AREAS TO BE EXAMINED

1. *DBE Program*
- a. Thresholds
- b. Program submittal
- c. DBE Liaison Officer

2. *DBE Goals and Reports*
- a. Annual goal submittals
- b. Uniform Report of DBE Awards or Commitments and Payments

3. *Procurement*
- a. Good faith efforts
- b. Payment clauses
- c. Monitoring
- d. TVM Certification

4. *Certification Process*
- a. Unified Certification Program
- b. DBE certifications

5. *DBE Complaints and Protests*
- a. Complaint handling procedures
- b. Complaint log and status of complaints

REFERENCES

1. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"

2. www.fta.dot.gov/dbe, FTA's DBE website

QUESTIONS FOR THE REVIEW

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

EXPLANATION
As part of its project oversight functions, FTA periodically conducts DBE reviews of selected grantees.

Even if such a review is scheduled for the current fiscal year or has been recently conducted, all questions in this section are still asked. If a DBE review has been recently conducted, a copy of the most recent report (draft or final) may be requested for input into the triennial review.

REFERENCE
Input to triennial review

SOURCES OF INFORMATION
The regional civil rights officer (RCRO) will have information on DBE review activities. Reports may be available from the grantee, at the regional office or from FTA headquarters.

DETERMINATION
None

2. *Does the grantee meet the threshold for a DBE program?*
a. If yes, has the grantee's DBE program been approved by FTA? If no, provide an explanation.
b. If no, skip to Question 11.

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

Grantees required to have a written program that are part of a local government may be allowed to submit a single plan to FHWA if the local government receives more funding from FHWA than from FTA. The grantee still must submit transit-specific goals to FTA on an annual basis (see Question 5).

REFERENCE
49 CFR 26.21

SOURCES OF INFORMATION
Purchases from FTA funded operating budgets, preventative maintenance budgets and capital programs may exceed $250,000 in FTA funds when aggregated. The contracting opportunities of a grantee's subrecipients are included when determining whether a grantee meets the threshold. If the local government submits a single plan to FHWA, the RCRO can confirm that a separate FTA program plan is not required.

DETERMINATION
A grantee is deficient if a program has not been submitted and it has $250,000 of FTA funds in contracting opportunities or has not responded to FTA's request for additional information.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit its DBE program to the RCRO.

3. *Who is the agency's DBE liaison officer (DBELO)? To whom does this person report for DBE matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

EXPLANATION
For grantees that meet the threshold requiring that they have a DBE program, the grantee's chief executive officer (CEO) must designate a DBE liaison officer (DBELO) and adequate staff to administer the DBE program. The DBELO must have direct and independent access to the CEO concerning DBE matters.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. However, if the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, the

exercise of this direct and independent access should be verified through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

Care should be taken to avoid conflicts when assigning the DBELO as a collateral duty assignment. The DBELO performs an oversight function. Therefore, if, for example, the procurement director is made the DBELO on a collateral duty basis, there may be a potential conflict of interest. If such an arrangement exists, the grantee should be prepared to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

REFERENCE
49 CFR 26.25

SOURCES OF INFORMATION
During the site visit, current staff assignments will be examined. An organization chart can indicate reporting relationships. A job description for the DBELO can confirm responsibilities and reporting relationships.

DETERMINATION
A staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. If the DBELO cannot demonstrate direct and independent access to the CEO, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to designate DBE responsibilities properly. If the deficiency is related to the reporting relationship of the DBELO, the grantee may need to change reporting relationships or assignment of responsibilities. The grantee will be directed to provide evidence of corrective actions to the RCRO.

4. *Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

EXPLANATION
Grantees are required to follow their approved DBE programs, and such programs need to be updated when significant changes occur. FTA has found in its DBE reviews that organizational changes have occurred and grantees have not updated their programs. A typical organizational change has been a revision to the position of the DBELO and the resulting reporting relationship to the CEO. FTA considers this to be a significant change to a grantee's DBE program that should be communicated to the RCRO for approval.

REFERENCE
49 CFR 26.21

SOURCES OF INFORMATION
The reviewer will examine a current organization chart and job description for the DBELO to determine if the DBE program on file with FTA is current.

DETERMINATION
If organizational changes that affect the DBE program have occurred and the DBE program on file with FTA has not been updated or resubmitted to FTA the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit an update of its DBE Program to the RCRO for approval.

5. *Were fiscal year goals submitted to FTA by August 1 preceding the start of each Federal fiscal year? Did the grantee conduct a consultative process in setting these goals? Did the grantee publish its goals for 45 days in general circulation media and available minority focused media and trade associations prior to submission to FTA?*

EXPLANATION
Annual overall agency goals are required of FTA recipients receiving planning, capital, and/or operating assistance who project contracting opportunities (excluding transit vehicle purchases) exceeding $250,000 with those funds in the upcoming Federal fiscal year. Contracting opportunities are counted in the aggregate, and include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects, and contracting activities of subrecipients. Overall goals should be calculated as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles) that the grantee will expend in FTA-assisted contracts in the forthcoming fiscal year. Grantees may also be permitted to express an overall goal as a percentage of funds for a particular grant and/or project with prior FTA approval. An example of this may occur with a major project such as a New Start project.

Overall DBE goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and

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

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

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

In establishing an overall goal, grantees must provide for public participation. This public participation must include the following steps in this order:

- Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
- A published notice announcing the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice must include addresses (including the FTA RCRO's address) to which comments may be sent. The notice must be published in general circulation media and be available in minority-focused media and trade association publications. Publication of DBE goals on the entity's website or any website is not sufficient to meet the publication requirement.

Because of the 45-day requirement for publication, a grantee must publish its goal no later than June 15.

REFERENCE
49 CFR 26.45

SOURCES OF INFORMATION
The reviewer will examine DBE files for correspondence regarding annual overall DBE goal submittals and public participation (e.g. evidence of consultation with interested parties and copies of DBE public notices with proof of publication). During the site visit, the reviewer may examine any outstanding materials (e.g., submission of current year goals) and evaluate the contracting opportunities to determine if the grantee has included all contracting opportunities in its goal submissions.

DETERMINATION
A grantee is deficient if:

- Overall annual DBE goals were not submitted to FTA by August 1 (or by another date established by FTA based on an extension request).
- Goals were not calculated in accordance with the regulations.
- The goals setting process did not include a public participation process.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit its annual overall DBE goal or adjusted goal to the RCRO and implement a procedure to ensure that future goals will be submitted by August 1. The grantee will be directed to develop or revise its public participation process and provide FTA documentation of the implementation of the process.

6. *Has the grantee submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually?*

EXPLANATION
Each grantee that meets the threshold requiring them to have a DBE program is also required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually. The report addresses the contracting opportunities of the grantee and its subrecipients. It includes information on awarded and completed contracts; those that included DBE participation, as well as those that did not. This report is available at www.fta.dot.gov/dbe. Reports are due by June 1 (for the period covering October 1 – March

31) and by December 1 (for the period covering April 1 – September 30).

REFERENCE
49 CFR 26.11
DBE Semi-Annual Reporting Form

SOURCES OF INFORMATION
The reviewer will examine the DBE files for correspondence regarding semi-annual report submittals. During the site visit, the reviewer may examine any outstanding materials and verify that the form submitted is the form noted above, and that it has not been modified by the grantee.

DETERMINATION
If the grantee has not submitted the reports semi-annually, has not submitted them timely or is not using the current form, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1) to the RCRO, along with an implemented procedure to ensure future timely and correct submissions.

7. *Since the last review, how many times did the grantee award a contract to a firm that did not meet the specified DBE solicitation goal? For these instances, how did the grantee determine if "good faith efforts" were sufficient?*

EXPLANATION
The grantee's DBELO should play a key role in procurement decisions to ensure that the DBE program is implemented properly. Prior to awarding a contract to a firm that did not meet a specific DBE solicitation goal; the grantee must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goals. Examples of efforts the grantee may consider include: whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR Part 26.

It is important to note that DBEs are certified to perform certain types of work. To receive credit for good faith efforts and to count towards goal attainment, DBEs named must be certified to do the scopes of work that they are contracted to perform.

REFERENCE
49 CFR 26.53 and Appendix A

SOURCES OF INFORMATION
The grantee may be asked to explain its methods for determining "good faith efforts." During the review of the procurement area, solicitations including a DBE goal may be examined. For procurements where the awarded DBE amount is less than the goal stated in the solicitation, the grantee's documented good faith efforts will be reviewed.

DETERMINATION
If the grantee cannot describe the methods, or applicable procurement files do not include documentation of the consideration of "good faith efforts," the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop a method for determining "good faith efforts" and/or include documentation in applicable procurement files. Provide evidence of any actions to the RCRO.

8. *Has the grantee included required prompt payment and return of retainage clauses in its procurement documents?*

EXPLANATION
Grantees must have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the grantee. Grantees must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The grantee **must** use one of the following methods to comply with this requirement:

- Decline withholding of retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- Decline withholding of retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
- Withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract

clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

For purposes of the retainage requirement, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the grantee. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. The grantee should be able to document its processes for ensuring contractor compliance with prompt payment and prompt return of retainage requirements.

REFERENCE
49 CFR 26.29

SOURCES OF INFORMATION
The reviewer will examine procurement files for information on the inclusion of appropriate prompt payment and return of retainage clauses and policies. Contract administration or contract compliance mechanisms may be reviewed for information on a grantee's means of enforcing these requirements.

DETERMINATION
A grantee is deficient if it has not included appropriate prompt payment and return of retainage clauses in its contracts. It is also deficient if it does not have a monitoring and enforcement process for ensuring the implementation of prompt payment and return of retainage.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the RCRO documentation of efforts to ensure compliance with prompt payment and return of retainage requirements.

9. *How does the grantee monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? What enforcement mechanisms does the grantee use for DBE requirements? Does the grantee require contractors to obtain approval from its DBELO prior to substituting a DBE firm after contract award?*

EXPLANATION
Recent investigations by the U.S. DOT Office of the Inspector General have raised concerns about the administration of DBE programs. Grantees must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (e.g., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Prior to awarding a project with a DBE goal to a contractor, the grantee is required to collect from the awardee the names, dollar amounts, and types of work for each DBE. This information forms the DBE commitment (not goal) of the awarded contract. The grantee should document efforts to monitor that primes are maintaining their commitment to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed. Additionally, grantees should demonstrate how they monitor for the adherence to the required prompt payment and return of retainage clauses.

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

The grantee should demonstrate that it provides oversight of subrecipients to ensure inclusion of required contract clauses and monitoring of contractors for adherence to commitments.

REFERENCE
49 CFR 26.37
49 CFR 26.53

SOURCES OF INFORMATION
The reviewer will examine the grantee's DBE program to identify the methods that the grantee states it will use to monitor contractors and subrecipients. At the site visit, the grantee may be asked to provide examples of actual monitoring activities/reports from the past three years.

DETERMINATION
If the grantee cannot demonstrate how it is monitoring its contractors and subrecipients, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to begin monitoring contractors and subrecipients and provide documentation of corrective actions to the RCRO. The grantee will be directed to update the DBE program to reflect current monitoring procedures.

10. *How does the grantee monitor to ensure that DBEs are actually performing applicable work on projects?*

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

Recent investigations by the U.S. DOT Office of the Inspector General have raised concerns about the administration of DBE programs. Specifically, it has been found that DBE certified firms are serving as "fronts" for ineligible firms. A grantee's responsibility for monitoring DBE participation does not end with the certification process.

The reviewer should ask if the grantee implements efforts such as conducting site visits to observe that DBEs are actually performing the work on contracts, reviewing subcontract agreements, checking payroll records to ensure that the employees working on the job are actually employees of the DBE, and looking at the title to equipment used on the project to ensure that the equipment is owned or leased by the DBE.

REFERENCE
49 CFR 26.37

SOURCES OF INFORMATION
The reviewer will examine the grantee's DBE program to identify the methods that the grantee states it will use to monitor that DBEs are actually performing the stated work on contracts. At the site visit, the grantee may be asked to provide examples of actual monitoring activities/reports from the past three years.

DETERMINATION
If the grantee cannot demonstrate how it is monitoring that DBEs are actually performing the stated work, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to begin monitoring that DBEs are actually performing the stated work and provide documentation of corrective actions to the RCRO. The grantee will be directed to update the DBE program to reflect current monitoring procedures.

11. *For procurements of transit vehicles (e.g., buses, railcars) conducted since the last review, did the grantee obtain DBE certifications from the transit vehicle manufacturers (TVM) with the bids/proposals submitted?*

EXPLANATION
All grantees must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. The certification should reference 49 CFR Part 26 (not Part 23). The grantee is required to include a provision in its bid specifications requiring the certification from TVMs as a condition of permission to bid. Typically, dealers and manufacturers of unmodified, mass-produced vehicles such as vans and sedans are not classified as TVMs for the DBE regulation. A list of TVMs that have submitted required DBE information to FTA is available at the FTA website: www.fta.dot.gov/dbe. Evidence that this website has been checked to validate the TVM certification, prior to award, should be included in applicable procurement files.

Please note that FTA is working with USDOT to formalize the definition of TVM. In particular, grantees using FTA funds for the purchase of ferries should review these procurements for either collection of a valid TVM certification from ferry manufacturers or inclusion of contracting opportunities associated with these procurements in their annual goal-setting methodology.

REFERENCE
49 CFR 26.49
FTA's DBE Website

SOURCES OF INFORMATION
The grantee's transit vehicle procurement files will be reviewed for signed TVM certifications.

DETERMINATION
If the grantee does not include a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders or if the TVM certification is out of date (references Part 23 instead of Part 26), the grantee is deficient. If the grantee is procuring ferries with FTA funds and has not included a TVM certification in its procurement documents or received signed, valid certifications from ferry manufacturers, the grantee is advised to work with the regional office for a resolution.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to include a provision in applicable bid specifications requiring current TVM

certifications and/or obtain TVM certifications from successful bidders and provide the RCRO with evidence of its corrective action.

12. *Is the grantee signatory to its state's Unified Certification Program (UCP)?*

13. *Does the grantee certify DBEs itself? If yes, does the grantee:*

- *use the correct application form, instructions and document checklist;*
- *conduct site visits prior to certification; and*
- *obtain annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation?*

EXPLANATION

The regulations require that all DOT grantees participate in a UCP within their state. Even if a grantee does not certify DBEs, it is required to be signatory to its state's UCP agreement. Any grantee that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs, consistent with the standards of Subpart D, participate as DBEs in their program.

The certification procedures help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. The regulations give specific guidance on determining eligibility based on group membership or individual disadvantage, business size, ownership, and control. The correct instructions, form, and document checklist to be used for DBE certification are located at USDOT's website. Certifying grantees are to use these documents unmodified, unless such modifications were approved by USDOT.

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

REFERENCE

49 CFR Part 26.61-26.91
USDOT DBE Certification Form

SOURCES OF INFORMATION

The grantee should be able to provide information regarding its participation in a UCP. Provide a copy of the signed UCP agreement.

Reviewers may examine two or three DBE certification files to confirm that the certification procedures are in place. Certification files should show evidence of a site visit prior to certification and annual affidavits of continued DBE eligibility. The reviewer may examine a sample of annual affidavits for DBE firms that have performed work during the past three years.

DETERMINATION

If the grantee is not participating (through at least being signatory to the state's agreement) in the UCP, it is deficient.

If the grantee certifies DBEs and is not using the correct forms or has not followed the procedures, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit a description of how it will participate in the UCP and submit copies of signed UCP agreements. The grantee will be directed to implement standards and procedures to determine initial and continued DBE eligibility in accordance with 49 CFR Part 26.61-26.91 and provide evidence of the corrective action to the RCRO. The grantee must update the DBE program to reflect the new procedures.

14. *Since the last review, did the grantee receive any complaints or procurement protests alleging that it did not comply with the DBE regulations? What is the grantee's process for handling and resolving such complaints? Do the complaints indicate any problems with the DBE program?*

EXPLANATION

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

REFERENCE

49 CFR 26.103

SOURCES OF INFORMATION

At the site visit, the grantee should make available a listing of all complaints or protests during the past three years and the disposition of such complaints. Individual complaint files can be reviewed.

Discussions with responsible officials and employees may be necessary.

DETERMINATION

If complaints indicate that the grantee is violating DBE program regulations or if the complaints do not receive a response, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to resolve any outstanding complaints and/or develop and implement procedures for handling DBE complaints and submit these procedures to the RCRO.

8. BUY AMERICA

BASIC REQUIREMENT

Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States. The only exceptions are if FTA has granted a waiver or if the product is subject to a general waiver. Rolling stock must have sixty percent domestic content. Also, final assembly of rolling stock must take place in the United States and grantees must conduct a pre-award and post-delivery audit for purchases of rolling stock in order to verify that the 60 percent domestic content and final assembly requirements were met.

AREAS TO BE EXAMINED

1. ***Buy America Provisions and Certifications***

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

REFERENCES

1. 49 CFR Part 661, "Buy America Requirements."

2. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases."

3. FTA "Dear Colleague" Letter, March 18, 1997.

4. Federal Register Vol. 71, No. 54, pp. 14112-14118, Buy America Requirements; Amendments to Definitions.

5. Federal Register Vol. 72, No. 182, pp. 53688-53698, Buy America Requirements; End Product Analysis and Waiver Procedures. Final rule.

6. Federal Register Vol. 72, No. 188, pp. 55102-55103, Buy America Requirements; End Product Analysis and Waiver Procedures. Final rule; correction

USEFUL WEB LINKS

Best Practices Procurement Manual

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements, FTA T-90-7713-93-1, Rev. B

Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements, FTA DC-90-7713-94-1, Rev. B

Questions and Answers

Waivers and Letters of Interpretation

QUESTIONS FOR THE REVIEW

1. *Has the grantee included a Buy America provision in all procurements of steel, iron, and manufactured products, except for products with a waiver or small purchases of $100,000 or less? Has the grantee obtained Buy America certifications from successful vendors?*

EXPLANATION

Buy America regulations require that all procurements of steel, iron, and manufactured products, except for those subject to a waiver, contain Buy America provisions. Waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software and small purchases (currently less than $100,000). The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four vans that totals $120,000, even though each van costs $30,000, must comply with the Buy America procedures. Grantees may not split procurements that exceed the threshold in order to avoid Buy America requirements. The general waiver for final assembly in the United States of 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation was repealed by SAFETEA-LU.

Buy America provisions apply to all purchases of steel, iron, and manufactured goods exceeding $100,000, regardless of whether they involve capital, operating, or planning funds. The requirements apply to subcontractors, regardless of the size of the subcontract, if the prime contract is more than $100,000. The requirements apply when a grantee uses an intergovernmental agreement or otherwise jointly purchases manufactured products. The requirements do not apply to purchase of used items.

The grantee must include a clause citing the Buy America requirement and a Buy America certification in its invitations for bids (IFB) and requests for proposals (RFP). There are different certifications for procurements of rolling stock than for procurements of other steel, iron, or manufactured products. The specific text for steel, iron or manufactured products can be found at 49 CFR 661.6. The specific text for rolling stock can be found at 49 CFR 661.12. Each is contained in the FTA *Best Practices Procurement Manual*.

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

REFERENCE

49 CFR 661.6
49 CFR 661.7
49 CFR 661.12
49 CFR 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118
Best Practices Procurement Manual.

SOURCES OF INFORMATION

During the desk review, the reviewer will determine if the grantee applied for any waivers from Buy America requirements. The grantee's written procurement procedures will be examined prior to the site visit. On site, the reviewer will discuss the procedures for incorporating Buy America provisions in procurements and obtaining certifications from vendors. A sample of procurement files will be selected and reviewed for evidence that Buy America requirements have been met. The review will focus on procurements of vehicles and other procurements of steel, iron or manufactured products greater than $100,000. The reviewer will examine invitations for bids to determine if Buy America provisions were included as well as bid responses and executed contracts to determine if properly executed Buy America certifications were obtained.

DETERMINATION

If the grantee does not include Buy America provisions in solicitations or does not obtain signed Buy America certifications from vendors, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to 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 grantee will need to submit documentation of the revised procedures to the FTA

regional office. For procurements in progress, the grantee will be directed to obtain signed Buy America certifications.

2. *How does the grantee ensure that subrecipients and contractors making procurements on its behalf include Buy America provisions in applicable solicitations and obtain signed Buy America certifications from vendors for applicable procurements?*

EXPLANATION
Buy America requirements flow through to subrecipients and management or service contractors making FTA funded procurements on the grantee's behalf. The grantee is responsible for ensuring that subrecipients and management or service contractors comply with the requirements.

REFERENCE
49 CFR 661.6
49 CFR 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118

SOURCES OF INFORMATION
The reviewer will examine subrecipient agreement(s), management or service contracts, project/state management plans, and other documentation of procurement procedures and requirements for information on the Buy America requirements and the responsibilities of the grantee, contractors and subrecipients in the procurement process. On site, the reviewer will discuss the mechanisms used to ensure compliance if subrecipients or management or service contractors have contracts for steel, iron, and manufactured products that are subject to the regulation. If the grantee has bid and/or contract documents on file, a sample will be reviewed for inclusion of Buy America provisions and signed Buy America certifications. Otherwise the reviewer will examine a procurement file during any site visit to a subrecipient or contractor.

DETERMINATION
The grantee is deficient if it does not ensure compliance with the Buy America requirements.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA procedures for ensuring that subrecipients and management or service contractors comply with Buy America requirements.

3. *Did the grantee conduct pre-award and post-delivery audits for its purchases of revenue rolling stock? What process was used to verify domestic content, final assembly activities, and location of final assembly at the pre-award and post-delivery stages? Does the grantee have on file signed pre-award and post-delivery Buy America, purchaser's requirement, and Federal Motor Vehicle Safety Standards (FMVSS) certifications?*

EXPLANATION
A grantee purchasing revenue service rolling stock with Federal funds must conduct or order to be conducted pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's 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 requirement does not apply to purchases of used revenue service rolling stock.

The pre-award audit is required before a grantee enters into a formal contract with a supplier. The post-delivery audit must be completed before a bus title is transferred to the grantee or before a bus is placed into revenue service, whichever is first. The audits require the grantee to complete two certifications at the pre-award stage and three certifications at the post-delivery stage.

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

FTA has published two guidance manuals to assist grantees with conducting pre-award and post-delivery audits:

- *Conducting Pre-Award and Post-Delivery Audits for Bus Procurements*, FTA T-90-7713-93-1, Rev. B.
- *Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements*, FTA DC-90-7713-94-1, Rev. B.

Buy America
If the procurement exceeds $100,000, at the pre-award stage, the grantee must complete:

- 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

- An exemption certification indicating that the grantee has a letter from FTA granting a waiver from the Buy America requirement.

Proper documentation for the certification includes disclosure by the manufacturer of the final assembly location; a listing of the component and subcomponent parts, the cost (actual or percent of total) of such components and subcomponents and the country of origin; and a description of final assembly activities.

The grantee or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

The grantee must complete similar certifications at the post-delivery stage, based on the actual vehicles delivered.

FTA issued a waiver from Buy America requirements for small purchases (less than $100,000). Thus, a procurement of small buses and vans which totals less than $100,000 is not subject to the general Buy America requirements of 49 CFR Part 661. This waiver does not exempt rolling stock from the pre-award and post-delivery purchaser's requirements and FMVSS audits required by 49 CFR Part 663.

Purchaser's Requirements

The recipient must complete a pre-award purchaser's requirements certification verifying that the manufacturer's bid specifications comply with the grantee'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 grantee's determination that the vendor is responsive and responsible.

The grantee 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 grantee's visual inspections and road tests and, if required, the resident inspector's monitoring of the final assembly process and final report of manufacturing activities.

The requirement to conduct an audit for compliance with purchaser's requirements and sign a certification applies to all purchases of revenue rolling stock, **even those under the Federal small purchase threshold**.

FMVSS

The grantee must complete, at the post-delivery stage, a certification that the grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stages a certification that the vehicles comply with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571). The requirement to conduct an audit for compliance with FMVSS and sign a certification applies to all purchases of revenue rolling stock, **even those under the Federal small purchase threshold.**

REFERENCE

49 CFR 661.11, Appendices B and C
49 CFR 663.21 and 663.31
Dear Colleague letter of March 30, 2001
Federal Register Vol. 71, No. 54, pp. 14112-14118
49 CFR Part 571
Conducting Pre-Award and Post-Delivery Audits for Bus Procurements,
Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements,

SOURCES OF INFORMATION

The reviewer will examine the grantee's procurement procedures for a discussion of pre-award and post-delivery audits. On site, the reviewer will discuss the process for completing the pre-award and post-delivery audits and certifications. As part of the review of procurement files, the reviewer will examine the pre-award and post-delivery audit certifications and supporting documentation for a recent procurement of rolling stock.

DETERMINATION

If the grantee did not conduct all of the required reviews and audits for any rolling stock procurement, it is deficient. If the grantee conducted the required pre-award and post-delivery audits and documented the procedures, but did not sign all required certifications, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop and implement procedures to complete the applicable pre-award and post-delivery audits and certifications. The grantee will need to submit documentation of the procedures to the FTA regional office.

4. *Did the grantee use in-plant inspectors when required?*

EXPLANATION

Grantees are required to have an in-plant inspector throughout the manufacturing process if it meets the following criteria:

- Grantees purchasing any number of rail vehicles
- Grantees in urbanized areas with populations of more than 200,000 that purchase more than 10 buses
- Grantees in areas with populations of 200,000 or less that purchase more than 20 buses

Grantees that purchase buses for subrecipients are only required to use an in-plant inspector if 10 or more of the vehicles are purchased for a subrecipient in an urbanized area with a population of more than 200,000, or 20 or more of the vehicles are purchased for a subrecipient in an area with a population of less than 200,000. The grantee or the subrecipient may provide the inspector. One in-plant inspector can meet the requirement for multiple grantees.

FTA does not require in-plant inspectors for any number of unmodified vans manufactured by the automobile companies. FTA requires only a visual inspection and road test after delivery for such procurements.

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 grantee must visually inspect and road test the vehicles.

The grantee 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. The post-delivery purchaser's requirements certification must certify that: 1) an on-site inspector was present throughout the manufacturing 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) following receipt of the inspector's report, the grantee visually inspected and road tested the rolling stock prior to acceptance.

REFERENCE
49 CFR 663.37 (a) and (c)

SOURCES OF INFORMATION
The reviewer will check projects in TEAM-Web for recent grants to determine the type and quantity of vehicles procured. On site, the reviewer will inquire about the vehicles procured over the last several years and the need for in-plant inspectors. If an in-plant inspector was required, the reviewer will discuss with the grantee how the requirement for an in-plant inspector was fulfilled, and identify the organization providing the in-plant inspector, e.g., the grantee, the subrecipient, or third-party contractor to the grantee or subrecipient. The reviewer also will examine procurement files.

DETERMINATION
If the grantee did not provide for an independent in-plant inspector during manufacture of the vehicles when required or did not prepare a report documenting the construction of the vehicles and how they meet the bid specifications, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will need to develop and implement procedures for providing, or requiring subrecipients to provide, in-plant inspectors during the manufacture of more than twenty vehicles. The grantee must submit documentation of the procedures to the FTA regional office.

5. *If the grantee purchased rolling stock with multiple delivery dates using either options or multi-year procurements, did it perform and certify a pre-award and post-delivery audit for each group of vehicles before placing them into service?*

EXPLANATION
Grantees may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each “order” of vehicles, have a valid pre-award and post-delivery audit before it is placed into service. One pre-award audit may suffice provided that there is no change in vehicle configuration between successive deliveries of vehicles.

REFERENCE
49 CFR 663.21 and 663.31
FTA Dear Colleague Letter, March 18, 1997

SOURCES OF INFORMATION
Contract files, invoices, and other procurement documentation will be examined during the site visit to identify delivery dates and obtain information on options.

DETERMINATION
If the grantee has placed a group of vehicles into service before the pre-award and post-delivery audits were completed, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide FTA with an explanation, complete the required audits and furnish FTA with copies of the audit documentation and work papers. The grantee must revise procedures so that future procurements will comply with this requirement.

6. *How does the grantee ensure subrecipients and contractors purchasing revenue rolling stock on the grantee's behalf comply with pre-award and post-delivery audit requirements?*

EXPLANATION

Pre-award and post-delivery audit requirements for rolling stock procurements flow through to subrecipients and management or service contractors procuring revenue rolling stock on the grantee's behalf. The grantee is responsible for ensuring compliance with the pre-award and post-delivery audit requirements when procuring rolling stock directly with FTA assistance.

REFERENCE

49 CFR 663

SOURCES OF INFORMATION

Subrecipient agreements, management or service contracts, project/state management plans or other procedures documents will be reviewed for information on the grantee's procurement procedures and the responsibilities of the grantee, contractors and subrecipients in procurements. On site, the reviewer will discuss procedures for ensuring compliance with the requirements. If the grantee has subrecipients' or contractors' documentation of direct procurements of rolling stock on file, a sample of these will be reviewed for the appropriate pre-award and post-delivery certifications. Otherwise, a procurement file for rolling stock will be examined during any site visit to subrecipients.

DETERMINATION

The grantee is deficient if it does not ensure compliance with pre-award and post-delivery audit requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to FTA procedures for ensuring that subrecipients and management or service contractors comply with pre-award and post-delivery audit requirements.

9. DEBARMENT AND SUSPENSION

BASIC REQUIREMENT

To protect the public interest from and prevent fraud, waste, and abuse in Federal transactions, persons or entities, which by defined events or behavior, that potentially threaten the integrity of Federally administered non-procurement programs are excluded from participation in FTA assisted programs.

AREAS TO BE EXAMINED

1. ***Inclusion of Clause in Procurements exceeding $25,000***

2. ***Search of the Excluded Parties Listing System***

3. ***Disclosure***

4. ***Subrecipient Oversight***

REFERENCES

1. 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension"

2. 2 CFR Part 1200, "Nonprocurement Suspension and Debarment"

3. FTA Master Agreement

USEFUL WEB LINKS

Excluded Parties Listing System

Best Practices Procurement Manual

QUESTIONS FOR THE REVIEW

1. *Has the grantee included a term or condition requiring compliance with the debarment and suspension requirement in subgrants, procurement solicitations and lower tiered transactions of $25,000 or more?*

EXPLANATION
Any subrecipient, third-party contractor, and subcontractor with a contract of $25,000 or more must agree to comply with the debarment and suspension requirements. The prime contractor makes this agreement by submitting a bid or offer that includes the clause/certification found in the Appendix A of the *Best Practices Procurement Manual*. The grantee also must require that proposed subcontractors with subcontracts expected to be $25,000 or more similarly agree. It is not necessary to include a separate certification for this requirement.

REFERENCE
2 CFR Part 180
2 CFR Part 1200
FTA Master Agreement, Section 3.b
Best Practices Procurement Manual

SOURCES OF INFORMATION
The grantee's written procurement procedures and subrecipient agreements may be examined to see that this requirement has been included. Procurement files will be examined during the site visit.

DETERMINATION
The grantee is deficient if the debarment and suspension clause is not included in procurement solicitation documents or agreements.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide FTA with documentation that demonstrates how it will comply with the debarment and suspension requirements for all future, applicable procurements. The grantee will be directed to update procurement procedures to include the requirement.

2. *Did the grantee search the Excluded Parties Listing System (EPLS) to ensure that excluded parties do not participate in covered transactions?*

EXPLANATION
Each grantee is required to ensure to the best of their knowledge and belief that none of the grantee's principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in Federally assisted transactions or procurements. FTA requires grantees to review the EPLS before entering into any third party contracts exceeding $25,000. A good practice is for the grantee to print the screen with the results of the search to include in the grant or procurement file.

2 CFR Part 180 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction. The grantee should have a similar review process for its principals as it does for it contractors and subrecipients regarding suspension and debarment.

REFERENCE
2 CFR Part 180
2 CFR Part 1200
FTA Master Agreement, Section 3.b
Excluded Parties Listing System

SOURCES OF INFORMATION
The reviewer may check the grantee's written procurement procedures or employment procedures to review the EPLS has been included. During the site visit, contract and subrecipient files may be reviewed to determine if the EPLS is being searched before entering into any third party contracts.

DETERMINATION
If the grantee has not reviewed the EPLS prior to applicable awards or actions, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to implement procedures to search EPLS before entering into applicable transactions. The grantee will be directed to update procurement procedures to include the requirement.

3. *Are excluded parties participating in covered transactions? If yes, did the grantee promptly inform FTA in writing of this information?*

EXPLANATION
In the event that a grantee becomes aware, after the award of a contract, that an excluded party is

participating in a covered transaction, it must promptly inform FTA in writing of this information.

The grantee may continue any covered transactions in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. The grantee is not required to continue the transaction and may consider termination. However, the grantee may not renew or extend the covered transaction (other than through a no-cost time extension) with the excluded party.

REFERENCE
2 CFR Part 180
2 CFR Part 1200

SOURCES OF INFORMATION
The grantee may be asked if it has become aware of a situation in which an excluded party is participating in a covered transaction. If so, provide a copy of the grantee's written notification to FTA.

DETERMINATION
The grantee is deficient if it has not promptly informed FTA in writing after becoming aware that an excluded party is participating in a covered transacation.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide documentation of an implemented process to promptly notify FTA in writing of any excluded party's participation.

4. *How does the grantee monitor subrecipients' compliance with requirements regarding debarment and suspension?*

EXPLANATION
The grantee is responsible for informing subrecipients of the requirements and for ensuring that they fulfill the requirements in covered contracts ($25,000 and over).

Subrecipients are also subject to a continuing duty of disclosure. A subrecipient must provide immediate written notice to the grantee if it learns that a person involved in a covered transaction has been excluded. The grantee must then provide written notice to FTA.

REFERENCE
2 CFR Part 180
2 CFR Part 1200

SOURCES OF INFORMATION
The reviewer will examine subrecipient agreements, project/state management plans, and other documentation for discussion of the requirements regarding debarment and suspension. Grantees should be prepared to discuss the mechanisms used to monitor subrecipients' compliance with these requirements.

DETERMINATION
If the grantee does not require subrecipients to comply with the requirements or does not have an appropriate process for monitoring compliance, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and implement an appropriate process for monitoring subrecipients for compliance with debarment and suspension requirements and submit documentation of the process to the FTA regional office.

10. LOBBYING

BASIC REQUIREMENT

Recipients of Federal grants and contracts exceeding $100,000 must certify compliance with Restrictions on Lobbying before they can receive funds.

AREAS TO BE EXAMINED

1. ***Certification***

2. ***Disclosure***

3. ***Oversight***

REFERENCES

1. 49 CFR Part 20, "New Restrictions on Lobbying"

USEFUL WEB LINKS

Best Practices Procurement Manual

Standard Form LLL

QUESTIONS FOR THE REVIEW

1. *Has the grantee included the lobbying certification in all FTA funded agreements and procurement solicitations exceeding $100,000? Have subrecipients, contractors, and subcontractors signed certifications?*

2. *How does the grantee monitor subrecipients and contractors to ensure that they include the lobbying certifications in solicitations and obtain signed certifications from contractors awarded contracts in excess of $100,000?*

EXPLANATION

Grantees are required to include the lobbying certification in agreements, contracts, and subcontracts exceeding $100,000. Signed certifications regarding lobbying must be obtained by the grantee from subrecipients and contractors. Subrecipients retain their contractors' certifications and contractors retain subcontractors' certifications. The grantee is responsible for ensuring that they fulfill the requirements in applicable direct procurements exceeding $100,000.

REFERENCE

49 CFR Part 20

SOURCES OF INFORMATION

The reviewer will examine solicitation documents, contract files and subrecipient applications and agreements. The reviewer also will discuss with staff the mechanisms used to inform subrecipients and contractors and to monitor compliance with lobbying requirements.

DETERMINATION

If the grantee has not included the lobbying certification in its agreements and procurement solicitations, it is deficient. If the grantee has not obtained the proper certifications from contractors and subrecipients, it is deficient. If the grantee does not ensure subrecipient and contractor compliance with restrictions on lobbying requirements, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to update written procurement procedures to include the certification requirement. The grantee will need to inform subrecipients of the certification requirement and develop procedures to monitor their direct procurements to ensure compliance. The grantee will need to submit documentation of these procedures to the FTA regional office.

3. *Has the grantee used non-Federal funds for lobbying activities? If yes, have proper disclosures been made and filed with FTA on Standard Form LLL? Have all disclosures been updated quarterly, if needed, and so reported?*

EXPLANATION

The use of Federal funds for lobbying is prohibited. If lobbying services are procured with non-Federal funds, the grantee is required to submit the disclosure form, Standard Form LLL. Activities that are required to be disclosed include the hiring of any third-party (i.e., lobbyist) for the purposes of attempting to influence a covered federal action. Disclosure is not required for activities performed by the grantee's own regularly employed officers and employees.

Covered Federal action means any of the following federal actions:

- The awarding of any Federal contract
- The making of any Federal grant
- The making of any Federal loan
- The entering into of any cooperative agreement; and
- The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

Updates to Standard Form LLL are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include:

- a cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a "covered federal action"
- a change in the person(s) attempting to influence such action
- a change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action

REFERENCE

49 CFR Part 20
Standard Form LLL

SOURCES OF INFORMATION
During the desk review, the reviewer will ask the regional counsel if Standard Form LLL and quarterly reports have been forwarded by the grantee. During the site visit, the reviewer will discuss with the grantee the process for receiving and forwarding the disclosure statements.

DETERMINATION
If any event occurred that should have been reported, and the grantee did not file Standard Form LLL and/or a quarterly report, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit the documentation to FTA as required and to develop and/or document the process to ensure timely reporting in the future.

4. *Have subrecipients, contractors, and subcontractors that filed certifications used non-Federal funds for lobbying activities? If yes, have proper disclosures been made and filed with the grantee on Standard Form LLL? Have all disclosures been updated quarterly if needed and so reported?*

EXPLANATION
Any subrecipient, contractor, and subcontractor in receipt of a grant or contract exceeding $100,000 are subject to the same disclosure and updating requirements as the grantee. All certifying entities must ensure that any quarterly disclosure forms are forwarded to the grantee, which must report them to FTA.

REFERENCE
49 CFR Part 20
Standard Form LLL

SOURCES OF INFORMATION
During the desk review, the reviewer will ask the regional counsel if Standard Form LLL and quarterly reports have been forwarded by the grantee. During the site visit, the reviewer will discuss with the grantee the process for receiving and forwarding the disclosure statements.

DETERMINATION
If any event occurred that should have been reported, and the grantee did not file Standard Form LLL or a quarterly report for a subrecipient, contractor or subcontractor, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit the documentation to FTA as required and to develop and/or document the process to ensure timely reporting in the future.

5. *Does the grantee have an appropriate process for receiving and filing the certifications and disclosure statements (Standard Form LLL and quarterly update)?*

EXPLANATION
All certifying entities must submit disclosure forms and quarterly updates from tier to tier until received by the grantee for forwarding to FTA. The grantee should have a process for receiving and filing the certifications and disclosure forms. This process can be included in procurement procedures.

REFERENCE
49 CFR Part 20

SOURCES OF INFORMATION
The reviewer will examine the grantee's written procurement procedures or separate procedures established for receiving and filing lobbying certifications and disclosure statements.

DETERMINATION
If the grantee does not have a process to ensure the receipt of certifications and disclosure statements and the filing of them with FTA, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and/or document the process for receiving and filing lobbying certifications and disclosure statements.

11. PLANNING/PROGRAM OF PROJECTS

BASIC REQUIREMENT (PLANNING)

The grantee must participate in the transportation planning process in accordance with FTA requirements, SAFETEA-LU, and the metropolitan and statewide planning regulations.

BASIC REQUIREMENT (HUMAN SERVICES TRANSPORTATION)

Grantees must develop and or participate in a locally developed, coordinated public transit-human services transportation plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritize transportation services for funding and implementation.

BASIC REQUIREMENT (POP)

Each recipient of a Section 5307 grant shall have complied with the public participation requirements of Section 5307(c)(1) through (7). Each grantee is required to develop, publish, afford an opportunity for a public hearing on, and submit for approval a Program of Projects (POP).

AREAS TO BE EXAMINED

1. ***Background Information***
2. ***MPO Planning Process***
3. ***Coordinated Planning Process for Human Services Transportation***
4. ***Public Participation Requirements***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. 23 USC Section 134, Federal Aid Highways, “Metropolitan Planning”
3. 23 CFR Part 450, “Planning Assistance and Standards”
4. FTA Circular 9030.1C, “Urbanized Area Formula Program: Grant Application Instructions”
5. FTA Circular 9050.1, “The Job Access and Reverse Commute (JARC” Program”
6. FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions”

QUESTIONS FOR THE REVIEW

Part A. Background Information

1. *If the grantee is located in a designated Transportation Management Area (TMA) (population 200,000 or more), when was the last Planning Certification Review (PCR) completed by FHWA/FTA? Did the grantee participate in the review? Are there any outstanding corrective actions from the PCR that pertain to the grantee?*

If the grantee is not in a TMA (population under 200,000), are there any outstanding actions from the metropolitan planning or statewide planning findings that pertain to the grantee?

2. *What is the name of the designated MPO for this area?*

EXPLANATION
In TMAs, FTA and FHWA will have conducted a Planning Certification Review (PCR) in the past four years. The PCR process includes input from participants in the planning process, including the grantee. The triennial review verifies the status of corrective actions from the PCR that pertain to the grantee.

In non-TMA areas (population of less than 200,000), FTA and FHWA assess the metropolitan planning processes and make a metropolitan planning finding. All states, at time of update or amendment of the statewide transportation improvement program (STIP), must self-certify that the transportation planning process is being carried out in accordance with all applicable statutes and regulations. Subsequently, FTA and FHWA jointly make a statewide planning finding as the basis for approving the STIP update or amendment. The finding lists all concerns with the performance of planning processes in all urbanized (and non-urbanized) areas throughout the state.

REFERENCE
None

SOURCES OF INFORMATION
Regional Office planning files and discussions with the planners on the regional staff. At the site visit, the grantee may be asked about its participation in the PCR and discuss any findings that pertain to the grantee.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part B. Planning Process - MPO

3. *If the MPO is located in a TMA, has it been designated or re-designated since 1991?*

4. *Does the grantee have an agreement with the MPO that specifies cooperative procedures for carrying out transportation planning and programming? What is the date of the agreement/document?*

5. *How does the grantee participate in the MPO planning process? Is the grantee a voting or ex officio member of the MPO policy board?*

6. *How does the grantee participate in developing the metropolitan transportation (20-year) plan? How is transit included in the plan?*

7. *How does the grantee participate in developing the transportation improvement program (TIP)?*

8. *Does the grantee participate cooperatively with the MPO in developing financial forecasts that are used in preparing the TIP and the metropolitan transportation plan?*

9. *How does the grantee participate cooperatively with the MPO in developing the listing of projects for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year?*

10. *Are planning studies conducted by the grantee using funds authorized in 49 U.S.C 5305, 5307, and 5339 included in the unified planning work program (UPWP) or simplified statement of work?*

EXPLANATION

To carry out the metropolitan transportation planning process under this subpart, a metropolitan planning organization (MPO) shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census). MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable state or local law.

Redesignation of an MPO is required whenever the existing MPO proposes to make: (1) a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the state(s); or (2) a substantial change in the decision-making authority or responsibility of the MPO, or in decision making procedures established under MPO by-laws.

The voting membership of an MPO that was designated or redesignated prior to December 18, 1991, will remain valid until a new MPO is redesignated.

The planning regulations state, "The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process." These responsibilities shall be clearly identified in written agreements among the MPO, the state(s), and the public transportation operator(s) serving the metropolitan planning area. Written agreements are required to address at least: 1) the grantee's responsibilities, 2) the development and sharing of information for financial plans and 3) the development of the annual listing of obligated projects.

The MPO typically will comprise a policy committee of local elected officials and a technical committee of the senior transportation planning staff of the participating agencies. As the provider of public transportation, the grantee should have a meaningful role in the planning process.

The MPO, the state(s), and the public transportation operator(s) shall validate data utilized in preparing other existing modal plans for providing input to the metropolitan transportation plan and shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation.

The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53, including transportation enhancements, Federal Lands Highway program projects, safety projects included in the State's Strategic Highway Safety Plan, trails projects, pedestrian walkways and bicycle facilities.

Any financial or travel demand forecasts related to transit services that appear in the TIP and the metropolitan transportation plan need to be developed cooperatively by the MPO and the transit operator.

Annually no later than 90 calendar days following the end of the program year, the state, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

Metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 shall be documented in a UPWP or simplified statement of work. A grant applicant seeking to use Section 5307 funds for planning projects should ensure that those funds are included in the local UPWP. If this is not the case, the MPO must approve an amendment to the UPWP, and the information evidencing this approval must be submitted to FTA with the grant application.

REFERENCE

23 USC 134
49 USC 5303
49 USC 5304
23 CFR 450.308, 310, 314, 322, and 324
FTA C 9030.1C Chapter VI Section 8.e

SOURCES OF INFORMATION
Grant information in TEAM-Web for 5305, 5307, and 5339 planning studies will be reviewed.

DETERMINATION
If the grantee does not have an agreement with the MPO, it is deficient. If the agreement does not specify the cooperative procedures for carrying out transportation planning and programming, it is deficient.

If the grantee's FTA funded planning activities are not in a UPWP or simplified statement of work, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide FTA with a schedule for providing a fully executed agreement. The grantee will be directed to provide FTA an amended UPWP or simplified statement of work that includes FTA funded planning projects.

11. *Since the last review, has the grantee had any complaints or lawsuits with respect to transit operator involvement in the metropolitan planning process? If yes, what was the nature of the complaint/lawsuit? How were these complaints/lawsuits resolved? Are any pending?*

EXPLANATION
The existence of complaints and lawsuits can indicate a deficiency in the metropolitan transportation planning process.

REFERENCE
None

SOURCES OF INFORMATION
The grantee may be asked to provide this information at the site visit.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part C. Coordinated Planning Process for Human Services Transportation

12. *If the grantee is a designated recipient of Section 5316 and/or Section 5317 funds, does the grantee:*

a. *Document procedures for administering these programs in a Program Management Plan?*

b. *Derive projects from a coordinated public transit-human services transportation plan, developed through a process that consisted of participation from public, private, and non-profit transportation providers, human services providers and members of the public?*

c. *Notify eligible local entities of funding availability and project selection criteria?*

d. *Conduct a competitive selection process?*

e. *Allocate grants to subrecipients on a fair and equitable basis?*

f. *Award projects only to eligible applicants?*

g. *Publish a list of selected projects?*

EXPLANATION
Section 5316 funds are available for transportation projects that support the development and maintenance of transportation services designed to transport low income individuals to and from jobs and activities related to their employment and to support reverse commute projects. FTA C 9050.1 Chapter III Section 11 lists potential eligible projects.

Section 5317 funds are available for transportation projects that support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation service, including transportation to and from jobs and

employment support services. FTA C 9045.1 Chapter III Section 11 lists potential eligible projects.

The grantee must document its procedures for administering the program(s), including eligibility requirements and the competitive selection process, in a Program Management Plan.

Federal Transit Law, as amended by SAFETEA–LU, requires that projects funded from the Section 5310, 5316, and 5317 programs be derived from a locally developed, coordinated public transit-human service transportation plan (coordinated plan). A coordinated plan should maximize the programs' collective coverage by minimizing duplication of services. Further, a coordinated plan should be developed through a process that includes representatives of public, private and non-profit transportation and human services providers, and participation by the public. In particular, it is important for the designated recipient of these funds to provide evidence of outreach for participation to local entities in the planning process.

The grantee shall publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential subrecipients.

The grantee shall conduct a competitive selection process that is separate from, but coordinated with, the planning process. The competition allocates funding to subrecipients to implement projects. Grantees may not allocate/suballocate funds without conducting a competitive selection process covering the large urbanized areas. The process should be transparent. The process may be conducted annually or at intervals not to exceed three years. Even if the process is conducted annually, the grantee may select projects that will be implemented over multiple years.

The grantee must demonstrate that the competition was open and transparent and that funds were distributed fairly and equitably. Fair and equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive process. The result may not be an "equal" allocation of resources among projects or communities.

There are three categories of eligible subrecipients of Section 5316 and 5317 funds: private non-profit organizations, state or local governmental authorities, and operators of public transportation services including private operators of public transportation services.

The grantee shall publish a list of selected projects following the competitive selection process.

REFERENCE

Federal Transit Laws, Title 49, United States Code, Chapter 53
Federal Register notice published March 29, 2007 (72 FR 14851)
FTA C 9045.1, Ch. II, Section 4.a-i
FTA C 9050.1, Ch. II, Section 4.a-i

SOURCES OF INFORMATION

The Program Management Plan (and coordinated plan if available) on file with the regional office will be reviewed along with the coordinated plan, public notification of availability of funding, and published list of selected projects. The grantee should be prepared to discuss the competitive selection process.

DETERMINATION

If the grantee's selection of projects does not follow all the listed requirements or if the grantee's Program Management Plan does not document eligibility requirements and the competitive selection process, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to update the Program Management Plan to incorporate any missing elements from the Section 5316 and 5317 process and submit it to FTA. The grantee will be directed to provide FTA an implemented plan for correcting any deficient part of the process.

13. *If the grantee is not the designated recipient, direct recipient or subrecipient of Section 5316 or 5317 funds, is the grantee participating in the coordinated public transit-human service transportation planning process?*

EXPLANATION

FTA's Section 5316 and 5317 circulars note that recipients of Section 5307 and Section 5311 assistance are the "public transit" in the public transit-human services transportation plan and their participation is assumed and expected. Further, Section 5307(c)(5) requires that, "Each recipient of a grant shall ensure that the proposed program of projects (POP) provides for the coordination of public transportation services … with transportation services assisted from other United States Government sources."

REFERENCE

FTA C 9045.1, Ch. V, Section 4.d
FTA C 9050.1, Ch. V, Section 4.d

SOURCES OF INFORMATION
The grantee should be prepared to provide information that demonstrates how the grantee is participating in the coordinated planning process. Participation can include attendance at meetings and provision of information to the designated recipient of Section 5316 or 5317 funds or the MPO.

DETERMINATION
If the grantee has not participated in, or does not have plans to participate in the coordinated public transit-human services transportation planning process, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA documentation that it has contacted the designated recipient of Section 5316 and 5317 funds to notify them of its intent to participate in the development of future coordination plans.

Part D. Public Participation Requirements

14. *Does the grantee rely on the MPO's public participation process to satisfy its public participation requirements for the Program of Projects (POP)?*

If yes:

a. *Does the MPO have an adopted public participation plan? What is the date of the document?*

b. *Does the plan clearly state that the MPO's public participation process satisfies the grantee's public participation requirements for the POP?*

c. *How does the grantee coordinate with the MPO to ensure that the public is aware that the TIP development process satisfies the POP public participation requirements? Is this stated explicitly in the public notice?*

If no:

a. *Did the grantee develop a proposed POP in consultation with interested parties, including private transportation providers?*

b. *How did the grantee ensure that the proposed POP provided for coordination of mass transportation services assisted by other Federal sources?*

c. *Has the grantee made available to the public information on amounts available to the recipient under Section 5307 and the POP it proposes to undertake?*

d. *Does the grantee publish its own POP?*

e. *Was the proposed POP published in a manner that afforded citizens, private transportation providers, and local elected officials an opportunity to examine its content and to submit comments on the proposed program and the performance of the recipient?*

f. *Was an opportunity for a public hearing provided?*

g. *Were comments or complaints filed as a result of the publication of the POP? How were such comments considered in preparing the final POP?*

h. *Was the final POP made available to the public?*

EXPLANATION
Both the planning regulations and Section 5307 require public participation.

The planning regulations require that the metropolitan transportation planning process include a proactive participation plan that provides complete information, timely public notice and reasonable public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs. (The grantee's projects must be programmed in the TIP to be eligible for funding.)

Section 5307 grantees also have specific requirements for public participation related to the

program of projects (POP). POP public participation requirements do not apply to funds flexed into a Section 5307 grant.

FTA C 9030.1C (Section V.6.f) allows a grantee to rely on the locally adopted public participation requirements for the TIP in lieu of the process required in the development of the POP if the grantee has coordinated with the MPO and ensured that the public is aware that the TIP development process is being used to satisfy the POP public participation requirements. The MPO's public participation plan must state that the MPO's public participation process satisfies the grantee's public participation process for the POP and the public notice for the TIP must have an explicit statement that public notice of public involvement activities and time established for public review and comments on the TIP will satisfy the POP requirements.

The following requirements apply to the POP public involvement process:

- *Availability of Public Information on the POP, Public Notice on the POP, Opportunity for Public Hearing, and Consideration of Comments and Availability of the Final POP*: The grantee must inform the public of the amount of funds available under Section 5307 and the capital, operating, and planning projects proposed to be undertaken. The public announcement that summarizes the POP must also indicate where citizens can examine the proposed program and budget in detail and submit comments on the proposed program and the performance of the grantee. The public notice is published in the general circulation newspaper in the service area of the grantee. If the service area includes a significant number of persons with limited English proficiency, the grantee should distribute the notice to these populations. (See the Title VI section of this Guide.) Most grantees combine this notice with an announcement that the proposed POP is available for review and that, if requested, a public hearing will be held. Some local laws or grantee policies make the public hearing mandatory.

  The grantee is required to consider comments from the public in preparing the final POP. In addition to the proposed POP, the grantee must make the final POP available to the public. If the proposed POP is not amended, including a statement that the proposed program will be the final program, unless amended, satisfies the requirements regarding the final POP.

- *Consultative Process*: The grantee is to develop the POP in consultation with interested parties, including private transportation providers. The grantee may rely on the MPO to assist in this process. A Transportation Advisory Committee of the MPO may be informed or used as a reviewer of the POP. Private providers should be involved throughout this process.

- *Coordination*: The grantee is required to ensure that the POP provides for coordination of Federally assisted mass transportation services. This assurance is included in the Annual List of Certifications and Assurances. Coordination may occur at many levels, from simple information sharing to total consolidation of services.

REFERENCE

23 CFR 450.316 and 324
FTA C 9030.1C, Ch. V, Section 6

SOURCES OF INFORMATION

The grantee should be prepared to discuss how the grantee handles the public participation requirements. If the grantee relies on the public involvement process for the TIP, the public notices will be reviewed to ensure that they state explicitly that public notice of public involvement activities and time established for public review and comments on the TIP will satisfy the POP requirements. The grantee may need to obtain the documentation from the MPO in preparation for the site visit.

If the grantee is publishing a separate notice of its POP, public notices for the past three years will be reviewed. The grantee should be able to describe the consultative process and how coordination was ensured as the POP was developed. The reviewer may examine written comments received by the grantee, transcripts of public hearings and internal reports that address the comments.

DETERMINATION

If the grantee is relying on the public involvement process for the TIP to meet public involvement requirements for the POP, the following determinations are made:

- If the MPO's public participation plan does not state that the MPO's public participation process satisfies the grantee's public participation process for the POP, the grantee is deficient.

- If the public notices for the TIP do not have an explicit statement that public notice for the TIP will satisfy the POP requirements, the grantee is deficient.

- If the MPO carries out these activities and is not involving the grantee, contrary to the agreement, the process is deficient.

When the grantee is responsible for publishing the POP, the following determinations are made:

- If the grantee has failed to publish a POP in an appropriate local publication, has failed to provide sufficient detail in the announcement, or has failed to offer an opportunity for a public hearing, the grantee is deficient. If the grantee has published in a newspaper of general circulation, but has failed to communicate to a significant minority of non-English speaking individuals, the grantee is deficient.

- If the proposed POP does not contain a statement that the proposed program also will be the final program unless amended and a final notice is not published, the grantee is deficient. If the proposed POP contains the statement and the POP is changed without a second notification, the grantee is deficient.

- If the grantee does not have a consultative process (e.g., does not attempt to solicit opinions of others, does not mail a notice of its plans for developing the POP to private providers, does not have an ongoing public participation process, etc.), it is deficient. The grantee is deficient if there is no evidence that a good faith effort toward service coordination was made as the POP was being developed.

SUGGESTED CORRECTIVE ACTION

If the grantee is relying on the MPO for public participation activities, the grantee will be directed to work with the MPO to submit to FTA an action plan and schedule showing how deficiencies will be corrected.

If the grantee publishes a separate POP, the grantee will be directed to make appropriate changes, e.g., change the wording of the announcement to indicate where the POP is available for review or to include sufficient detail describing the POP. Since the publication of the POP is an annual event, the timetable of the corrective action will depend upon the next publication date. The grantee will be directed to make the appropriate changes and forward a copy of the public notice, or public notice language to FTA.

12. TITLE VI

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program, or activity receiving Federal financial assistance. The grantee must ensure that Federally supported transit services and related benefits are distributed in an equitable manner.

AREAS TO BE EXAMINED

1. ***Responsibility for Title VI Coordination***
   a. Certification of non-discrimination (Annual Certifications and Assurances)
   b. Implementation of Title VI provisions

2. ***Approved Title VI Program***
   a. General reporting requirements (all grantees)
   b. Program-specific requirements (areas with population 200,000 and over)

3. ***Title VI Public Information and Complaints***
   a. Public Notification of Rights
   b. Complaint Procedures
   c. List of Title VI complaints
   d. List of Title VI lawsuits

4. ***Title VI Monitoring Procedures***
   a. Limited English Proficiency (LEP)
   b. Environmental Justice Assessment
   c. Level and quality of service

REFERENCES

1. FTA C 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients"

2. 49 CFR Part 21, "Nondiscrimination in Federally-assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964"

3. Federal Register: April 15, 1997 (Volume 62, Number 72, pp. 18377-18381) "Department of Transportation (DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations"

4. Executive Order 13166: "Improving Access to Services for Persons with Limited English Proficiency"

5. Federal Register: December 14, 2005 (Volume 70, Number 239, pp. 74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"

QUESTIONS FOR THE REVIEW

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

EXPLANATION
As part of its project oversight functions, FTA periodically conducts Title VI reviews of selected grantees.

Even if such a review is scheduled for the current fiscal year or has been recently conducted, all questions in this section are still asked. If a Title VI review has been recently conducted, obtain a copy of the most recent report (draft or final) for input into the review.

REFERENCE
Input to review

SOURCES OF INFORMATION
The reviewer will determine if a Title VI review has occurred or has been scheduled and will analyze findings and corrective actions from completed Title VI reviews.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Who is responsible for the coordination of Title VI program/ environmental justice assessments? Who prepares the Title VI Program submissions and updates for FTA?*

EXPLANATION
While neither the DOT Title VI regulations nor FTA's C 4702.1A require that recipients appoint a person(s) to coordinate Title VI activities, many recipients have a person or office perform this task that can assist the reviewer in answering the subsequent questions of this section.

REFERENCE
General information

SOURCES OF INFORMATION
Title VI program submissions to the RCRO may include the name of the person(s) responsible for coordinating and implementing the Title VI program/ environmental justice assessments. This information will be confirmed and/or updated at the site visit.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

3. *Has the grantee's Title VI program been approved by FTA? If yes, when does the approval expire? If the program has expired, please provide an explanation.*

EXPLANATION
All direct grantees must submit a Title VI program that documents their compliance with Chapter IV of FTA C 4702.1A every three years (every four years for MPOs that are direct recipients). Section 5307 recipients with service area populations of 200,000 or more must submit a Title VI program that documents their compliance with Chapter IV and Chapter V of FTA C 4702.1A.

REFERENCE
49 CFR 21.9(b)
FTA C 4702.1A, Ch. II, Section 4; Ch. IV, Section 7; Ch. V, Section 6; Appendices A and B

SOURCES OF INFORMATION
The RCRO's files should include a copy of the most recently submitted program. There should be correspondence indicating when it was approved by FTA and when the approval expires.

DETERMINATION
The grantee is deficient if no Title VI program has been submitted or if the Title VI program has expired and the grantee has not made a submission or requested and received an extension for submitting a new program or program update.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit the required Title VI Program to the RCRO.

4. *How does the grantee notify the public of their rights under Title VI?*

EXPLANATION
Grantees and subrecipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Grantees and subrecipients that provide transit service shall disseminate this information to the public through measures that can include, but shall not be limited to a posting on the agency's Web site.

The notice shall include: (1) a statement that the agency operates programs without regard to race, color, and national origin; (2) a description of the procedures that members of the public should follow in order to request additional information on the recipient's or subrecipient's nondiscrimination obligations; and (3) a description of the procedures that members of the public should follow in order to file a discrimination complaint against the grantee or subrecipient. FTA C 4702.1A, Chapter IV section 5b provides guidance on how to disseminate this notification.

Grantees need not necessarily refer to "Title VI of the Civil Rights Act of 1964" in their notification to the public, since most of the public is not aware of this provision. Rather, grantees can fulfill this requirement by notifying the public that they are committed to providing non-discriminatory service, and informing customers how to request more information and how to file a discrimination complaint.

Grantees can find examples of brochures published by the U.S. Department of Justice that notify the public of their rights under Title VI at http://www.usdoj.gov/crt/cor/pubs.htm.

REFERENCE
49 CFR 21.9(d)
FTA C 4702.1A, Ch. IV, Section 5

SOURCES OF INFORMATION
The grantee's Title VI program submissions should include a description of how this notification requirement is implemented. A copy of the materials that the grantee uses to inform the public of their rights under Title VI and a description of how these materials are disseminated should be made available to the reviewer. Reviewers should also be able to view this notice, as posted, during the site visit.

DETERMINATION
The grantee is deficient if it has not developed a notification to the public, or if it has developed but not disseminated this notification, or if its only means of dissemination consists of publishing the notice on the agency's website.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the RCRO a plan and timeline for developing and disseminating a notification to the public of its rights under Title VI, as well as a copy of the notification that will be disseminated.

5. *How does the grantee identify, investigate and track Title VI complaints? Do these procedures afford the public due process for resolving complaints?*

EXPLANATION
FTA requires its grantees to maintain, as part of their records, a description of the process that they use to investigate Title VI complaints filed against the agency. FTA C 4702.1A states that, "recipients and subrecipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to the public upon request."

The grantee should have a system in place whereby it can identify which, if any, of its complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the grantee. Although the complainant may not refer to Title VI in the complaint to the grantee, the grantee should be able to identify and classify this type of complaint as a Title VI complaint.

Most grantees have a well-established process and schedule for receiving and acknowledging complaints, determining whether it is appropriate to investigate, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints as long as it provides due process for complaints.

It has been noted that the complaint or complaint appeals process of some grantees does not afford due process to the complainant or the process itself serves to discourage the filing of complaints. For example, if a grantee adds to their complaint procedures a requirement that the complainant agree with the outcome of the resolution of the complaint in order for the investigation to occur, that could serve to discourage complaints.

REFERENCE
49 CFR 21.9(b)
FTA C 4702.1A, Ch. IV, Section 2

SOURCES OF INFORMATION
The grantee's procedures for investigating and tracking complaints in its Title VI submission will be reviewed. During the site visit, the reviewer will verify implementation and request a copy of Title VI complaints received since the last review. The grantee will be asked to identify who or what office receives complaints and how staff is trained to identify complaints of discrimination under Title VI.

DETERMINATION
The grantee is deficient if it cannot provide information on how it identifies and investigates Title VI complaints and/or if the grantee cannot demonstrate that it has a process for tracking discrimination complaints on the basis of race, color, or national origin.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit a written document that describes its procedures for investigating and tracking Title VI complaints to the RCRO.

6. *What steps has the grantee taken to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (LEP)?*

EXPLANATION
The U.S. DOT published revised LEP guidance for its recipients on December 14, 2005 (Federal Register, vol. 70, no. 239, pp. 74087–74100, December 14, 2005). The DOT LEP Guidance advises grantees to determine what steps are necessary to provide "meaningful access" on the basis of four factors: (1) the number and proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program, activity, or service; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and costs.

The DOT LEP Guidance also recommends that grantees develop an implementation plan to address the identified needs of the population it serves. The plan should (1) identify LEP individuals who need language assistance; (2) develop language assistance measures; (3) address staff training; (4) detail how to provide notice to LEP persons; and (5) address procedures for monitoring implementation and updating the plan.

Recipients and subrecipients can ensure that LEP persons have meaningful access to their programs and activities by developing and carrying out a language implementation plan pursuant to the recommendations in Section VII of the DOT LEP Guidance. Certain grantees or subrecipients, such as those serving very few LEP persons or those with very limited resources may choose not to develop a written LEP plan. However the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a grantee's program or activities. Grantees or subrecipients electing not to prepare a written language implementation plan should consider other ways to reasonably provide meaningful access.

Such methods can include the following actions:

- training bilingual staff to act as interpreters and translators
- using telephonic and video conferencing interpretation services
- formalizing use of qualified community volunteers
- using centralized interpreter and translator services
- hiring staff interpreters
- using symbolic signs (pictographs)
- translating into languages other than English vital written materials, such as applications or instructions on how to participate in a grantee's program, signs in bus and train stations, notice of public hearings and other community outreach, and notices advising LEP persons of free language assistance

REFERENCE
Executive Order 13166
DOT LEP Guidance
FTA C 4702.1A, Ch. IV, Section 4

SOURCES OF INFORMATION
The reviewer will examine documentation of how the agency has analyzed the four factors presented in the DOT LEP Guidance and determine whether the agency developed an implementation plan on language assistance. Examples of language assistance measures that have been implemented also will be reviewed.

DETERMINATION
The grantee is deficient if has not conducted an analysis of how the four factors in the DOT LEP Guidance apply to the grantee's programs and activities. Even if the grantee has taken specific actions, the grantee is deficient if it has not conducted the four factor analysis.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the RCRO a document that describes its plans for conducting the four-factor analysis and provides a timeline for when the analysis will be completed. Once the analysis has been completed, the grantee will need to submit the analysis along with a list of language assistance it has provided or intends to provide and a timeline for providing this assistance.

7. *How has the grantee sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities?*

EXPLANATION

Grantees and subrecipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities. An agency's public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.

Some effective practices to promote inclusive public involvement include: (1) coordinating with individuals, institutions, or organizations, and implementing community-based public involvement strategies to reach out to members in the affected minority and/or low-income communities; (2) providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments; (3) using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities; (4) using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities, so that communications are tailored to the particular community or population; and (5) implementing DOT's policy guidance concerning recipients' responsibilities to LEP persons to overcome barriers to public participation.

REFERENCE

EO 12898, DOT Order 5610.2
FTA C 4702.1A, Ch. IV, Section 9

SOURCES OF INFORMATION

The reviewer will examine the grantee's procedures for outreach in its Title VI program submissions. The reviewer will verify that these procedures have been implemented by reviewing public involvement activities conducted since the last review and a description of the methods used to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting these public outreach and involvement activities. Documentation of public hearings, planning activities and program of projects development also will be reviewed.

DETERMINATION

The grantee is deficient if it has conducted public outreach activities since the last review but cannot demonstrate that it implemented the public involvement strategies listed in its Title VI program or in Chapter IV section 9a.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to provide to the RCRO a document that describes the measures it will take to promote inclusive public participation in future public involvement activities, as well as a timeline for implementing the proposed procedures.

8. *For any construction projects that required an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), did the grantee incorporate an environmental justice analysis into its National Environmental Policy Act (NEPA) documentation?*

EXPLANATION

The U.S. Order on Environmental Justice (Order 5610.2) sets forth a process by which DOT and its Operating Administrations will integrate the goals of the executive order into their operations. Consistent with Order 5610.2, FTA's C 4702.1A advises grantees to integrate an environmental justice analysis into NEPA documentation of construction projects (see Chapter IV section 8 of FTA C 4702.1A). This provision states that environmental justice information should be included in applications for a documented categorical exclusion (CE), environmental assessments (EA) and environmental impact statements (EIS)

An EA or EIS should include analytical information including:

- a description of the low-income and minority population within the area affected by the project, and a discussion of the method used to identify this population,
- a discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population,
- a discussion of all positive effects that would affect the identified minority and low-income population; a description of all mitigation and

environmental enhancement actions incorporated into the project to address the adverse effects,

- a discussion of the remaining effects, if any, and why further mitigation is not proposed, and
- a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority and non-low income areas.

REFERENCE
49 CFR 21.5(b)(3), Appendix C
EO 12898, DOT Order 5610.2
FTA C 4702.1A, Ch. IV, Section 8

SOURCES OF INFORMATION
FTA regional staff and grantee staff will be asked to provide reviewers with copies of any NEPA documentation submitted by the grantee to FTA since the date of the last review.

DETERMINATION
The grantee is deficient if an application for an EA or an EIS does not include an environmental justice analysis.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the RCRO a document that describes how it will incorporate environmental justice considerations into future NEPA documents.

9. *How does the grantee ensure that subrecipients comply with Title VI requirements?*

EXPLANATION
The grantee is responsible for ensuring that subrecipients comply with Title VI requirements. The oversight program should ensure that subrecipients notify customers of their rights under Title VI; have Title VI complaint procedures; take reasonable steps to ensure access to LEP populations; and seek out the viewpoints of minority, low-income and LEP populations when conducting public outreach and involvement activities.

REFERENCE
49 CFR 18.37 and 18.40
49 CFR 21.9(b) (d)
FTA C 4702.1A, Ch. IV
Executive Order 13166
DOT LEP Guidance
EO 12898, DOT Order 5610.2

SOURCES OF INFORMATION
The reviewer will examine the grantee's monitoring tools and the oversight files on any subrecipients to be visited. During the site visit, the reviewer will discuss the grantee's procedures.

DETERMINATION
If the grantee does not ensure that subrecipients comply with all or some Title VI requirements, it is deficient.

Questions 10-13 apply to grantees that provide service to geographic areas with a population of 200,000 or more under 49 USC 5307.

10. *How has the grantee collected and analyzed demographic data showing the extent to which members of minority groups are beneficiaries of programs receiving FTA financial assistance?*

- *If it prepares demographic and service profile maps and charts, how often are they updated?*
- *If it collects demographic information as part of agency ridership surveys, how and how often is it collected?*
- *If it has developed its own procedures to collect and analyze demographic data on its beneficiaries, how is this implemented?*

EXPLANATION
Grantees that provide service to geographic areas with a population of 200,000 or more under 49 USC 5307 must collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance. This provision of the circular recommends that grantees fulfill this requirement either by preparing demographic and service profile maps and charts (described in Chapter V section 1a), by collecting demographic information as part of agency ridership surveys (described in Chapter V section 1b), or by developing their own procedures to collect and analyze demographic data on their beneficiaries (described in Chapter V section 1c).

If the grantee prepares demographic and service profile maps and charts, they should be updated after each decennial census and prior to proposed service reductions or eliminations. If the grantee collects demographic information as part of agency ridership surveys, it should provide information about how often it collects this information and should include methods to make these surveys accessible to LEP persons. If the grantee uses a locally-developed analysis process, provide information on how it is conducted and that it meets the overall requirement to collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

REFERENCE
49 CFR 21.9(b)
FTA C 4702.1A, Ch. V, Section 1

SOURCES OF INFORMATION
The Title VI program submission will be reviewed for demographic maps and overlays, results of customer surveys or information on procedures to collect and analyze demographic data of beneficiaries.

DETERMINATION
The grantee is deficient if it cannot provide maps and overlays, or the results of customer surveys, or results of a locally developed method. The grantee is also deficient if it has made major service changes, but has not updated its maps or charts (if this is the method it is using). The grantee is deficient if it provides the results of passenger survey information, but a survey has not been conducted in the past three years or it is was not conducted in a manner that was inclusive of LEP persons.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the RCRO a document that describes its strategy and timeline for collecting demographic information, consistent with one of the options for collecting this information in Chapter V section 1 of FTA C 4702.1A. Once the grantee has collected this information, it should provide a copy of the results to the RCRO.

11. *Are the grantee's system-wide service standards and system-wide service policies reflected in overall agency policies?*

EXPLANATION
Grantees that provide service to geographic areas with a population of 200,000 or more under 49 USC 5307 must set system-wide service standards and policies necessary to guard against discriminatory service design or operation decisions

Examples of service standards are: (1) vehicle load; (2) vehicle headway; (3) on-time performance; (4) distribution of transit amenities; and (5) service availability. Grantees are free to adopt additional service standards or other standards in lieu of the ones cited in this provision.

Service policies differ from service standards in that they are not necessarily based on a quantitative threshold. Examples of system-wide service policies are: (1) vehicle assignment; and (2) transit security. Grantees are free to adopt additional service policies or other policies in lieu of those cited in this provision.

The service standards and policies in the Title VI submission should be the same as those used by the agency to monitor its operations. The reviewer should be able to validate the system-wide service standards and policies stated in the Title VI submission with operational information provided by the grantee.

REFERENCE
49 CFR 21.9(b); Appendix C
FTA C 4702.1A, Ch. V, Sections 2 and 3

SOURCES OF INFORMATION
Grantee staff should be able to provide reviewers with a list of service standards and service policies that the agency has adopted and a description of how the agency defines its standards and policies.

DETERMINATION
The grantee is deficient if it cannot document that system-wide service standards and policies in Title VI program submission are reflective of overall agency policies The grantee is also deficient if it has not established any system-wide standards and policies.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the RCRO a document that describes its plans for adopting system-wide service standards and policies and provides a timeline for adopting these standards and policies. Once these standards and policies have been adopted, the grantee should forward a copy of the standards and policies to the RCRO.

12. *How and how often does the grantee monitor the service it provides to identify any disparities in the level and quality of service provided to different demographic groups? Has the grantee taken corrective action if it determined that disparities exist?*

EXPLANATION
Grantees that provide service to geographic areas with a population of 200,000 or more under 49 USC

5307 shall monitor the transit service provided throughout the grantee's service area. Periodic service monitoring activities shall be undertaken to compare the level and quality of service provided to predominantly minority areas with service provided in other areas to ensure that the end result of policies and decision making is equitable service.

Grantees must implement one of four service monitoring procedures as follows:

- Option A: Level of Service Methodology, based on a sample of bus routes and (if applicable) fixed guideway routes that provide service to a demographic cross-section of grantee's population.
- Option B: Quality of Service Methodology, based on an appropriate number of Census tracts or traffic analysis zones that represent a cross-section of grantees population.
- Option C: Title VI Analysis of Customer Surveys, based on most recent passenger survey, grantees should compare the responses from individuals who identified themselves as members of minority groups and/or in low-income brackets, and the responses of those who identified themselves white and/or in middle and upper-income brackets.
- Option D: Locally Developed Alternative, grantees have the option of modifying the above options or developing their own procedures to monitor their transit service to ensure compliance with Title VI.

Monitoring shall be conducted at minimum once every three years. If a grantee's monitoring determines that prior decisions have resulted in disparate impacts, agencies shall take corrective action to remedy the disparities.

REFERENCE

49 CFR 21.9(b) and Appendix C
FTA C 4702.1A, Ch. V, Section 5

SOURCES OF INFORMATION

The monitoring procedures in the Title VI program submission will be reviewed. Documentation that service monitoring procedures have been conducted within the past three years also will be reviewed.

DETERMINATION

The grantee is deficient if it has no acceptable procedures for monitoring service, or cannot document that it has monitored service within the past three years.

The grantee is also deficient if its monitoring identified disparities in the level and quality of service provided to minority and non-minority users but did not take corrective action.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the RCRO a document that describes its plans for conducting service monitoring, consistent with the procedures in FTA C 4702.1A, Chapter V Section 5 as well as a timeline for conducting this monitoring. Once the monitoring has been conducted, the grantee must provide a copy of the results to the RCRO.

13. *Has the grantee had a major service change or a fare change since the last review? If yes, has it conducted an internal evaluation of the change(s) to determine whether proposed changes would have a discriminatory impact?*

EXPLANATION

Grantees that provide service to geographic areas with a population of 200,000 or more under 49 USC 5307 shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders. This requirement applies to "major service changes" only. The grantee should have established guidelines or thresholds for what it considers a "major service change" to be. Often, this is defined as a numerical standard, such as a change that affects 25 percent of service hours of a route. Chapter V Section 4a recommends specific procedures for conducting an analysis of service changes and fare changes. Chapter V Section 4b states that grantees can conduct an analysis of service and fare changes using a modified version of the procedures in Chapter V Section 4a or a locally-developed set of procedures.

Whatever methodology is used, the analytical assessment should adequately evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. This analysis should measure the impacts borne by the service or fare changes.

Note: This requirement is different from the Section 5307 requirement for public comment for fare increases and major service reductions. (*See Triennial Review Section 13. Fare Increases and Major Service Reductions.*) Section 5307 requires a *public comment process* before *raising* a fare or carrying out a major *reduction* of transportation service. For purposes of Title VI, grantees to which this requirement applies must perform an internal equity evaluation (not public comment process) for "major service changes" (both increases and reductions), as locally defined, and fare changes.

REFERENCE

49 CFR 21.5(b)(2); (b)(7); and Appendix C
U.S. DOT Order 5610.2
FTA C 4702.1A, Ch. V, Section 4

SOURCES OF INFORMATION

The grantee will be asked to provide a list of service and fare changes that have occurred since the last review and a description of the nature of the changes. A description of the methodology used to determine the impact of the service and fare change should also be provided as well as the threshold for a "major service change" under Title VI.

DETERMINATION

The grantee is deficient if it has not established a methodology and/or conducted an analysis of the effects of one or more major service change and/or fare change that have occurred since the last triennial review. The grantee is deficient if the analytical assessment is not adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The grantee is deficient if it has not established a methodology and/or conducted an analysis of any service changes, under the pretense that none of the changes constituted "major service changes."

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the RCRO a document that describes a methodology to analyze the impacts of future fare and major service changes. The grantee will need to submit to the RCRO its policies for what it constitutes a major service change for the purposes of Title VI.

13. FARE INCREASES AND MAJOR SERVICE REDUCTIONS

BASIC REQUIREMENT

Section 5307 grantees are expected to have a written locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

AREAS TO BE EXAMINED

1. ***Existence and Application of Locally Developed Process to Solicit and Consider Public Comment***
   a. Prior to raising fares
   b. Prior to implementing a major reduction of service

2. ***Oversight***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws

2. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions"

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a process for soliciting and considering public comments prior to a fare increase or a major service reduction? How are these procedures documented? What is considered to be a "major" service reduction?*

EXPLANATION

Section 5307 grantees are required to have a process for soliciting and considering public comment prior to raising fares or implementing major service reductions. Grantees are expected to have a written policy that describes the public comment process. The process should provide an opportunity for a public hearing or meeting for any fare increase or major service reduction. It should describe how such meetings will be conducted and how the results will be considered. The procedures should describe how the grantee will solicit and consider public comments.

A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. The law does not require that fare decreases or service increases be preceded by public comment. In the event no member of the public requests a public meeting, there must be a process by which the grantee solicits public comment (e.g., flyers on buses, newspaper/radio advertisements, etc).

The requirement applies to "major service reductions" only. The grantee should have established guidelines or thresholds for what it considers a "major" change to be. Often, this is defined as a standard, such as:

- elimination of a route;
- reduction of "X" percent of service hours of a route; and/or
- elimination of one or more stops on a route.

Some grantees offer an opportunity for public comment for all service changes. This meets the requirement.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(I)
FTA C 9030.1C, Ch. V, Section 5.o

SOURCES OF INFORMATION

The reviewer will examine a copy of the grantee's policy that describes the public participation process and define a major service reduction. These procedures may be separate stand-alone documents or part of a larger set of administrative procedures of the agency or local government.

DETERMINATION

In cases where a grantee has no written procedure and has carried out a fare increase or major service reduction, the reviewer will need to make a determination based upon the grantee's actions. If a process has been followed and documented and that process included all of the required elements, the grantee is not deficient. However, if the process did not address all of the required elements, or if documentation is lacking, the grantee is deficient.

If the grantee has neither a written procedure nor documentation that a process has been followed, it is deficient.

If the grantee has a written process that does not define a threshold for what constitutes a major service reduction, address fare increases, or specify how comments will be considered, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to to modify or prepare written procedures that describe its public participation process for an intended fare increase or major service reduction and send a copy to the FTA regional office.

2. *Since the last review, has the grantee raised a fare or carried out a major reduction in service? Was the locally developed process followed? If not, what was done differently?*

3. *How were the comments considered in the decision-making process?*

EXPLANATION

Section 5307 grantees must follow their public participation process and consider the public comment as part of the decision-making process. A grantee is not required to change its plans based on the comments received. However, the grantee, and particularly its policy makers, should give due consideration to comments made by the public.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(I)
FTA C 9030.1C, Ch. V, Section 5.o

SOURCES OF INFORMATION
The reviewer will examine the list of any fare increases or major service reductions implemented by the grantee since the last review. The reviewer may also examine transcripts from public hearings, minutes of board meetings, and staff summaries or other internal memoranda that document whether the public participation process was followed and how comments were considered.

The reviewer will examine internal working documents that show the original plans proposed by the grantee compared to the actual plans that were implemented.

DETERMINATION
If the grantee has increased fares or implemented a major service reduction since the last review but did not follow its public participation procedures, it is deficient.

If public comments were received, but the grantee does not have evidence that they were considered in the implementation of the final plan, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide FTA with a process to document that it will implement its written procedures and/or a written explanation of why procedures were not followed. The grantee will be directed to change its procedures to incorporate consideration of public comments into the process and document those considerations.

4. *How does the grantee ensure that Section 5307 subrecipients comply with public comment process requirements?*

EXPLANATION
The grantee must ensure that Section 5307 subrecipients have a process for obtaining public comment for fare increases and major service reductions. Either the grantee or its subrecipients are expected to have a written policy that describes the public comment process. The grantee must also ensure that subrecipients follow the process and consider public comment when they raise fares or implement major service reductions.

REFERENCE
49 USC Chapter 53, Section 5307 (d)(1)(I)
49 CFR Part 18.37
FTA C 9030.1C, Ch. V, Section 5.o

SOURCES OF INFORMATION
The reviewer will examine oversight mechanisms and correspondence and discuss on site with grantee staff. Reviewers will examine the policy and files for subrecipients and discuss the policy and recent subrecipient fare increases and/or major service reductions.

DETERMINATION
The grantee is deficient if it does not ensure that Section 5307 subrecipients have and follow processes for obtaining public comment for fare increases and major service reductions.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide FTA procedures for ensuring Section 5307 subrecipients have and follow processes for obtaining public comment for fare increases and major service reductions.

14. HALF FARE

BASIC REQUIREMENT

During non-peak hours for fixed route service supported with Section 5307 assistance, fares charged elderly persons, persons with disabilities or an individual presenting a Medicare card will not be more than half the peak hour fare.

AREAS TO BE EXAMINED

1. ***Half Fare During Non-Peak Hours***

2. ***Half Fare for Persons with a Medicare Card***

3. ***Subrecipient, Contractor and Lessee Oversight***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws

2. 49 CFR Part 609, "Transportation for Elderly and Handicapped Persons"

3. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions"

QUESTIONS FOR THE REVIEW

1. *Does the grantee allow elderly persons, persons with disabilities, and persons with a Medicare card to pay, during the off peak hours, one half the fare generally paid during the peak hours?*

2. *What is the grantee's full fare? What is the half fare? During what hours are half fares available (all hours or off-peak hours only)? Are there any fixed route services not included in the half fare program?*

EXPLANATION

For fixed route service funded with Section 5307 assistance, grantees must allow 1) elderly persons, 2) persons with disabilities, and 3) Medicare cardholders to ride fixed route services during off peak hours for a fare that is not more than one half the base fare charged other persons during the peak hours. The requirement applies to base fares. Though many do, grantees are not required to offer half fares on payment options such as monthly passes. If there are services such as neighborhood circulator and shuttle services with fares that are different from the grantee's fare for its regular local service, separate half fares are needed for each type of service.

The requirement is applicable to:

- All fixed route services (including route deviation services and service to sporting events) that operate in both peak and off peak hours and use or involve facilities and equipment financed with Section 5307 funds, whether the services are provided by the grantee directly, by a contractor, by a subrecipient, or by another entity that leases facilities and/or equipment from the grantee
- Any express and commuter service that operates beyond peak hours
- Fixed route services for which the grantee has not defined peak hours

This requirement is not applicable to:

- Demand responsive services
- Services that operate only during peak hours, such as express and commuter routes
- Services that operate only in the off-peak hours (e.g., lunchtime circulators and weekend routes to sporting events)
- Services funded with other FTA assistance that do not use Section 5307 funded equipment or not operated out of Section 5307 funded facilities

"Elderly" by FTA regulations is to "at a minimum, include all persons 65 years of age or over." Grantees are permitted to use a definition that extends this fare to younger (e.g., 62 and over) persons. Persons with disabilities are defined by FTA as persons "who by reason of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including any individual who is a wheelchair user or has semi-ambulatory capabilities), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility."

The definition of Medicare cardholder is self-explanatory. This is a distinct half fare requirement, though many grantees choose to use a Medicare card as proof of eligibility for the elderly and persons with disabilities half fare (see questions and discussion below). Though most Medicare cardholders are elderly (age 65 or older), a Medicare card can be issued to anyone under 65 years of age who has received Social Security or Railroad Retirement Board disability benefits for 24 months or is a kidney dialysis or kidney transplant patient.

The grantee determines its peak hours. Peak hours can be seasonal. If the grantee determines it is not large enough, or demand is not strong enough, to identify or justify peak hour service, then its entire service should be defined as "off-peak." In this instance, the grantee has two options:

- Review ridership data and determine the peak ridership hours and develop a policy for half fare, or
- Choose not to determine a peak period and offer half fares during all hours.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1C, Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

The reviewer will examine the grantee's general public information that presents its fare structure. Common examples are the system map, pocket timetables, signs within the system (e.g., decals on fareboxes, signs in stations, and car cards on vehicles) and the website. Other sources are brochures describing the fare structure and the reduced fare program, and application forms for the reduced fare program or special ID cards. Documents

such as fare policies/tariffs and internal policy memoranda may describe the program.

If the grantee limits half fares to off peak hours, the reviewer will verify that the definition of "off peak" is reasonable. For example, if the grantee has both peak and off peak fares in its overall fare structure, the off peak time periods for the general public and the half fare program should be defined consistently. The times should be consistent with the hours reported to NTD. The review will ensure that the grantee has not limited acceptance of a Medicare card to seniors only.

DETERMINATION

If the grantee charges more than one half the peak hour fare during off peak hours, the grantee is deficient.

If the grantee does not provide a half fare for a service that should be included, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have a half fare program during non-peak hours on all of its applicable services, the grantee will be directed to implement a program or ensure that such a program is implemented and submit documentation to the FTA regional office. If the fare is more than one half the full fare, the grantee will be directed to provide a plan and schedule for correcting its half fare program to the FTA regional office.

3. *Is an identification card required at time of boarding in order to obtain the half fare? If yes, what type of card is accepted onboard? What are the procedures to obtain the special ID card? Does the grantee require any additional information from a Medicare cardholder?*

EXPLANATION

The half fare program, as applied, may require passengers to show proof of eligibility when they pay their fare in order to receive the half fare. The reviewer should identify the types of identification that are accepted (e.g., Medicare card, special identification card, ADA eligibility card). All are permissible. The grantee may require more than one piece of identification for determining age or disability-related qualifications.

A grantee may require passengers to obtain a special identification card as the sole basis for paying the half fare. A valid Medicare card must be considered sufficient proof of eligibility for obtaining such a reduced fare card.

In order to ensure that the person presenting a Medicare card is the authorized individual, the grantee may request proof of identity (i.e., another card with a photograph). There is no specific prohibition against this, provided the grantee is not asking for further proof of eligibility from the Medicare cardholder but is only checking the validity of the Medicare card.

Obtaining a special half fare card must be relatively easy. For example, requiring individuals to travel to a single office, which may be inconveniently located, is not consistent with the intent of this requirement, though not strictly prohibited.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1C, Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

The reviewer will examine public informational materials (described above) and application materials for special identification cards for a description of the process and the identification necessary to qualify for half fare. The reviewer also will discuss the application procedures with the grantee to ascertain if the program is implemented properly.

DETERMINATION

If the location(s) for obtaining a special card are not accessible by transit, open during convenient hours, and publicized, the grantee's program is deficient.

If a Medicare card is not accepted as the basis for payment of half fare or as a means to obtain a special identification card, the grantee is deficient. If the grantee requires more than a Medicare card as proof of eligibility for half fares, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to make passengers aware of any need for a special identification card, and enable identification cards to be easily obtained. The grantee will be directed to accept a Medicare card as proof of eligibility for the half fare program. The grantee will need to submit documentation of corrective action(s) to the FTA regional office.

4. *How has the grantee informed its employees, subrecipients, contractors and lessees, and the public that half fares are available? Do internal and external materials describing fares show half fares and eligibility?*

EXPLANATION

A policy is not effective unless it is communicated to those who will carry it out and to those who can take advantage of it. Training documents and communication with drivers and others responsible for implementing the fare program should demonstrate that the grantee has notified the staff of the program and included the correct information. Public information should include half fare information, including Medicare eligibility, if it contains fare information. For example, if a brochure says the fare to ride the bus is $1.00, it also should say that the fare for elderly persons, persons with disabilities, and Medicare cardholders is $0.50 during off-peak hours.

Though it is not necessary to have a separate fare category for Medicare cardholders, the grantee's readily available public information should be clear that Medicare cards are accepted as proof of eligibility for the half fare program, including for persons who are not elderly.

REFERENCE

49 USC Chapter 53, Section 5307(d)(1)(D)
49 CFR 609.23
FTA C 9030.1C, Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

The reviewer will examine both internal and public information. The reviewer will also examine training documents and communication with drivers (e.g., driver bulletins) and others responsible for implementing the fare program as well as system maps, route timetables, and general system fare brochures. The reviewer will check other common public information items, such as the website, station signs and farebox decals to see whether they include fare information and, if so, that they include the proper information for half fares.

DETERMINATION

If internal or public information regarding half fares is incomplete or does not include half fare information, the grantee is deficient.

If some half fare information is included, but Medicare eligibility is not mentioned, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to make complete information on the half fare program available where fare information is presented. Information must be provided on the fares for elderly persons and persons with disabilities and on the availability of those fares to Medicare cardholders. If any of this information has been omitted from the grantee's readily available public information items (e.g., maps and timetables, or website), the grantee must revise the text the next time these materials are reprinted/updated. If materials for drivers and other operating personnel do not convey the current program requirements, the grantee must update and redistribute the materials.

If the grantee is planning to republish the item that needs correcting, the reviewer will discuss with the grantee a schedule for completing the corrective action. Grantees may be given up to 365 days to complete these changes. In the interim, an assurance that the changes will be made along with sample text of these changes may be requested.

5. *How does the grantee ensure that subrecipients, contractors and lessees comply with half fare requirements?*

EXPLANATION

The grantee is responsible for ensuring that subrecipients, contractors and lessees that operate services to which the half fare requirement applies comply with half fare requirements. The oversight program should ensure that a half fare is offered for applicable services during off peak hours, the definition of off peak hours is reasonable, identification requirements ensure that eligible persons can obtain the half fare, and internal and external fare information show the half fare and eligibility, including Medicare cardholder eligibility.

REFERENCE

49 USC Ch. 53, Section 5307(d)(1)(D)
49 CFR 609.23
FTA C 9030.1C, Ch. V, Sections 5.f and 5.g

SOURCES OF INFORMATION

The grantee's monitoring tools and the oversight files for subrecipients, contractors and lessees will be reviewed. During site visits, the reviewer will discuss the half fare program with the entity and review fare information on buses, in employee training information, in brochures and other printed information, and on the entity's website.

DETERMINATION

If the grantee's procedures are inadequate to ensure that subrecipients, contractors and lessees comply with half fare requirements, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop oversight procedures that ensure that subrecipients, contractor and lessees comply with half fare requirements.

15. AMERICANS WITH DISABILITIES ACT

BASIC REQUIREMENT

Titles II and III of the Americans with Disabilities Act of 1990 (ADA) provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

AREAS TO BE EXAMINED

1. ***Vehicle Accessibility***
2. ***Facility Accessibility***
3. ***Service Provision***
4. ***Training***
5. ***Maintenance of Accessibility Features***
6. ***Commuter Bus/University Service***
7. ***Demand Responsive Service***
8. ***ADA Complementary Paratransit***
9. ***Rail Station & Rail Car Requirements***
10. ***Complaints/Lawsuits***

REFERENCES

1. 49 CFR Part 27, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance”
2. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
3. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"

USEFUL WEB LINKS

DOT Disability Law Guidance

ADA Accessibility Guidelines for Building and Facilities (ADAAG)

FTA's ADA Website

Transit Cooperative Research Program Synthesis Projects

Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities

Project ACTION

Disability.gov

U.S. Department of Justice ADA Homepage

ADA Business Brief: Service Animals

QUESTIONS FOR THE REVIEW

1. *During the past two Federal fiscal years, did the FTA Office of Civil Rights conduct an ADA compliance review? Is a review scheduled for the current Federal fiscal year? If yes, what was/is the scope of the review(s)?*

EXPLANATION
Consistent with FTA's oversight responsibilities, FTA has a program of ADA compliance reviews. The reviews target a particular area of the ADA and the implementing regulations, such as ADA complementary paratransit; key, new, and renovated rail stations; fixed route stop announcements and route identification; and fixed route bus lift and maintenance reliability.

Even if an ADA review site visit has been conducted within the past two Federal fiscal years or one is scheduled for the current fiscal year, the relevant questions in this section will be asked.

REFERENCE
None

SOURCES OF INFORMATION
None

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part A: Bus and Rail Vehicles

2. *Since the last review, has the grantee or a subrecipient purchased or leased any new bus or rail vehicles for use in fixed route service? If yes:*

a. Do the vehicles comply with the applicable regulations under 49 CFR Part 37?

b. Do the vehicles comply with the applicable standards under 49 CFR Part 38?

3. *Since the last review, has the grantee or a subrecipient purchased or leased any used bus or rail vehicles for use in fixed route service? If yes, do the vehicles comply with the applicable standards under 49 CFR Part 38? If no, does the grantee have documentation of good faith efforts meeting the requirements of 49 CFR Part 37 to obtain accessible used equipment?*

4. *Since the last review, has the grantee or a subrecipient remanufactured any existing bus or rail vehicles for use in fixed route service? If yes, are the vehicles readily accessible to people with disabilities, including those who use wheelchairs?*

5. *When subrecipients purchase or remanufacture vehicles themselves, how does the grantee ensure that they comply with ADA requirements?*

6. *If the grantee or a subrecipient contracts for fixed route service, including commuter and intercity bus service, how does the grantee know that the buses used for the service are accessible?*

7. *Since the last review, has the grantee or a subrecipient purchased or leased any new vehicles that are not accessible for demand responsive service, including deviated fixed route service? If yes:*

a. Is the grantee or subrecipient providing equivalent service?

b. Has the grantee documented its analysis to ensure that the system, when viewed in its entirety, is accessible to and usable by

people with disabilities, including those who use wheelchairs, and that service is provided in the most integrated setting appropriate to the needs of the individual?

c. *How does the grantee monitor its own and its subrecipients' compliance with equivalent service provisions?*

d. *Has the grantee filed a certification of equivalent service?*

e. *If the grantee is a state, has it obtained a certification of equivalent service from Section 5307 and 5311 subrecipients?*

EXPLANATION

49 CFR Part 38 contains accessibility standards for transportation vehicles. 49 CFR Part 37 includes specific requirements for the acquisition of accessible vehicles by public and private entities. Grantees must comply with the requirements, as must contractors and subrecipients.

Private nonprofit entities are eligible subrecipients under Sections 5310, 5311, 5316 and 5317. Private for profit entities are eligible subrecipients under Sections 5316 and 5317. All Section 5311 subrecipients, including private nonprofit entities, follow the rules for public entities. Unless the service is general public service, Section 5310, 5316 and 5317 subrecipients that are private entities follow the rules for private entities. For those that operate general public service, consult the Office of Civil Rights (TCR) for guidance.

Public Entities

In general, all new bus and rail vehicles purchased or leased by public entities operating fixed route service must be accessible (must comply with Part 38 standards).

Used bus and rail vehicles that are not accessible may be purchased or leased only after a good faith effort has been demonstrated to obtain accessible vehicles. Good faith efforts include:

- an initial solicitation or documented communication for used vehicles specifying that all used vehicles are to be lift equipped or otherwise accessible to and usable by individuals with disabilities;
- a nationwide search for accessible vehicles, involving specific inquires to used vehicle dealers and other transit providers; and
- advertising in trade publications and contacting trade associations.

The grantee must keep records documenting the good faith effort for three years.

Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible, unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicles are established by 49 CFR Part 38.

When a grantee contracts for fixed route service, including commuter and intercity bus service, all of the buses used in the service must be accessible. The contractor must meet the grantee's obligations as it "stands in the shoes" of the grantee and the grantee cannot contract away its obligations to provide accessible service.

Public entities operating demand responsive service for the general public must purchase or lease accessible vehicles unless it can be demonstrated that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. The service must be provided in the most integrated setting feasible and be equivalent with respect to:

- response time;
- fares;
- geographic service area;
- hours and days of service;
- restrictions or priorities based on trip purpose;
- availability of information and reservation capability; and
- any constraints on capacity or service availability.

Before procuring any non-accessible vehicle for demand responsive service, the grantee must file an equivalent service certification with FTA by checking certification number 11 of the annual certifications and assurances. A state must obtain certifications from Section 5307 and 5311 subrecipients. Appendix C to Part 37 of the DOT ADA regulations includes a copy of the Certification of Equivalent Service.

Private Entities

A private entity primarily engaged in the provision of transportation services may purchase a vehicle that is not accessible under the following circumstances:

- When acquiring a sedan
- When acquiring a new van with capacity < 8 persons, including the driver, for fixed route

service if the service, when viewed in its entirety, meets the equivalent service standard
- When acquiring a vehicle for demand response service if the service, when viewed in its entirety, meets the equivalent service standard

A private entity not primarily engaged in the provision of transportation service may purchase a vehicle that is not accessible under the following circumstances if the service, when viewed in its entirety, meets the equivalent service standard:
- When acquiring a non-accessible vehicle for fixed route service with capacity <16 persons, including the driver
- When acquiring a vehicle for demand response service

Oversight
Grantees that allow subrecipients to purchase or remanufacture vehicles directly must ensure that the subrecipients comply with ADA requirements. The grantee should monitor its service and the service of its subrecipients to ensure that equivalent service, that is, equal opportunities for each individual with a disability to use the transportation service, exists. The grantee should document its analysis.

REFERENCE
49 CFR Part 37.23
49 CFR Part 37, Subpart D
49 CFR Part 37, Appendix C
49 CFR Part 38

SOURCES OF INFORMATION
The reviewer will examine grant projects in TEAM to determine the types of vehicles acquired. The grantee should be prepared to discuss each instance in which a non-accessible vehicle was acquired since the last review, and for each non-accessible vehicle acquired, determine whether the conditions were met. The supporting documentation for each acquisition — documentation of good faith efforts to obtain an accessible vehicle or documentation of equivalent service – will be reviewed. The grantee should be able to describe how it monitors equivalent service. If subrecipients have acquired non-accessible vehicles, a sample of supporting documentation, including procurement documents, documentation of good faith efforts to acquire accessible vehicles, or certifications of equivalent service, will be reviewed as required.

DETERMINATION
The grantee is deficient if it has acquired non-accessible vehicles and the conditions permitting the acquisition of a non-accessible vehicle have not been met. The grantee is deficient if contractors do not use accessible buses for fixed route service. The grantee is deficient if it has purchased used, non-accessible vehicles and cannot document good faith efforts to obtain accessible vehicles. The grantee is deficient if it purchased non-accessible vehicles for general public demand responsive service and did not file a certification of equivalent service.

The grantee is deficient if it does not ensure 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 grantee cannot document that the subrecipients meet the equivalent service standard, it is deficient. A state is deficient if it did not obtain a certification of equivalent service from a Section 5307 or 5311 subrecipient acquiring a non-accessible vehicle for demand responsive service.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit documentation to the RCRO that the applicable conditions have been met which permit the acquisition of the non-accessible vehicle(s). If the grantee is unable to demonstrate that the required conditions have been met, FTA could declare the purchase ineligible for Federal assistance and require the refund of Federal share.

The grantee will be directed to submit to the RCRO 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 grantee will be directed to submit to the RCRO a procedure for obtaining a certification of equivalent service from Section 5307 and 5311 subrecipients purchasing non-accessible vehicles for demand responsive service.

Part B: Facilities

8. *Since the last review, has the grantee or a subrecipient constructed any new transit facility? Is the facility accessible?*

9. *Since the last review, has the grantee or a subrecipient altered any transit facilities in any way? If yes, were the modifications in accordance with Appendix A to 49 CFR Part 37, the ADA Accessibility Guidelines (ADAAG)? If no, has the grantee provided documentation sufficient to support that it has made the facility accessible to the maximum extent feasible or that the cost of alterations*

required to the path of travel were disproportionate?

10. *When subrecipients construct or modify facilities, how does the grantee ensure that they comply with ADA requirements?*

EXPLANATION
Any new facility to be used in providing public transportation services must be accessible according to the standards in 49 CFR Part 37 Appendix A. If the grantee alters an existing facility used to provide public transportation, the altered portions of the facility must be accessible. When the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards, the alterations must be made accessible to the maximum extent feasible. When an alteration affects the usability of or access to an area containing a primary function (i.e., a major activity for which the facility is intended), the path of travel to the altered area and the bathrooms, telephones, and drinking fountains must be accessible unless the cost is disproportionate. The regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility features.

A grantee must provide documentation sufficient to support that it has made the facility accessible to the maximum extent feasible or that alterations required to the path of travel were disproportionate.

Grantees must ensure that subrecipients comply with ADA requirements when constructing or altering a facility.

REFERENCE
49 CFR Part 37 Subpart C (37.41-37.45)
49 CFR Part 37 Appendix A
DOT Final Rule Adopting New Accessibility Standards – Effective November 29, 2006

SOURCES OF INFORMATION
Grants in TEAM-Web will be reviewed for facility projects. During the site visit, facility projects will be discussed and inspected. Procurement documents for architectural/engineering services should reference the ADA requirements. If the grantee has undertaken alterations to an area that serves a primary function but has not made the altered facility accessible due to impossibility or costs, supporting documentation, including the cost calculations, may be examined.

DETERMINATION
The grantee is deficient if the new or modified facilities do not comply with the standards in 49 CFR Part 37, Appendix A. The grantee is deficient if it does not have documentation supporting the reasons for not making facility alterations fully accessible.

The grantee is deficient if it has not ensured that subrecipients that construct or modify facilities comply with ADA requirements.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the RCRO a schedule for making the necessary modifications to bring the facility into compliance and report quarterly on progress until full compliance is attained. The grantee will be directed to submit to the RCRO documentation supporting the reasons for not making facility alterations fully accessible. The grantee will be directed to submit to the RCRO procedures for overseeing subrecipients to ensure that they comply with facility accessibility requirements when constructing or altering a facility.

Part C: Service Provision

11. *What are the grantee's procedures or policies governing the following ADA requirements?*

a. *Stop announcements on fixed route vehicles?*

b. *Means of route identification at stops served by multiple vehicles on multiple routes?*

c. *Service animals in vehicles and facilities?*

- *Are there any policies or practices that may have the effect of limiting service animal use?*
- *Are animals other than dogs recognized as service animals in the grantee's procedures?*
- *Are persons with disabilities other than visual impairments allowed to use service animals?*
- *May a passenger board a fixed route vehicle at any time, with no prior arrangements, with a service animal?*

d. *Transporting of devices meeting the definition of a "common wheelchair?"*

e. *Drivers providing assistance with the use of accessibility equipment on the vehicle including lifts, ramps and securement systems?*

f. *Securement policy for wheelchairs?*

g. *Provision of service when a mobility device cannot be secured?*

h. *Passengers using mobility devices transferring to a seat?*

i. *Use of lifts or ramps by standees?*

j. *Signage designating priority seating for elderly persons and persons with disabilities for vehicles used in fixed route service?*

k. *Requesting that persons sitting in priority seats vacate those seats when a person with a disability needs to use them?*

l. *Use of accessibility related equipment and features, such as automatic enunciators, stop request buttons, etc.*

m. *Public information/communications available in accessible formats? In what formats is information regarding transportation services available?*

n. *Lift/ramp deployment at any stop?*

o. *Service to persons using respirators or portable oxygen?*

p. *Time allowed for persons with disabilities to board/disembark a vehicle?*

12. *How are the above requirements communicated to employees, contractors, subrecipients and lessees?*

13. *How does the grantee monitor adherence to these requirements or otherwise enforce their implementation?*

EXPLANATION

The DOT ADA regulations (49 CFR 37.161-167) detail specific service requirements. The regulations do not require written policies detailing how they comply with these service provisions, but the grantee should demonstrate that these requirements are the common and effective practice. The grantee should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and how the grantee enforces their implementation.

a. Stop announcements are required for fixed route service at transfer points, major intersections, destination points, and intervals along the route to orient passengers and upon request. If the grantee indicates that a union agreement prevents the grantee from calling stops, reviewers should note the ADA is a Federal law that supersedes any union agreement.

b. When more than one route serves a stop, the grantee shall provide a means by which an individual with a visual or other disability can identify the route on which he or she wants to travel.

c. The grantee must allow service animals to accompany individuals with disabilities in vehicles and facilities. The DOT ADA regulations define a service animal as any animal individually trained to work or perform tasks for an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. It is discriminatory to require a person with a disability to certify or register a service animal. Policies or practices that have the effect of limiting service animal use are prohibited. A grantee may not require passengers to make prior arrangements when boarding a fixed route vehicle with a service animal.

d. Grantees must transport "common wheelchairs." A common wheelchair is a three or four wheeled mobility device that does not exceed 30 inches in width and 48 inches in length as measured two

inches above the ground and does not weigh more than 600 pounds when occupied. Grantees should make every effort to transport wheelchairs that do not meet the definition of a common wheelchair.

e. Where necessary and upon request, the grantee's personnel will assist individuals with disabilities in the use of securement systems, ramps and lift. Personnel must leave their seats if it is necessary to provide the assistance.

f. Grantees may require passengers to allow their mobility devices to be secured and may deny service if a passenger refuses.

g. Grantees must transport passengers when the securement system cannot accommodate the rider's "common wheelchair." Grantees may not establish requirements concerning wheelchair equipment or specifications, such as brakes or wheel locks.

h. Grantees may recommend, but not require, passengers using a wheelchair to transfer to a seat.

i. The grantee must deploy lifts or ramps for persons who do not use wheelchairs, including standees.

j. Vehicles used in fixed route service shall have signs designating priority seating for elderly persons and persons with disabilities.

k. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the grantee shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary); and ii) Individuals sitting in a fold-down or other movable seat in a wheelchair securement location. The grantee is not required to enforce the request.

l. The grantee will ensure that vehicle operators and other personnel make use of accessibility related equipment and features.

m. Public information and communications must be made available in accessible formats.

n. Grantees must not refuse to permit a passenger who uses a lift to board or 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 (i.e., the stop is "closed" for the duration of such conditions).

o. Grantees may not deny service to individuals using respirators or portable oxygen.

p. Grantees must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

The key to ensuring compliance with these policies is ensuring that all employees, contractors, subrecipients and lessees are aware of them. For employees, this might be done through initial and refresher training. It might even be beneficial for these policies to be communicated to riders, giving them an even knowledge base with the employees serving them.

Having policies is not sufficient. The grantee must monitor its compliance with the policies. In addition to monitoring its own employees, the grantee is responsible for informing contractors, subrecipients and lessees of the ADA requirements and for monitoring compliance with the applicable required service provisions.

REFERENCE

49 CFR 37.161-167
49 CFR 38.27, 38.55 and 38.105
Disability Law Guidance on Use of Segways
FTA Bulletin on Common Wheelchairs and Public Transit

SOURCES OF INFORMATION

Driver handbooks, operating and training manuals and internal bulletins may be reviewed for information or procedures pertinent to the regulations. Procedures should include monitoring of compliance with requirements related to ADA provisions. The reviewer may examine public information materials for details on communications in alternative formats and documentation of oversight activities, including surveys, checklists, interview forms and follow up correspondence.

DETERMINATION

If any required procedures are not in effect, there are policies or procedures that are contrary to the ADA requirements, policies are not enforced or internal operations are not monitored, the grantee is deficient.

If the grantee does not ensure that contractors, subrecipients and lessees follow these requirements, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to implement all required service provisions, and submit documentation to the

RCRO and/or provide evidence of monitoring the implementation of these provisions. The grantee will be directed to submit to the RCRO procedures for monitoring contractors, subrecipients and lessees.

Part D: Training

14. *Are personnel, contractors, subrecipients and lessees trained to proficiency so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*

EXPLANATION

The ADA requires that each fixed route or demand responsive service operator ensure that personnel are trained to proficiency, as appropriate for their duties. This training is required so that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities.

The DOT ADA regulations do not specify an acceptable course or frequency of training. The grantee must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is proficient at all times. The training must be appropriate to the duties of each employee, and must address both technical requirements and human relations. The reviewers should assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, subcontractors, subrecipients and lessees are "proficient," and what, if any, consequences result if these standards are not met.

REFERENCE

49 CFR 37.173

SOURCES OF INFORMATION

The reviewer may examine training materials and handbooks along with bulletins and other material provided to personnel. Complaint records may indicate problem areas.

DETERMINATION

If the grantee has not incorporated sensitivity training on interacting with persons with disabilities into its various equipment operation and safety training programs, it is deficient.

If the grantee does not ensure that contractors, subrecipients or lessees have incorporated sensitivity training on interacting with persons with disabilities into its various equipment operation and safety training programs, it is deficient

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to revise the training program, begin retraining, and report to FTA on progress. The grantee will continue to report quarterly to FTA on retraining until all personnel have been trained as appropriate for their duties. The grantee will be directed to submit to FTA procedures for monitoring the training programs of contractors, subrecipients and lessees.

Part E: Maintenance

15. *Are accessibility features maintained in operative condition? What system of regular and frequent maintenance checks of lifts and ramps has been established? Is this system sufficient to determine if lifts and ramps are operative?*

16. *What is the policy with regard to lift and ramp failures on in-service vehicles? Are operators required to report failures promptly? Is alternative service provided to persons stranded for more than 30 minutes due to failures? Are lifts and ramps repaired within the timeframes required by the DOT ADA regulation prior to returning the vehicle to service? Does the grantee have sufficient accessible spares to enable it to meet the timeframes?*

17. *How does the grantee monitor its operations and the operations of contractors, subrecipients and lessees to ensure compliance with ADA maintenance requirements?*

EXPLANATION

Grantees, contractors, subrecipients and lessees must maintain in operative condition vehicle accessibility features such as lifts, ramps, annunciators and securement devices. They must have a system of regular and frequent maintenance checks for wheelchair lifts and ramps on non-rail vehicles that is sufficient to ensure that the lifts are operative. There is

no specific requirement for daily cycling of lifts and ramps, though many grantees have adopted this practice to meet this requirement. The adequacy of the procedures may be reflected in the frequency of in-service failures.

Operators must report immediately any in-service lift and ramp failures. If a lift or ramp failure occurs on a route where the headway is greater than 30 minutes and the passenger cannot be served, the grantee is required to provide alternative service promptly. The vehicle must be removed from service before the beginning of the next service day if the lift or ramp is not repaired. The lift or ramp should be repaired before the vehicle is returned to service. In the event that there is no spare vehicle available and the grantee would be required to reduce service to repair the lift or ramp, it may keep the vehicle with the inoperable lift or ramp in service for no more than five days (if the grantee serves an area of 50,000 persons or fewer in population) or three days (if the grantee serves an area of more than 50,000 persons in population).

The grantee must monitor its compliance with the ADA maintenance requirements. In addition to monitoring its own operations, the grantee is responsible for ensuring that subrecipients, contractors and lessees meet the requirements.

REFERENCE
49 CFR 37.161-163

SOURCES OF INFORMATION
Maintenance and operations policies will be reviewed. The maintenance facility inspection will note if the grantee has and is following maintenance procedures for wheelchair lifts, ramps and other accessibility equipment. Ant reports on lift availability should be made available. Maintenance records may be checked to determine how long lifts, ramps, or other equipment may have been out of service. Monitoring procedures and documentation of monitoring activities will be reviewed.

DETERMINATION
The grantee is deficient if it does not have a program to maintain accessibility features in operative condition and has not established a system of regular and frequent maintenance checks of lifts and ramps. The grantee is deficient if records show that the grantee either does not follow the system or does not maintain the accessibility equipment properly. The grantee is deficient if operators do not report lift or ramp failures immediately or if it operates vehicles with inoperable lifts or ramps when it should not. The grantee is deficient if does not remove and repair buses with inoperable lifts and ramps within the required timeframes. The grantee is deficient if it does not provide alternative service when a lift or ramp fails on routes with headways greater than 30 minutes.

The grantee is deficient if it does not monitor contractors, subrecipients and lessees for compliance with ADA maintenance requirements.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop a preventive maintenance program for accessibility features that are not maintained regularly and properly. A grantee failing to follow its system of lift maintenance checks must revise and/or fully implement the system. The grantee will be directed to develop and implement procedures to report immediately a lift or ramp failure on a vehicle in service. The grantee will be directed to remove and repair buses with inoperable lifts and ramps within the required timeframes. The grantee will be directed to provide alternative service on routes with headways greater than 30 minutes. The grantee will be directed to submit evidence of corrective actions to the RCRO.

Part F: Commuter Bus/University Service

18. *Does the grantee or a subrecipient provide commuter bus service? If yes, how did the grantee determine that the service is commuter and not fixed route service where complementary paratransit is required?*

19. *Does the grantee or a subrecipient operate university service?*

20. *How does the grantee ensure that commuter bus or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations?*

EXPLANATION
The DOT ADA regulations require public entities operating fixed route transit to provide complementary paratransit to persons with disabilities who are unable to use the regular fixed route system. For the purposes of the regulation, all Section 5311 subrecipients must comply with the rules for public entities, even those that are nonprofits. The requirement to provide ADA complementary paratransit service does not apply to commuter bus and rail service and university transportation systems.

Commuter bus service is fixed route bus service characterized by service predominately in one direction during peak periods, and with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, such as no attempt to comprehensively cover a service area, limited

purposes of travel and a coordinated relationship to another mode of transportation. A grantee operating commuter bus service must be able to demonstrate that the service can be characterized as such.

University systems are transportation systems designed primarily to meet the needs of students, faculty and staff. Like commuter bus systems, university fixed route systems generally have limited, rather than comprehensive, route structures. They serve a limited number of origins and destinations, and have limited functions. One of their primary functions is to interface with fringe parking lots and/or city transit systems that carry people to the vicinity of, but not directly to, major campus destinations. A university transportation system may also have to venture out on the public street to access off campus housing; this fact in and of itself does not make it subject to the ADA complementary paratransit regulations.

In addition, most university transportation systems are subsidized by student fees, and patrons of the system must display some type of identification (student, faculty, etc.) so that the driver knows the individual is entitled to use the system. If a driver lets a person without ID access the system, that in and of itself does not make it subject to the ADA complementary paratransit regulations. The service may or may not be open to the general public.

The grantee must ensure that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

REFERENCE

49 CFR Part 37.25
49 CFR Part 37.121
49 CFR Part 37 Appendix D
Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005
FTA C 9040.1F, Ch. X, Section 11.f

SOURCES OF INFORMATION

The reviewer may examine documentation of the determination that bus service is commuter service, not fixed route service requiring ADA complementary paratransit service. The reviewer may examine documentation to ensure that university service is designed primarily to meet the needs of students, faculty and staff. Schedules, timetables, system maps, the website and other public information may be reviewed and discussed during the site visit.

DETERMINATION

The grantee is deficient if it cannot explain or document that commuter bus service meets the ADA definition of commuter service. The grantee is deficient if it cannot explain or document that university service meets the ADA definition of university service.

The grantee is deficient if it does not ensure that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the RCRO documentation to support its determination of commuter or university service. The grantee will be directed to submit to the RCRO procedures for ensuring that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

Part G: Demand Responsive Service

21. *Does the grantee or a subrecipient provide deviated fixed route service as its method for demand responsive service? If yes:*

a. Does the service deviate for people with and without disabilities?

b. Does the grantee or subrecipient promote the service as deviated fixed route service?

22. *How does the grantee ensure that deviated fixed route service provided by subrecipients has the characteristics of demand responsive service?*

EXPLANATION

The DOT ADA regulations require public entities operating fixed route transit to provide complementary paratransit to persons with disabilities who are unable to use the regular fixed route system. For the purposes of the regulation, all Section 5311 subrecipients must comply with the rules for public entities, even those that are nonprofits. Route deviation and point deviation systems are defined as demand responsive systems, which do not require ADA complementary paratransit. One key factor to consider in determining if a transit system is fixed route or demand responsive is if an individual must request the service in some way, typically by making a phone call in advance. With fixed route service, no action is needed to access the service. If a person is at the bus stop at the time the bus is scheduled to appear, then the person can use the service. With demand responsive service, the individual typically must make a phone call in order to ride the bus. A system that permits user initiated deviations from

routes or schedules generally fits the definition of demand responsive service.

To be considered demand responsive, the service must deviate for the general public, not just persons with disabilities. Systems should provide information to the public on how to request a deviation. If deviations are restricted to a particular group, the service ceases to be a form of demand responsive service for the general public.

The grantee must ensure that deviated fixed route service provided by subrecipients has the characteristics of demand responsive service.

REFERENCE

49 CFR Part 37 Appendix D
Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005
FTA C 9040.1F, Ch. X, Section 11.f

SOURCES OF INFORMATION

Schedules, timetables, system maps, the website and other public information will be examined to ensure that the service is promoted as route deviation service. The service may be discussed during the site visit.

DETERMINATION

The grantee is deficient if it operates fixed route service and does not offer ADA complementary paratransit service. If the grantee does not provide ADA complementary paratransit and its demand responsive service does not deviate for the general public or it does not promote the service to the general public, it is deficient.

The grantee is deficient if it does not ensure that deviated fixed route service provided by subrecipients has the characteristics specified in the DOT ADA regulations, if it is also not providing ADA complementary paratransit service.

SUGGESTED CORRECTIVE ACTION

If ADA complementary paratransit is not provided, the grantee will be directed to submit to the RCRO public information and other documentation to demonstrate that general public deviated fixed route service is provided, submit to the RCRO procedures for ensuring that deviated fixed route service provided by subrecipients has the characteristics of demand responsive service, or begin offering ADA complementary service.

Part H: ADA Complementary Paratransit

23. *Does the ADA complementary paratransit eligibility process of the grantee meet the following regulatory requirements:*

a. *Are eligibility decisions made within 21 days of receipt of a complete application? If no, is presumptive eligibility granted?*

b. *Are eligibility decisions based solely on a note from a physician? What percent of applicants are approved?*

c. *Are persons who are denied eligibility or given conditional or temporary eligibility given a written notice with specific reasons for the decision and notice of their right to appeal? If conditional eligibility is granted, are conditions applied to individual trips?*

d. *Does the appeals process adhere to the DOT ADA regulations (opportunity to be heard, separation of functions, decision within 30 days, and written notification of decision with reason for it)?*

e. *If a decision is not made within 30 days of completing the appeals process, is transportation provided until and unless a decision to deny the appeal is issued?*

EXPLANATION

Each grantee providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. Eligibility is to be strictly limited to certain categories of individuals:

- Any person with a disability who is unable to board, ride, or disembark from an accessible vehicle without the assistance of another person (except for the operator of a lift or other boarding device)
- Any person with a disability who could ride an accessible vehicle but the route is not

accessible or the lift does not meet ADA standards

- Any person with a disability who has a specific impairment related condition that prevents the person from traveling to or from a boarding/disembarking location

There are many ways that the grantee can determine eligibility. The process may include functional evaluation or testing of applicants. Evaluation by a physician or health professional may be part of the process, but a diagnosis of a disability does not establish eligibility. What is needed is a determination of whether, as a practical matter, the individual can use fixed route transit under given circumstances.

The goal of the process is to ensure that only persons who meet the regulatory criteria are regarded as ADA eligible. If decisions are based solely on a note from a physician, and 100 percent of applicants are approved, the grantee may not have an appropriate process. The grantee is not prohibited from providing service to other persons; however, the eligibility process must distinguish whether someone is ADA eligible or is provided service on some other basis. Information on the eligibility process is particularly important if the grantee is failing to meet the demand for service.

The grantee must process a completed application within 21 days of submittal. If after 21 days, the grantee has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the grantee later denies the application.

The grantee may require passengers to be recertified at reasonable intervals. See Appendix D to the regulations.

The grantee is required to establish an appeals process for persons denied eligibility or granted conditional eligiblity. The applicant must be given a written reason for the determination and notice of the right to an appeal. The written determination cannot be a recital that it has been determined that the applicant can use fixed route service. Applicants should be required only to state their intent to appeal, not be required to give a full justification in writing prior to an opportunity to be heard. The grantee may require that an appeal be filed within 60 days of the denial of a person's application. The process must include an opportunity to be heard and to present information. The person hearing the appeal must be separate from the person who made the original decision to deny eligibility.

The grantee is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

REFERENCE

49 CFR 37.121-125
49 CFR Part 37 Appendix D

SOURCES OF INFORMATION

Public information that describes the ADA complementary paratransit and the eligibility process will be reviewed. The grantee should be able to describe how applications are processed and how eligibility determinations are made. Recent application files will be examined to ensure that the grantee processed them within the 21 day required time frame. Grantees should be prepared to discuss the appeals process and spot check files for recent appeals to ensure that the process meets the regulatory requirements. Sample eligibility (including denial and conditionally eligible) and appeal decision letters may be examined.

DETERMINATION

The grantee is deficient if the application process does not conform to the required time frames.

The grantee is deficient if it fails to notify applicants of their right to appeal or if the appeals process does not include all required elements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to modify its eligibility determination process and/or appeals process to meet the regulatory requirements and submit copies of the revised procedures to the RCRO.

24. *Does the ADA complementary paratransit service provided by the grantee meet the following regulatory requirements:*

a. Is service provided to an ADA eligible individual? A personal care attendant (PCA)? A companion? Additional companions on a space available basis?

b. What is the visitor policy?

c. What type of service is provided? Is origin to destination service provided when needed?

d. *Is service provided within 3/4-mile corridors of fixed routes and the core area? Is service provided beyond the 3/4-mile corridors and core area?*

e. *Is next day service provided? If yes, what percent of reservations are made for the next day?*

f. *Are requests for reservations accepted during normal business hours on all days prior to days of service (e.g., weekends, holidays) even if the administrative office is closed? How are reservations accepted when the administrative office is closed?*

g. *Are trips scheduled within one hour of the requested trip time?*

h. *Are fares no more than twice the non-discounted fixed route fare for a comparable fixed route trip?*

i. *Are PCAs charged a fare? Are companions charged a fare?*

j. *If a free fare zone exists or a free shuttle service is offered, are comparable paratransit trips for that service area also free?*

k. *Is ADA complementary paratransit service available during the same hours and days as fixed route service?*

l. *Are there priorities based on trip purposes?*

m. *What percentage of service is subscription? Is non-subscription capacity available?*

EXPLANATION

The DOT ADA regulations include detailed requirements for provision of ADA complementary paratransit. These requirements include:

Provision of Service: ADA complementary paratransit must be provided to an ADA eligible individual, including those with temporary eligibility, the PCA if one is necessary, and one other individual accompanying the ADA eligible individual, if requested. Additional companions may be provided service if space is available. Service also must be provided to visitors. Any visitor who presents ADA eligibility documentation from another jurisdiction must be provided service. If a visitor does not have ADA eligibility documentation, the grantee may request proof of residency, and if the disability is not apparent, proof of disability. The grantee must accept a certification by the visitor that he or she is unable to use fixed route transit. The grantee is not required to provide more than 21 days of service within a 365 day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

Type of Service: The regulations specify "origin to destination" service. The basic mode of service can be designated as door to door or curb to curb. If the grantee's basic mode of service is curb to curb, the grantee must have policies and procedures in place to provide assistance between the vehicle and the first doorway for customers who need additional assistance to complete the trip.

Service Area: The ADA service area at a minimum includes all origins and destinations within corridors with a width of ¾ mile of each fixed route. Within the core service area, any small areas not inside a corridor but surrounded by corridors also must be served. Outside the core service area, the grantee may designate corridors with widths of up to 1 and ½ miles on each side of the fixed route, based on local circumstances. The grantee may provide additional service.

Response Time: Requests for reservations must be accepted during normal business hours on a "next day" basis (<u>not</u> 24 hours in advance) on all days prior to days of service (e.g., weekends, holidays). Reservations can be accepted using mechanical means (e.g., answering machines, voice mail). Trips must be scheduled within one hour of the requested pickup time. Advance reservations may be permitted up to 14 days before a desired trip.

Fares: The ADA complementary paratransit fare cannot exceed twice the non-discounted fare for a trip of similar length, at a similar time of day, on the fixed-route system. No fare may be charged for PCAs. Any companions must pay the same fare as the ADA-eligible individual. Grantees that provide free fare zones and/or operate free shuttle routes in downtown areas or in other parts of their service area must extend the free fares to all "comparable" complementary paratransit trips. If the fares are paid by a third party, consult TCR. If the grantee provides

free fares on ADA complementary paratransit in a corridor along a free shuttle route that is narrower than the ¾ mile corridor, the grantee should have data supporting that the free shuttle service draws riders only from the narrower corridor. Discounted fares or free fares offered on a promotional basis on fixed route services (e.g., ozone alert days) do not require a corresponding reduction of the ADA complementary paratransit fare.

Days and Hours of Service: The days and hours of service for fixed route service and ADA complementary paratransit service must be the same.

Trip Purpose: No restrictions or priorities may be based on trip purpose.

Subscription Service: Unless there is non-subscription capacity, subscription service may not absorb more than 50 percent of the number of trips available at a given time. If there are no capacity constraints within a given system, subscription service is free to absorb as much as the transit system chooses.

REFERENCE

49 CFR 37.123-133
DOT Disability Law Coordinating Council Guidance on Origin to Destination Service

SOURCES OF INFORMATION

Public information, including the grantee's web site, will be reviewed for a description of the ADA complementary paratransit service. Internal operating policies that describe how trips are reserved and scheduled may also be reviewed. Grantees should ensure that the service characteristics are consistent with the regulatory requirements. If the grantee is experiencing capacity constraints, identify if the population served, the level of service provided or the service area exceeds the minimum requirements. The reviewer may discuss the percentage of next day reservations. A very low percentage may indicate capacity constraints. The reviewer may conduct a spot check of service hours in regards to weekend service, very early or late service, and special or new services.

DETERMINATION

If the ADA complementary paratransit service does not meet all ADA regulatory requirements, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to take immediate steps to modify any operating policies and change services that do not meet the regulatory requirements and submit documentation of the changes to the RCRO.

25. *How does the grantee monitor ADA complementary paratransit service operated directly or contracted to ensure that there is no pattern or practice of trip denials? Lack of access to phone reservations? Untimely pick-ups? Missed trips? Excessively long trips?*

26. *What is the denial rate (overall and for next day trips)? What is the on-time performance rate? How are these data confirmed for accuracy?*

27. *Are rides that are not provided in a one hour window tracked as denials?*

28. *When one leg of a round trip cannot be reserved, how many denials are tracked when the rider declines the round trip?*

29. *What is the telephone hold time standard? How is telephone access measured (averages, percentiles, etc.)?*

30. *For next day service, at what time of day are reservations cut off?*

31. *At peak times, can a caller reach the reservation office? Do callers ever receive busy signals? How does the grantee know?*

32. *How does a rider contact the reservation agent to cancel a trip?*

EXPLANATION

The DOT ADA regulations specify that a grantee may not limit the availability of complementary paratransit to eligible individuals by restrictions on the number of trips or by waiting lists. Any operational pattern or practice that has the effect of limiting availability is prohibited (e.g., limited phone reservation capacity or substantial numbers of late pick-ups, trip denials, missed trips or excessively long trips).

"Pattern or practice" in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the grantee, such as unanticipated weather or traffic problems that affect all vehicular traffic, do

not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. One trip during the review period that is one hour late is probably not a capacity constraint, but 20 percent of the grantee's trips arriving one hour late probably would be.

In order to determine whether capacity constraints exist, the grantee should have a definition of what constitutes a missed trip, what on-time performance means, when a trip has been denied, and when travel time is too long. For example, at what point in time does a trip go from being late to being missed? Grantees are required to plan and budget for 100 percent of demand for next day service. FTA has determined that to intentionally plan to deny a set percentage of trips is not in compliance with ADA requirements.

The grantee should have a mechanism in place for monitoring its on-time performance and tracking these indicators of capacity constraints to comply with ADA requirements. While there is no regulatory requirement for record-keeping or monitoring in any particular way, unless the grantee has no trip denials and few complaints about other performance indicators, the grantee must be able to demonstrate that the denials it does have, as well as the missed trips, late pickups, etc. are not an operational pattern or practice that significantly limits the availability of ADA paratransit service.

The regulations allow the grantee to negotiate pick-up times with ADA eligible persons within a one-hour +/- window. If the grantee cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one hour window, the trip must be tracked as a denial due to the grantee's inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines the trip, it should be tracked as two denials. If the rider refuses an alternate time that is within the one hour window, it is not a denial for the purposes of ADA compliance.

If on a regular basis, the phone lines are busy, average or long phone hold times are excessive, call abandonment rates are high, or callers after a certain time (e.g., mid-morning) are told that they cannot reserve trips for the next day, the grantee is limiting the availability of service. The grantee also must ensure that an ADA eligible individual can reach a reservation agent to cancel a trip. The grantee should be able to provide data on the performance of its phone reservation system.

REFERENCE
49 CFR 37.131(f)

SOURCES OF INFORMATION
The grantee should be prepared to discuss what its standards of service are and whether the complementary paratransit service is meeting them, how complementary paratransit service is monitored and what the denial rate is. Performance data that the grantee collects may be reviewed. Communication systems that provide data on average call wait time, number of missed calls, call abandonment rates, and other indicators of performance may be examined. If no such data are collected or reviewed, the reviewer may discuss how the agency assures compliance with these requirements.

DETERMINATION
The grantee is deficient if it relies on waiting lists, trip caps, or demonstrates phone access limitations or substantial, repeated numbers of untimely pick-ups, trip denials, missed trips, or excessively long trips. The grantee is deficient if it has no provisions to accommodate peaks in demand. The grantee may be deficient if it is not monitoring complementary paratransit service.

The grantee must track trip denials properly. If the grantee is not tracking as a denial trips provided outside the one hour window, and is not tracking as two denials round trips that cannot be scheduled, it is deficient.

SUGGESTED CORRECTIVE ACTION
If the ADA complementary paratransit service does not have adequate capacity to meet the peak demand for service by ADA eligible riders, the grantee must increase capacity or take other measures to reduce demand (e.g., consider eliminating service that exceeds ADA requirements or modify the fixed route service area or other characteristics). The grantee must track trip denials correctly. The grantee will be directed to provide the RCRO with documentation of the implemented corrective actions.

33. *Is a no-show/late cancellation suspension policy used? If yes:*

a. What is the suspension policy for no-shows?

b. How does the grantee determine whether or not no-shows are under the rider's control?

c. Are no-shows caused by operator error counted against the rider?

d. *What is the grantee's threshold for a cancellation before it is considered a no-show?*

e. *Are only riders who have demonstrated a true pattern or practice of no-shows suspended?*

f. *Are financial penalties assessed for no-shows?*

g. *Is there a policy to allow riders to contest no-shows?*

h. *Is there an appeals process for suspensions?*

EXPLANATION
Many transit providers have a suspension policy for a pattern or practice of no-shows, as allowed by 49 CFR 37.125(h). However, such a policy must be narrowly tailored to a true pattern or practice. For example, three no-shows in 120 days would not be a pattern or practice for a daily rider. Ideally, such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold. Only no-shows that are under the rider's control should be counted against the rider. No shows caused by operator error should not be counted against the rider.

Transit providers may include cancellations in their suspension policy, but only late cancellations that are the operational equivalent of a no-show. A provider should be able to absorb the capacity of an evening trip cancelled first thing in the morning.

Systems may not impose a financial penalty as part of a no-show policy, including charging for the fare for the no-show trip.

As access to complementary paratransit service is a civil right, the policy should allow riders to contest no-shows and there must be an appeals process for suspensions.

REFERENCE
49 CFR 37.125(h)

SOURCES OF INFORMATION
The no-show policy will be reviewed and discussed during the site visit.

DETERMINATION
The grantee is deficient if it suspends riders who do not demonstrate a true pattern or practice of no-shows. The grantee is deficient if it counts no-shows not under the rider's control or caused by operator error against the rider. The grantee is deficient if cancellations that are not the equivalent of a no-show are counted against the rider. The grantee is deficient if it assesses financial penalties for no-shows. The grantee is deficient if it does not allow riders to contest no-shows or does not have an appeals process for suspensions.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to cease counting no-shows that are not under the rider's control against the rider. The grantee will be directed to only count cancellations against the rider that are the operational equivalent to a no-show. The grantee will be directed to revise its no-show policy to only suspend riders with a pattern or practice of no-shows. The grantee will be directed to cease assessing a financial penalty for no-shows. The grantee will be directed to allow riders to contest no-shows. The grantee will be directed to implement an appeals process for no-shows and to submit evidence of the implemented corrective actions to the RCRO.

Part I: Rail Operations

34. *If the grantee is a rail operator:*

a. *Are any key stations currently covered by a Time Extension (TE) or a Voluntary Compliance Agreement (VCA)? If yes, has the grantee submitted Key Station Quarterly Status Reports timely? Has the VCA or TE expired? If yes, has the grantee completed the necessary work on the affected stations? If no, has the grantee filed an extension request with FTA?*

b. *Since the last review, have any new stations been constructed or stations (other than key stations) been altered in any way? If yes, does the boarding platform coordinate with the level of the floor of the railcars? Have all other ADAAG requirements been met?*

c. *If level boarding is not provided at newly constructed or altered stations (other than key stations), has the grantee documented for each station the specific factors that render level*

boarding structurally and/or operationally infeasible? What alternative means of boarding are provided for passengers with disabilities, including wheelchair users? Does this method of boarding comply with the applicable provisions of 49 CFR Parts 27, 37, and 38 and DOT level boarding guidance documents?

d. *Does the system have at least one accessible car per train?*

EXPLANATION

All rail operators are required to ensure that key stations (e.g., transfer points, major interchanges with other transportation modes, and stations serving major activity centers) are accessible. Some rail operators that have not yet met the regulatory requirements are working under a VCA or TE with FTA's Office of Civil Rights. If a VCA or TE is in place, the grantee is required to submit Key Station Quarterly Status Reports to FTA.

All rail operators are also required to ensure that new stations comply with ADAAG requirements for new construction and for new rail stations. This includes a requirement that the rail-to-platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. ADAAG provides for exceptions to this requirement if it is not structurally or operationally feasible to provide level boarding, and lists alternate methods of boarding that may be used. If stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented, the grantee may be in violation of the DOT ADA regulations.

If a rail operator undertakes alterations to a station (other than key station requirements), those alterations must also be accessible per ADAAG.

Under the DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the grantee provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs.

REFERENCE

49 CFR 27.7(b)(6)
49 CFR 37.47-37.61
49 CFR Parts 37.93
ADA Accessibilty Guidelines for Buildings and Facilities (ADAAG)
DOT Final Rul Adopting new Accessibilit Standards – Effective November 29, 2006
DOT Disability Law Guidance on Level Boarding

SOURCES OF INFORMATION

If a VCA or TE is in effect, the reviewer will check to see that the required reports have been submitted to FTA as required, and/or that timeframes have been met if the VCA or TE has expired. System and/or station plans and associated documentation should indicate any factors relating to exceptions from full level boarding requirements. If the grantee altered or constructed new stations and, if level boarding is not provided, the specific factors for each station that render level boarding structurally and/or operationally infeasible must be documented. If time permits, during the site visit, "one-car-per-train" accessibility by may be verified by observing or riding the service.

DETERMINATION

If the grantee has a VCA or TE and is not submitting reports to FTA on time, or has not completed the required work by the deadlines specified, it is deficient.

If the grantee has constructed new stations that do not comply with ADAAG, or has not substantiated an exception from the level boarding/platform gap requirements, it is deficient. If a grantee has undertaken alterations to a station and has not complied with ADAAG, it is deficient.

The grantee is deficient if it violates the one-car-per-train rule.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit delinquent reports to FTA. The grantee will be directed to submit documentation supporting platform related exceptions to FTA. The grantee will be directed to correct noncompliant station elements in new construction or alterations. The regional office and headquarters will determine corrective actions for one-car-per-train rule deficiencies. The grantee will be directed to submit documentation of the implementation of the requirements to the RCRO.

Part J: Complaints/Lawsuits

35. *Does the grantee have a procedure for responding to and tracking complaints? Who handles the complaints?*

36. *Has the grantee or its subrecipients received any complaints of*

discrimination due to disability? What is the status of the complaints?

37. *Are there any lawsuits alleging discrimination on the basis of disability? If so, identify parties to suits and issues.*

EXPLANATION
These questions are for information only. Complaints or legal actions may indicate a problem with implementation of the ADA requirements. Requiring subrecipients to notify the grantee of any complaints may be part of the grantee's oversight program. The FTA Office of Civil Rights should be advised of any pending lawsuits.

REFERENCE
None

SOURCES OF INFORMATION
The reviewer may discuss with the grantee during the site visit.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

16. CHARTER BUS

BASIC REQUIREMENT

FTA grantees are prohibited from using Federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. Grantees are allowed to operate community based charter services excepted under the regulations.

AREAS TO BE EXAMINED

1. ***Charter Service***
2. ***Reporting***
3. ***Use of Locally Owned Vehicles***
4. ***Training***
5. ***Oversight***
6. ***Advisory Opinions***
7. ***Cease and Desist Orders***
8. ***Complaints***

REFERENCE

1. 49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

USEFUL WEB LINKS

ombudsman.charterservice@dot.gov

Charter Registration Website

Charter Resources

Reporting form and instructions

Other Forms

QUESTIONS FOR THE REVIEW

1. *Does the grantee or its subrecipients, contractors, or lessees operate any charter service, as defined in the regulation? If yes, does the service fall under one or more of the allowed exceptions? If so, under what exception(s) is the charter service operated? Were the requirements of the exception followed?*

EXPLANATION

The charter service regulations apply to all grantees and subrecipients that receive Section 5307, 5309, 5310, 5311, 5316, or 5317 funds. The regulations define charter service as follows:

1. Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristics of charter service:
   a. A third party pays a negotiated price for the group
   b. Any fares charged to individual members of the group are collected by a third party
   c. The service is not part of the regularly scheduled service, or is offered for a limited period of time*
   d. A third party determines the origin and destination of the trip as well as scheduling

2. Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration and:
   a. A premium fare is charged that is greater than the usual or customary fixed route fare; or
   b. The service is paid for in whole or in part by a third party.

Examples of service that do not meet the definition of charter service and, therefore, are not considered charter service by FTA are:

- Service that is irregular or on a limited basis for an exclusive group of individuals and is free of charge when a third party requests service. When the transit agency initiates service it is allowed so long as the grantee does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the grantee, the grantee charges its customary fixed route fare and there is no third party involvement.
- When a university pays the grantee a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the grantee provides the service on a regular basis, along a fixed route and the service is open to the public.
- When the grantee sees a need and wants to provide service for a limited duration at the customary fixed route fare.

The charter regulations include **exemptions** and **exceptions**. Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. Exceptions are considered charter service and have administrative, record-keeping and reporting requirements.

Exemptions

The charter service regulation **exempts** the following services:

1. Transportation of Employees, Contractors and Government Officials: Grantees are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

2. Private Charter Operators: The prohibitions do not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under Section 3038 of TEA 21, as amended, or to non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance.

3. Emergency Preparedness Planning and Operation: Grantees are allowed to transport their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

4. Section 5310, 5311, 5316 and 5317 Recipients: The prohibitions do not apply to grantees that use Federal financial assistance from FTA for program purposes, that is, transportation that serves the needs of either human service agencies or targeted populations (elderly,

individuals with disabilities), under Section 5310, 5311, 5316, or 5317. Program purposes does not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.

5. Emergency Response: Grantees are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the president, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration.

6. Recipients in Non-Urbanized Areas: Grantees in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions

The charter regulation **excepts** the following community based charter services. The grantee must retain records of each charter service provided for at least three years. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours (time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage).

1. Government Officials: A grantee is allowed to provide charter service (up to 80 charter service hours annually) to government officials (Federal, state and local) for official government business, which can include non-transit related purposes, if the grantee:
   a. Provides the service in its geographic service area
   b. Does not generate revenue from the charter service, except as required by law

   The grantee may petition FTA for additional charter service hours.

   The grantee is required to record the following information after providing such service:
   a. The government organization's name, address, phone number and email address
   b. The date and time of service
   c. The number of government officials and other passengers
   d. The origin, destination, and trip length (miles and hours)
   e. The fee collected, if any
   f. The vehicle number for the vehicle used to provide the service

2. Qualified Human Service Organization (QHSO): A grantee is allowed to provide charter service to a QHSO for the purpose of serving persons:
   a. With mobility limitations related to advanced age
   b. With disabilities
   c. With low income

   If the QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the regulation, the QHSO is not required to register on the FTA's charter registration website. Otherwise, the QHSO is required to register. The grantee may provide service only if the QHSO is registered at least 60 days before the date of the first request for charter service.

   The grantee is required to record the following information after providing such service:
   a. The QHSO's name, address, phone number and email address
   b. The date and time of service
   c. The number of passengers
   d. The origin, destination, and trip length (miles and hours)
   e. The fee collected, if any
   f. The vehicle number for the vehicle used to provide the service

3. Leasing of Equipment and Driver: A grantee is allowed to lease its FTA funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:
   a. The private charter operator is registered on the FTA charter registration website
   b. The registered charter provider owns and operates buses or vans in a charter service business
   c. The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated or the number of accessible vehicles operated by the registered charter provider
   d. The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area

   The grantee is required to record the following information after leasing equipment and drivers:
   a. The registered charter provider's name, address, telephone number, and email address
   b. The number of vehicles leased, type of vehicles leased, and vehicle identification numbers

c. The documentation provided by the registered charter provider in support of the four conditions discussed above

4. No Response by Registered Charter Provider: A grantee is allowed to provide charter service, on its own initiative or at the request of a third party, if no charter provider registered on the FTA's website responds to the notice issued:
   a. Within 72 hours for charter service requested to be provided in less than 30 days, or
   b. Within 14 calendar days for charter service requested to be provided in 30 days or more.

   The grantee is not allowed to provide charter service under this exception if a registered charter provider indicates an interest in providing the charter service described in the notice and the registered charter provider has informed the grantee of its interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

   If the grantee is interested in providing charter service under this exception, the grantee shall provide email notice to registered charter providers in the grantee's geographic service area by the close of business on the day the grantee received the request unless the request was received after 2:00 pm, in which case the notice shall be sent by the close of business the next business day. The email notice sent to the list of registered charter providers shall include:
   a. Customer name, address, phone number, and email address (if available)
   b. Requested date of service
   c. Approximate number of passengers
   d. Type of equipment requested, bus(es) or van(s)
   e. Trip itinerary and approximate duration
   f. The intended fare to be charged for the service

   The grantee shall retain an electronic copy of the email notice and the list of registered charter providers that were sent email notice of the requested charter service for a period of at least three years from the date the email notice was sent. If the grantee receives an "undeliverable" notice in response to its email notice, the grantee shall send the notice via facsimile. The grantee shall maintain the record of the undeliverable email notice and the facsimile sent confirmation for three years.

   The grantee is required to record the following information after providing the service:
   a. The group's name, address, phone number and email address
   b. The date and time of service
   c. The number of passengers
   d. The origin, destination, and trip length (miles and hours)
   e. The fee collected, if any
   f. The vehicle number for the vehicle used to provide the service

   If a registered charter provider indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and the grantee was willing to provide the service, then the grantee can file a complaint against the registered charter provider. A form for this is provided on the FTA website.

5. Agreement with All Registered Charter Providers: The grantee is allowed to provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the grantee's service area. The grantee is allowed to provide charter service up to 90 days without an agreement with a newly registered charter provider in the geographic service area subsequent to the initial agreement. Any parties to an agreement may cancel the agreement after providing a 90 day notice to the grantee.

6. Petition to the Administrator: The grantee may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
   a. Events of regional or national significance. The petition shall describe how registered charter providers were consulted and will be utilized and include a certification that the grantee has exhausted all the registered charter providers in its service area. The petition must be submitted at least 90 days before the first day of the event.
   b. Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population). The exception is only available if the registered charter providers have deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service.
   c. Unique and time sensitive events (e.g., funerals of local, regional or national significance) that are in the public's interest. The petition shall describe why the event is unique and time sensitive and would be in the public's interest.

Petitions to the Administrator are posted at regulations.gov, so they are not reported in quarterly reports. The grantee shall retain a copy of the Administrator's approval for a period of at least three years.

The table below summarizes the notification, record-keeping, quarterly reporting and other requirements applicable to each **exception**.

REFERENCES

49 CFR Parts 604.2 (b) – (g) and 604.3 (c); Appendix C (c) (18), (24), (26) and (36)
49 CFR Parts 604.6 – 604.11; Appendix A; Appendix C (a) (1), (3) and (6)

SOURCES OF INFORMATION

The reviewer may examine the grantee's charter procedures, if written, to ensure that they comply with the charter regulation. If the grantee has not developed written procedures, it should provide information on how the exceptions are communicated and implemented within the organization. Financial documents submitted as part of the Financial area of the review may be examined to determine if charter revenue is noted as a source of funds. Charter logs and reports submitted to FTA in TEAM provide information on types of charter services provided.

DETERMINATION

If the grantee operates charter service which does not comply with the requirements of the exception, it is deficient.

SUGGESTED CORRECTIVE ACTION

If the grantee wishes to continue to provide charter service, it must submit to FTA procedures for ensuring that services are consistent with the exceptions allowed under the charter regulation.

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
1. Government Officials	No	Yes	Yes	None
2. Qualified Human Service Organization (QHSO)	No	Yes	Yes	Evidence that QHSO receives funding, directly or indirectly, from the programs listed in Appendix A
3. Leasing of Equipment and Driver	No	Yes	Yes	Evidence that registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area
4. No Response by Registered Charter Provider	Yes	Yes	Yes	None
5. Agreement with All Charter Providers	No	No	No	Properly executed agreements with all registered charter providers in grantee's geographic service area

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
6. Petition to the Administrator	Yes	No	No	Grantee must demonstrate how it contacted registered charter providers and how the grantee will use the registered charter providers in providing service to the event. Grantee must also certify that it has exhausted available registered charter providers' vehicles in the area.

2. *Did the grantee report all charter services provided under the exceptions by itself, subrecipients, contractors and lessees? Were the quarterly reports submitted on time? Did they note under which exception the charter service was provided?*

EXPLANATION

Beginning July 30, 2008, grantees providing charter service under four of the exceptions shall post the required records on the FTA charter website using TEAM-Web within 30 days of the end of each calendar quarter as follows:

- October 1 to December 31: January 30
- January 1 to March 31: April 30
- April 1 to June 30: July 30
- July 1 to September 30: October 30

The reporting requirement applies to the following four exceptions:

- Government officials (604.6)
- Qualified human service organizations (604.7)
- Leasing (604.8)
- No response from a registered charter provider (604.9)

An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading from the FTA website and appear at the end of this section.

The grantee reports for itself and its subrecipients, contractors and lessees except subrecipients that are also direct FTA grantees for Section 5307 formula funds.

When charter service is provided under one or more of the exceptions under this regulation, the grantee, subrecipient, contractor or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The grantee may maintain the required records in other formats in addition to the electronic format.

The records shall include a clear statement identifying which exception the grantee relied upon when it provided the charter service. A single document or charter log may include all charter service trips provided during the quarter. The grantee may exclude specific origin to destination information for safety and security reasons. If such information is excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

REFERENCE

49 CFR Part 604.12
FTA Charter Reports

SOURCES OF INFORMATION

The reviewer mat examine charter logs and quarterly reports submitted to FTA in TEAM to ensure that the grantee submitted information for all exceptions under which it provided charter service. The quarterly reports are due 30 days after the end of each calendar quarter. Procedures for obtaining charter information from subrecipients, contractors and lessees for reporting to FTA may be reviewed.

DETERMINATION
If the grantee did not submit information for itself, subrecipients, contractors or lessees for all applicable exceptions on time, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA procedures for submitting the required information for all applicable exceptions timely.

3. *Does the grantee, a subrecipient, a contractor or a lessee provide charter service with locally owned vehicles? If yes, are the vehicles stored and maintained in a locally funded facility?*

EXPLANATION
The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained with only local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

REFERENCE
49 CFR Part 604 Appendix C(a)(8)

SOURCES OF INFORMATION
The reviewer may examine grantee records and bus fleet information to ensure that the equipment is locally funded. If the grantee operates charter service with equipment that is fully funded with local funds, the equipment must be stored in a locally funded facility and be maintained with local funds.

DETERMINATION
If the grantee operates charter service with locally funded equipment but stores or maintains it in an FTA funded facility and is unable to provide documentation to show that it has completely segregated that service, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA a plan for ensuring that locally owned equipment used to provide charter service is not stored and/or maintained in an FTA funded facility and there is complete segregation of charter service operated with local equipment.

4. *How does the grantee ensure that its employees, subrecipients, contractors and lessees have the necessary competency to effectively use the FTA charter registration website?*

5. *How does the grantee ensure that subrecipients, contractors and lessees comply with the charter regulations?*

EXPLANATION
The grantee shall ensure that its affected employees, subrecipients, contractors and lessees have the necessary competency to effectively use the FTA charter registration website.

The grantee shall ensure that any subrecipient, contractor or lessee providing charter service operates the service in accordance with the regulation.

REFERENCE
49 CFR Part 604.16
FTA Charter Service Quarterly Exceptions Reporting Form and instructions

SOURCES OF INFORMATION
The reviewer may examine information provided by the grantee to assess if and how employees, subrecipients, contractors and lessees were trained. Oversight materials, such as reports, questionnaires and site visit checklists, may be reviewed as well as subrecipient grant agreements, operating contracts and leases to ensure that they contain the required charter bus clause. The reviewer may ask the subrecipient, contractor or lessee if it operates charter service and, if so, under what exception, and if the subrecipient, contractor or lessee reported the information to the grantee for reporting to FTA.

DETERMINATION
If the grantee made no efforts to ensure competency in use of the FTA Charter Registration Website, it is deficient.

If the grantee does not have procedures to ensure that subrecipients, contractors and lessees operate charter service in accordance with the regulation, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA regional office documentation that employees, subrecipients, contractors and lessees have been trained to effectively use the FTA Charter Registration Website.

The grantee will be directed to submit to the FTA regional office procedures for ensuring that subrecipients, contractors and lessees comply with the charter regulations.

6. *Did the grantee on behalf of itself or a subrecipient, contractor or lessee*

request an advisory opinion from the Office of Chief Counsel? If yes, what was the outcome? Was the advisory opinion followed?

EXPLANATION
A grantee may request an advisory opinion from the Office of Chief Counsel on a matter regarding specific factual events only. An advisory opinion represents the formal position of FTA on a matter and obligates the grantee to follow it until it is amended or revoked. A request for an advisory opinion from a subrecipient, contractor or lessee should be submitted to the grantee for submission to FTA. If not, FTA will copy the grantee on the opinion.

REFERENCE
49 CFR Parts 604.18, 604.20

SOURCES OF INFORMATION
The reviewer may examine information provided by the grantee and FTA's charter registration website to find out if the grantee requested an advisory opinion from the Office of Chief Counsel. If so, the grantee will be asked to provide evidence to indicate that the advisory opinion was followed.

DETERMINATION
If the grantee did not follow or ensure that the subrecipient, contractor or lessee followed an advisory opinion, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA regional office a plan for ensuring that it or its subrecipients, contractors or lessees follow advisory opinions from the Office of Chief Counsel.

7. *Did any registered charter provider request a cease and desist order against the grantee, subrecipient, contractor or lessee? If yes, what was the outcome? Was the cease and desist order followed?*

EXPLANATION
Any interested party (a grantee or registered charter service provider) may request a cease and desist order as part of its request for an advisory opinion. Issuance of a cease and desist order against a grantee shall be considered as an aggravating factor in determining the remedy to impose against the grantee in future findings of noncompliance if the grantee provides the service described in the cease and desist order issued by the Office of Chief Counsel.

REFERENCE
49 CFR Parts 604.22 and 604.23

SOURCES OF INFORMATION
The reviewer may examine information provided by the grantee and FTA's charter registration website to find out if any registered charter provider requested a cease and desist order(s) against the grantee, a subrecipient, contractor or lessee from the Office of Chief Counsel. If so, the grantee will be asked to provide evidence to indicate that the cease and desist order(s) was followed.

DETERMINATION
If the grantee did not follow or did not ensure that a subrecipient, contractor or lessee followed the cease and desist order(s), it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to the FTA a plan for ensuring that it or its subrecipient, contractor or lessee will follow cease and desist order(s) from the Office of Chief Counsel.

8. *Did any registered charter provider, or its duly authorized representative, file a complaint with the Office of the Chief Counsel against the grantee alleging noncompliance with the charter regulation? If yes, did the grantee file an answer within 30 days from the date of service of the FTA notification to file an answer?*

EXPLANATION
A registered charter provider or its duly authorized representative may file a Notice of Charter Service Complaint with the Office of the Chief Counsel. Unless the complaint is dismissed, FTA shall notify the grantee within 30 days after receiving the complaint that the complaint has been docketed. The grantee shall have 30 days from the date of the FTA notification to file an answer. The complainant may file a reply within 20 days. The grantee may subsequently file a reply within 20 days of the date of service of the respondent's answer. There are no requirements for the grantee in the complaint process for a subrecipient.

REFERENCE
49 CFR Part 604.27

SOURCES OF INFORMATION
The reviewer may examine information provided by the grantee and FTA's charter registration website to find out if any registered charter provider or its duly authorized representative filed a complaint against the

grantee with the Office of Chief Counsel. The reviewer will examine information provided by the grantee to ensure that the grantee filed an answer within 30 days from the date of service of the FTA notification to file an answer.

DETERMINATION

If the grantee filed an answer after 30 days or did not file an answer, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to file answers to the pending FTA notification(s) and develop a plan to submit the answers to FTA notifications in a timely manner in the future. The grantee must submit the plan to the FTA regional office.

Instructions for filling out the FTA Charter Exceptions Quarterly Reporting Form

There are four exceptions for which a quarterly report is required:

- government officials (Section 604.6);
- qualified human service organizations (Section 604.7);
- leasing (Section 604.8); and
- no response from a registered charter provider (Section 604.9).

The form is broken into three sections.

Section 1 – For All Exceptions

- This section is filled out for all exceptions.
- In the first column specify which exception you relied upon to perform the charter service according to the following codes:
    - government officials - **GO**
    - qualified human service organizations - **QH**
    - leasing - **LE**
    - when no registered charter provider responds to notice from a recipient - **WN**
- Fill out the name, address, phone number, and email address of the government organization, qualified human service organization, or group as appropriate.

Section 2 – For GO, QH, and WN Exceptions Only

- This section is filled out for the government officials, qualified human service organizations, and when no registered charter provider responds to notice from a recipient only.
- Provide the requested trip information as indicated.
- For vehicle numbers please list all vehicle numbers separated by semicolons. If there's not enough room include this information, please attach a separate sheet with the required information. When doing this, please indicate the line number by referring to the number in column "A".

Section 3 – For LE Exception Only

- This section is filled out for the leasing exception only.
- For this exception supporting documentation is required.
- In column "P" list the title(s) of any documentation that supports the requirements of Section 604.8.b.3.

***It is very important that if you are reporting any LE exceptions that you print the form out and scan it as a PDF with the supporting documentation.**

FTA Charter Exceptions Quarterly Reporting Form

	Section 1					Section 2								Section 3	
	Exception	Name	Address	Phone #	Email Address	Date of Service	Start Time of Service	# of Passengers	Trip Origination	Trip Destination	Trip Duration (hours)	Fee Collected (per capita or total)	Vehicle #s (separate by semicolon)	# of Vehicles	Supporting Documentation (Document Title)
1															
2															
3															
4															
5															
6															
7															
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17. SCHOOL BUS

BASIC REQUIREMENT

Grantees are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally funded equipment or facilities cannot be used to provide exclusive school bus service. School tripper service that operates and looks like all other regular service is allowed.

AREAS TO BE EXAMINED

1. ***School Bus Service***

2. ***Tripper Service***

3. ***Oversight***

REFERENCES

1. 49 CFR Part 605, "School Bus Operations"

USEFUL WEBLINKS

School bus questions and answers

School bus decisions

QUESTIONS FOR THE REVIEW

1. *Does the grantee operate exclusive school bus service? If yes, does the service qualify for one of the statutory exemptions? Has the grantee received approval from the FTA Administrator? Does the service operate only with non-FTA funded equipment and facilities?*

EXPLANATION
There are three statutory exemptions under which an FTA grantee may operate exclusive school bus service:

- The grantee 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 grantee, a public entity, has operated the service prior to August 12, 1973 or has received a grant for facilities before November 26, 1974

A grantee 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 grantee to operate exclusive school bus service under one of the statutory exemptions. Upon notice of approval by the Administrator, the grantee enters into an agreement with the Administrator.

Exclusive school bus service operated under an approved exemption must use locally owned vehicles that are not housed or maintained in an FTA funded facility. FTA funded equipment and facilities cannot be used for exclusive school bus service under any circumstances.

REFERENCE
49 CFR Part 605

SOURCES OF INFORMATION
If the grantee operates exclusive school bus service, the reviewer will discuss the exception under which the service is operated. The reviewer will examine the documentation of the public process, 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
If the grantee operates exclusive school bus service that is not approved by the Administrator, it is deficient.

If the grantee uses FTA funded equipment or facilities in exclusive school bus service, whether or not the service qualifies for a statutory exemption, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to immediately cease providing exclusive school bus service that violates the statute, i.e., has not been approved by the Administrator or uses FTA funded equipment or facilities.

2. *Does the grantee provide school "tripper service"? If yes, is the service open and promoted to the general public?*

EXPLANATION
Grantees are permitted to provide school tripper service to accommodate the needs of school students and personnel. The school bus regulation defines school tripper service as:

- regularly scheduled mass transportation service
- open to the public
- designed or modified to accommodate the needs of school students and personnel
- using various fare collections or subsidy systems.

Buses used in tripper service must

- be clearly marked as open to the public,
- not carry designations such as “school bus” or “school special”, and
- stop only at regular bus stops.

All routes traveled by tripper buses must be within the regular route service as indicated in the published route schedules. Schedules listing tripper routes should be on the grantee’s regular published schedules or on separately published schedules that are available to the public with all other schedules, including on the website. School tripper service should operate and look like all other regular service.

REFERENCE
49 CFR Part 605

SOURCES OF INFORMATION
Route maps, brochures, timetables and websites will be examined for inclusion of the service. The grantee should be prepared to discuss school tripper service and verify that the service meets all of the required criteria for being open and promoted to the general public.

DETERMINATION
If the grantee operates any school tripper service that does not meet the criteria for being open and promoted to the general public, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to discontinue directly operated school tripper service not meeting the requirements or modify the service to comply with FTA requirements. The grantee will be directed to submit documentation of compliance to the FTA regional office, including revised timetables, route maps, brochures, and website information.

3. *How does the grantee ensure that subrecipients comply with school bus regulations?*

4. *Do any contractors or lessees provide exclusive school bus service? If yes, how does the grantee ensure that it is provided only with non-FTA funded equipment and facilities?*

EXPLANATION
The grantee must ensure that exclusive school bus service operated by subrecipients is done so under one of the statutory exemptions and does not involve FTA funded equipment or facilities. The grantee must ensure that school tripper service operated by subrecipients operates and looks like all other regular service. The grantee must also ensure that any contractor or lessee that provides exclusive school bus service does so with locally owned vehicles that are not housed or maintained in an FTA funded facility.

REFERENCE
49 CFR Part 605

SOURCES OF INFORMATION
The reviewer will examine subrecipient agreements, contracts and lease agreements for the required school bus clause and review oversight materials, such as reports, questionnaires and site visit checklists. The grantee should be prepared to identify any subrecipients, contractors and lessees operating exclusive school bus service and to identify subrecipients that operate school tripper service.

DETERMINATION
If the grantee does not ensure that subrecipients, contractors or lessees comply with the regulation, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA procedures for ensuring that subrecipients, contractors and lessees comply with the school bus regulations.

18. NATIONAL TRANSIT DATABASE

BASIC REQUIREMENT

Grantees that receive Section 5307 and 5311 grant funds must collect, record, and report financial and non-financial data in accordance with the Uniform System of Accounts (USOA) and the *National Transit Database (NTD) Reporting Manual* as required by 49 USC 5335(a).

AREAS TO BE EXAMINED

1. ***Collection, Recording, and Reporting of Data***

2. ***Passenger Mile Data Collection***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws

2. 49 CFR Part 630, "Uniform System of Accounts and Records Reporting System"

3. *National Transit Database Reporting Manual, (www.ntdprogram.gov)*

4. FTA Circulars 2710.1A and 2710.2A

QUESTIONS FOR THE REVIEW

1. *Did the grantee submit its NTD report for each of the past three years? If not, did the grantee receive a reporting waiver from submitting an annual NTD report or a waiver because it operates nine or fewer vehicles?*

EXPLANATION

All grantees that receive Section 5307 and 5311 grant funds are required to file annual reports in the NTD Internet Reporting System. This requirement also applies to recipients of CMAQ and STP funds that are "flexed" into the 5307 and 5311 programs. Section 5307 grantees are also required to file monthly reports on transit ridership and operations and safety and security incidents. The requirement to report continues as long as the grantee benefits from the grant funds, i.e., for the minimum useful life of the FTA-funded fixed asset, or indefinitely in the case of facilities.

A grantee that operates no more than nine vehicles in peak service at any time during the year may request a waiver from filing a complete NTD report. This waiver does not apply to fixed guideway service. The grantee must base its peak service requirements on all fleets and annual maximum service levels. This waiver exempts the grantee from filing the monthly reports. The grantee must still file an annual report containing system identification information and a revenue vehicle inventory.

In certain circumstances, the grantee may request and FTA can grant a waiver from either some or all of the NTD reporting requirements.

All reporting waivers must be requested and approved by FTA for every reporting year. FTA does not grant permanent or multi-year waivers from reporting.

REFERENCE

49 USC 5335 (a)
49 CFR Part 630
NTD Reporting Manual

SOURCES OF INFORMATION

The grantee will be asked to provide copies of close-out letters and waivers, showing evidence of compliance with the reporting requirements. Information on reporting compliance may also be obtained from the National Transit Database Program office at FTA Headquarters.

DETERMINATION

The grantee is deficient if it does not have a waiver and has not filed reports.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit a report for the current fiscal year by the required due date and to notify the regional office when the submission is made. The due date for a transit agency's NTD report submission is tied to the agency's fiscal year. The due dates are:

Fiscal Year End Date (Between)	NTD Report Due Date
January 1 and June 30	October 28
July 1 and September 30	January 28
October 1 and December 30	April 30

If applicable, the grantee may be directed to apply for a waiver annually.

2. *Has the grantee provided a complete report to the NTD of all transit operations?*

EXPLANATION

Grantees must report on their own directly operated and contracted transit operations, even those not supported with FTA funds, except for ineligible activities such as charter, school bus, sightseeing and intercity transportation. If a grantee contracts another public entity, the service should be reported by the party that physically operates the service or is the responsible contracting party for the operations contract. Data for subrecipients should not be included in the grantees own NTD report. Recipients of Section 5307 that also receive 5311 funds from a state should report all activities, including rural operations, in the direct report to NTD and should not be included in the Rural NTD Report made by its state. However, 5307 grantees that receive a nine or fewer vehicle waiver and also receive 5311 funds from a state should report on all activities, including urban operations, to the state for reporting to the Rural NTD.

REFERENCE

49 USC 5335 (a)
49 CFR Part 630
NTD Reporting Manual

SOURCES OF INFORMATION
The grantee's financial statements will be compared to the NTD F-40 expenses report to identify differences in operating expenses. The NTD B-30 report will be reviewed for the list of contractors.

DETERMINATION
The grantee is deficient if it does not report on its complete operations. It is deficient if it does not report on operations that it provides on behalf of another public transit operator, or if it reports on transit operations that are physically operated by another public entity. It is deficient if it is an urban operator and does not report its rural operations directly to FTA. It is deficient if it is an urban operator and has received a nine or fewer vehicles waiver and does not include the urban service in the reports to the state.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to contact the NTD Program Offices to begin providing a complete NTD report, and to work out an arrangement to ensure time-series continuity in the data reported to the Monthly Module.

3. *Does the grantee have any Section 5307 subrecipients? If yes, list the name and NTD ID of the subrecipients. Do the subrecipients report required data using their own NTD ID?*

EXPLANATION
49 U.S.C. 5335 requires recipients or beneficiaries of Section 5307 funds to report to the NTD. Section 5307 grantees are responsible for ensuring that any subrecipients (beneficiaries) of their Section 5307 grants report to the NTD. The grantee may ensure that each subrecipient has its own NTD ID, or it may request a consolidated NTD ID for multiple subrecipients. A 5307 grantee does not, however, need to ensure that subrecipients of other programs, such as Section 5316 or 5317, report to the NTD but may have these subrecipients report voluntarily. As discussed in the explanation to question 2, Section 5307 grantees and subrecipient must file a complete report that includes Section 5316 and/or 5317 funded operations.

REFERENCE
NTD Reporting Manual

SOURCES OF INFORMATION
The reviewer will obtain from the grantee a list of Section 5307 subrecipients.

DETERMINATION
The grantee is deficient if the subrecipient does not have a waiver and has not submitted complete NTD reports.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to work with the subrecipient(s) and FTA to submit the required reports. The grantee may set up members of their own staff as points-of-contact for the NTD IDs for their subrecipients in order to retain oversight of subrecipient NTD reporting.

4. *What is the system for collecting passenger mile information? If the grantee uses automatic passenger counters, does it have an agreement with NTD? Does it validate the counts throughout the year?*

EXPLANATION
Unless the grantee has a waiver, it must report passenger mile data to the NTD. A grantee has three options for reporting this data:

- A 100 percent count of passenger mile data. This method should be used whenever it is available.
- When a 100 percent count of unlinked passenger trips is available, a sample of average passenger trip lengths multiplied by the 100 percent count of unlinked passenger trips.
- A sample of passenger miles.

If a 100 percent count of passenger miles is used, the grantee should have documented procedures for any incidental adjustments made to the data for occasional "missed trips" or other minor errors in the records.

If the grantee uses sampling, the grantee should have documented procedures for ensuring that the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated.

If the grantee uses automatic passenger counters (APCs) for any of the three methods, it must have an agreement with NTD and should have a documented system to validate the data throughout the year in accordance with the procedures in the agreement. If APCs are used for sampling data, the grantee should have written procedures for ensuring that the APCs are used on all routes, service runs, and days of the year to ensure a random sample.

REFERENCE

49 USC 5335 (a)
49 CFR Part 630
NTD Reporting Manual

SOURCES OF INFORMATION

The grantee will be asked for records used to report passenger mile data to the NTD for the most recent report year for each of the modes it operated.

If a 100 percent count of passenger miles is used, the records must reflect 100 percent of the transit service and documented procedures should exist for any incidental adjustments made to the data for occasional "missed trips" or other minor errors in the records.

If the grantee uses sampling, the reviewer will request data from the most recent sampling year (small systems are only required to sample once every three years). The reviewer will ensure that the grantee has documented procedures in place to ensure that the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated.

If the grantee uses APCs to collect data for either a 100 percent count or for sampling, the reviewer will ensure that the grantee has a written confirmation from FTA and a documented system in place to ensure that the data are periodically validated throughout the year. If APCs are used for sampling data, the reviewer will ensure that the grantee has written procedures for ensuring that the APCs are used on all routes, service runs, and days of the year to ensure a random sample.

DETERMINATION

The grantee is deficient if it does not report passenger mile data. The grantee is deficient if it collects its sampling data without randomly sampling all routes, service runs, and days of the year. The grantee is deficient if it uses APCs without an agreement with NTD or does not validate the data in accordance with the agreement.

19. SAFETY AND SECURITY

BASIC REQUIREMENT

Any grantee of Urbanized Area Formula Grant Program funds must annually certify that it is spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

Under the safety authority provisions of the Federal transit laws, the Secretary has the authority to investigate the operations of the grantee for any conditions that appear to create a serious hazard of death or injury, especially to patrons of the transit service. States are required to oversee the safety of rail fixed guideway systems through a designated oversight agency, per 49 CFR Part 659, Rail Fixed Guideway Systems, State Safety Oversight. FTA has developed web sites for Bus Safety and Rail Safety. These sites include helpful tools, such as resources, self assessments, and forums.

Under security, a list of 17 Security and Emergency Management Action Items has been developed by FTA and the Department of Homeland Security's Transportation Security Administration (TSA). This list of 17 items, an update to the original FTA Top 20 security action items list, was developed in consultation with the public transportation industry through the Mass Transit Sector Coordinating Council, for which the American Public Transportation Association (APTA) serves as Executive Chair. Security and Emergency Management Action Items for Transit Agencies aim to elevate security readiness throughout the public transportation industry by establishing baseline measures that transit agencies should employ. Additionally, FTA has developed an extensive website for transit security.

The goal of FTA's Safety and Security Program is to achieve the highest practical level of safety and security in all modes of transit. To this end, FTA continuously promotes the awareness of safety and security throughout the transit community by establishing programs to collect and disseminate information on safety/security concepts and practices. In addition, FTA develops guidelines that transit systems can apply in the design of their procedures and by which to compare local actions. Many of the questions in this review area are designed to determine what efforts grantees have made to develop and implement safety, security, and emergency management plans. While there may not be specific requirements associated with all of the questions, grantees are encouraged to implement the plans, procedures, and programs referenced in these questions. For this reason, findings in this area will most often result in advisory comments rather than deficiencies.

AREAS TO BE EXAMINED

1. ***Safety***
   a. Policy and Management
   b. Administration and Procedures
   c. Personnel and Training
   d. Safety Reporting
   e. Safety Training

2. ***Security and Emergency Management***
   a. Security Expenditures
   b. Management and Accountability
   c. Security and Emergency Response Training
   d. Homeland Security Advisory System (HSAS)
   e. Public Awareness
   f. Drills and Exercises
   g. Risk Management and Information Sharing
   h. Facility Security and Access Control
   i. Background Investigations
   j. Document Control
   k. Security Audits

REFERENCES

1. 49 USC Chapter 53, Federal Transit Act, Section 5307(d)(1), Security Expenditures

2. 49 CFR Part 630, "Uniform System of Accounts and Records and Reporting"

3. 49 CFR Part 659, "Rail Fixed Guideway Systems, State Safety Oversight"

USEFUL WEBLINKS

Bus Safety Website

Rail Safety Website

Transit Security Website

QUESTIONS FOR THE REVIEW

Part A. Safety

Policy and Management

1. *Does the grantee have a written policy on safety? Has it been signed by the CEO?*

2. *Does the grantee have a written system safety program plan (SSPP) for its transit services? Does the SSPP address management of the safety function?*

3. *How is the safety function managed? Are there staff safety personnel? If so, are responsibilities and authorities clear? To whom do they report?*

EXPLANATION
FTA is concerned about the safety of both transit passengers and transit workers. FTA can conduct safety investigations when conditions of any facility, equipment, or manner of operation appear to create a serious hazard of death or injury.

Recognizing that safety is an integral part of transit operations, grantees are encouraged to have a written safety policy and safety plan. The safety plan should assign responsibilities for safety management from the most senior executive to the first-line supervisory level. Endorsement by the CEO conveys this importance. At a minimum, a grantee's safety plan should address compliance with applicable legal requirements. Striving for continual improvement to achieve a high level of safety performance should be a program goal. Guidance on the development of a written bus transit system safety program plan is available in an APTA publication entitled, Manual for the Development of Bus Transit System Safety Program Plans (1998). The grantee may have a safety plan developed from another source, which responds to specific state or local requirements.

These questions are intended to provide an overall understanding of how safety is incorporated into the organization, what kind of emphasis is placed on safety, how the safety program is managed, and how various responsibilities are communicated to personnel at all levels.

REFERENCE
Manual for the Development of Bus Transit System Safety Program Plans

SOURCES OF INFORMATION
The grantee's written safety policy or system safety program plan should be examined at the site visit. Reviewers may discuss with the grantee the reporting relationships in regard to safety to ensure that the safety function is managed adequately.

DETERMINATION
If the grantee does not have a safety policy or safety plan, an advisory comment is made. If the safety plan does not address the management of the safety function, if staff responsibilities are not clearly delineated, or the CEO has not signed it, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
If the grantee does not have a written safety policy or system safety program plan, the grantee will be encouraged to prepare a plan. If the safety plan does not adequately address management of the safety function, the grantee should revise the plan to correct any deficiencies.

Administration and Procedures

4. *What are the investigation procedures for major incidents? What circumstances and conditions determine which incidents will be investigated? Who does the investigation? To whom do reports go? What follow-up action is taken and by whom?*

5. *What key safety issues have been identified and how are they being addressed?*

6. *Is there a process for hazard identification and resolution? When corrective action is needed, how is it initiated and followed up?*

EXPLANATION
Safety issues include more than vehicle and passenger accidents and workplace injuries. As such, the grantee's safety-related responsibilities may be numerous. They may include, for example:

- investigating major incidents
- identifying workplace hazards
- proper handling of hazardous materials
- emergency preparedness

The grantee should have established procedures to investigate, identify, and address safety issues. The process should be both reactive in terms of investigating incidents and proactive in terms of identifying and responding to key safety issues and potential hazardous conditions.

REFERENCE
None

SOURCES OF INFORMATION
The minutes from safety committee and/or accident/incident review committee meetings should be made available during the site visit. Emergency management plans and procedures may be requested. The grantee should be able to provide safety statistics for the past three years for major incidents involving passengers, property damage, and work-related accidents. At the site visit or the desk review, newspaper articles or other publications describing accidents or safety incidents may be reviewed. This does not necessarily indicate poor safety practices; however, the incident may be discussed during the site visit. Insurance companies also conduct assessments of their clients. Such reports are another source of information. Claims records and insurance costs identified in financial reports also provide information. Both costs and the actual number of incidents may be examined.

Procedures manuals and employee handbooks may contain information related to safety. Copies of these documents should be examined on site to determine if safety procedures are addressed for various functions (e.g., transportation, maintenance, procurement, and storage). Discussions may be held with the person responsible for maintaining safety information, handbooks, procedures manuals, and materials safety data sheets (MSDS).

DETERMINATION
If incident and accident investigation procedures appear to be lacking, an advisory comment is made. If hazard identification and resolution procedures are lacking, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
If procedures for investigating incidents appear to be lacking, the grantee will be encouraged to develop and implement adequate procedures. If procedures for dealing with workplace hazards, safe materials handling, etc. appear to be lacking, the grantee will be encouraged to establish appropriate procedures.

Personnel and Training

7. *Does management hold line personnel accountable for safety? Do line personnel job descriptions (senior level to first-line supervisors) include a provision for safety accountability? Are safety responsibilities clearly defined? Do annual evaluations include an appraisal of safety performance?*

8. *Is there safety training for employees performing safety sensitive functions? Who performs the training? How is it done? Do supervisors receive formal safety training?*

EXPLANATION
Grantees are encouraged to clearly define the safety responsibilities for all employees and establish a comprehensive safety training program. By providing training to the appropriate personnel, grantees can enhance safety performance in all areas (e.g., accidents, workplace hazards, and emergency preparedness). Training may consist of initial training to new hires as well as recurrent training to all employees. Additional training may be provided on a case-by-case basis, if employees have a high number of incidents in a particular area of concern.

REFERENCE
None

SOURCES OF INFORMATION
The grantee may be asked to provide an overview of its training program for drivers, mechanics, supervisors, and other line personnel. Job descriptions and requirements for safety sensitive positions and supervisory personnel may be discussed with the grantee. The grantee should be able to provide training records of its employees (line personnel and supervisors) to be examined on site. Additionally, training manuals, safety handouts, safety postings and other materials should be made available.

DETERMINATION
If safety responsibilities have not been clearly defined for safety-sensitive and supervisory personnel, an advisory comment is made. If safety-sensitive and supervisory personnel have not received adequate safety training, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
If the grantee has not clearly defined safety responsibilities, it will be advised to do so. If the grantee does not have an adequate safety training program, the grantee will be encouraged to develop one.

NTD Safety Reporting

9. *Has the grantee submitted transit safety data in NTD for the past year timely?*

EXPLANATION
All transit agencies, regardless of the number of vehicles operated, are required to provide information by mode and type of service in the Safety & Security Module of NTD on a monthly basis. If a grantee operates nine or fewer vehicles and has been granted a waiver, it is exempt from the safety and security reporting requirements.

The NTD Safety & Security Module has three components: Major Incident Reporting, Non-Major Incident Safety, and Non-Major Incident Security reporting. Grantees are required to submit information for each component and for all modes except commuter rail. Agencies that operate commuter rail service do not have to report Major Safety Incident and Non-Major Incident Safety data to FTA since these data are available from FRA. However, agencies operating commuter rail service must complete the NTD Major Security Incident and Non-Major Incident Security reports. Major Incident forms are due thirty days after the major incident occurred.

A Major Incident is defined as an event involving a transit vehicle or transit-controlled property, involving one or more of the following:

- A fatality
- Injuries requiring immediate medical attention away from the scene for two or more persons
- Property damage equal to or exceeding $25,000
- An evacuation due to life safety reasons
- A collision at a grade crossing
- A main-line derailment
- A collision with person(s) on a rail right of way resulting in injuries that require immediate medical attention away from the scene for one or more persons
- A collision between a rail transit vehicle and another rail transit vehicle or a transit non-revenue vehicle resulting in injuries that require immediate medical attention away from the scene for one or more persons.
- Forcible rape
- Confirmed terrorist/security events
  - Bombings
  - Chemical/biological/radiological/other release
  - Cyber incident
  - Hijacking
- Sabotage

Non-Major Incident Safety data include any incident not reported as a Major Incident and meeting one or more of the following criteria:

- Injuries requiring immediate medical attention away from the scene for one person
- Property damage equal to or exceeding $7,500, but less than $25,000
- All non-arson fires not qualifying as a Major Incident

REFERENCE
49 CFR 630

SOURCES OF INFORMATION
The grantee may be asked to provide a summary of its Major Incidents for the past year. The reviewer will verify that this information is being reported into NTD as required.

Non-Major Incident (Safety) data may be examined to ensure that the grantee is reporting information as required.

DETERMINATION
If the grantee has not submitted Major Incident data for the past year or is not submitting information for the current year, the grantee is deficient in the NTD requirements. If the grantee has not submitted Non-Major Incident Safety data, the grantee is deficient in the NTD requirements. [Note: If these findings are made, they will be discussed in the NTD area of the report, and the deficiency code will be entered in the NTD area of the summary table.]

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit information in the NTD as required.

Part B. Security and Emergency Management

10. *Does the grantee utilize one percent of its Urbanized Area Formula Grant expenditures for transit security? If yes, how were the funds utilized over the last three years? If no, how do existing security measures meet agency needs?*

EXPLANATION
The grantee is required to certify that it is spending at least one percent of the Urbanized Area Formula Grant (UAFG) Program funds it receives annually for transit security projects or that such expenditures are not necessary. This certification is part of the annual certifications and assurances.

For grantees that spend the one percent, examples of appropriate security expenditures include facility perimeter security and access control systems (e.g., fencing, lighting, gates, card reader systems, etc.), closed circuit television camera systems (at stations, platforms, bus stops and on-board vehicles), security and emergency management planning, training and drills (SAFETEA-LU expanded the definition of security related capital projects to include planning, training and drills, such that these expenditures are now eligible expenses for grantees in UZAs over 200,000 population to apply towards the 1% for security requirement.) and any other project intended to increase the security and emergency management of an existing or planned transit system. Grantees should provide detail on how these funds were spent during the review period.

There are three reasons that grantees may have for considering the one percent security expenditure to be unnecessary: (1) No deficiencies identified from conducting a recent threat and vulnerability assessment; (2) TSA/FTA Security and Emergency Management Action Items met or exceeded; or (3) Other. For the Other category, the primary basis is that a grantee spends sufficient local funds on security projects and therefore does not need to spend formula grant funds on security projects. Regardless of their reasons for deciding not to spend FTA formula funds on transit-related security, grantees should provide information and documentation that supports this decision.

REFERENCE
49 USC 5302(a)(1) and 5307(d)(1)(J)

SOURCES OF INFORMATION
These questions will be asked at the site visit. If a grantee is spending at least one percent of its formula funds on security projects, the grantee should be prepared to provide the detail of these expenditures for each year of the review period in the requested format as well as documentation that supports these expenditures.

If the grantee has decided that it is not necessary to expend one percent of its UAFG funds, the grantee should provide a written explanation and any information that supports this decision. Such information may include the recommendations/ findings from (1) a threat and vulnerability assessment and (2) a TSA/FTA Security and Emergency Management Action Items assessment. If the grantee indicates that it spends local funds on security, the grantee should provide expense detail in the requested format as well as documentation that supports these expenditures.

DETERMINATION
If the grantee decides that expenditures for security are necessary but cannot document the expenditures, the grantee is deficient. If a grantee decides that expenditures for security are necessary but expenditures fall short of the one percent requirement, the grantee is deficient. If the grantee cannot provide adequate documentation of its security expenditures using formula funds, the grantee is deficient. If the grantee decides that expenditures for security are not necessary but cannot explain or provide adequate documentation to support its decision, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to provide a plan for meeting the one percent expenditure requirement and report on implementation of this plan to FTA. The grantee will be directed to provide a plan for documenting the amount of formula funds spent on transit security. The grantee will be directed to provide an explanation and adequate documentation on why the expenditure is not necessary.

Management and Accountability

11. *Does the grantee have written security and emergency management plans for all modes of operation?*

12. *Do the security and emergency management plans define roles and responsibilities for transit personnel?*

13. *Do the security and emergency management plans ensure that operations and maintenance supervisors, forepersons, and managers are held accountable for security issues under their control?*

EXPLANATION
FTA has specific requirements for a written system security plan for rail fixed guideway systems (RFGS). FTA encourages all transit systems, particularly those in areas with populations of 200,000 or more, to develop and implement a transit system security program plan and emergency management plans that cover passengers, employees, vehicles, and facilities, including the planning, design, and construction of new facilities. Guidance on the development and implementation of system security program plans is

available in a report entitled, *The Public Transportation System Security and Emergency Preparedness Planning Guide* (DOT-VNTSC-FTA-03-01), dated January 2003.

Grantees should ensure that security and emergency management plans are endorsed by senior level management in order that they are communicated throughout the agency from the highest level. Plans should be reviewed annually and updated as circumstances warrant. Plans should integrate visibility, randomness, and unpredictability into security deployment activities in order to avoid exploitable patterns and to enhance deterrent effects. Plans should also address Continuity of Operations and Business Recovery in the event that normal operations need to be suspended or altered as the result of a catastrophic incident. In addition, plans and protocols should address specific threats from Improvised Explosive Devices (IED), Weapons of Mass Destruction (WMD), and other high consequence risks identified in transit risk assessments. Grantees should also establish and maintain standard security and emergency operations procedures (SOPs/EOPs) for each mode operated, including procedures for operations control centers.

In situations where grantees are planning the construction or modification of systems and facilities, security design and crime prevention criteria through environmental design (CPTED) should be applied to ensure a secure environment for the riding public and employees.

The security and emergency management programs should be assigned to the senior level managers in the grantee's organization. The names and titles of the Primary and Alternate Security Coordinator (including Security Directors and Transit Police Chiefs) should be recorded and maintained on file. The telephone numbers, e-mail addresses and other contact information for these individuals should be accurately maintained so that they are accessible at all times. The Security Coordinators also should report to the senior level management of the organization. Security duties should be defined and properly delegated to front line employees. The grantee should distribute the security and emergency management plans to appropriate personnel. Regular security coordination meetings involving all personnel assigned security responsibilities should be held. Informational briefings with appropriate personnel also should be held whenever security protocols are substantially updated. In order to ensure continuity of the plans, the grantee should establish lines of delegated authority and/or succession of security responsibilities and inform the affected personnel.

The grantee should hold regular supervisor and foreperson security review and coordination briefings for operations and maintenance personnel. An internal security incident reporting system should be developed and maintained and a Security Review Committee should be established in order to regularly review security incident reports, trends, and program audit findings, and make recommendations to senior level management for changes to plans and processes.

Note: Due to the Sensitive Security Information (SSI) designation of grantees' security and emergency management plan, they must be examined on site. Reviewers must not remove security and emergency management plans from the grantee's premises or request them in advance of the review.

REFERENCE

49 CFR 659.31
TSA/FTA Action Item No. 1
TSA/FTA Action Item No. 2
TSA/FTA Action Item No. 3
The Public Transportation System Security and Emergency Preparedness Planning Guide

SOURCES OF INFORMATION

The grantee's written security and emergency management plans will be examined at the site visit. At the site visit or the desk review, newspaper articles or other publications describing security incidents may be reviewed. Such articles may highlight an incident. Though this does not necessarily indicate poor security practices, the incident may be discussed at the site visit.

The security and emergency management plans may not be stand-alone documents, but may be chapters or sections of a more comprehensive safety/security plan, such as a System Safety Program Plan for a Rail Fixed Guideway System. The plan should cover all modes the contractor operates, including contracted services.

DETERMINATION

If a grantee does not have a security plan for all modes, an advisory comment is made. If a grantee has a security plan for each mode, but it does not include personnel roles and responsibilities, protocols to address specific threats, a Continuity of Operations, a Business Recovery Plan, or other elements described in the Explanation, an advisory comment is made. If the plans do not have an endorsement from the top official, an advisory comment is made. If responsibilities have not been clearly defined, an advisory comment is made.

If the grantee does not have an emergency management plan or if the plan does not cover all modes, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee does not have a written security and emergency management plan for all modes, the

grantee will be encouraged to prepare and implement one. If the grantee has a plan, but it does not include the specific elements described above, the grantee will be encouraged to update its plan according to the TSA/FTA guidelines.

14. *Are the security and emergency management plans coordinated with local agencies?*

EXPLANATION

A grantee's security and emergency management plans should be an integrated system program and be coordinated with local first responders. Coordination should include mutual aid agreements with these agencies and should address communications interoperability with first responders (e.g., police and fire departments) in the grantee's service area. Grantees also should coordinate with Federal and state entities associated with public transportation security such as the TSA's Surface Transportation Security Inspection Program (STSIP) area office, the FBI's Joint Terrorism Task Force (JTTF), the State Homeland Security Office, and FTA Regional Office. Coordinated plans should be consistent with the National Incident Management System, (NIMS) and the National Response Framework (NRF). NIMS provides a unified approach to incident management including standard command and management structures and an emphasis on preparedness, mutual aid and resource management. The NRP forms the basis of how the Federal government coordinates with state, local, and tribal governments and the private sector during incidents.

REFERENCE

TSA/FTA Action Item No. 4
National Incident Management System
National Response Framework

SOURCES OF INFORMATION

The grantee will be asked to provide copies of security plans and procedures. Also, the grantee should provide copies of any inter-agency agreements that outline a coordinated emergency response. If no formal agreements exist, the grantee may be asked if it has met with representatives of other agencies to discuss and/or plan emergency response coordination. The grantee's plans should be consistent with NIMS and the NRP.

DETERMINATION

If the grantee has not coordinated with other agencies, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

If the grantee has not coordinated with other local, state and Federal agencies, it will be encouraged to do so. The grantee will be advised to establish contacts with other agencies and begin developing coordinated emergency response procedures.

Security and Emergency Response Training

15. *Has the grantee established a security and emergency training program?*

EXPLANATION

The grantee should provide ongoing basic training to all employees in security orientation and awareness and emergency response. Ongoing training should be provided to employees that have direct security responsibilities such as operating, maintenance, law enforcement and fare inspection. Ongoing training should include advanced security and emergency response training by job function and actions required at incremental Homeland Security Advisory System (HSAS) threat advisory levels. Security training programs should emphasize integration of visible deterrence, randomness, and unpredictability into security deployment activities to avoid exploitable patterns and heighten deterrent effect.

Advanced security training programs also should be established for transit managers, including but not limited to CEOs, General Managers, Operations Managers, and Security Coordinators (includes Security Directors and Transit Police Chiefs). The materials should be updated regularly to address high consequence risks that have been identified by the grantee's risk assessments. Training should reinforce roles and responsibilities and should ensure that employees are proficient in their duties at all times.

The grantee should establish a system that records personnel training in security and emergency response that, at a minimum, documents employee's initial training, and any recurrent training (e.g., periodic and/or refresher). Grantees should also establish and maintain a security notification process to inform personnel of significant updates to security and emergency management plans and procedures, as necessary.

REFERENCE

TSA/FTA Action Item No. 5

SOURCES OF INFORMATION

Procedure manuals, employee handbooks, and training materials may provide information on the grantee's efforts to train employees in security and emergency response. The grantee may be asked if security training seminars or workshops have been conducted for all employees.

A sample of the grantee's records concerning security and emergency training may be reviewed to verify the grantee's recordkeeping system. The grantee should also have a notification process to inform employees of significant updates to plans and procedures.

DETERMINATION
If training has not been provided to operating personnel, an advisory comment is made. If training has not been provided to non-operating personnel, an advisory comment is made. If the grantee does not maintain training records, an advisory comment is made. If the grantee does not have such a process, then an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to implement a security and emergency response training program for operating and/or non-operating personnel and maintain records of employee training. If necessary, the grantee should establish and maintain a notification process to inform employees of updates to security and emergency plans and procedures.

Homeland Security Advisory System (HSAS)

16. *Have protocols been established to respond to the Department of Homeland Security Advisory System Threat Levels?*

EXPLANATION
FTA recommends that all grantees have an updated security plan that addresses terrorism as well as procedures to respond incrementally to the HSAS threat levels issued by the Department of Homeland Security.

REFERENCE
TSA/FTA Action Item No. 6

SOURCES OF INFORMATION
The grantee's security plan and/or procedures may be examined to ensure that there are protocols for responding to the Department of Homeland Security's threat advisory levels.

DETERMINATION
If the grantee does not have protocols for responding to threat advisory levels, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be encouraged to develop protocols to respond to Department of Homeland Security threat advisory levels.

Public Awareness

17. *Have public awareness materials been developed and distributed on a system-wide basis?*

EXPLANATION
The grantee should disseminate information to the riding public on identifying and reporting suspicious or illegal activity. Public service announcements, billboards, and brochures are effective mechanisms to provide security information to passengers. Grantees also should consider implementing FTA's Transit Watch program at their agency.

REFERENCE
TSA/FTA Action Item No. 7

SOURCES OF INFORMATION
The grantee should provide any information related to security that has been disseminated to passengers.

DETERMINATION
If security information has not been provided to passengers, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
If information on recognizing and reporting suspicious or illegal activity has not been provided to the riding public, the grantee will be encouraged to do so.

Drills and Exercises

18. *Are tabletop and functional drills conducted at least once every six months, and are full-scale exercises, coordinated with regional emergency response providers, performed at least annually?*

EXPLANATION
It is good practice for grantees to conduct tabletop exercises on a semi-annual basis and full scale exercises on an annual basis. Such drills and exercises should be coordinated with regional security partners, including Federal, state, and local governmental representatives and other affected entities (e.g., other transit agencies or rail systems) to integrate their representatives into exercise programs. Recommended exercise plans and procedures include threat scenarios involving improvised explosive devices (IEDs), weapons of mass destruction (WMD), and other high consequence risks identified through the grantee's risk assessments. Following each exercise and drill, the grantee should conduct and/or participate in de-briefings to examine

the results of the exercise and/or drill and develop after-action reports to address any updates to plans and procedures that might be warranted.

REFERENCE
TSA/FTA Action Item No. 8

SOURCES OF INFORMATION
The grantee may be asked what drills and/or exercises have been conducted and to provide a list of the drills and exercises showing the dates that they were conducted and the other agencies that participated. After-action reports may be reviewed to determine if plans and/or procedures were updated accordingly.

DETERMINATION
If the grantee has not conducted such drills and/or exercises, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to conduct coordinated tabletop exercises on a semi-annual basis and full scale exercises on an annual basis. The grantee should conduct or prepare de-briefings and/or after-action reports to address the results of the exercise and address any updates to plans and procedures that might be warranted.

Risk Management and Information Sharing

19. *Has the grantee established a risk management process to assess and manage threats, vulnerabilities and consequences? Did the process identify mitigation measures after the risk assessment had been completed?*

EXPLANATION
Grantees are encouraged to establish a risk management process that is based on a system-wide assessment of risks and obtain management approval of this process. As part of the process, grantees should ensure proper training of management and staff responsible for managing the risk assessments. Whenever a new asset/facility is added or modified, and when conditions warrant (e.g. changes in threats or intelligence), the risk assessment process should be updated. The risk assessment process should be used to prioritize security investments.

As with the overall security and emergency management plans, the risk assessment process should be coordinated with regional security partners, including Federal, state, and local governments as well as agencies with shared infrastructure (e.g., other transit agencies or rail systems). Coordination will assist grantees to leverage resources and experience for conducting risk assessments.

REFERENCE
TSA/FTA Action Item No. 9

SOURCES OF INFORMATION
The grantee may be asked if it has established a risk assessment process, and to provide documentation (e.g., risk assessments and mitigation measures) that demonstrates such a process has been established.

DETERMINATION
If the grantee has not established a risk management process, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to establish a risk management process and conduct risk assessments according to the established process.

20. *Does the grantee participate in information sharing networks such as the FBI's Joint Terrorism Task Force (JTTF) or other regional anti-terrorism task force and/or the Public Transportation Intelligence Sharing & Analysis Center (PT-ISAC)?*

EXPLANATION
Grantees are encouraged to participate in intelligence sharing networks such as the FBI's JTTF (if they have their own law enforcement personnel) or PT-ISAC in order to facilitate coordination on regional security matters throughout the area and share intelligence with law enforcement and other agencies. The PT-ISAC is a clearinghouse of security threats, vulnerabilities and solutions for the public transit industry. Members report and receive information through the PT-ISAC to assist them and other members in preparing for and responding to threats. APTA is the coordinator for the PT-ISAC. Other intelligence sharing networks include the DHS Homeland Security Information Network (HSIN) and the TSA's Surface Transportation Security Inspectors (STSI).

REFERENCE
TSA/FTA Action Item No. 10

SOURCES OF INFORMATION
The grantee may be asked if it participates in an information sharing network such as the JTTF, PT-ISAC, or other agency to share intelligence on potential threats.

DETERMINATION/DEFICIENCY CODE
If the grantee does not participate in an information sharing network, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
If the grantee is not participating in a regional task force, the grantee will be advised to join the JTTF, ST-ISAC or other regional task force in order to share intelligence on potential threats.

21. *Does the grantee have a process to ensure that security threats, concerns and incidents are reported appropriately? Is security information reported through the NTD timely?*

EXPLANATION
All grantees, regardless of the size of their urbanized areas, are required to report security data as part of their NTD report. Transit agencies are required to provide information by mode and type of service in the Safety & Security Module of NTD on a monthly basis. If a grantee operates nine or fewer vehicles and has been granted a waiver, it is exempt from the safety and security reporting requirements.

The NTD Safety & Security Module has three components: Major Incident Reporting, Non-Major Incident Safety, and Non-Major Incident Security reporting. Grantees are required to submit information for each component and for all modes except commuter rail. Agencies that operate commuter rail service do not have to report Major Safety Incident and Summary Safety data to FTA since these data are available from FRA. However, agencies operating commuter rail service must complete the NTD Major Security Incident and Non-Major Incident Security reports. Major Incident forms are due thirty days after the major incident occurred.

Non-Major Incident Security data include any incident not reported as a Major Incident and meeting one or more of the following criteria:

Occurrence of Part I Offenses (except homicide):
- Robbery
- Aggravated assault
- Burglary
- Larceny/theft
- Motor vehicle theft
- Arson

Arrest/Citation for Part II Offenses:
- Other assaults
- Vandalism
- Trespassing
- Fare evasion

Occurrence of Other Security Issues:
- Bomb threat
- Non-violent civil disturbance

Occurrence of Suicides and Attempts

REFERENCE
49 CFR 630
TSA/FTA Action Item No. 11

SOURCES OF INFORMATION
The grantee may be asked to provide a summary of its Major Incidents for the past year. The reviewer may examine Non-Major Incident Security data to verify that this information is being reported to NTD as required.

DETERMINATION
If the grantee has not submitted the required security data for the past year nor is not making current-year submissions as required, the grantee is deficient in the NTD requirements. [Note: If this finding is made, it will be discussed in the NTD area of the report and the deficiency code will be entered in the NTD area of the summary table.]

SUGGESTED CORRECTIVE ACTION
If the grantee is not reporting NTD information, the grantee will be directed to submit information in the NTD as required.

Facility Security and Access Control

22. *Are ID badges used for all visitors, employees, and contractors to control access to key critical facilities?*

23. *Has the grantee conducted a physical inspection of facilities to ensure that access is controlled and that facilities are secure?*

EXPLANATION
Grantees should identify security critical facilities and assets and ensure that access to these facilities is controlled. Grantees should develop written procedures to control access to security critical facilities and areas. The use of ID badges, while not required, is encouraged, for employees, visitors, and contractors that need entry to controlled areas. As with all policies and procedures, access control procedures should be updated as conditions warrant (e.g., new threats are identified).

Grantees should conduct, monitor and document facility security inspections (e.g., perimeter/access control) on a regular basis. The frequency of such

inspections should increase in response to elevation of the HSAS threat advisory level. In addition, grantees should develop and use protocols for vehicle (e.g. buses and rail cars) inspections as well as protocols for inspections of rights-of-way corresponding to HSAS threat advisory levels. In order to integrate unpredictability in the process, grantees should vary the manner in which inspections of facilities, vehicles, and rights-of-way are conducted to avoid setting discernible and exploitable patterns.

REFERENCE
TSA/FTA Action Item No. 12
TSA/FTA Action Item No. 13

SOURCES OF INFORMATION
The grantee's policies and procedures that pertain to granting access to security critical systems and facilities.

DETERMINATION
If the grantee does not have policies and procedures for granting access to security critical systems and facilities, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to develop procedures for access control for security critical systems and facilities.

Background Investigations

24. *Have background investigations been conducted on all new front-line operations and maintenance employees?*

25. *Have criteria for background investigations been established?*

EXPLANATION
Operating personnel have a responsibility for the safety of the public that they serve. As such, it is imperative that grantees take all available precautions in the hiring process to ensure the public's safety and security. Criminal background checks can be used to identify individuals that may pose a potential threat to the public safety and security. Although the focus of background checks is on new hires, grantees are encouraged to conduct checks for all operating employees, particularly those with access to safety and/or security critical systems (e.g., revenue vehicle operations and maintenance, signal rooms, and control centers). Grantees should establish specific criteria for background checks by employee type (e.g., operator, maintenance employees, safety/security sensitive, and contractors). These criteria should be documented.

REFERENCE
TSA/FTA Action Item No. 14

SOURCES OF INFORMATION
The grantee may be asked if criminal background checks are performed on applicants for operating positions. Recent job applications (blank) or descriptions of application requirements may be reviewed. An individual's criminal background information is strictly confidential. Under no circumstances should a reviewer request to see individual records. Answers to these questions should be discussed in general terms within the context of the grantee's hiring practices.

DETERMINATION
If criminal background checks are not conducted for new hires, an advisory comment is made. If the grantee conducts background checks for new hires, but has not done so for existing employees, no advisory comment is made. However, grantees are encouraged to check the criminal backgrounds of all operating employees, particularly those with access to safety and/or security critical systems.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to implement a program to conduct criminal background checks on all applicants for operating positions and for existing operating employees.

Document Control

26. *Is access to documents of security critical systems and facilities controlled?*

27. *Does the grantee have a process for handling of and access to Sensitive Security Information (SSI)?*

EXPLANATION
Controlling access to documents of security critical systems safeguards the public, transit employees and transit assets from potential sabotage and security risks. Grantees should ensure that an appropriate level of security is provided around the plans and designs of its operating and maintenance facilities and its infrastructure (e.g., tunnels, bridges, electrical substations, etc.). Also, measures to protect documentation for security detection systems also should be tightly controlled. The grantee should develop document control procedures to ensure that such documents are identified and that a person or department is made responsible for administering the document control program.

REFERENCE
TSA/FTA Action Item No. 15
TSA/FTA Action Item No. 16

SOURCES OF INFORMATION
Grantees may be asked if there are adequate document control procedures to safeguard Sensitive Security Information (SSI) and documentation of security critical systems. Policies and procedures also may be reviewed.

DETERMINATION
If the grantee does not have procedures to control access to documentation of security critical systems and facilities and security sensitive documents, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to develop procedures to control access to documentation for security critical systems and security sensitive documents.

Security Audits

28. *Has the grantee conducted periodic audits of security policies and procedures?*

EXPLANATION
It is important for grantees to audit security and emergency response procedures and to take all necessary steps to identify potential security and emergency events. In determining the likelihood of security and emergency scenarios, a grantee can take actions to reduce the chances of an event occurring or, at a minimum, lessen its effects. For example, identifying fire hazards and implementing measures to address them can reduce or even eliminate the risk of fires from potential sources. Some events, such as natural disasters, are not preventable. However, with proper planning, the effects of these events can be mitigated.

REFERENCE
TSA/FTA Action Item No. 17

SOURCES OF INFORMATION
The grantee should be prepared to discuss what audits have been conducted. Reports or memoranda that contain security audit information and security committee meeting minutes may be reviewed. The grantee may be asked if procedures and plans have been updated to reflect findings from security audits.

DETERMINATION
If the grantee has not conducted an audit of its security policies and procedures, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
The grantee will be advised to have audits of its security and emergency response plans performed and to update plans and procedures as necessary.

EXHIBIT 19-1
TRANSIT SECURITY EXPENDITURES

Security Funding	FTA Section 5307 Funds		
	FY 2007	FY 2008	FY 2009
Total amount of 5307 Funds expended	$	$	$
Amount of 5307 Funds expended on security	$	$	$
Percent of 5307 Funds expended on security	%	%	%
Infrastructure/Capital Improvement Security Projects:			
Lighting, Fencing & Perimeter Control			
CCTV and Surveillance Technology			
Communications Systems			
Security Planning*			
Drills & Tabletop Exercises*			
Employee Security Training*			
Other Security-Related Infrastructure & Capital Improvements (please list)			
Operating/Personnel Expenditures (can only be used by agencies in areas with populations UNDER 200,000):			
Contracted Security Force			
In-house Security Force			
Other Security-Related Operating Expenditures (please list)			

* SAFETEA-LU amended the definition of a capital project to include:
- projects to refine and develop security and emergency response plans;
- the conduct of emergency response drills with public transportation agencies and local first response agencies; and
- security training for public transportation employees.

20. DRUG-FREE WORKPLACE

BASIC REQUIREMENT

FTA grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program.

AREAS TO BE EXAMINED

1. ***Written Policy***

2. ***Ongoing, Drug-free Awareness Program Workplace***

3. ***Notification of a Drug Statute Violation***

REFERENCES

1. 49 CFR Part 32 "Governmentwide Requirements for a Drug-free Workplace (Grants)"

2. 41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a written policy as prescribed in the Drug-Free Workplace Act (DFWA)? Has the grantee distributed it to all transit-related employees? Does the policy notify employees that:*

- *The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace?*
- *They must abide by the terms of the policy statement as a condition of employment?*
- *If convicted of a drug statute violation occurring in the workplace, they are to report such to the employer in writing no later than five days after such a conviction?*

EXPLANATION

The grantee is required to have and distribute to transit related employees a written policy that states that the workplace is drug-free and that it prohibits the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. The grantee must notify employees that they must abide by the terms of the policy statement as a condition of employment. The grantee is required to inform all employees that, if convicted of a drug statute violation that occurred in the workplace, they are to report it to the employer in writing no later than five calendar days after such a conviction. The DFWA policy can be in the FTA Drug and Alcohol Testing Policy as long as it is clearly differentiated and its applicability is extended to all employees, not just safety-sensitive employees.

The DFWA requirement applies to employees of a recipient directly engaged in the performance of work under the grant, including both direct and indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to that employee. The requirements do not apply to volunteers, consultants or independent contractors not on the grantee's payroll, or employees of subrecipients or contractors in covered workplaces. These requirements should not be confused with the FTA Drug and Alcohol Testing Program, which applies only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

REFERENCE

49 CFR 32.200; 205; and 210

SOURCES OF INFORMATION

The reviewer will obtain and review a copy of the grantee's drug-free workplace policy.

DETERMINATION

If the grantee does not have a written policy, it is deficient.

If the grantee has not provided written notification to its employees, has not notified all transit related employees, has not informed employees that adherence to the policy is a condition of employment, has not informed employees of the criminal drug statute violation time frames, or has other omissions in its policy, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop a written policy that includes all the required elements, distribute it to all grant-related employees, inform employees that adherence to the policy is a condition of employment, or inform employees of the criminal drug statute violation time frames. The grantee will need to submit the policy to the regional office.

2. *Has the grantee established an ongoing drug-free awareness program? How has the grantee informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs?*

EXPLANATION

In addition to establishing and maintaining a drug-free workplace environment, the grantee must establish an ongoing drug-free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, grantees may rely on an employee assistance program to provide drug-free awareness information. This procedure is acceptable,

provided the material includes a drug-free workplace message.

REFERENCE
49 CFR 32.200; 215; and 220

SOURCES OF INFORMATION
The reviewer will examine the written policy, employee handbooks, brochures, posters and other information on bulletin boards, employee assistance program information, and other material distributed to employees.

DETERMINATION
If the grantee does not periodically inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, the opportunities for assistance, and the penalties, it is deficient. If the grantee has provided such information in the past but has not provided information on a consistent basis, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to implement an ongoing drug-free awareness program and inform employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs.

3. *Has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely? Did the grantee provide FTA timely notice of the conviction? What action was taken against personnel that reported such a conviction?*

EXPLANATION
When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report the conviction to the FTA regional counsel. Grantees must provide the individual's position title and the grants in which the individual was involved. Further, the grantee must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

REFERENCE
49 CFR 32.225

SOURCES OF INFORMATION
At the desk review, the reviewer will examine files to determine if any report of a conviction has been made by an employee to the grantee and subsequently by the grantee to FTA. The reviewer will follow up with the grantee during the site visit.

DETERMINATION
If the grantee has reported a conviction, but not within the appropriate time frames, or has taken personnel actions, but not within the appropriate time frames, it is deficient. If the grantee reports that a conviction has occurred but did not notify FTA or take appropriate personnel actions, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to report outstanding convictions to FTA and/or take appropriate personnel actions and to develop procedures to do so in the future within the required timeframes.

21. DRUG AND ALCOHOL PROGRAM

BASIC REQUIREMENT

Grantees receiving Urbanized Area Formula Program (Section 5307), Nonurbanized Area Formula Program (Section 5311), or Capital Investment Program (Section 5309) funds must have a drug and alcohol testing program in place for all safety-sensitive employees.

AREAS TO BE EXAMINED

1. ***Drug and Alcohol Testing of Safety-sensitive Employees***
2. ***Policy Statement on Prohibited Drug Use and Alcohol Misuse in the Workplace***
3. ***Types of Tests and Substances***
4. ***Rate of Random Testing***
5. ***Post-accident Determinations***
6. ***New Hire Data***
7. ***Records Control***
8. ***MIS Reporting***
9. ***Monitoring Program Vendors (e.g., Collection Sites, MROs, and SAP)***

REFERENCES

1. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations."
2. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs."

USEFUL WEB LINKS

Newsletters

Drug and Alcohol MIS Reporting

Drug and Alcohol Training

Technical Assistance

Drug and Alcohol Publications

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit

Drug and Alcohol Program Compliance Audit Questionnaires

APPLICABILITY

FTA program funds can be segregated from other funds. Therefore, FTA drug and alcohol testing requirements may not apply to grantees that receive FTA funds exclusively for facilities if these funds can be segregated from other program funds. If a question arises whether FTA funds can be segregated, please contact your project manager, who can contact the FTA Drug and Alcohol Program Manager, Jerry Powers at gerald.powers@dot.gov.

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a drug and alcohol program compliance audit in the past two Federal fiscal years? If yes, when was the site visit? Is an audit scheduled for the current Federal fiscal year?*

EXPLANATION
As part of its project oversight functions, FTA periodically conducts Drug and Alcohol Audits of selected grantees.

Even if such an audit is scheduled for the current fiscal year or has been recently conducted, all questions in this section are still asked. If an audit has been recently conducted, a copy of the most recent report may be requested for input into the review.

REFERENCE
None

SOURCES OF INFORMATION
None

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Does the grantee have a drug and alcohol testing program for safety-sensitive employees as defined by FTA? Do subrecipients, contractors, subcontractors and lessees with safety-sensitive employees have drug and alcohol testing programs?*

EXPLANATION
Grantees and their subrecipient, contractors, subcontractors and lessees that have safety-sensitive employees are required to have a drug and alcohol testing program for these employees. For grantees that use volunteer drivers, the volunteers are not subject to testing unless the volunteer is required to hold a commercial driver's license (CDL) or receives remuneration in excess of expenses incurred while engaged in a safety-sensitive function. Safety-sensitive employees are employees that perform the following functions:

- operating a revenue vehicle including when not in revenue service
- operating a non-revenue vehicle when required to be operated by a holder of a CDL
- controlling dispatch or movement of a revenue service vehicle
- maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the <u>exception</u> of:
  - all maintenance contractors of grantees in UZAs under 200,000; and
  - subcontractors of maintenance contractors

  Note that contractors that provide maintenance services to an operations contractor <u>are</u> subject to FTA's drug and alcohol testing regulations.
- carrying a firearm for security purposes

Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations and follow FTA regulations for its non-railroad operations. Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard's (USCG's) chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered safety-sensitive by the USCG (crew members with a merchant mariners document or under a certificate of inspection), since the USCG does not have a similar requirement.

Grantees that have employees, subrecipients, contractors, subcontractors or lessees that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

Contractors performing safety-sensitive work, such as tire maintenance, overhaul or rebuild of vehicles, engines and parts or body work are subject to FTA regulations, unless the work is done on an ad-hoc (non- routine) basis. Warranty work performed by employees of the bus manufacturer is not subject to the regulations. Also, vendors from whom grantees purchase or exchange rebuilt engines or other

components are not subject to the regulations unless that work is regular and on-going.

If a grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab companies and schedules and dispatches the trips, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

Off-duty police officers under contract to the grantee or a contractor to a grantee are subject to FTA drug and alcohol testing. Police officers who as part of their normal duties patrol public transit facilities are not subject to FTA testing. When a grantee contracts the local police department but does not supervise the officers and the officers also respond to nontransit-related police calls, the officers are not subject to FTA's drug and alcohol rules.

REFERENCE

49 CFR 655.3 and 655.4
Body work interpretation letter
Police officer interpretation letter

SOURCES OF INFORMATION

The grantee will be asked to provide evidence that all safety-sensitive employees (including subrecipients, contractors, subcontractors and lessee employees) are covered by a drug and alcohol testing program. A list of all contractors and subcontractors should be provided in order to determine if the requirement applies.

DETERMINATION

If the grantee or any of its subrecipients, contractors, subcontractors or lessees has not adopted an FTA program, as applicable, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop and implement a drug and alcohol testing program for all covered employees and submit evidence of such to FTA. The grantee can include the contractor's employees in its program or require the contractor to have its own program based on FTA requirements. If a contractor is lacking a drug and alcohol testing program, the grantee will be directed to ensure that the contractor implements a program and to provide evidence of such to FTA.

3. *Do the grantee and its subrecipients, contractors, subcontractors and lessees have a drug and alcohol policy as required by FTA drug and alcohol regulations? Do the policies contain the required elements?*

EXPLANATION

The grantee and its subrecipients, contractors, subcontractors and lessees covered by 49 CFR Part 655 must have a drug and alcohol policy detailing the provisions of their drug and alcohol program. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments.

The following checklist identifies the minimum requirements of a policy as defined by 49 CFR 655.15:

- Proof of policy adoption by the appropriate governing body with effective date indicated
- Identity of the person designated by the employer to answer questions about the anti-drug and alcohol misuse program
- Categories of employees who are subject to testing
- Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs
- Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing)
- Drug and alcohol testing procedures consistent with 49 CFR Part 40, as amended
- The requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations
- Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the DOT program:

    1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer
    2. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test)
    3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations
    4. In the case of a directly observed or monitored collection in a drug test, fail to

permit the observation or monitoring of your provision of a specimen

5. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
6. Fail or decline to take an additional drug test the employer or collector has directed you to take
7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or employer. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test
8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)
9. For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
11. Admit to the collector or MRO that you adulterated or substituted the specimen

Instead of listing all the refusals, the policy may state that refusals to test are listed in 40 CFR Part 40, as amended, or 49 CFR 40.161 as amended for urine collections and 49 CFR 40.261 as amended for breath tests. The policy should then state that a copy of 49 CFR Part 40 is available upon request.

- Description of the consequences for a covered employee who has a verified positive drug test result or a confirmed alcohol test with an alcohol concentration of 0.04 or greater. If the system has a second chance policy, a description of the evaluation and treatment processes must be included.
- Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04

In addition to the requirements listed above, the policy should include the grantee's policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 which states that if the MRO informs the agency that a *negative* drug test was dilute, the agency may (but is not required to) direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, the grantee must not retest some employees and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record.

Some grantees may have modeled their testing programs after FMCSA regulations (49 CFR Part 382). FMCSA regulations do not meet FTA requirements. For example, FMCSA only covers CDL holders. If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.

REFERENCE

49 CFR 655.15
49 CFR 40.191; 40.197; 40.261
49 CFR Part 382

SOURCES OF INFORMATION

The grantee's drug and alcohol policy and up to three policies of any subrecipients, contractors, subcontractors or lessees with safety-sensitive employees will be reviewed. If the grantee is covered by FRA or USCG, it should document that it complies with FRA or USCG regulations. In these situations, the grantee should confirm that there are no employees subject to FTA requirements.

DETERMINATION

If the policies reviewed do not include any of the above provisions required by the regulations, the grantee is deficient.

If a grantee or its subrecipient, contractor, subcontractor or lessee has not updated its policy to reflect updates and/or amendments to the regulations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to correct the policy to bring it into compliance, obtain governing board or other "final authority" approval, and re-communicate the policy to all affected employees. The grantee will be directed to submit the new or revised policy to FTA, and/or submit to FTA the amended policy of the subrecipient, contractor, subcontractor or lessee.

4. *Do the grantee, subrecipients, contractors, subcontractors and lessees conduct the following types of drug and alcohol testing:*

a. *Pre-employment (alcohol optional)*
b. *Random*
c. *Post-accident*
d. *Reasonable suspicion*
e. *Return-to-duty (only for employers with 2nd chance programs)*
f. *Follow-up (only for employers with 2nd chance program)?*

5. *Do the grantee, subrecipients, contractors, subcontractors and lessees test for the following substances: marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol?*

EXPLANATION
Six types of testing are required by the drug and alcohol testing regulations. Pre-employment (mandatory for drugs and optional for alcohol), random, post-accident, and reasonable suspicion under certain conditions must be conducted by all grantees. If the grantee offers rehabilitation and the opportunity for an employee who tested positive to return to work, it must conduct return to duty and follow up testing also. Note that employees returning to duty from an absence of 90 days or more *and* that have been removed from the random testing pool must pass a *pre-employment test(s)* (not a return-to-duty) before being placed back into safety-sensitive duty.

The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, amphetamines and alcohol.

If the grantee conducts pre-employment alcohol tests of covered employees, the testing is conducted under FTA authority and the grantee must follow Part 40 testing procedures.

REFERENCE
49 CFR 655.31, 655.33, 655.34, 655.41, 655.42, 655.43, 655.44, 655.45, 655.46, and 655.47

SOURCES OF INFORMATION
The grantee's drug and alcohol policy will be reviewed to ensure that it indicates clearly when and under what circumstances employees will be tested for drugs and alcohol. Specific employee records will not be examined.

DETERMINATION
If the policy omits the required information, tests are not being conducted, or substances are not being tested, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to correct the policy to bring it into compliance, obtain governing board approval and re-communicate the policy to all affected employees. The grantee will be directed to implement the testing program immediately if any requirement is lacking and to submit the revised policy to FTA.

6. *Are the random testing rates of 25 percent for drugs and 10 percent for alcohol achieved?*

EXPLANATION
Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current minimum random testing rate for drugs is set at 25 percent. The minimum random testing rate for alcohol is 10 percent of the number of safety sensitive employees annually.

Grantees that have their own random pool of safety sensitive employees must be able to document that they are meeting the required rates for random drug and alcohol tests. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing meets the FTA required rates.

REFERENCE
49 CFR 655.45

SOURCES OF INFORMATION
The reviewer will determine the appropriate number of random tests for the most recent calendar year.

DETERMINATION
As of the date of the site visit, if the number of random tests is below 90 percent of the required number for the year, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and implement a plan to bring the random testing rate to the required level.

7. *Do the grantee, subrecipients, contractors, subcontractors and lessees conduct post accident testing under FTA authority only when the conditions set forth in Part 655 are met?*

EXPLANATION

FTA requires that a DOT post accident test be administered under two circumstances: 1) in the event of a fatal accident and 2) in the event of a non-fatal accident.

A fatal accident is defined as an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle (non-revenue requiring a CDL or transit police), which results in the loss of a life.

A non-fatal accident is an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle, defined by the following:

- One or more individuals is immediately transported for medical treatment away from the accident
- Any vehicle incurs disabling damage requiring a tow truck
- A rail transit vehicle is taken out of service as a result of the accident

Following a fatal accident involving a transit vehicle, grantees and/or their contractors and subcontractors with safety-sensitive employees are required to test all surviving covered employees operating the vehicle at the time of the accident and, using the best available information at the time of the decision, any other covered employee whose performance may have contributed to the accident.

Following a nonfatal accident involving a transit vehicle, grantees and/or their contractors and subcontractors with safety-sensitive employees are required to test all covered employees operating the vehicle and, using the best available information at the time of the decision, any other covered employee whose performance may have contributed to the accident unless the employer determines that an employee's performance can be completely discounted as a contributing factor to the accident. A decision not to test is made using the best information available at the time of the decision and must be documented in detail, including the decision-making process used to make the determination.

Post-accident testing for "accidents" that do not meet the definition of an accident under Part 655 must be done under the grantee's own authority and non-DOT custody and control forms and alcohol testing forms must be used.

REFERENCE

49 CFR 655.44

SOURCES OF INFORMATION

Provide a copy of a post-accident form, if used. During the site visit, the reviewer may examine a sample of accident reports in which post accident testing was performed as well as copies of accident reports in which post accident testing was not performed.

DETERMINATION

If a covered employee was not tested following a nonfatal accident and the grantee cannot properly document its determination, the grantee is deficient. If the grantee conducted a post-accident test under FTA's authority for an accident that does not meet the Part 655 definition of accident, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop and implement a process to make proper post accident determinations including procedures to document the decision-making process. The grantee will be directed to develop and implement a process to ensure that only accidents that meet the definition of an accident under Part 655 are done under FTA's authority. The grantee will be directed to submit the new process and documentation of its implementation to FTA.

8. *Do the grantee, subrecipients, contractors, subcontractors and lessees check on the drug and alcohol testing record of new hires and transfers that they are intending to use to perform safety-sensitive duties?*

EXPLANATION

Grantees, subrecipients, contractors subcontractors and lessees, after obtaining an employee's written consent, request information on the DOT drug and alcohol testing history of any employee who is seeking to begin performance of safety-sensitive duties for the grantee for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position). Grantees must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- Alcohol tests with a result of 0.04 or higher alcohol concentration
- Verified positive drug tests
- Refusals to be tested (including verified adulterated or substituted drug test results)
- Other violations of DOT agency drug and alcohol testing regulations

- The employee's successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable

If the previous employer does not have information about the return-to-duty process (e.g., for an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must obtain this information from the employee.

The grantee must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the grantee must obtain and review the information as soon as possible. After 30 days, the grantee must not permit the employee to perform safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information.

If the employee refuses to provide this written consent, the grantee must not permit the employee to perform safety-sensitive functions. If the grantee obtains information that the employee has violated a DOT agency drug and alcohol regulation, it must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with return-to-duty requirements.

Grantees must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process. The employee records must be maintained for three years.

REFERENCE
49 CFR 40.25

SOURCES OF INFORMATION
The reviewer may request a copy of the applicant consent form and the letter requesting drug and alcohol testing information from prior DOT employers. The reviewer should not request to see copies of employee drug test results, consent forms, and/or any other potentially confidential material.

DETERMINATION
If the grantee does not obtain an applicant's consent, obtain the required information, or obtain the information for the past two years, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA a process to ensure that the previous drug and alcohol testing records of first-time safety sensitive employees are reviewed.

9. *Are drug and alcohol testing program records maintained in a secure location with controlled access?*

EXPLANATION
The grantee must maintain records on program administration and the test results of individuals for whom it has testing responsibility. The records must be maintained by the grantee in a secure location with controlled access. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records. It is necessary, under this circumstance, for the grantee to maintain a duplicate set of records. It is the responsibility of the grantee to exercise and document oversight activities to ensure that records are accurate and current and that they comply fully with FTA regulations.

As an example, the grantee should maintain program records in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys.

REFERENCE
49 CFR 655.71

SOURCES OF INFORMATION
The grantee should be able to document how records are stored.

DETERMINATION
If the drug and alcohol testing program records are not maintained in a secure location with controlled access, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA documentation that is has moved program records to a secure location with controlled access.

10. *Has the grantee submitted annual calendar year Management Information System (MIS) reports for itself, subrecipients, contractors, subcontractors and lessees summarizing drug and alcohol test results as requested by FTA? Were the reports submitted by March 15?*

EXPLANATION
The grantee must prepare, maintain and submit to FTA annual MIS reports for itself and collect, maintain and submit annual MIS reports for Section 5307, 5309, and 5311 subrecipients, contractors and lessees and their contractors with safety sensitive employees summarizing drug and alcohol program testing results. The reports cover the prior calendar year. Grantees must submit to FTA the reports for FTA funded ferry operations. Grantees must retain copies of the reports for five years.

The standard MIS report forms, which are on the web, must be used "as-is;" they may not be combined or modified by a grantee and must be filled out completely. The MIS reports must be submitted to the FTA Office of Safety and Security or its designated agent by March 15 following the calendar year for which the reports were prepared. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet at http://damis.dot.gov/.

REFERENCE
49 CFR 655.72
MIS report forms

SOURCES OF INFORMATION
The reviewer may request documentation that the MIS reports were submitted as required, and discuss the grantee's process for obtaining MIS reports from subrecipients, contractors, subcontractors and lessees with safety sensitive employees and ensuring the reports are forwarded to FTA by March 15. MIS reports for the grantee and a sample of reports for subrecipients, contractors, subcontractors and lessees also may be reviewed.

DETERMINATION
If the MIS reports for the grantee, subrecipient, contractor, subcontractor or lessee were not submitted, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to prepare or collect and submit all delinquent MIS forms and to develop a procedure for timely reporting of MIS forms. The grantee will be directed to submit the new procedure, documentation of its implementation and copies of the MIS reports to the FTA regional office.

11. *How does the grantee monitor subrecipients, contractors and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*

12. *If the grantee contracts private carriers, how does it ensure that they comply with FTA drug and alcohol requirements?*

EXPLANATION
Grantees are responsible for passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, and overseeing the drug and alcohol programs of subrecipients, contractors, subcontractors and lessees with safety-sensitive employees. The oversight program must ensure that all aspects of the drug and alcohol programs, including use of vendors and vendor activities, are in compliance with 49 CFR Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended, and 49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

FTA does not dictate how grantees must oversee the programs. However, elements of an effective oversight program will ensure:

- Drug and alcohol policies include required elements and are approved by the governing body
- Employees performing safety-sensitive functions are covered
- Marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol are tested for
- Pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing is conducted properly
- Proper forms are used, the forms are completed correctly, the records are stored in a secure location with limited access, and the records are maintained for the required amount of time
- Employees and supervisors have received the required training
- Testing performed under the employer's own authority is segregated from the testing done under FTA's authority (separate random testing pool, separate specimens, non-DOT forms used)
- MROs, SAPs, and collection site personnel have the required credentials and training
- Collections are performed properly and the employer ensures that CCFs are reviewed and that collection site procedures and security are in compliance

If a private intercity bus operator, such as Greyhound, receives FTA operating assistance or operates FTA funded buses, the operator may be subject to FTA drug and alcohol requirements. Private carriers are already covered by FMCSA drug and alcohol testing requirements (49 CFR Part 382) as drivers hold commercial driver's licenses (CDLs). However, if

employees that perform safety-sensitive functions as defined by Part 655 (e.g., operating a revenue service vehicle, maintaining a revenue service vehicle, controlling dispatch or movement of a revenue service vehicle) spend more than half of their time in FTA purchased vehicles or FTA funded operations, then Part 655 applies. Once determined, the employee will be subject to pre-employment and random testing under FTA authority. The assignment of regulatory authority for reasonable suspicion and post-accident testing depends on the function an employee is performing at the time of the incident/accident. Return-to-duty and follow-up tests are assigned to the modal administration that generated the initial positive test result. If subject to Part 655, the grantee must collect, retain and submit MIS reports annually for the private carrier.

REFERENCE
49 CFR 655.81
49 CFR 40.15
Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit
Drug and Alcohol program compliance audit questionnaires

SOURCES OF INFORMATION
Subrecipient agreements, contracts, leases and monitoring documents (reports, questionnaires, site visit checklists) may be reviewed for a description and the details of the grantee's drug and alcohol oversight program. The grantee's program will be discussed and the files for the subrecipients, contractors and lessees to be visited may be reviewed during the site visit.

DETERMINATION
If the grantee does not oversee the drug and alcohol programs or if its oversight program is inadequate to ensure minimal compliance, it is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA a drug and alcohol oversight program for its subrecipients, contractors, subcontractors and lessees.

13. *How does the grantee monitor vendors (e.g., consortia, third party administrators, collection sites, MROs) that support its program and the programs of subrecipients, contractors, subcontractors and lessees to ensure compliance with program requirements?*

EXPLANATION
The grantee is responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, the grantee should have a written contract that references 49 CFR Part 40 with each vendor and should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. Grantees need only ensure that testing laboratories are HHS certified.

The grantee should not assume that its vendors are following the correct procedures or that they are knowledgeable about FTA regulations. Note that the FTA does not prescribe how a grantee must monitor its vendors. The grantee simply must show evidence that monitoring is being performed at some level. Examples of monitoring activities include maintaining on file copies of vendor qualifications, conducting periodic mock collections, investigating reports of employees or subrecipients of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training.

REFERENCE
49 CFR 40.15
HHS certified laboratories

SOURCES OF INFORMATION
Copies of contracts and monitoring reports will be reviewed.

DETERMINATION
If there are no written contracts and/or the grantee cannot show that it is monitoring vendor operations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit to FTA executed contract(s) with vendor(s) and/or monitoring procedures.

22. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving Federal financial assistance from the Federal transit laws. (Note: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. *EEO Program*
- a. Designated EEO Officer
- b. Approved EEO program and updates (every three years, or as major changes occur in the work force or in employment conditions, e.g., major layoffs)
- c. Workforce utilization

2. *Oversight of Subrecipients and Contractors*

3. *EEO Complaints/Lawsuits*
- a. Number and status of complaints and lawsuits alleging discrimination
- b. Complaint handling procedures

4. *Workforce Utilization*
- a. EEO Goals
- b. Underutilization area
- c. Training

5. *Title I of ADA*
- a. Plan in place to ensure non-discrimination in hiring and promotion
- b. Reasonable accommodation policy and reasonable accommodations made for persons with disabilities

REFERENCES

1. 49 CFR 27, "Nondiscrimination On The Basis Of Disability In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance"

2. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"

3. Federal Register: December 14, 2005 (Volume 70, Number 239, pp.74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons

"

QUESTIONS FOR THE REVIEW

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

EXPLANATION
As part of its project oversight functions, FTA periodically conducts EEO reviews of selected grantees.

Even if such a review is scheduled for the current fiscal year or has been recently conducted, all questions in this section are still reviewed. If an EEO review has been recently conducted, obtain a copy of the most recent report (draft or final) for input into the review.

REFERENCE
Input to review

SOURCES OF INFORMATION
Prior to conducting the desk review, the reviewer will check OTrak to determine if an EEO review has occurred or has been scheduled and to analyze findings and corrective actions from completed EEO reviews. The regional civil rights officer (RCRO) will also have information on EEO review activities. Reports at the regional office or from headquarters may also be examined during the desk review.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Does the grantee meet the threshold for submission of a formal EEO program?*

a. If yes, has the grantee's EEO program been approved by FTA?
- *If yes, when does it expire?*
- *If no, provide an explanation.*

b. If no, skip to Question 5.

EXPLANATION
A formal EEO program is required of any grantee that both employed 50 or more transit-related employees (including temporary, full-time or part-time employees) <u>and</u> received in excess of $1 million in capital or operating assistance or in excess of $250,000 in planning assistance in the previous Federal fiscal year. The program requirements detail what must be included, such as designation of personnel responsibilities, a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices, proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years.

Employees are not counted in the aggregate. The requirement applies to any single employer of 50 or more transit-related employees. For example, if a city (receiving over $1 million in FTA funds) with 10 transit-related employees contracts a private provider who employs 40 transit-related employees, then neither the city nor the contractor is required to have a formal EEO Program. However, if the city exceeds both thresholds, then it would be required to submit a formal EEO program to FTA.

REFERENCE
FTA C 4704.1, Ch. II, Section 2 and 5; Ch. III

SOURCES OF INFORMATION
The RCRO's files are reviewed for a copy of the most recently submitted program. TEAM-Web, RCRO correspondence or RCRO tracking information also are reviewed for program approval and expiration date.

DETERMINATION
If the grantee meets the threshold and has not submitted a program, it is deficient. If the current EEO program has expired and the grantee has not submitted a program update or requested and received an extension for submitting a new program, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to submit the required EEO program or program update to the regional office.

3. *For grantees that meet the threshold described in Question 2, who is responsible for ensuring that EEO obligations are fulfilled? To whom does this individual report for EEO matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

EXPLANATION
The grantee's chief executive officer (CEO) should designate an EEO officer and adequate staff to administer the EEO program. The EEO officer should be an executive and must report directly to the CEO. Care should be taken to avoid conflicts when assigning responsibility for administering the EEO program as a collateral duty assignment. The EEO officer should serve as a check and balance on employment practices. Therefore, a personnel or human resource officer may have a conflict if they are also the EEO officer.

REFERENCE
FTA C 4704.1, Ch. II, Section1; Ch. III, Section 2.c

SOURCES OF INFORMATION
The reviewer will examine the EEO program submissions for the name and reporting relationship of the EEO officer. The reviewer will consult the RCRO for any indications of past problems with staffing. Current staff assignments will be confirmed during discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the EEO officer can confirm responsibilities and reporting relationships.

If the EEO officer is located in the human resources or administrative office, conflicts of interest could arise. If such an arrangement exists, the grantee will be asked to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis.

DETERMINATION
If the EEO officer does not report directly to the CEO, the grantee may be deficient. The determination will be partially based on the size of the grantee. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles, resulting in more latitude for enforcing this requirement. A temporary staffing problem or coordination problems among responsible offices could lead to a finding of deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to designate EEO responsibilities properly and provide evidence of corrective actions to the RCRO. The grantee may need to change reporting relationships or assignment of responsibilities.

4. *For grantees that meet the threshold described in Question 2, were EEO goals met during the past three years? What are the grantee's current areas of underutilization? What is the grantee doing to address this underutilization?*

EXPLANATION
Goals and timetables are management tools to assist in the optimum utilization of human resources. For grantees that meet the formal program threshold, specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis. Grantees must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Employment practices include recruitment, selection, promotion, termination, transfers, layoffs, disciplinary actions, compensation and benefits, and training. Barriers can include not having employment material available for persons with limited English proficiency. Grantees should demonstrate outreach efforts to populations that are underrepresented.

An important part of any successful EEO program is an effective internal monitoring and reporting system. This system should: 1) assess EEO accomplishments, 2) enable the evaluation of the program during the year and taking of necessary action regarding goals and timetables, 3) indentify those units which have failed to achieve a goal or to implement affirmative actions, and 4) provide a factual data base for future projections. Grantees should be able to demonstrate how their monitoring system has been implemented in order to address their stated areas of underutilization.

REFERENCE
FTA C 4704.1, Ch. III, Sections 2.d; e; f; and g
Federal Register: December 14, 2005 (Volume 70, Number 239, pp. 74087-74100)

SOURCES OF INFORMATION
The reviewer will examined the grantee's EEO program update on file for information on the EEO goals and areas of underutilization. At the site visit, employment materials, examples of actions taken to accommodate persons with disabilities and persons with LEP, and a copy of the most recent workforce utilization analysis will be examined to determine progress toward meeting EEO program goals. The reviewer will inquire about efforts the grantee has made to not discriminate in employment practices, including outreach, and to positively impact areas of underutilization.

DETERMINATION
If prior year goals were not attained and a satisfactory explanation cannot be provided, or the grantee cannot demonstrate that it is implementing or acting on its internal monitoring, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop a plan to meet its EEO goals, including a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization, and submit the plan to the RCRO.

5. *Do any subrecipients or transit management/operations contractors meet the threshold for submission of a formal EEO program as described in Question 2? If yes:*

- *Do the subrecipients or contractors have on file with the grantee an approved EEO plan?*
- *Does the grantee obtain program updates every three years? If no, provide an explanation.*

EXPLANATION
Subrecipients and contractors 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 the grantee an EEO plan. Program updates are due every three years.

Note: In some circumstances, the RCRO may require grantees to submit the EEO program of a subrecipient or a contractor to FTA for review. If the grantee has a subrecipient or contractor that meets the employee threshold, seek additional guidance from the RCRO on the submittal of their program.

REFERENCE
FTA C 4704.1, Ch. II, Section 2

SOURCES OF INFORMATION
During the desk review at the regional office, the reviewer will examine information to determine whether any subrecipient or transit management/operations contractor receives capital or operating assistance in excess of $1 million or planning assistance in excess of $250,000 **and** has 50 or more transit-related employees. Assets, such as vehicles that have been purchased by the grantee for use by a subrecipient, are counted towards the subrecipient's threshold. The reviewer will ask if subrecipients or contractors have approved EEO plans on file with FTA or if they are on file with the grantee. Additional information will be provided through grantee responses to the agenda package and the site visit.

DETERMINATION
If subrecipients and contractors who meet threshold requirements do not have an approved EEO plan on file with the grantee (or with FTA if requested), the grantee is deficient.

SUGGESTED CORRECTIVE ACTION
The grantee will be directed to develop and implement procedures to identify subrecipients and contractors that meet threshold requirements and to notify FTA of such subrecipients and contractors. The grantee will notify the subrecipient or contractor of FTA requirements and will withhold the approval of future subgrants until it receives appropriate EEO plans. The grantee will need to submit the new procedures and documentation of its implementation to the RCRO.

6. *Are there any EEO related complaints filed with the grantee, its subrecipients or its transit management/operations contractors concerning transit related employees? What is the status of the complaints?*

EXPLANATION
The number and nature of EEO complaints may indicate that the grantee or one of its subrecipients or contractors is not administering programs to comply with EEO.

REFERENCE
FTA C 4704.1, Ch. VI

SOURCES OF INFORMATION
At the regional office, the reviewer will ask the civil rights officer whether the grantee or any of its subrecipients has EEO complaints filed with it and discuss the nature of the complaints. On site, the reviewer will discuss with the grantee any EEO complaints that are filed with it or its subrecipients or contractors and determine the nature of the complaints as well as the grantee's, subrecipients' or contractors' responses to them.

DETERMINATION
If there are EEO complaints filed against the grantee concerning the FTA programs and the grantee has not acted to investigate and resolve the complaints, the grantee is deficient.

If there are EEO complaints filed against any subrecipients or contractors and the nature and number of complaints indicate that the grantee needs to improve its monitoring, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to resolve all outstanding EEO complaints filed against it and advise the FTA regional office of the resolution of the complaints. The grantee will be directed to develop and implement procedures for improved monitoring of compliance by subrecipients and contractors with EEO requirements. The grantee will need to send documentation of the new procedures to the RCRO.

7. *Does the grantee's program ensure non-discrimination for ADA-eligible persons in terms of employment? Does the grantee have a policy and procedures for making reasonable accommodations for persons with disabilities? If requested, did the grantee make reasonable accommodations for persons with disabilities during the past three years, in accordance with Title I of the ADA? If yes, please describe.*

EXPLANATION

Grantees are required to not discriminate against persons with disabilities. Discriminatory acts include, but are not limited to, denying a person the opportunity for participation in or the benefit of a program and limiting, for a qualified person with physical or mental disability, the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Grantees are required to not discriminate in employment and to make reasonable accommodations for qualified candidates with disabilities hired by the grantee. Such accommodations could include modifications to telephone systems, computers, and office furniture.

REFERENCE

49 CFR 27.7
49 CFR 27.19

SOURCES OF INFORMATION

At the site visit, the reviewer will ask the grantee to identify its employment program and efforts to employ persons with disabilities. The reviewer also will ask the grantee to indicate if any persons with disabilities since the last review have requested reasonable accommodations and to describe reasonable accommodations made for qualified employees.

DETERMINATION

If the grantee has no process for making reasonable accommodations for persons with disabilities, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop a process for making reasonable accommodations for persons with disabilities and submit evidence of such to the RCRO.

23. ITS ARCHITECTURE

BASIC REQUIREMENT

Intelligent Transportation Systems (ITS) projects funded by the Highway Trust Fund and the Mass Transit Account must conform to the National ITS Architecture, as well as to United States Department of Transportation (USDOT) adopted ITS Standards.

AREAS TO BE EXAMINED

1. ***Regional ITS Architecture Conformance***

2. ***Systems Engineering Analysis***

REFERENCES

1. TEA-21, PL 105-178, Section 5206(e)

2. 23 USC Section 502, Surface Transportation Research

3. Federal Register: January 2, 2001 (Volume 66, No. 5, pp. 1455-1459) "FTA National Architecture Policy on Transit Projects"

USEFUL WEBLINKS

Systems Engineering for Intelligent Transportation Systems

Systems Engineering Guidebook for ITS

Systems Engineering and ITS References

Systems Engineering Management Plan

QUESTIONS FOR THE REVIEW

1. *Is the grantee attempting to deploy ITS technologies? If yes, are ITS projects and programs part of a locally approved Regional ITS Architecture?*

EXPLANATION

FTA grantees may deploy many types of ITS technologies and projects. An ITS ***project*** is defined in the ITS Architecture Policy Guidance as "any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the National ITS Architecture." Thus, if the project includes ITS components that implement any of the defined User Services it is considered an "ITS Project." There are currently 33 User Services, organized in seven User Service Bundles, represented within the National ITS Architecture. The User Services most likely to be proposed/implemented by an FTA grantee include:

- Travel and Traffic Management
  - Pre-Trip Travel Information
  - Route Guidance
  - Ride Matching and Reservation
  - Traffic Control
  - Highway Rail Intersection
- Public Transportation Management
  - Public Transportation Management
  - En-Route Transit Information
  - Personalized Public Transit
  - Public Travel Security
- Electronic Payment
  - Electronic Payment Services
- Emergency Management
  - Emergency Notification and Personal Security
- Information Management
  - Archived Data User Services

Examples of systems that may be implemented as part of transit ITS Projects are:

- **Pre-trip traveler information systems** through phone, 511 systems, kiosks, the web, and other electronic channels that help provide route and fare information or itinerary planning
- **En-route transit information** through 511 systems, variable message signs, enunciators, or personal devices that provide next vehicle and stop information, or route and itinerary planning
- **Multi-modal traveler information systems** that integrate transit information with highway, rail, and other options
- **Personalized public transit** for route deviation, flex route, and paratransit services
- **Transit management systems and management centers** using AVL, computer aided dispatch, GIS, and surveillance of network conditions to improve the travel time and reliability of the transit system, and provide for transfer connection protection
- **Transit signal priority** to improve the travel time and reliability of the transit vehicles operating in mixed flow, or crossing major arterials at grade
- **Carpool ride matching and reservation systems**
- **Electronic payment systems** both at transit centers and stations and on vehicles that include both fare payment and the ability to pay for other services (parking or toll charges)
- **Communications systems** that provide the backbone for the vehicle and wayside communication to each other and to the transportation management center
- **Automatic passenger counters** for performance monitoring and service planning
- **Vehicle and system monitoring** that tracks system functions and provides warning of likely malfunction or maintenance needs
- **Vehicle, stop or wayside surveillance** to provide for passenger, driver and system safety and security. Silent alarms to notify authorities of an incident or emergency.
- **Highway/rail intersection protection** to improve the safety of rail-transit operations and buses that travel through rail intersections
- **Collision warning/avoidance, vision enhancement and driver assistance** to ensure safe transit operations in increasingly congested conditions, or limited rights of way
- **Data archiving and information management systems** to store and analyze the real time system data and assist in service planning, system monitoring and other decisions

A decade ago, Federal law 23 CFR 940 defined ITS as: "*…electronics, communications, or information technology, used singly or in combination, to improve*

the efficiency or safety of the surface transportation system.**"** This is a broad definition, covering the range from small, simple devices (e.g. an electronic head sign) up to large and complex systems (e.g., a multi-function "smart bus" that communicates with multiple agencies).

As transportation agencies have installed more electronic equipment, the emphasis of ITS projects has shifted from ***internal*** operational improvements to ***external*** coordination with other agencies, which enables each agency to achieve their mission more effectively. This ***inter-agency cooperation*** is the major objective of the Regional ITS Architecture. ITS projects include comprehensive management strategies and apply technologies in an ***integrated*** manner. The purpose of ITS integration is to facilitate institutional integration through sharing information and reducing redundant spending between jurisdictions. ITS integration includes both ***technical*** and ***inter-agency*** aspects of system development.

One example of institutional integration is sharing information between transit, arterial and freeway agencies to improve the speed and schedule reliability of buses on the transportation network. Another type of integration is when agencies use technologies that are compatible with each other, such as traffic signals and emergency vehicle preemption to enable emergency vehicles to respond faster. ITS projects are those that contribute to the provision of one or more ITS user services as described above.

The Regional ITS Architecture is a tool that is used in transportation planning, programming, and project implementation for ITS. It is a framework for institutional agreement and technical integration for ITS projects and is the place to start when defining the basic scope of a project. The FTA grantee is not likely to be the lead agency for creating and updating the Regional ITS Architecture. The lead agency may be the MPO or the state department of transportation. The grantee needs to be an active participant in the Regional ITS Architecture development and maintenance if the grantee is implementing ITS projects. For reasons discussed above, the grantee's ITS projects must be included in the locally approved Regional ITS Architecture.

REFERENCE

National ITS Architecture
PL 105-178 Section 5206(e)
Federal Register: January 2, 2001 (Volume 66, No. 5, pp. 1455-1459)

SOURCES OF INFORMATION

The grantee should be able to provide a description of the scope of the ITS project, an operational concept that identifies the roles and responsibilities of the participating agencies, the functional requirement of the ITS project, and the interface agreements and information exchanges between the ITS project and other planned and existing systems and subsystems. The reviewer may examine work statements in RFPs, project design documents and system documentation delivered by a contractor or the Regional ITS Architecture.

The grantee should be able to provide documentation, typically excerpts from the Regional ITS Architecture, showing that the major architecture elements for ITS projects are included in the locally approved Regional ITS Architecture.

DETERMINATION

If ITS projects are not included in the Regional ITS Architecture, the grantee is deficient. If the final design of the ITS project is inconsistent with the regional architecture, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to establish a plan to have its ITS projects included in the Regional ITS Architecture. If the project is inconsistent with the Regional ITS Architecture, the grantee will be directed to work with the lead Regional ITS Architecture agency to incorporate any omitted elements in an update to the Regional ITS Architecture. The grantee will be directed to submit evidence of the implementation of the corrective action to the FTA regional office.

2. *Has the grantee established a process for the systems engineering analysis of ITS projects? Has it applied the process? If the project scope has changed, has the grantee validated that the systems engineering analysis has been updated to reflect all revisions?*

EXPLANATION

FTA grantees are required to follow a systems engineering analysis in implementing an ITS project. Systems engineering reduces the risk of schedule and cost overruns and increases the likelihood that the implementation will meet the user's needs. If there are changes to the scope of the project, such changes must be reflected in the systems engineering analysis for it to be effective.

The system engineering analysis process is intended to address the risk associated with an ITS project because ITS projects often are not fully successful. This is especially true of ITS projects that include new technology, new software, new communications, or joint efforts with external partners.

FTA's ITS Architecture Policy prescribes a seven step systems engineering analysis process that includes the following:

1. Identification of portions of the Regional ITS Architecture being implemented. Show where the elements of the ITS project is in the Regional ITS Architecture.
2. Identification of participating agency's roles and responsibilities. Define for each participating agency.
3. Requirements definition. What functions will the ITS system need to perform?
4. Analysis of alternative system configurations and technology options to meet the requirements. What other options were examined?
5. Financing and procurement analysis. How will the ITS project be funded, procured and maintained?
6. Identification of ITS standards and testing. Identify applicable ITS standards and testing procedures.
7. Procedures and resources necessary for operations and management. How will the ITS project be operated and maintained?

In addressing the risks associated with ITS projects, it is prudent for the implementing agency or agencies to determine whether the ITS project is low risk or high - risk in nature. With low risk projects, a simplified system engineering process can be utilized or in some cases none at all. Risks for an ITS project can be determined by assessing the following eight characteristics:

1. Jurisdiction. Does the ITS project include a single or multiple jurisdictions?
2. Software, commercial-off-the-shelf (COTS). Does the project require software development or can rely entirely on existing and proven software?
3. Hardware. Does the project require development of hardware or does proven hardware exist?
4. Interfaces. Does the project require new interfaces or will it rely entirely on existing interfaces?
5. Requirements. Will the project's requirements be well defined and fully documented prior to procuring the system?
6. Procedures. Will the project's operating procedures be well documented prior to procuring the system?
7. Technologies. Does the project only use proven and stable technologies?
8. Staff experience. Does the staff implementing the project have prior experience with ITS procurement, implementation and operations?

REFERENCE

PL 105-178 Section 5206(e)
Federal Register: January 2, 2001 (Volume 66, No. 5, pp. 1455-1459)

SOURCES OF INFORMATION

The grantee may be asked to demonstrate that all seven items in the system engineering analysis were fully addressed.

DETERMINATION

If the grantee has not established a process for the systems engineering analysis of ITS projects and it has not applied the process to its ITS projects, it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to develop and submit to FTA a process for the systems engineering analysis of ITS projects.

24. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

BASIC REQUIREMENT

Grantees must have the legal, financial and technical capacity to carry out the proposed program of projects and meet the additional reporting requirements for ARRA funded grant activities.

Because ARRA grants are 100 percent Federally funded, heightened oversight has been implemented. Each of the following questions will be addressed during the course of the related review area. If an ARRA grant has not been executed, assistance may be provided as needed to clarify requirements.

AREAS TO BE EXAMINED

1. ***Technical***
2. ***Reporting***
3. ***Financial***
4. ***Satisfactory Continuing Control***
5. ***Procurement***
6. ***DBE***
7. ***Title VI***
8. ***Drug and Alcohol Program***
9. ***EEO***

REFERENCES

1. FTA ARRA Website
2. FTA Master Agreement

USEFUL WEBLINKS

FTA ARRA Webpage

Recovery.gov

QUESTIONS FOR THE REVIEW

1. *For ARRA funded projects, has the grantee implemented a similar project in the past three years? If no, how does the grantee plan to maintain or increase its technical capacity to ensure project implementation?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical questions 6 and 10 for detailed guidance.

DETERMINATION
The grantee is deficient if it does not have the resources or procedures to implement the ARRA project.

2. *Does the grantee have the necessary resources (this may include but not limited to staff, financial, technical, etc.) to maintain its current program and implement the additional ARRA projects? If no, how does the grantee plan to acquire the resources?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical questions 1 through 11.

DETERMINATION
The grantee is deficient if it does not have the resources to maintain its current FTA funded program and implement its ARRA funded program.

3. *Does the grantee have adequate resources and procedures to provide additional necessary oversight for subrecipient ARRA projects? If no, how does the grantee plan to acquire the resources?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical questions 10 and 11.

DETERMINATION
The grantee is deficient if it does not have the resources to provide adequate oversight of subrecipients' ARRA funded projects.

4. *Has the grantee amended or revised a non-ARRA grant to eliminate a project similar to one funded in an ARRA funded grant? If yes, please explain and document.*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
ARRA program funds cannot be used to replace funds already obligated in an existing FTA grant even if those funds have not been expended. ARRA funds can, however, be used to replace program funds identified in the STIP and TIP but not yet awarded in a grant. For more information on this requirement, see ARRA Pre-Award FAQs question 19.

DETERMINATION
If the grantee amended or revised a non-ARRA grant to eliminate a project similar to an ARRA funded, it is deficient.

5. *If an ARRA grant has been amended or the budget revised, did the amendment or budget revision comply with FTA's ARRA grant amendment or budget revision procedure?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Prior to September 30, 2010, FTA will allow amendments to ARRA grants under the following circumstances:

- To add previously unobligated ARRA resources to a grant;

- To allow up to 10 percent of ARRA funds to be used for operating assistance, and
- To allow the addition of a new scope that will be funded using cost savings from bids coming in under the previous estimate.

FTA will allow budget revisions to ARRA grants under the following circumstances:

- To implement any budget revision that does not require prior FTA approval per FTA C 5010.1D
- To add an activity line item that will be funded using cost savings from bids coming in under the previous estimates.

Note: Where a budget revision or amendment is being added as a result of cost savings, documentation should be included in the TEAM-Web grant file. Additionally, in order for adherence to these procedures to be accurately reflected in the grant records, budget revisions and grant amendment activities should be separate actions. Grantees should not combine them in a single amendment.

DETERMINATION

The grantee is deficient if it did not follow the rules for amending or revising an ARRA grant.

6. *Has the grantee submitted its ARRA reports (1512, 1201(c)) on time? Are the grantee's ARRA reports complete?*

RELATED REVIEW AREA

3. Technical

EXPLANATION AND SOURCES OF INFORMATION

In addition to progress reports in TEAM-Web, there are two reporting requirements for ARRA grants.

Section 1512 of the Recovery Act requires reports on the use of funding by a grantee no later than the 10th day after the end of each calendar quarter (beginning the quarter ending September 30, 2009). The first grantee report was due on October 10, 2009 for recipients that were awarded an ARRA grant by September 30, 2009. Recovery Act recipients submit one Section 1512 report for each grant that it has been awarded by the end of the reporting period. Any grantee that was awarded one or more ARRA grants by December 31, 2009 is required to submit a report(s) in January 2010. Once a grantee has disbursed 100 percent of its Recovery Act funds, completed work on the project, and plans to not amend the grant from which funds have been disbursed, it can note in the next Section 1512 report that it submits that this is the grantee's final Section 1512 report for the grant in question.

The grantee is required to report on its activities and the activities of its subrecipients and vendors. (However, grantees can choose to require their subrecipients to report certain information directly). The White House Office of Management and Budget (OMB) has provided a detailed list of what information should be reported. This information, as well as FTA's guidance to its grant recipients on how to report the required data elements, can be found at http://www.fta.dot.gov/index_9440_10542.html.

With the exception of jobs reporting, which is on a quarter-by-quarter basis, Section 1512 information should be reported on a cumulative basis from the enactment of the Recovery Act or from the use of pre-award authority after October 1, 2008.

Additional detailed information on this reporting requirement can be found at: http://www.recovery.gov/?q=node/579. The OMB supplement provides additional information and detailed instructions.

Section 1201 requires grantees to report, in each periodic report, **cumulative** data on funds committed, funds expended and contracts that have been put out to bid, are awarded or underway, or have been completed as well as jobs created and/or retained and state sources of funding since the enactment date of ARRA (February 17, 2009). Any grantee with an ARRA grant obligated by July 31, 2009 was required to submit a section 1201(c) report by August 17, 2009. The next reporting deadline is February 17, 2010 for Recovery Act grants obligated by January 31, 2010. Subsequent reporting deadlines are February 17, 2011, and February 17, 2012.

DETERMINATION

The grantee is deficient if it has not submitted reports on time. The grantee is deficient if its submissions do not include all required information.

7. *Has the grantee submitted its progress reports for ARRA grants on time?*

RELATED REVIEW AREA

3. Technical

EXPLANATION AND SOURCES OF INFORMATION

Grantees are required to submit milestone progress reports for ARRA grants no later than 30 days after each quarter.

DETERMINATION
The grantee is deficient if progress reports for ARRA grants are late.

8. *Do the progress reports for ARRA grants contain the required information?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical question 3 for more detailed guidance.

DETERMINATION
The grantee is deficient If progress reports do not contain the required information.

9. *Has the grantee submitted its Federal Financial Reports (FFRs) for ARRA grants on time?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Grantees are required to submit FFRs for ARRA grants no later than 30 days after the end of each quarter.

DETERMINATION
The grantee is deficient if the FFRs for ARRA grants are late.

10. *Has the grantee correctly reported unliquidated obligations for ARRA grants?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical question 4 for more detailed guidance.

DETERMINATION
The grantee is deficient if it is not reporting unliquidated obligations for ARRA grants correctly.

11. *Does a review of ECHO documentation for ARRA grants verify adequate funds management procedures (i.e., adequate documentation, segregation of duties, no excess cash on hand)?*

RELATED REVIEW AREA
2. Financial

EXPLANATION AND SOURCES OF INFORMATION
The reviewer selects one ECHO transaction from each active ARRA grant. For those selections, the reviewer examines each underlying transaction, up to a maximum of five, to verify funds management procedures (i.e., adequate documentation, segregation of duties, and no excess cash on hand). Refer to Section 2 Financial question 8 for more detailed guidance.

DETERMINATION
If the grantee does not maintain documentation adequate to support the ECHO draws, demonstrate sufficient internal controls, or disburse Federal funds within three business days of receipt, it is deficient.

12. *Does the grantee or a subrecipient intend to charge or has it charged indirect costs to ARRA grants? If yes, was a cost allocation plan approved prior to incurring costs?*

RELATED REVIEW AREA
2. Financial

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 2 Financial question 10 for more detailed guidance.

DETERMINATION
The grantee is deficient if it or a subrecipient has charged indirect costs to an ARRA grant without an approved cost allocation plan.

13. *Did the grantee record ARRA funded property at the correct Federal share (100 percent) in its property records?*

RELATED REVIEW AREA
4. Satisfactory Continuing Control

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 4 Satisfactory Continuing Control question 4 for more detailed guidance.

DETERMINATION
The grantee is deficient if its records are missing some of the required information, or if some information is not current, for ARRA funded equipment.

14. *Do the ARRA funded procurements require an independent cost estimate (ICE)? If yes, how has the grantee developed the ICE and is it reasonable?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Grantees must develop an independent cost estimate before receiving bids or proposals. Refer to Section 6 Procurement question 16 for more detailed guidance.

DETERMINATION
The grantee is deficient if an independent cost estimate has not been developed and documented for ARRA funded procurements.

15. *Was a cost or price analysis done for ARRA funded procurements? How is the cost or price analysis documented?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Grantees must conduct a cost or price analysis in connection with every procurement action. Refer to Section 6 Procurement question 17 for more detailed guidance.

DETERMINATION
The grantee is deficient if a cost or price analysis was not performed for ARRA funded procurements.

16. *If an ARRA funded procurement was sole-sourced or a single bid was received, did the grantee perform a cost analysis and a sole source justification? How are these documented?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Grantees must perform a cost analysis and a justification for sole source procurements. Refer to Section 6 Procurement question 21 for more detailed guidance.

DETERMINATION
The grantee is deficient if a justification and cost analysis has not been performed for an ARRA funded sole source or single bid procurement

17. *Has the grantee or a subrecipient conducted any piggyback purchases with ARRA funds? If yes, is the appropriate documentation on file?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 6 Procurement question 22 for more detailed guidance.

DETERMINATION
The grantee is deficient if it or a subrecipient has conducted an inappropriate piggyback for ARRA funded procurements.

18. *Has the grantee considered ARRA funds in determining if it meets or exceeds the threshold for developing, submitting, or revising its DBE program? If yes, has it submitted a program for approval?*

RELATED REVIEW AREA
7. DBE

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 7 DBE question 2 for more detailed guidance.

DETERMINATION
The grantee is deficient if it now meets the threshold for submission of a DBE plan and has not submitted a program for approval.

19. *Has the grantee or a subrecipient applied the required Title VI Environmental Justice analysis for ARRA funded construction projects?*

RELATED REVIEW AREA
12. Title VI

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 12 Title VI question 8 for more detailed guidance.

DETERMINATION
The grantee is deficient if it or a subrecipient has not applied the required Title VI Environmental Justice analysis for ARRA funded construction projects.

20. *If the grantee or a subrecipient does not currently have a drug and alcohol testing program, has it considered ARRA projects in determining whether it may now need to develop one?*

RELATED REVIEW AREA
21. Drug and Alcohol Program

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 21 Drug and Alcohol Program question 2 for more detailed guidance.

DETERMINATION
The grantee is deficient if it or a subrecipient does not have a drug and alcohol program and one is required because of an ARRA project.

21. *Has the grantee considered ARRA funds in determining if it or a subrecipient meets or exceeds the threshold for developing, submitting, or revising its EEO program?*

RELATED REVIEW AREA
22. EEO

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 22 EEO questions 2 and 5 for more detailed guidance.

DETERMINATION
The grantee is deficient if it meets the threshold and has not submitted a program to FTA. The grantee is deficient if a subrecipient now meets the threshold for submission of an EEO program and has not submitted a program for approval to it.