



FEDERAL TRANSIT ADMINISTRATION

State Management Review Workshop Workbook FY 2014



U.S. Department of Transportation
Federal Transit Administration



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0. CONTRACTOR REVIEW PROCESS

FTA has used contractors to assist its regional staff in conducting state management reviews since the program's inception in 1994. Contractors work closely with the state management review coordinators in each regional or metropolitan office to plan and conduct the review. FTA staff has the ultimate responsibility for the state management review. Monitoring, follow-up, and close-out of open findings are the responsibility of regional and metropolitan office staff.

REVIEW SCOPE

It is important for the reviewer to remain within the scope of the review. As the state management review does not cover all requirements, FTA has carefully determined those requirements that are addressed. FTA may have purposefully decided not to address an issue, as the policy may change or determining compliance requires particular expertise. Before addressing a deficiency not addressed by the state management review, the reviewer, through the contractor's project manager and Contracting Officer's Representative (COR), should contact the program office in headquarters.

SCHEDULING AND COORDINATING STATE MANAGEMENT REVIEWS

FTA reviews states triennially. The regional staff determines each state's review cycle. The COR assigns reviews to the contractors. The contractor develops a preliminary schedule of key milestones, such as desk review and site visit dates for each state, which is coordinated with the other oversight reviews and/or audits to be conducted during the fiscal year. Once a preliminary review schedule is developed, the contractor enters information in the process stages section of OTrak for that state.

PREPARATION FOR REVIEW

The Review Preparation section of the State Management Review (SMR) package is to be used to gather information prior to the site visit portion of the review. Prior to the desk review at the regional office, reviewers should examine all remotely available sources (TEAM-Web, OTrak, NTD, FTA website, state/subrecipient website, etc.) and begin completion of this section. The completed tables will appear either in the background section of the review package or in another review area, such as Program Management or Grant Administration. At the regional office desk review, the completed portions of this section are reviewed with FTA staff (to include FTA Headquarters Civil Rights staff as appropriate) and additional data completed based on discussions held and documents reviewed at the regional office.

Any information remaining to be collected after the regional office desk review is to be forwarded to the state for completion as part of the review package.

At the conclusion of the desk review, an exit briefing is held with regional office staff to determine, based on information reviewed to date, areas of additional preparation, emphasis, and follow up for the site visit portion of the review.

Program Profile

The state completes Exhibit 0.1, Program Profile. The state's profile provides the information the reviewer uses to develop the state's description and to guide the review.

The reviewer will also obtain organizational charts that document:

- Staffing of public transit positions
- Oversight positions
- Other positions in the state that support the state programs
- Financial management positions
- Procurement positions
- Civil rights positions

The answers to the questions and the documents provide the basis for a detailed discussion of resources.

Prior Reviews

The State Management Review (SMR) is a comprehensive review. FTA also conducts program and project-specific reviews. Prior to conducting the desk review, the reviewer will search OTrak to determine if a program-specific review has occurred or is scheduled. The reviewer should ascertain from the regional office the status of any special purpose reviews. The reviewer will obtain reports from the regional office, headquarters, or OTrak and review findings and corrective actions from completed program-specific reviews for input into the review process.

If a program-specific review was completed in the year preceding the SMR site visit, (i.e., the final report was issued within 365 days preceding the SMR site visit start), the reviewer will not ask duplicative questions. Instead, the SMR will be used to obtain the status of any open deficiencies and verify implementation of remedies and/or resolution of deficiencies that were addressed or closed out. If a program-specific review has occurred prior to 365 days of the SMR site visit, all questions in the related SMR area will be asked, and the SMR will follow up

on the implementation of corrective actions. The reports from program-specific reviews should be carefully reviewed, as they provide meaningful input to the SMR.

Prior to the desk review, the reviewer will complete Exhibit 0.2 to the extent possible by reviewing available information in TEAM-Web, OTrak, and FTA's website. The exhibit should be completed for any reviews completed (final report issued), for which site visits were conducted within the past three years and for any scheduled reviews. Draft or final reports (dependent on review stage) for many of the program-specific reviews are uploaded to OTrak and final reports for selected Civil Rights reviews are located on FTA's Civil Rights section of the FTA website under each program type (i.e. EEO, DBE).

When FTA has scheduled other oversight activities with a state, the reviewers should coordinate the SMR site visit schedule through the regional office.

Reports and Submissions

Before and during the desk review, the reviewer will determine whether the state is submitting all required reports and submittals and whether they are submitted on time. Exhibit 0.3, Reports and Submittals, documents the analysis. The reviewer will also analyze a sample of progress reports and Federal Financial Reports (FFR's) for grants to ensure that the state is reporting the required information at the required intervals. The review package will document whether each required topic is addressed. This exhibit will appear in Grant Administration in the review package. The state will respond to reviewer comments.

Complaints/Protests/Other

Complaints, protests, litigation and/or legislation alone do not indicate that the state is deficient in any area. However, the nature, pattern and trends of these occurrences can be an indication of areas that warrant follow up or additional review in the SMR. Much of the information in this area will be completed during the desk review at the regional office, including discussions with the regional counsel and civil rights officer, and during the review process with the state. In Exhibit 0.4, Complaints/Lawsuits/Other, the reviewer will indicate the nature of complaints, protests, litigation and/or legislative occurrences.

State Management Plans

The reviewer is responsible for reviewing, analyzing and examining all grantee state management plans to ensure that they address the required topics and address current procedures. As shown in Exhibit 0.6, State Management Plans, which will appear in Program Management, the reviewer will document the review of the state management plans in the review package and verify through the review that procedures are being followed.

Program Expenditures

Before the desk review, the reviewer completes a series of tables that document state administration, intercity bus and RTAP expenditures. The tables are included in the review package.

Exhibit 0.6, State Administration Expenditures, documents whether the state is using the allowed percentage of apportioned funds on state administration expenditures. The purpose of the exhibit is to help FTA determine whether the state is spending adequate resources to administer the programs. The exhibit appears in Program Management in the review package.

Exhibit 0.7, Intercity Bus Expenditures, documents whether the state is expending the required 15 percent of the Section 5311 apportionment on intercity bus projects. The exhibit appears in Program Management in the review package.

Grant Analysis

Before the desk review, the reviewer will forward the completed Exhibit 0.9, Grant Analysis, to the regional office grants management staff to facilitate an interview on grants status during the desk review. This data from TEAM-web forms the basis for the reviewer's analysis of grants. This will allow the reviewer to ascertain:

- The number of open grants by program
- Whether the state is spending from the oldest grant with available funds first
- Which grants are inactive based on no draw downs in 18 months or that have been open for five years or more
- Comparison of grant balances in TEAM-Web to those reported in FFRs to see if the state is completing FFRs correctly
- Consistency of data in FFR to narratives in progress reports
- RTAP balances

During the desk review, the reviewer discusses potential issues with the regional office and follows up on issues with the state during the site visit.

The exhibit appears in Grant Administration in the review package.

When review preparation and the exhibits are completed, the reviewer emails the review package to regional FTA staff.

CONDUCTING STATE MANAGEMENT REVIEWS

The state management review involves the following major steps:

- Conduct the desk review
- Schedule the site visit
- Enter OTrak process stages
- Prepare the review package
- Contact the state
- Review state input and prepare draft report
- Finalize site visit schedule
- Send the review package
- Conduct the site visit
- Distribute the draft report to program offices
- Prepare the final report
- Input findings and upload report to OTrak
- Finalize the review package and files
- Provide technical assistance
- Close out the review

Conduct the desk review. During the desk review, gather documents on file in the regional office and discuss specific issues with regional office staff. Information available in the regional office varies with the size and complexity of the state, but in general, access:

- 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 state management review files
- Other oversight reports and findings (Financial Management Oversight reviews, Procurement System Reviews, etc.)

Meet with regional staff to discuss specific issues included in the state management review package. The regional staff can identify particular concerns that should be highlighted during the review.

Enter notes into the review package.

Schedule the site visit. During the desk review, a contractor or regional staff member contacts the state to identify a convenient date for the site visit. Typically, the site visit takes four or five days, depending on how many FTA programs are addressed. Schedule the site visit at a time when the appropriate state officials will be available to meet with the review team and discuss the issues that are identified.

Enter OTrak process stages. Using the “Site Visit Planned” and “Site Visit Start/Entrance Conference” process stages in OTrak, enter the planned date for the entrance conference once the date has been confirmed with the region and the state. Update these dates if changes occur.

Prepare the review package. Prepare the review package for the region to email to the state giving detailed information about the site visit. The package includes a cover letter, instructions, preliminary site visit schedule, state 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.

Have the Regional Administrator or the Director of Operations and Program Management sign the cover letter. Address the letter to the chief executive officer with a carbon copy to the state’s state management review point of contact. Send the package to the regional office at least eight to ten weeks prior to the site visit to allow time for the regional office to send the package and the state to gather the requested documentation, prepare written answers to the questions in the review package, and send the materials to the review team.

The list of documents assigns each item to one of three categories: information examined during the desk review, information to be sent to the review team leader in advance of the site visit, and documents that the state should have available on site. The documents requested in advance are due four to six weeks prior to the site visit. States are encouraged to submit the requested information electronically (e.g., on CD, flash drive or file transfer protocol (FTP) site whenever possible. States 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 state. Telephone the state 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 state’s office. The reviewer can confirm that the review package arrived and ask the state if

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

Review state input and prepare draft report. Examine the materials and written answers to the questions that the state submits. After completing this step, decide if any items require follow-up with the state before the site visit. This may be necessary if the state 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 state is reviewed, prepare as much of the draft report as possible.

Finalize site visit schedule. After reviewing the state's input, finalize the site visit schedule and a list of state/contractor facilities and subrecipients to be visited. Do not visit a Section 5316 or 5317 subrecipient unless it also receives other FTA funds. Close any review areas that do not require follow-up during the site visit. Indicate to the state which ECHO draws, procurements, equipment and facilities have been selected for examination during the site visit.

Send the review package. E-mail the review package with the final schedule and follow-up items to the state at least seven days before the site visit date.

Conduct the site visit. It is important that the site visit be well planned and executed. Organize all files, notes, and other papers neatly. Conduct yourself with professionalism and courtesy at all times. Create a positive, not adversarial atmosphere. While FTA wants the discussion to be friendly, stick to the agenda, as time is limited. Observe the following procedures:

- 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 Preliminary Findings of Deficiency, draft and final reports. Regional office staff participate in the entrance conference either in person or via video/telephone conference. Record the names and titles of all participants at the entrance conference. While senior staff is assembled at the entrance conference, go over the schedule for the site visit and confirm the expected day and time for the exit conference.

- Review each area. Following the entrance conference, discuss the outstanding questions in each review area. For reviews conducted by a team, have only one team member ask questions in a particular area. At the end of the questioning, the lead reviewer may invite further questions from other members of the team, but assign one person with primary responsibility for each area. When the review of an area is complete, state that it is time to move on to the next area. It is important to stay focused on the area under review. Do not ask questions from another area. This practice can confuse the state and makes the reviewers appear disorganized. If necessary, note the question and raise it at a later time.
- Visit facilities and inspect records. 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 state has equipment control procedures.
- Visit subrecipients, contractors and lessees and inspect records. The purpose of visits to subrecipients, contractors and lessees is to confirm that the state has effective and comprehensive oversight procedures. Obtain an overview of the operations. Interview subrecipients, contractors and lessees on policies and procedures regarding FTA requirements. Key topics to discuss are funding sources, coordination, marketing (5311), incidental use, maintenance, ADA, Title VI, DBE, EEO, procurement, training needs, charter bus, school bus, drug and alcohol program, public comment on fare and service changes (5307), half fare (5307), and safety and security (5311 and 5307). For subrecipients, review back-up documentation for an invoice to the state. Verify that FTA funded 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 state has equipment control procedures, review procurement files, and review the back-up documentation for an invoice to the state.
- Resolve open issues, if possible. At the end of the review, but prior to the exit conference, ask the state to get answers to any remaining questions not yet resolved. States may close deficiencies during the site visit. If a deficiency is closed before the exit conference, document the deficiency and corrective action in the review package.

- Prepare the Preliminary Findings of Deficiency. At the conclusion of the site visit, in consultation with the regional office, develop and issue a "Preliminary Findings of Deficiency" report. For consistency among all reviews, use the language for corrective actions that appears in this guide. Any deviations from this language are to be discussed with the regional office.
- Working Version of Draft Report. The Region may, at their discretion, request a working version of the draft report. If the Region does not intend to ask for a working version of the draft report, this must be disclosed to the reviewer as soon as possible before entering the review. The working version of the draft report will NOT be provided to the grantee and does not need to be polished for review outside of the FTA. Advisory comments are not to be included in this document or subsequent versions of the report. Receive input from regional staff. Confer separately with regional staff about the deficiencies in each area. Usually, the regional staff member on site will review the Preliminary Findings of Deficiency. If no regional staff members are present at the site visit, email the Preliminary Findings of Deficiency to the region (after performing internal quality control discussed on page 7) for approval before the exit conference.
- Conduct exit conference. The site visit concludes with an exit conference. Should the reviewer or region request that the exit conference be held at a different time and place than noted during the entrance conference, the grantee shall be given as much notice as possible. Regional office staff participates in the exit conference either in person or by video/telephone conference. Distribute the Preliminary Findings of Deficiency to the grantee. Discuss each preliminary deficiency, recommended corrective action(s) and the timeframe for implementing the corrective action(s). Discuss the timeframe for issuance of the draft report to the regional office (five calendar days from the exit conference) and issuance of the final report (30 calendar days from the exit conference). Ask the state to limit comments to corrections of misstatement of fact, obstacles to implementation of proposed corrective action(s) and a confirmation of or a request for an extension of the deadlines for the corrective action(s). However, state that corrective actions completed within the five days and accepted by the regional office will appear as closed in the draft report.

Finalize the draft report and prepare the transmittal letter. The transmittal letter will be signed by the

Regional Administrator. For consistency among all reviews, use the language for corrective actions that appears in this guide. Address transmittal letter to state point of contact. Unless otherwise determined by the regional office, set a 90-day timeframe from the date of the final report for implementing corrective actions. Use the actual date in the report. If the calculated date falls on a weekend or holiday, use the next available business day as the due date.

Distribute the draft report. As soon as possible after issuance of the draft report to the grantee, distribute it to the SMR Program Manager, upload it to OTrak and ensure that all process stages are accurate and complete. Distribution should be made to the designated program office contacts in headquarters for deficiencies in the following areas:

- ADA
- Buy America
- Charter Bus
- DBE
- Drug and Alcohol Program
- EEO
- Financial
- Lobbying
- Procurement
- Title VI

Refer to *Exhibit 0.10. FTA Headquarters Draft Report Distribution List*, at the end of this section for the program office contact for each review area.

Prepare the final report. The state 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 state submits documentation to close a deficiency; review the documentation and recommend a course of action to the regional office. Deficiencies closed within the seven days appear in the final report as closed. Discuss any requests for additional time for a corrective action with the regional office. Finalize the report within 21 calendar days of the site visit. Prepare and transmit the final report file and cover letter to the regions and the SMR Program Manager in MS Word format. Address the cover letter, which will be signed by the regional administrator, to the chief executive officer, as directed by the Administrator in the policy letter dated February 28, 2012. The regional office will issue the final report to the state within 30 days after the site visit.

Enter findings in and upload report to OTrak. Within 30 days of the issuance of the final report by the regional office, obtain an electronic copy of the final

report and signed transmittal letter that were issued (the regional office may have made changes), enter the findings from the report into OTrak, upload the final report and letter to OTrak, and verify that all process stages are accurate and complete.

Finalize the review package and files. Once the final report is issued, finalize the review package and submit the file electronically to the regional office. Prepare file folders with electronic or hard copies of supporting documents and mail the files to the regional office. Follow the file structure described in the following section. Submit the files no later than 30 days following the submission of the final report. Upload the final review package to OTrak.

Provide technical assistance. Upon request by the regional office, provide technical assistance to the states to close deficiencies for up to 90 days after the site visit. The state management 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 corrective actions and closing out deficiencies. After the 90-day period for technical assistance noted above, the regional staff will provide technical assistance to the state, if needed.

FINDINGS

FTA makes a finding of "not deficient," "deficient" or "not applicable" in each area reviewed. The contractor's guide presents the deficiency codes to be used for deficiencies. Advisory comments can be included in the transmittal letter for the final report.

Sometimes a review will find that the state did not comply with FTA requirements early in the review period but now does. In those instances, the state is not deficient if the review indicates that the state's current procedures follow FTA requirements.

REVIEW PACKAGE, SOURCES OF DOCUMENTS, AND FILES

The state management 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 date 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 and note that the documents can be found in the regional office and in the state's files. A complete package should substantiate the fact that sufficient, competent documentation was obtained through inspection,











observation, inquiries, and testing to afford a reasonable basis regarding any finding, including findings of "not deficient." Although the state enters 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.

Organize supporting documents that are provided by the state in advance of the site visit or made available on site into an electronic or hardcopy folder for each area. Properly label each file. The actual file contents will vary, depending on the size and complexity of the state. Use professional judgment in determining what documents to retain on file and what documents to cross-reference in the package as accessible in FTA's or the state's files.

For electronic files, 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 example below shows the naming convention that should be used when organizing electronic files.

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.

Folder/File Naming Convention for Electronic Files

Review Area/ Document	Folder/File Name
1. Program Management	 1_Program Management
a. State management plans	 1a_5310 SMP.doc
	 1a_5311 SMP.doc
	 1a_5316 SMP.doc
	 1_5317 SMP.doc
b. Subrecipient agreement for each program	 1b_5310 subrecipient agreement.doc
	 1b_5311 subrecipient agreement.doc
	 1b_5316 subrecipient agreement.doc
	 1b_5317 subrecipient agreement.doc
c. Contract with management contractor/lease agreement	 1c_Lease agreement.doc

PROGRAM AREA REVIEWS

FTA conducts program area and project level reviews. Program area reviews include:

- Financial Management Oversight
- Cost Allocation Plan
- Procurement System
- Disadvantaged Business Enterprise
- Title VI
- Americans with Disabilities Act
 - Key Station Assessments
 - Fixed Route Operations
 - Complementary Paratransit
- Equal Employment Opportunity
- Safety and Security
 - Drug and Alcohol Program
 - State Safety Oversight
 - Security Readiness Assessment

Project level reviews include Project Management Oversight and Financial Capacity Assessments.

Even if a program area or project level review has been conducted or is scheduled, the state management review will still ask all applicable questions in those areas. Prior to conducting the desk review, search OTrak to determine if a program-specific review has occurred or has been scheduled. Analyze findings and corrective actions from completed program reviews for input into the review process. Obtain reports from the regional office, headquarters or OTrak. For areas that have been addressed by a program-specific review within the past two years, include the following language in the report: "FTA conducted a [review] of [state]. Deficiencies identified during that review are being addressed through the [review] program. During this review of [state], deficiencies/no deficiencies were found with the FTA requirements for [review area]."

QUALITY CONTROL

Quality control checks are built in every step of the state management review process. This contractors' guide establishes common steps to be followed by every reviewer in conducting state management reviews in all FTA regions. This guide also presents a common interpretation of FTA requirements and corrective actions to be implemented when a state is deficient. Reviewers should contact their respective project managers with questions and/or clarification; or when faced with an unusual situation. The project manager may decide to seek additional guidance from the COR/program offices so that findings are consistent with FTA's interpretation of the requirement. Do not contact the COR/program offices directly about the information presented in this guidance document.

FTA provides training and information to the state management review contractor teams. It is the responsibility of each contractor to ensure that all team members are adequately trained in FTA requirements and the contents of this contractors' guide. An experienced member of the contractor's team, other than the one who is responsible for conducting the site visit, is expected to review the draft report. The final report is reviewed and edited by an experienced member of the contractor's team before it is forwarded to the regional staff.

Reviewers work closely with the regional staff during every step of a state management review, thus providing the regional offices opportunities to assure quality. After the desk review, the regional office reviews the site visit package before it is forwarded to the state by the region. The regional office reviews and comments on the draft and final reports before transmittal to the state.

PERFORMANCE REPORTING

The Monthly State Management Review Performance Measures Report prepared for FTA tracks the timely issuance of the final reports to the states and the number of findings closed. The timely issuance of the final report is tracked based on the date that the final report was sent to the state by the region. In order to accurately track this date, the region copies the reviewer when it issues the final report to the state.

CONTRACTOR GUIDE UPDATES

The contractors' guide is updated annually to coincide with the beginning of the state management review cycle at the start of the Federal fiscal year. The information in the contractors' guide is kept up-to-date during the fiscal year by program advisories as needed. If changes to an area are extensive, the guidance for that area may be revised completely and shared with the recipients of the contractors' guide.

PROGRAM TECHNICAL ADVISORIES

Periodically, FTA issues program advisories to clarify and/or correct guidance and procedures. Program advisories include an expiration date for the end of the program year and any permanent changes necessitated by an advisory are incorporated into the contractors' guide update for the following fiscal year.

FRAUD DETECTION AND REPORTING

The Office of Inspector General (OIG) of the United States Department of Transportation works 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 state management review, he or she should contact the regional State Management Review Coordinator as soon as possible. Be prepared to provide available information. It will be the responsibility of the regional coordinator to pursue the matter further.

RECORDS SELECTION PROCEDURES

Although the state management review is not an audit, FTA would like to ensure a consistent approach in sampling records. Although a larger sample may be necessary due to particular circumstances at an individual state, the following selection procedures should be followed in the areas of Financial Management, Maintenance, Procurement, and Drug and Alcohol Program.

Financial

Non-ARRA Grants. Use the following systematic approach when selecting the ECHO sample. Using this approach, the reviewer will prepare a list of disbursement transactions to examine during the site visit. The terms used in this discussion are defined as follows:

- ECHO drawdown is the complete ECHO drawdown prepared by the state.
- ECHO transaction is the line item on the disbursements and refunds report from TEAM-Web. An ECHO drawdown may include one or several ECHO transactions.
- Underlying transaction is the state's supporting documentation, such as invoices, checks and payroll data. An ECHO transaction may include one or several underlying transactions.

FTA's goal is to review a judgmentally selected sample of a minimum of nine ECHO transactions. To accomplish this, perform the following steps:

1. Download TEAM-Web Data – Prior to the site visit, prepare a list of ECHO transactions for the period from the date of the last site visit to the date of the current site visit using TEAM-Web data. These data can be downloaded using the disbursements and refunds report under the Dynamic Query>>Data Query menu.
2. Select ECHO Transactions – Select at least three ECHO transactions from each year of the review period. Use the following characteristics as guide for selecting these transactions:
 - Select from different grant programs (i.e., 5307, 5309, 5310, 5311, 5316, 5317)
 - Select from different financial purpose codes. Common financial purpose codes are:

- 00 - Capital
- 01 - Research & Training
- 02 - Planning
- 03 - Elderly and Disabled
- 04 - Operating Assistance
- 05 - Project Administration
- 06 - State Administration
- 07 - RTAP
- 08 - ADA Paratransit
- 09 - Multiple Types

- Select large capital draws
- Select preventive maintenance
- Select flat dollar amounts such as \$80,000
- Select any unusual credits that appear to be systemic

3. Prior to the site visit, request that the state have available the entire ECHO drawdown that contains the ECHO transactions you selected, along with supporting documentation.
4. During the site visit, analyze the selected ECHO transactions to identify the underlying transactions. Underlying transactions consist of checks, invoices, payroll data, etc.
5. The following attributes should be tested:
 - a. Ensure that an individual other than the one preparing the drawdown approves the drawdown.
 - b. Ensure that someone other than the approving official draws the funds.
 - c. Ensure that the individual approving ECHO drawdowns is either the registered ECHO approving official or a person to whom this person has delegated the authority in writing. The approving official appears on the print out of the ECHO screen.
 - d. Ensure that the sum of the underlying transactions equals the amount of the ECHO transactions selected in Step 2.
 - e. For each selected ECHO transaction, select a minimum of one underlying transaction to verify that supporting source documents, such as cancelled checks, paid bills, payrolls, time and attendance records, contracts, and subgrant award documents, are maintained to support the underlying transaction(s) selected.
 - f. Ensure that expenses tested are at the correct Federal share and are reasonable, allowable and allocable to the grant charged.

- g. Ensure that advanced funds drawn down were expended within three business days.

6. Complete *Exhibit 4.1 Examination of ECHO Drawdowns* in the review package.

ARRA Grants. Select one ECHO transaction from each ARRA grant. For those selections, review each underlying transaction, up to a maximum of five.

Subrecipient Invoices. During the subrecipient site visits, review the back-up information for one invoice to the state to ensure that the subrecipients have supporting documentation, such as invoices, checks and payroll data.

Procurement

Request that the state provide a list of FTA-assisted procurements carried out during the review period. In consultation with the regional office, select a sample for examination during the site visit. The sample should include, as applicable:

- Up to two small purchases. These include procurements that are greater than \$3,000 but less than the simplified acquisition threshold (currently \$100,000). These procurements must be awarded competitively and must include applicable FTA clauses (see Exhibit 6.2).
- At least one sole source procurement or other non-competitive procurement
- Up to six procurements that exceed the simplified acquisition threshold (currently set at \$100,000) in the following categories:
 - Construction
 - A&E
 - Non-A&E professional services
 - Supplies
 - Operations/management
 - Rolling stock
 - ARRA funded projects

As part of the review of procurement files, also examine the applicable requirements for the areas of Disadvantaged Business Enterprise, Buy America, debarment and suspension, and lobbying.

During subrecipient site visits, review a sample of FTA-assisted procurements.

Maintenance

For states that directly operate or contract for service, use the following procedures for selecting vehicle, facility and equipment maintenance records.

Selection of Vehicle Maintenance Records. Ask the state to prepare a list of Federally funded vehicles by

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

Select a minimum of three vehicles up to a total of one percent of the FTA funded fleet for each mode. Modes are classified according to NTD definitions as follows:

Non-Rail Modes	Rail Modes
Motorbus – DO	Light Rail
Motorbus – PT	Heavy Rail
Demand Response - DO	Commuter Rail*
Demand Response - PT	Cable Car
Trolleybus	Automated Guideway
Ferryboat	Monorail
Vanpool	Inclined Plane
Jitney	Aerial Tramway
Público	

* In lieu of selecting a sample of PM records for commuter rail locomotives and cars, make a determination based on compliance letters issued to the state by Federal Railroad Administration (FRA). If the state is unable to provide a compliance letter from FRA, sample the commuter rail fleet.

For states that use a combination of directly operated (DO) and purchased transportation (PT), treat the DO and PT portions as separate modes. For larger states that use multiple contractors, treat each contractor visited as a mode. Consult with the regional office in selecting the garages, contractors and subrecipients to visit. To the extent practical, distribute the sample of vehicles selected by age and subfleet in each mode.

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

Mode	Fleet Size	Sample Size
Motorbus-DO	400	4 vehicles
Motorbus-PT	250	3 vehicles
Paratransit-PT	120	3 vehicles
Light Rail	55	3 vehicles

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

Check preventive maintenance inspection intervals by reviewing management reports used by the state for monitoring preventive maintenance inspections and by reviewing a selected sample of FTA funded vehicles for each mode operated by the state and/or its contractor(s). Contractors may rely only on management reports if, after exploring the source of the data, the contractor is assured that the data are accurate.

For each vehicle chosen, examine the preventive maintenance history for the preceding 12 months. Note the date when each inspection was accomplished and record the vehicle mileage (or hours) at the time of each inspection. Inspections that are no later than 10 percent of mileage or time 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 state uses a different definition of an "on time" inspection, use the state's definition if it is deemed appropriate.

Preventive maintenance inspections for a mode are on time when at least 80 percent of the inspections for the sample are conducted on time.

Selection of Facility and Equipment Maintenance Records. Request a copy of the latest inventory of FTA funded facilities and equipment from the state. If the state operates a commuter railroad, ask the state to identify those FTA funded items that are not regulated by the FRA. Select a sample of three facility and three

equipment items to examine during the site visit. Limit the sample to critical items, such as fire suppression systems, hoists, lifts, transformers, and catenary, and ADA accessibility features, such as elevators, escalators, and lifts.

Subrecipient Maintenance Records. During subrecipient site visits, review vehicle and facility maintenance records. For vehicles, ensure that the subrecipient meets state requirements. For facilities, ensure that the subrecipient is complying with its FTA-required facility maintenance plan.

Drug and Alcohol Program

Select up to four policies for the agency consisting of at least one (as applicable) for

- state
- subrecipient
- operations contractor
- maintenance contractor
- lessee

EXHIBIT 0.1 PROGRAM PROFILE

Please provide the following background information:

Section 5305	
How many Section 5305 subrecipients does the state have?	
Section 5311	
How many Section 5311 subrecipients does the state have?	
Please provide the number of: <ul style="list-style-type: none">▪ Public entities (excluding Indian tribes)▪ Private non-profit entities▪ Indian tribes	
What types of service do they provide (fixed route, route deviation, demand response)?	
Section 5310	
Is the state administering the 5310 funds in large urbanized areas?	
How many Section 5310 subrecipients does the state have?	
In the large urbanized area?	
On average, how many vehicles does the state fund each year?	
How many vehicles are in operation that have remaining Federal interest?	

Section 5316	
How many Section 5316 subrecipients does the state have?	
How many do not receive 5307, 5310 or 5311 funds?	
Do the small urban grantees apply for their Section 5316 funds directly with FTA?	
What types of service do they provide (fixed route, route deviation, demand response)?	
Section 5317	
How many Section 5317 subrecipients does the state have?	
How many do not receive 5307, 5310, or 5311 funds?	
Do the small urban grantees apply for their Section 5317 funds directly with FTA?	
What types of service do they provide (fixed route, route deviation, demand response)?	
Section 5309	
Does the state have Section 5309 subrecipients? If yes, how many?	
Are any of these subrecipients direct FTA grantees for Section 5307 assistance? If yes, how many?	
Section 5339	
Does the state have Section 5339 subrecipients? If yes, how many?	

Are any of these subrecipients direct FTA grantees for Section 5307 assistance? If yes, how many?	
Facilities	
List the subrecipients and location of any facilities constructed or renovated with FTA funds passed through the state. Note the source of FTA funding (5309, 5310, 5311, 5339, etc.)	
Grant Activity	
Please provide a brief description of any noteworthy projects completed within the past three years.	
Please provide a brief description of noteworthy projects that are on-going.	
Please provide a brief description of noteworthy projects that are planned for the next 3 to 5 years.	
Provide a brief description of Section 5324 projects <u>completed</u> or <u>underway</u> .	

CHIEF EXECUTIVE OFFICER CONTACT INFORMATION

The final report of the final state management review will be provided to the agency's chief executive officer (or equivalent). Provide contact information for that individual.

Name:

Title:

Mailing Address:

Email Address:

EXHIBIT 0.2 PROGRAM SPECIFIC REVIEWS

Please comment on the status of open deficiencies and progress on meeting review deadlines.

Type of Review	Site Visit Dates	Draft Report Date	Final Report Date	Deficiency	Close/Due Date	Comment
Financial Capacity Assessments (FCA)						
Financial Condition and Capability Assessments (FCCA)						
Financial Management Oversight (FMO) Full Scope Review						
FMO Follow-Up Review						
FMO Cost Allocation Plan Review						
FMO Agreed Upon Procedures or Special Assignment Review						
Real Estate Review						

EXHIBIT 0.2 PROGRAM SPECIFIC REVIEWS

Please comment on the status of open deficiencies and progress on meeting review deadlines.

Type of Review	Site Visit Dates	Draft Report Date	Final Report Date	Deficiency	Close/Due Date	Comment
Procurement System Review (PSR)						
PSR Follow-Up Review						
Buy America Audit						
Dis-advantaged Business Enterprise Review						
Uniform Certification Program Review						
Title VI Review						
Drug and Alcohol Program Audit						
Equal Employment Opportunity Review						

EXHIBIT 0.3 REPORTS AND SUBMITTALS*Completed by the Reviewer*

Report/Program Submission	Due Date	Submitted Date	Reviewer Comments	State Response
Progress Reports/IPRs				
FFRs				
Intercity Bus Certifications				
EEO Program Update				
DBE Program				
DBE Goals				
DBE Semi-Annual Reports				
DBE ARRA Quarterly Reports				
Title VI Program				
Standard form LLL				
Charter reports				

EXHIBIT 0.4 COMPLAINTS/LAWSUITS/OTHER*Please complete this table.*

Review Area	Identified by FTA	Identified by State	State's System for Processing	State's System for Becoming Aware of/ Monitoring Subrecipient Issues in this Area
Legal – Any litigation or legislation that would impact the provision of mass transit service				
Selection and Eligibility – Complaints regarding distribution of funds				
Intercity Bus - Complaints				
Subrecipient Single Audit Findings				
GAO/OIG Audits				
Asset Management– Real property incidental use approvals				
Asset Management– Prior concurrence for real property dispositions				
Procurement – Bid protests/ complaints/ litigation				
Buy America - Waivers				
Disadvantaged Business Enterprise – Complaints or bid protests				

EXHIBIT 0.4 COMPLAINTS/LAWSUITS/OTHER

Please complete this table.

Review Area	Identified by FTA	Identified by State	State's System for Processing	State's System for Becoming Aware of/ Monitoring Subrecipient Issues in this Area
Charter Bus – Complaints/ litigation				
School Bus - Complaints/ litigation				
Title VI - Complaints/ litigation				
Equal Employment Opportunity - Complaints/ litigation				
ADA – Complaints/ litigation				

EXHIBIT 0.5**STATE MANAGEMENT PLAN**

If combined plan, please use Section 5311 checklist.

Questions	State Response				Reviewer Comments
[If combined plan, please use Section 5311 checklist]	Enter page number				
	5311	5310	5316	5317	
Program goals and objectives					
Roles and responsibilities					
Coordination					
Eligible subrecipients					
Eligible services and service areas					
Eligible assistance categories					
Local share and local funding requirements					
Project selection criteria and method of distributing funds					
Intercity bus transportation					
Annual POP development and approval process					
Funds transfers					
State administration, planning and technical assistance					
RTAP					
Private sector participation					
Civil rights					

Maintenance					
Charter rule					
Section 504 and ADA compliance					
Program measures					
NTD reporting					
State program management (e.g., procurement, financial management, property management, vehicle use and disposition, accounting systems, audit and close out, subrecipient and project oversight and reporting, productivity/cost-effectiveness/service standards)					
Other provisions (e.g., Section 5333(b), environmental protection, Buy America, pre-award and post-delivery audits, lobbying restrictions, prohibition of exclusive school transportation, drug and alcohol testing)					
Date of regional office SMP approval, if available					

EXHIBIT 0.6**STATE ADMINISTRATION EXPENDITURES***Completed by the reviewer*

Section 5311				
Year	Year X	Year Y	Year Z	ARRA
Apportionment				
Grant number				
State Administration (FPC 6)				
% of Apportionment				
Section 5310				
Year	Year X	Year Y	Year Z	
Apportionment				
Total				
Grant number				
State administration (FPC 6)				
% of Apportionment				
Section 5316				
Year	Year X	Year Y	Year Z	
Large urbanized area apportionment				
Governor's small urbanized area apportionment				
Governor's nonurbanized area apportionment				
Total apportionment				
Grant number				
State Administration (FPC 6)				
% of Apportionment				

EXHIBIT 0.6**STATE ADMINISTRATION EXPENDITURES***Completed by the reviewer*

Section 5317			
Year	Year X	Year Y	Year Z
Large urbanized area apportionment			
Governor's small urbanized area apportionment			
Governor's nonurbanized area apportionment			
Total apportionment			
Grant number			
State Administration (FPC 6)			
% of Apportionment			

EXHIBIT 0.7
Intercity Bus Expenditures
Completed by the reviewer

Year	Year X	Year Y	Year Z	ARRA
Apportionment				
Grant				
Intercity Bus				
% of Apportionment				

Completed by the reviewer

FY2014

EXHIBIT 0.9**FTA HEADQUARTERS DRAFT REPORT DISTRIBUTION LIST**

Area/Title	First Name	Last Name	Phone	E-mail
TSO/COR	Matthew	Butner	(202) 366-0242	Matthew.Butner@dot.gov
Financial <i>Please include Mr. Patella on Financial Capacity issues.</i>	Alison Michael	Pegram Patella	(202) 366-9249 (202) 366-0815	Alison.Pegram@dot.gov Michael.Patella@dot.gov
Charter Bus	Nancy Ellen	Zusman	(312) 353-2577	NancyEllen.Zusman@dot.gov
Drug & Alcohol Program /Drug-Free Workplace	Iyon	Rosario	(202) 366-2010	Iyon.Rosario@dot.gov
Procurement	James Steve Christopher Jim	Harper Pereira Hall Muir	(202) 366-1127 (202) 493-0542 (202) 366-5218 (202) 366-2507	James.Harper@dot.gov Stephen.Pereira@dot.gov Christopher.Hall@dot.gov Jim.Muir@dot.gov
Buy America	Jayme Richard	Blakesley Wong	(202) 366-0304 (202) 366-0675	Jayme.Blakesley@dot.gov Richard.Wong@dot.gov
Legal	Linda	Sorkin	(202) 366-0959	Linda.Sorkin@dot.gov
Lobbying (<i>only for disclosure issues</i>)	Elizabeth	Martineau	(202) 366-7936	Elizabeth.Martineau@dot.gov
Title VI	Monica	McCallum	(206) 220-7519	Monica.McCallum@dot.gov
ADA	John	Day	(202) 366-1671	John.Day@dot.gov
DBE	Monica	McCallum	(206) 220-7519	Monica.McCallum@dot.gov
EEO	Monica	McCallum	(206) 220-7519	Monica.McCallum@dot.gov
School Bus	Eldridge	Onco	(817) 978-0557	Eldridge.Onco@dot.gov

1. PROGRAM MANAGEMENT

BASIC REQUIREMENT

The state must dedicate sufficient resources to managing the FTA funded programs in accordance with the grant application, Master Agreement, and all applicable laws and regulations using sound management practices.

AREAS TO BE EXAMINED

1. *Resources and Procedures*

2. *Selection and Eligibility*

3. *Intercity Bus*

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 Master Agreement
4. Annual Certifications and Assurances
5. Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance
6. FTA Fiscal Year 2014 Apportionments, Allocations, and Program Information (Federal Register notice published 3/10/2014)
7. FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"(or subsequent versions)
8. FTA Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and

Application Instructions" (or subsequent versions)

9. FTA Circular 9050.1, "The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions"
10. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
11. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
12. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
13. FTA Circular 5010.1D, "Grant Management Requirements"

USEFUL WEBLINKS

State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs

National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools

Questions and Answers on the Section 5310, JARC and New Freedom Programs

Section 5311 Program Overview

Section 5310 Program Overview

Section 5316 Program Overview

Section 5317 Program Overview

Intercity Bus Overview

TCRP Report 79: Effective Approaches to Meeting Intercity Bus Transportation Needs

National RTAP

National Transit Resource Center

Project Action

National Center on Senior Transportation

Small Urban and Rural Transit Center

United We Ride

Local and Tribal Transportation Assistance
Program

QUESTIONS FOR THE REVIEW

Part A: Resources and Procedures

1. *Which agency (or agencies) has the governor designated for administering the FTA programs?*

What unit within the agency is responsible for administering the programs?

Who is the person with day-to-day management responsibility for each program?

What is the organizational structure and staffing of the unit?

What are the major functions of the unit?

What other agencies or units support the FTA programs?

What training is provided to staff to ensure capacity?

EXPLANATION

The State is the designated recipient for Sections 5305 and 5311, and, for small urbanized and rural areas, for Sections 5310 and 5339. Current 5305, 5311, and, for small urbanized and rural areas, 5310 designations remain in effect until changed by the governor by officially notifying the appropriate FTA regional administrator of re-designation.

In large urbanized areas, the designation of the recipient charged with administering the Section 5310 or 5339 programs shall be made by the governor in consultation with responsible local officials and publicly owned operators of public transportation, as required in sections 5303 and 5304. Section 5310 and 5339 funds for large urbanized areas cannot be awarded until this designation is on file with the FTA Regional office. A state agency can be the designated recipient for Section 5310 or 5339 funds for a large urbanized area.

The governor designates the state agency (or agencies) with the principal authority and responsibility for administering the FTA programs. The designation remains in effect until changed by the governor by official notice of re-designation transmitted to the FTA Regional Administrator.

The agency that administers the program must have the requisite technical capacity to receive and administer Federal funds. It must have the staffing resources necessary to carry out its responsibilities in accordance with FTA requirements and to ensure subrecipient compliance with Federal requirements. Other administrative offices usually support the FTA programs. These offices may include finance, procurement, civil rights, engineering, and legal.

REFERENCE

FTA C 9040.1F, Ch. III, Section 1a

FTA C 9070.1F, Ch. III, Section 1

FTA C 9050.1, Ch. III, Section 1

FTA C 9045.1, Ch. III, Section 1

FTA C 9300.1B, Ch. II, Sections 1 and 9

FTA C 5010.1D, Ch. II, Section 3

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

FTA Fiscal Year 2014 Apportionments, Allocations, and Program Information (Federal Register notice published 3/10/2014)

SOURCES OF INFORMATION

Discuss the state's organization and staffing levels with FTA regional office staff. Before the site visit, obtain copies of the agency's overall organization chart and a more detailed organization chart for the specific unit within the agency that is responsible for the FTA programs. Ask the state to explain the organizational structure, identify current and authorized positions within the division, and describe the principal responsibilities of each position. Identify the manager for each FTA program. Identify other departments or divisions that provide support services for administration of the FTA programs, such as accounting, human resources, procurement, and civil rights. Identify the major functions and programs

administered by the division, including Federal and state programs.

For states that are the designated recipients for Section 5310 or 5339 funds in large urbanized areas, review information in TEAM-Web and confirm with the regional office that the governor has designated a state agency to administer the program(s) for the large urbanized area(s) and that the required designation letters are on file. Determine whether the state has applied for MAP-21 funds under either program.

DETERMINATION

Review of the state's organizational structure and staffing levels does not by itself lead to a finding. The state's organization, functions, and staffing levels, when considered with findings in other aspects of program management (technical assistance, monitoring, and routine administrative activities) and other review areas, support a determination of whether the state is applying the resources necessary to manage the FTA programs in accordance with FTA requirements. (See question 7.)

If designation letters are not available, prior to making a determination, verify this with the regional office.

The state is deficient if it has applied for Section 5310 or 5339 funds under MAP-21 for large urbanized areas and does not have the required documentation of designation on file with the FTA regional office. (**DEFICIENCY CODE 65:** Officials do not have requisite authority)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office documentation of designation.

2. *When did the state submit to FTA a state management plan for the Section 5310, 5311, 5316, and 5317 programs?*

If the plans have been updated since the last State Management Review, what were the dates of those revisions? Please explain the impetus for the revisions, such as:

- *Changes in program management or new requirements, i.e. changes to the Section 5310 program*
- *New programs or capital projects*

How and when did the state seek public comment for significant revisions to the state management plans?

How do the plans address the required areas?

EXPLANATION

Each state is required to have and submit a state management plan for the Section 5310, 5311, 5316, and 5317 programs to the FTA regional office and to update it regularly to incorporate any changes in program management or new requirements.

State management plans document the state's policies and procedures for the state managed portions of the programs. FTA gives each state the maximum discretion permitted by law in designing and managing the programs to meet the passengers' needs under those programs. The state develops program standards, criteria, procedures and policies for the programs. The document should be useful to the state, subrecipients, and FTA. The plans should facilitate FTA oversight.

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

The state may develop separate plans for the programs or a combined plan covering all four programs. Parallels in the programs make it desirable for the state to consider all resources and plan for their use in a complementary way. Many of the policies and procedures implemented by the state apply to all programs.

FTA strongly encourages the state to issue timely revisions to state management plans, particularly when information helpful to minority applicants, subrecipients and third party contractors is involved. The state should seek public comment in making significant revisions to a plan. A significant revision is a change in state policy, such as a change in eligibility or grant award cycle. Updates to state management plans to reflect changes in FTA policy that do not trigger a change in state policy do not require public comment. Opportunity for comment should be given, at a minimum, to potential subrecipients, potential service providers, other state agencies, representatives of other funding sources, and any relevant state association or professional organization.

REFERENCE

FTA C 9040.1F, Ch. VII
FTA C 9070.1F, Ch. VII
FTA C 9050.1, Ch. VII
FTA C 9045.1, Ch. VII

SOURCES OF INFORMATION

During the desk review, obtain copies of the state management plan(s). Discuss the plan(s) with the regional office to determine whether the plans are current, the regional office's approach for reviewing and approving plans, and any concerns or issues the regional office has identified with the plan(s). If necessary, obtain a current copy of the plan(s) with the documents requested for the review. A state management plan checklist is submitted to the state prior to the site visit. Before the site visit, review the plan(s), review the state's responses to this checklist, and note in each section of the review package the pertinent policies and procedures documented in the plan. During the site visit, discuss and confirm the policies and procedures documented in the plan(s). Compare the information provided in the plan(s) with that obtained through discussion with state staff. Ask the state if the plan(s) are up-to-date and reflect current practice in each area.

DETERMINATION

Determination of deficiency is based on the state's direct response to this question, comparison of the policies and procedures documented in the state management plan with the responses of state staff to specific questions in each review area, and discussions with regional office staff. The determination should

only be made after completing the review of each area.

The state is deficient if a state management plan does not address each required area. The state is deficient if there are discrepancies between a state management plan and actual policies and procedures. (**DEFICIENCY CODE 24:** SMP out of date/incomplete)

The state is deficient if it did not obtain public comment for significant plan revisions. (**DEFICIENCY CODE 43:** No public comment for significant SMP revisions)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated plan that includes missing areas or policies.

Direct the state to submit to the FTA regional office an updated plan that reflects current practice in all areas. Direct the state to seek public comment on the revised plan if significant revisions are required.

Direct the state to submit to the FTA regional office evidence of having solicited public comment for any significant revisions and procedures for obtaining public comment for future significant revisions.

3. *How does the state document its procedures for management of the Section 5305 and 5339 programs?*

States may have or plan to develop state management plans or other documents to support management of the Section 5305 and 5339 programs. Many of the policies developed for the Section 5310 and 5311 programs may also apply to the Section 5305 and 5339 programs and states may have one plan that covers all programs.

REFERENCE

None

SOURCES OF INFORMATION

Request and review state management plans or other documents.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

4. *Describe how the coordinated plans for Section 5310, 5316, or 5317 programs address the required elements.*

What measures were taken to ensure that plans that include projects funded with MAP-21 Section 5310 funds were developed and approved with representation from seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public?

What is the cycle and duration of the coordinated plans?

How was the development of the coordinated plan prepared in coordination and consistent with the applicable statewide transportation planning process?

EXPLANATION

States must certify that: projects selected for funding under this program are included in a locally developed, coordinated public transit-human services transportation plan; and the plan was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public. Although the requirement for a coordinated plan is not new, FTA recognizes that some large urbanized areas may need to modify existing coordinated plans to address the specific needs of the program's target populations and/or be approved by individuals from the target populations. Modifications to existing programs are acceptable.

Public transit-human services transportation plans must contain:

- An assessment of available services that identifies current transportation providers (private, public, and nonprofit)
- An assessment of transportation needs of individuals with disabilities and seniors
- Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to improve efficiencies in service delivery
- Priorities for implementation based on resources (from multiple program sources), time and feasibility for implementing specific strategies and/or activities identified

The plans must be developed and approved with representation from seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public. Similar to how FTA treated this requirement under SAFETEA-LU, states are not required to submit the coordinated plans to FTA. States must certify, however, that projects were selected from this process and must make reference to the plan in the program of projects.

The coordinated plan serves as the foundation for the program of projects and should be integrated into the metropolitan and statewide transportation planning processes and document local policy support and Federal fund eligibility. The coordinated plan may either be developed separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans or be developed as part of the metropolitan and statewide transportation planning processes. If the plan is not prepared within the broader process, the lead agency for the coordinated plan should ensure coordination and consistency between the coordinated planning process and metropolitan or statewide planning processes. The update cycles for coordinated plans in metropolitan areas should follow the update cycles for metropolitan transportation plans (i.e., four years in air quality nonattainment and maintenance areas and five years in air quality attainment areas).

REFERENCE

FTA C 9070.1F Ch. V
FTA C 9050.1 Ch. V

SOURCES OF INFORMATION

Review the state management plans for a discussion of public transit-human services transportation plans. Review any technical assistance documents provided by the state providing guidance on development of the plans. Discuss on site. Review the state's documentation of review of a plan and a sample of coordinated plans to ensure that the plans include required elements. Review a sample of unified planning work programs (UPWP) to ensure that human services coordinated planning activities are included.

DETERMINATION

The state is deficient if the coordinated plans do not contain the required elements. (**DEFICIENCY CODE 66:** Coordinated plans missing required elements)

The state is deficient if plans that include projects funded with MAP-21 funds were not developed and approved with representation from seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public. (**DEFICIENCY CODE 595:** Inadequate public involvement efforts for coordinated plans)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that all coordinated plans contain the required elements.

5. *Demonstrate that the state entered into a written agreement with each subrecipient stating the terms and conditions of assistance? Describe how often the plans are reviewed and updated.*

How do the agreements address Federal requirements? If agreements do not address Federal requirements, how does the state pass through FTA requirements?

EXPLANATION

The state must enter into a written agreement with each subrecipient. The written agreement must include applicable Federal requirements and require the subrecipient to undertake responsibilities for the project usually performed by the state. The Federally required clauses that the state is required to incorporate in agreements (see *Procurement* section) reference some, but not all, of the basic Federal requirements. Many states pass through FTA requirements to subrecipients by incorporating the FTA Master Agreement by reference.

REFERENCE

49 CFR 18.37

FTA Master Agreement, Subsection 2e

FTA C 5010.1D, Ch. IV, Section 3.j(1)

FTA C 9040.1F, Ch. VI, Section 2

FTA C 9070.1F, Ch. VI, Section 2

FTA C 9050.1, Ch. VI, Section 2

FTA C 9045.1, Ch. VI, Section 2

FTA C 8100.1C, Ch. II, Section 7.b(2)

SOURCES OF INFORMATION

Obtain and review the state's standard subrecipient agreements for each program. On site, discuss with staff.

DETERMINATION

The state is deficient if it has not entered into a written agreement with each subrecipient. (**DEFICIENCY CODE 110:** Missing written agreements)

The state is deficient if the written agreements do not address FTA requirements. (**DEFICIENCY CODE 135:** Written agreements are missing required elements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office executed written agreements with each subrecipient. Direct the state to submit to the FTA regional office an updated state management plan that includes a requirement for entering into written agreements with each subrecipient prior to the expenditure of Federal funds on a local project.

Direct the state to submit to the FTA regional office an amended subrecipient agreement that includes missing FTA requirements. Direct the state to use the amended agreement beginning with the next project application cycle.

6. *How and how often does the state provide technical assistance to subrecipients in meeting Federal requirements? Please describe the technical assistance process.*

EXPLANATION

The state must inform subrecipients of applicable Federal requirements, provide technical assistance in meeting those requirements, and oversee compliance with the requirements. The state management plan(s) can serve as a program guide for local project subrecipients. The state's subrecipient agreements should identify applicable Federal requirements. In addition to the agreements, states sometimes provide more detailed guidance for specific activities, such as the procurement of vehicles, in separate documentation. Some states require applicants/subrecipients to participate in program orientation sessions.

Technical assistance may be provided through orientations, informal conversations, formal correspondence, on-site performance reviews, conferences, etc. Many states sponsor annual conferences, frequently in conjunction with the state transit association, at which training in Federal requirements is provided. FTA provides Rural Transportation Assistance Program (RTAP) funds to assist states in these efforts.

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

REFERENCE

49 CFR 18.37
FTA C 9040.1F, Ch. II, Section 3.b
FTA C 9070.1F, Ch. III, Section 7
FTA C 9050.1, Ch. III, Section 10
FTA C 9045.1, Ch. III, Section 10

SOURCES OF INFORMATION

Review the state management plan(s) for documentation of technical assistance activities and delivery approaches. On site, discuss the state's technical assistance activities and how they are funded. Review RTAP expenditures. Inquire as to how the state has provided technical assistance to subrecipients for new or revised Federal requirements.

DETERMINATION

The state is deficient if it does not provide technical assistance to subrecipients in meeting FTA requirements. (**DEFICIENCY CODE 151:** No technical assistance provided in meeting FTA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for providing technical assistance to subrecipients in meeting FTA requirements.

7. *How and how often does the state monitor subrecipients to ensure compliance with Federal requirements?*

EXPLANATION

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

The state must have an on-going system to ensure that subrecipients adhere to Federal requirements. While FTA does not prescribe specific monitoring activities, it expects the state to look behind certifications and assurances and for the oversight program to be comprehensive. FTA relies on each state to develop and implement effective systems for monitoring and ensuring compliance with requirements.

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

Appropriate systems may include:

- Applications

- Monthly, quarterly, or annual reports
- Meetings
- Site visits
- Vehicle/facility inspections

Once an issue is discovered, FTA expects the state to follow up with the subrecipient ensure that corrective action is taken. Efforts, including the follow-up on findings, should be documented. It is not necessary for the state to perform all of its monitoring functions in-house.

REFERENCE

49 CFR 18.37 and 18.40

FTA Master Agreement, Subsection 2e

FTA C 5010.1D, Ch. II, Section 3

FTA C 9040.1F, Ch. II, Section 3.a and Ch. VIII, Section 5

FTA C 9070.1F, Ch. II, Section 4

FTA C 9050.1, Ch. II, Section 4

FTA C 9045.1, Ch. II, Section 4

FTA C 8100.1C, Ch. II, Section 7.b and 7.e (5)

SOURCES OF INFORMATION

Review the state management plan(s) for a discussion of monitoring activities of subrecipients, including periodic reporting, management or financial reviews, project monitoring and on-site reviews.

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

Review the applications and the agreements for additional information regarding the state's monitoring mechanisms, particularly reporting requirements.

On site, discuss information obtained from the state management plans, application packages, agreements, and other documents regarding monitoring activities and have state staff confirm and explain the use of specific monitoring mechanisms. Discuss the documentation and follow-up of findings. Obtain copies of routine reporting forms and guidelines for reporting. Discuss how the state analyzes the information obtained through periodic reporting and types of follow-up action that could result. Review the file for the subrecipient(s) to be visited during the site visit.

DETERMINATION

The state could be found deficient in its monitoring of a specific area but not deficient in Program Management. Similarly, it could be found deficient in Program Management, but not deficient in a specific

area where it is effectively monitoring compliance with Federal requirements.

The state is deficient if it does not have appropriate systems for monitoring compliance with FTA requirements, does not document oversight efforts, or is not applying the resources required to carry out an effective monitoring program. (**DEFICIENCY CODE 208:** Inadequate oversight of subrecipient/third-party contractor/lessees)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for effectively monitoring compliance with Federal requirements.

8. *How does the state demonstrate that it has adequate resources (staffing and budget) to administer the FTA funded programs?*

EXPLANATION

The designated state agency must have the financial and staffing capabilities to receive and administer Federal funds and to monitor and ensure compliance with Federal and state program requirements. This question brings together the review of the:

- Organization and staffing of the agency or unit responsible for administering the programs
- Technical assistance program
- Oversight program
- Compliance with FTA requirements
- Amount and percentage of funds under each program that are being applied to administration

Changes in the state's management of the programs, such as reductions in staff, decreases in the frequency of on-site monitoring of subrecipients, and increases in delays in submission of information to FTA, are indications that the state is not applying adequate staffing resources to the programs.

REFERENCE

49 CFR 18.40

FTA Master Agreement, Subsection 2e

FTA C 5010.1D, Ch. II, Section 3

FTA C 9040.1F, Ch. II, Section 3.a

FTA C 9070.1F, Ch. II, Section 4

FTA C 9050.1, Ch. II, Section 4

FTA C 9045.1, Ch. II, Section 4

FTA C 9300.1B, Ch. II, Section 9(c)

FTA C 8100.1C, Ch. II Section 7.b

SOURCES OF INFORMATION

Responses to other questions in *Program Management*, *Grant Administration*, and other review areas provide the basis for making a determination. Discussions with regional office and state staff support the determination. Before the desk review, review grant budget in TEAM-Web to determine if the state applies for state administrative funding. At the desk review, discuss the adequacy of resources the state is applying to the programs. On site, discuss with staff.

DETERMINATION

The state is deficient if it is not deploying the resources necessary to manage the programs effectively. (**DEFICIENCY CODE 591:** Insufficient allocation of program resources)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office a plan for deploying the resources necessary to properly administer the FTA programs.

Part B: Selection and Eligibility

9. *What are the state's procedures for:*

- *determining the availability of subrecipients' local match and operating funds?*
- *ensuring that only eligible sources are used as local match?*
- *ensuring that subrecipients fully document volunteered services or in-kind contributions used as local match?*

EXPLANATION

Annually, the state certifies to FTA (as part of the annual certifications and assurance process) that it and its subrecipients have the financial capacity to carry out its proposed program of projects. Most states provide financial assistance to support public transit services. State assistance may provide some or all of the entire non-Federal match. The sources of state funding may differ for capital and operating assistance programs. Operating assistance may be funded through general revenues. Capital assistance may be funded through bond revenues. **FTA does not require a dedicated funding source.**

All of the local share must come from non-U.S. Department of Transportation (DOT) sources, except for Federal Lands Highway Program funds.

Depending on the grant program, FTA permits the use of the following as local share: cash (or in-kind contribution); non-farebox revenues from transit operations (e.g., advertising and concession revenues); amounts received under a service contract with a state, local or private social service agency or organization; undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash or new capital; in-kind contributions; revenue bond proceeds; transportation development (toll) credits; program income generated from an earlier grant; and **non-DOT Federal funds if authorized by the originating program to be used for transportation**. No FTA program funds can be used as a source of local match for other FTA programs, even when used to contract for service. In-kind contributions are eligible as long as the value of each is documented and supported, represents a cost which would otherwise be eligible under the program, and is included in the net project costs in the project budget.

The state must ensure each subrecipient has or will have the required local match for the project and has or will have sufficient funds to operate and maintain the vehicles and equipment purchased under the project. Revenue sources should be stable and reliable enough to meet future annual operating and routine capital costs. The state must obtain and maintain sufficient documentation from each subrecipient to support its certification to FTA. The state must ensure that subrecipients use only eligible funds as local match and that volunteer or in-kind services are fully documented.

States generally require applicants to list the sources of funding that will be applied to the project. Some states have included the availability of local funding for the project as a threshold or evaluation criterion in the project selection process. Many states require the development of transit development plans. For capital items, such as vehicle purchases or facility construction, a state may request a three-to-five-year financial plan.

REFERENCE

Annual Certifications and Assurances
FTA Master Agreement, Section 5
FTA C 9040.1F, Ch. III, Sections 1.a and 3
FTA C 9070.1F, Ch. III, Sections 1 and 9
FTA C 9050.1, Ch. III, Section 12
FTA C 9045.1, Ch. III, Section 12
FTA C 5010.1D, Ch. VI, Section 4
FTA C 9300.1B, Ch. II, Sections 7 and 9.b

SOURCES OF INFORMATION

Review the state management plans for discussions on sources of state funds and eligible local match. On site, ask state staff for an explanation of the state funding programs. Discuss the types of projects funded (e.g., capital, operating, or planning) and how

the state programs supplement the FTA programs. Obtain an explanation of the sources of state funds for each program.

Review the state management plan(s), application package(s) and standard subrecipient agreement(s) for information on how the state ensures that the subrecipient has the necessary local match and sufficient funds to operate and maintain vehicles purchased under the project. Review site visit checklists or other monitoring materials. On site, discuss how the state considers local match in the evaluation process and ensures that subrecipients have the necessary local match and funds to operate and maintain capital projects.

DETERMINATION

The state is deficient if it cannot document that the funds it uses for local match are eligible. The state is deficient if the value of non-cash share is not documented, the non-cash share represents a cost which is not eligible under the program, or the non-cash share is not included in the net project costs in the project budget. (**DEFICIENCY CODE 202:** State match deficiencies)

The state is deficient if it does not ensure that subrecipients have the required local match and sufficient operating funds to operate and maintain the capital project. The state is deficient if it does not ensure that only eligible funds are used as local match. The state is deficient if it does not ensure that subrecipients document and support the value of non-cash share, the non-cash share represents a cost which would otherwise be eligible under the program, or the non-cash share is included in the net project costs in the project budget. (**DEFICIENCY CODE 288:** Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office documentation that the funds it uses for local match are eligible. If ineligible funds have been used as local match, work with the FTA regional office to develop a corrective action.

Direct the state to submit to the FTA regional office procedures for ensuring that the value of non-cash share is documented, the non-cash share represents a cost which would otherwise be eligible under the program, and the non-cash share is included in the net project costs in the project budget.

Direct the state to submit to the FTA regional office procedures for obtaining information from subrecipients on the sources and amounts of local match available for projects and the anticipated sources and amounts of operating revenue and subsidies for continued operation and maintenance of equipment or facilities.

Direct the state to submit to the FTA regional office procedures for ensuring that only eligible funds are used as local match.

Direct the state to submit to the FTA regional office procedures for ensuring that subrecipients document and support the value of non-cash share, the non-cash share represents a cost which would otherwise be eligible under the program, and the non-cash share is included in the net project costs in the project budget.

Direct the state to submit to the FTA regional office evidence that it follows its financial capacity oversight procedures.

Section 5311 - Nonurbanized Area Formula Program

10. *How does the state define eligible subrecipients under Section 5311?*
11. *How does the state define technical capacity for Section 5311 subrecipients? How does the state ensure that Section 5311 subrecipients have the technical capacity to carry out proposed projects?*

EXPLANATION

Section 5311 funds are available for expenditure for public transportation projects and intercity bus projects in areas other than urbanized areas. Under Section 5311, eligible subrecipients may include:

- state agencies
- local governmental authorities
- private nonprofit organizations
- Indian tribal governments
- operators of public transportation services or intercity bus service providers that receive FTA grant funds indirectly through the state or a subrecipient
- private intercity bus operators (Section 5311(f) only)

Private for-profit operators of transit service may participate through contracts with eligible subrecipients. State agencies may further limit recipient eligibility in order to comply with state laws or to further state program goals. However, the state may not extend eligibility beyond those entities

allowed by FTA. The state management plan must document program eligibility requirements.

Federally recognized Indian tribes are eligible as direct recipients of Section 5311 funds administered by the states. Those funds are subject to all the terms and conditions of FTA's standard grant agreements. The special terms and conditions that FTA developed for tribes receiving funding under the Tribal Transit Program (5311(c)) are applicable only to that program. When a tribe becomes a direct FTA recipient, the state is only responsible for the program requirements, such as fair and equitable distribution of funds.

The state certifies that its Section 5311 subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

REFERENCE

FTA C 9040.1F, Ch. III, Section 2
Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the state management plan, subrecipient grant application, and subrecipient agreement for eligibility and technical capacity requirements. Review oversight procedures. Confirm eligibility and technical capacity requirements on site.

DETERMINATION

The state is deficient if its eligibility criteria are more permissive than FTA's eligibility requirements. (**DEFICIENCY CODE 269:** Ineligible subrecipients)

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (**DEFICIENCY CODE 233:** Lacking criteria for oversight of technical capacity)

SUGGESTED CORRECTIVE ACTION

Direct the state to revise its Section 5311 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's

requirements. Direct the state to seek public comment on the revised state management plan. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to include technical capacity criteria for Section 5311 subrecipients and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan if applicable. Direct the state to submit to the FTA regional office the revised plan and other pertinent documents and evidence that public comment, if applicable, was solicited for the revised state management plan.

12. *What is the process used to distribute funds under Section 5311? How are Indian tribal governments, where present, included in the selection process?*
13. *Does the project selection process provide for a fair and equitable distribution of funds?*

EXPLANATION

The annual Section 5311 program of projects must provide for fair and equitable distribution of funds within the state, including Indian reservations. Tribal Transit Program funds are not meant to replace or reduce funds that Indian tribes receive from states through Section 5311 but are used to enhance public transportation on Indian reservations and other tribal transit services. The state's project selection process must assure equity of distribution of benefits among all groups within the state. The state is responsible for developing project selection criteria and reviewing and selecting projects for approval. The state must document its process for selecting projects and distributing funds in the state management plan.

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

Applicants for Section 5311 assistance tend to be consistent over time. Many subrecipients were in operation before the start of the program or started operations in the early years of the program. States might accept new providers based on criteria such as projected ridership and technical and financial capacity. Many states limit eligibility to public entities. States frequently distribute operating assistance by formula, based on population or some other measure. Some states use performance criteria in addition to, or instead of, population-based formulas.

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

For many states, demand exceeds the availability of funding. The state may restrict Section 5311 funding by increasing the local match requirement, by limiting the use of funds (e.g., operating assistance only), or by imposing other limitations. Some states, for example, give priority to maintenance of effort over service expansion. While this may prevent new systems from participating in the Federal assistance program, it would not necessarily indicate an inequitable distribution of funds.

REFERENCE

FTA C 9040.1F, Ch. IV

SOURCES OF INFORMATION

Review the state management plan, the subrecipient application, and other documentation of the project evaluation and selection process. On site, discuss the selection process with state staff. Identify the basis for distribution of funds for each category of assistance (capital, operating, and project administration). Identify evaluation factors used, weighting of evaluation factors, and the participants in the evaluation process.

DETERMINATION

The state is deficient if its method for soliciting applications for funding, selecting projects or distributing funds does not provide for fair and equitable distribution of funds. (**DEFICIENCY CODE 245**: Selection process issues)

SUGGESTED CORRECTIVE ACTION

Direct the state to incorporate into its state management plan a revised process for distributing funding to provide fair consideration of projects to all eligible Section 5311 applicants. Direct the state to solicit public comment on the revised plan. Direct the state to submit to the FTA regional office the revised state management plan, evidence that public

comment was solicited, and evidence that it was implemented in the next application cycle.

14. *What are the state's procedures for monitoring Section 5311 subrecipients to ensure that services delivered continue to be eligible and are open and promoted to the general public?*

EXPLANATION

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

Section 5311 service may be designed to maximize use by members of the public who are transportation disadvantaged, including elderly persons and persons with disabilities. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but that is not restricted from carrying other members of the public, is considered open to the general public if it is advertised as public transportation service.

States are responsible for ensuring that Section 5311 funds are being used to support eligible services. Applications generally request a description of the proposed service, including service area, eligible customers, days and hours of operation, and route information. The state must enter into an agreement with subrecipients prior to expending funds on a project that specifies the project to be funded under the grant. Some states require Section 5311 applicants to provide information on marketing. States typically require subrecipients to report information on the services provided (e.g., populations served - general public, elderly, disabled) on a periodic basis. States can observe subrecipients' service during site visits. States might also assist subrecipients in developing marketing plans and a public transportation "brand."

REFERENCE

FTA C 9040.1F, Ch. III, Section 2.c

SOURCES OF INFORMATION

Review the subrecipient application to identify the information obtained in the application process. On site, discuss the technical assistance efforts, application requirements, reporting requirements, site visits, and other mechanisms used to ensure that

subrecipients are providing services eligible for Section 5311 funding.

DETERMINATION

The state is deficient if it does not ensure that 5311-funded services continue to be eligible and are open and promoted to the general public. (**DEFICIENCY CODE 250**: Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that services provided by Section 5311 subrecipients continue to be eligible and are open and promoted to the general public.

15. *Where meal delivery or other incidental service is provided, how does the state ensure such service does not conflict with the provision of transit service or result in a reduction of service to transit passengers? How does the state ensure that nutrition programs pay the operating costs attributable to meal delivery?*

EXPLANATION

Transit service providers receiving assistance under Section 5311 may coordinate and assist in providing meal delivery service for homebound persons on a regular basis if this service does not conflict with the provision of mass transit service or result in a reduction of service to transit passengers. FTA expects the nutrition program to pay operating costs attributable to meal delivery. Section 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment related to meal delivery.

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

The state must ensure that incidental service provided by subrecipients does not interfere with the provision of transit service. The state may request information on incidental service in the subrecipient application process. Along with the number of passengers, miles and other statistics, some states require subrecipients to report periodically on meal delivery and other incidental service. Some states observe subrecipients' service during site visits.

REFERENCE

FTA C 9040.1F, Ch. III, Section 2.c

SOURCES OF INFORMATION

Review the state management plan for discussion of incidental service. On site, discuss with staff the state's policy on meal delivery and other incidental service. Identify subrecipients providing incidental service. During subrecipient site visits, ask if the subrecipients provide meal delivery or other incidental service.

DETERMINATION

The state is deficient if it does not ensure that incidental service does not interfere with the provision of transit service and cover the cost of the service. (**DEFICIENCY CODE 250**: Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that incidental service provided by Section 5311 subrecipients does not detract from transit service.

16. *Which Section 5311 subrecipients provide service in urbanized areas? How does the state ensure that costs are properly allocated between urban and rural service?*

EXPLANATION

A subrecipient may receive both Section 5307 and Section 5311 funding to provide public transportation to an urbanized area and surrounding nonurbanized areas. The subrecipient must develop a reasonable basis for allocating the cost of service between the two funding sources. Service to and from a rural area may be considered rural, not urban, service.

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

REFERENCE

FTA C 9040.1F, Ch. III, Section 2.d

SOURCES OF INFORMATION

On site, ask the state to identify any Section 5311 subrecipients that provide service in both urbanized

and nonurbanized areas. Discuss the state's mechanism for ensuring that costs are allocated appropriately between the urban and nonurban service. Review cost allocation methodologies.

DETERMINATION

The state is deficient if it provides Section 5311 assistance to subrecipients operating in both urbanized and nonurbanized areas but does not ensure that costs are properly allocated between the urban and nonurban service. (**DEFICIENCY CODE 250:** Insufficient monitoring subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that Section 5311 subrecipients operating in both urbanized and nonurbanized areas properly allocate costs between urban and nonurban service.

Section 5310 - Enhanced Mobility of Seniors and Individuals with Disabilities Program

17. *How does the state define eligible subrecipients under Section 5310? Do any governmental authorities receive Section 5310 funds? Have the governmental authorities been approved by the state to coordinate services for elderly individuals and individuals with disabilities or have they certified that no nonprofits are readily available?*
18. *What is the process used to allocate funds? Is the distribution of funds fair and equitable?*
19. *How does the state define technical capacity for Section 5310 subrecipients? How does the state ensure that Section 5310 subrecipients have the technical capacity to carry out the proposed projects?*
20. *What are the state's procedures for monitoring Section 5310 subrecipients to ensure that services being delivered continue to be eligible?*

EXPLANATION

Pursuant to MAP-21, Section 5310 provides formula funding to states and designated recipients of large UZAs (UZAs with populations of 200,000 or more) to improve mobility for seniors and individuals with disabilities. MAP-21 defines a "senior" as an individual who is 65 years of age or older. This program provides funds for:

- Public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable, or inappropriate
- Public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990
- Public transportation projects that improve access to fixed route service and decrease reliance by people with disabilities on complementary paratransit
- Alternatives to public transportation that assist seniors and individuals with disabilities with transportation

Not less than 55 percent of the funds available for this program must be used for projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, typically carried out by eligible subrecipients. The 55 percent is a minimum, not a maximum.

MAP-21 expands eligibility of the funds to be used for operating, in addition to capital, for transportation services that address the needs of seniors and individuals with disabilities. At the discretion of the state, a subrecipient's acquisition of transportation services under contract, lease, or other arrangement may be funded under Section 5310 (capital cost of contracting).

FTA established three categories of eligible subrecipients for public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate (5310(b)):

- Private nonprofit organizations if public transportation service provided by state and local governmental authorities is unavailable, insufficient, or inappropriate for elderly individuals and individuals with disabilities
- Governmental authorities approved by the state to coordinate services for seniors and individuals with disabilities

- Governmental authorities that certify to the governor that there are no nonprofit corporations readily available in the area to provide the service

Eligible subrecipients for other eligible Section 5310 activities include a state or local governmental authority, a private non-profit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient. Private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) on a regular basis are operators of public transportation, and therefore eligible subrecipients.

The state develops its own process and criteria for approving public bodies to coordinate service. States may further limit subrecipient eligibility for the program in order to comply with state laws or to further program goals. However, the state may not extend eligibility beyond those entities allowed by FTA. The state management plan must document program eligibility requirements.

The state certifies that the allocation of grants to subrecipients is fair and equitable.

The state certifies that its Section 5310 subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the application process and oversight, and it may build technical capacity through training programs.

FTA encourages maximum use of 5310 funded vehicles. Vehicles are to be used for the project stated in the grant application and subrecipient agreement. Beyond those needs, vehicles should be used to meet other transportation needs of seniors and individuals with disabilities; to meet other Federal program or project needs; and finally, to meet other local transportation needs. Subrecipients may coordinate and assist in delivering meals if the delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. The number and size of vehicles applied for must be determined by the number of passengers to be transported, not meal delivery capacity. Section 5310 funds may not be used to

purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

The state is responsible for monitoring subrecipients to ensure that the funds are being used to support eligible transportation services for seniors and individuals with disabilities. Generally, the state's subrecipient application package requests a description of the proposed project, including service area, eligible customers, and days and hours of operation. The state must enter into an agreement with subrecipients prior to expending funds on a project that specifies the project to be funded under the grant. The state may require subrecipients to report information on the services provided and populations served (e.g., general public, elderly, disabled) on a periodic basis. The state must report performance information on gaps in service filled and ridership for the program. The state may also observe a subrecipient's service during site visits.

REFERENCE

FTA C 9070.1F, Ch. II, Section 4; Ch. III, Sections 4, 6, 8; Ch. VI Section 5

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

FTA Fiscal Year 2014 Apportionments, Allocations, and Program Information (Federal Register notice published 3/10/2014)

Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the state management plan, subrecipient grant application, and subrecipient agreement for eligibility and technical capacity requirements. Review the most recent program of projects to determine whether any public entities receive Section 5310 funds. Review oversight procedures. Confirm eligibility requirements and technical capacity requirements on site. Discuss the process and criteria, if applicable, for approving governmental authorities to coordinate services. Review subrecipients' certifications to the governor or state correspondence approving a public body to coordinate services.

DETERMINATION

The state is deficient if its eligibility criteria are more permissive than FTA's eligibility requirements. The state is deficient if it does not have the appropriate documentation for governmental authorities receiving Section 5310 assistance. (**DEFICIENCY CODE 554:** Ineligible Section 5310 subrecipients)

The state is deficient if the allocation of grants to subrecipients is not fair and equitable. (**DEFICIENCY CODE 245:** Selection process issues)

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (**DEFICIENCY CODE 233:** Lacking criteria for oversight of technical capacity)

The state is deficient if it does not ensure that the services being funded are eligible. (**DEFICIENCY CODE 250:** Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the state to revise its Section 5310 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the state to obtain public comment on the revised state management plan. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the state to submit to the FTA regional office procedures for approving governmental authorities to coordinate services for elderly individuals and individuals with disabilities and for obtaining and maintaining on file certifications from governmental authorities to the governor that no nonprofits are readily available to provide the service. Direct the state to submit to the FTA regional office the appropriate documentation (applicant's certification to the governor or state's correspondence approving a governmental authority to coordinate service) for governmental authorities receiving Section 5310 assistance.

Direct the state to revise the state management plan and other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the technical capacity requirements and evidence that public comment, if applicable was solicited for the revised state management plan.

Direct the state to submit to the FTA regional office a revised state management plan that includes procedures for ensuring that services provided are eligible for Section 5310 funding.

Section 5316 - The Job Access and Reverse Commute (JARC) Program

21. *How does the state define eligible subrecipients under Section 5316? Did the state publicly advertise the availability of funds and selection criteria? Are projects selected using a competitive process? Is the distribution of funds fair and equitable? Did the state publish a list of selected projects?*
22. *How does the state define technical capacity for Section 5316 subrecipients? How does the state ensure that Section 5316 subrecipients have the technical capacity to carry out the proposed projects?*
23. *What are the state's procedures for monitoring Section 5316 subrecipients to ensure the services delivered continue to be eligible?*

EXPLANATION

Under SAFETEA-LU, Section 5316 funds were 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. (Under MAP-21, Section 5316 was rescinded and job access-reverse commute projects are eligible for Section 5307 and 5311 assistance.) FTA C 9050.1 Ch. III Section 11 lists potential eligible projects.

FTA established three categories of eligible subrecipients for Section 5316:

- Private nonprofit organizations
- State or local governmental authorities
- Operators of public transportation services, including private operators of public transportation services

States may further limit recipient eligibility in order to comply with state laws or to further program goals. However, the state may not extend eligibility beyond entities allowed by FTA. The state management plan must document program eligibility requirements.

The state should publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential applicants. The state 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. States may not allocate/suballocate funds without conducting a statewide competitive selection process covering areas other than large urbanized areas (over 200,000 in population). 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 state may select projects that will be implemented over multiple years. The state management plan must document the competitive selection process.

The state must demonstrate that the competition was open and transparent and 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. The state should also publish a list of selected projects following the competitive selection process.

The state certifies that its Section 5316 subrecipients have the technical capacity to carry out proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

The state is responsible for monitoring subrecipients to ensure that the funds are being used to support eligible transportation services. Generally, the state's subrecipient application package requests a description of the proposed project, including service area, targeted riders, and days and hours of operation. The state must enter into an agreement with subrecipients prior to expending funds on a local project that specifies the project to be funded under the grant. The state must report performance information for the program. The state may also observe a subrecipient's service during site visits.

REFERENCE

FTA C 9050.1, Ch. III, Sections 5, 11 and Ch. IV, Section 3
Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the state management plan, subrecipient grant application, and subrecipient agreement for eligibility and technical capacity requirements. Review oversight procedures. Confirm requirements on site.

Review the subrecipient application to identify the information obtained on the populations to be served. On site, examine materials associated with the most recent competitive selection process. Discuss application requirements, reporting requirements, site visits, and other mechanisms used to ensure that subrecipients implement eligible projects.

DETERMINATION

The state is deficient if its eligibility requirements are not consistent with FTA's requirements.
(DEFICIENCY CODE 269: Ineligible subrecipients)

The state is deficient if it did not publicly advertise the availability of funds and selection criteria in formats and forums appropriate to potential applicants. The state is deficient if it does not select projects using a fair and open competitive process that provides for fair consideration of Section 5316 projects throughout the state and by all eligible applicants. The state is deficient if it did not publish a list of selected projects following the competitive selection process.
(DEFICIENCY CODE 245: Selection process issues)

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. **(DEFICIENCY CODE 233: Lacking criteria for oversight of technical capacity)**

The state is deficient if it does not ensure that the services being funded are eligible. **(DEFICIENCY CODE 250: Insufficient monitoring of subrecipient eligible services)**

SUGGESTED CORRECTIVE ACTION

Direct the state to revise its Section 5316 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the state to obtain public comment on the revised state management plan. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for publicly advertising the availability of funds and selection criteria in formats and forums appropriate to potential Section 5316 applicants. Direct the state to submit to the FTA regional office copies of public advertisements for the next application cycle.

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to incorporate a fair and open competitive process that provides for fair consideration of Section 5316 projects by all eligible applicants. Direct the state to obtain public comment on the revised state management plan. Direct the state to submit to the FTA regional office a revised state management plan that documents the new process, and evidence that it was implemented in the next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for publishing a list of selected Section 5316 projects following the competitive selection process and to submit the published list after the next application cycle.

Direct the state to revise the state management plan and other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the technical capacity requirements and evidence that public comment, if applicable, was solicited for the revised state management plan.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for ensuring that services provided are eligible for Section 5316 funding.

Section 5317 - New Freedom Program

- 24.** *How does the state define eligible subrecipients under Section 5317? Did the state publicly advertise the availability of funds and selection criteria? Are projects selected using a competitive process? Is the distribution of funds fair and equitable? Did the state publish a list of selected projects?*

- 25.** *How does the state define technical capacity for Section 5317 subrecipients? How does the state ensure that Section 5317 subrecipients have the technical capacity to carry out the proposed projects?*

- 26.** *What are the state's procedures for monitoring Section 5317 subrecipients to ensure that services delivered continue to be eligible?*

EXPLANATION

Under SAFETEA-LU, Section 5317 funds were 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. (Under MAP-21, Section 5317 was rescinded and New Freedom-type projects are eligible for Section 5310 assistance.) "New" service is any service or activity that was not in operation on August 10, 2005, and did not have identified sources of funds as of August 10, 2005, as evidenced by inclusion in the TIP or STIP. Recipients or subrecipients may not terminate ADA paratransit enhancements or other services funded as of August 10, 2005, in an effort to reintroduce the services as "new" and then receive Section 5317 funds for those services. FTA C 9045.1 Ch. III Section 11 lists potential eligible projects.

FTA established three categories of eligible subrecipients for Section 5317:

- Private nonprofit organizations
- State or local governmental authorities
- Operators of public transportation services, including private operators of public transportation services

States may further limit recipient eligibility in order to comply with state laws or to further program goals. However, the state may not extend eligibility to beyond those entities allowed by FTA. The state management plan must document eligibility requirements.

The state should publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential applicants. The state 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. States may not

allocate/suballocate funds without conducting a statewide competitive selection process covering areas other than large urbanized areas over 200,000 in population. 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 state may select projects that will be implemented over multiple years. The state management plan must document the competitive selection process.

The state must demonstrate that the competition was open and transparent and 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. The state should also publish a list of selected projects following the competitive selection process.

The state certifies that its Section 5317 subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

The state is responsible for monitoring subrecipients to ensure that the funds are being used to support eligible transportation services. Generally, the state's subrecipient application package requests a description of the proposed project, including service area, targeted riders, and days and hours of operation. The state must enter into an agreement with subrecipients prior to expending funds on a local project that specifies the project to be funded under the grant. The state must report performance information for the program. The state may also observe a subrecipient's service during site visits.

REFERENCE

FTA C 9045.1, Ch. III, Sections 5, 11 and Ch. IV, Section 3
Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the state management plan, subrecipient grant application, and subrecipient agreement for

eligibility and technical capacity requirements. Review oversight procedures. Confirm requirements on site.

Review the subrecipient application to identify the information obtained on the eligibility of proposed projects. On site, examine materials associated with the most recent competitive selection process. Discuss application requirements, reporting requirements, site visits, and other mechanisms used to ensure that subrecipients implement eligible projects.

DETERMINATION

The state is deficient if its eligibility requirements are not consistent with FTA's requirements. (**DEFICIENCY CODE 269:** Ineligible subrecipients)

The state is deficient if it did not publicly advertise the availability of funds and selection criteria in formats and forums appropriate to potential applicants. The state is deficient if it does not select projects using a fair and open competitive process that provides for fair consideration of Section 5317 projects throughout the state and by all eligible applicants. The state is deficient if it did not publish a list of selected projects following the competitive selection process (**DEFICIENCY CODE 245** Selection process issues)

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (**DEFICIENCY CODE 233:** Lacking criteria for oversight of technical capacity)

The state is deficient if does not ensure that the services being funded are eligible. (**DEFICIENCY CODE 250:** Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the state to revise its Section 5317 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the state to obtain public comment on the revised state management plan. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for publicly advertising the availability of funds and selection criteria in formats and forums appropriate to potential Section 5317 applicants. Direct the state to submit to the FTA regional office copies of public advertisements for the next application cycle.

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to incorporate a fair and open competitive process that provides for fair consideration of Section 5317 projects by all eligible applicants. Direct the state to obtain public comment on the revised state management plan. Direct the state to submit to the FTA regional office a revised state management plan that documents the new process, evidence that public comment, was solicited, and evidence that it was implemented in the next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for publishing a list of selected Section 5317 projects following the competitive selection process and to submit the published list after the next application cycle.

Direct the state to revise the state management plan and other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the technical capacity requirements and evidence that public comment, if applicable, was solicited for the revised state management plan.

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for ensuring that services provided are eligible for Section 5317 funding.

Sections 5309 and 5339 - Bus and Bus Facilities Formula Grants

27. *How does the state ensure that Section 5309 and 5339 subrecipients have the technical capacity to carry out the proposed project?*

EXPLANATION

A state with Section 5309 or 5339 subrecipients must ensure that the subrecipients have the technical capacity to implement the project. Technical capacity involves the capability of the grant applicant to properly carry out the project and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. Expectations are for the grantee to:

- Demonstrate legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program

- Provide administrative and management support of project implementation
- Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress
- Ensure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards
- Maintain the project work schedule agreed to by FTA and the grantee and monitor grant activities to assure that schedules are met and other performance goals are achieved
- Keep expenditures within the latest approved project budget
- Ensure compliance with FTA and Federal requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements
- Request Federal funds for eligible activities only in amounts and at times as needed to make payments and retain receipts to substantiate withdrawals
- Account for project property
- Demonstrate and retain satisfactory continuing control over the use of project property
- Demonstrate procedures for asset management and adequate maintenance of equipment and facilities
- Ensure that an annual independent organizationwide audit is conducted in accordance with Office of Management and Budget (OMB) Circular, A-133, "Audits of States, Local Governments, and Non-Profit Organizations"
- Prepare force account and cost allocation plans and submit and obtain approval, if applicable, before incurring costs
- Prepare and submit FTA required reports
- Update and retain FTA required reports and records for availability during audits or oversight reviews
- Ensure that effective control and accountability are maintained for all grants and subgrants, cash, real and personal property, and other assets. Grantees and subgrantees must ensure that resources are properly used and safeguarded, and used solely for authorized purposes.

REFERENCE

Master Agreement Section 2.e

SOURCES OF INFORMATION

Review the subrecipient application and agreement for technical capacity requirements. Review oversight procedures. Discuss on site with the state.

DETERMINATION

The state is deficient if it does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (**DEFICIENCY CODE 233:** Lacking criteria for oversight of technical capacity)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that Section 5309 or 5339 subrecipients have technical capacity.

Part C: Intercity Bus

- 28.** *What amount and percentage of Section 5311 funds has the state programmed for intercity bus service, per Section 5311(f), for the past three years?*

EXPLANATION

The state is required to expend a portion of its Section 5311 apportionment on a program to develop and support intercity bus transportation in rural areas. The requirement applies only to the funds FTA apportions to the state; it does not apply to any funds the state transfers to its 5311 program. Note that since insular areas (American Samoa, Guam, and Northern Mariana Islands) can use their consolidated grant funds for any purpose or program authorized under the programs, they are not required to spend 15 percent of their Section 5311 apportionments on intercity bus service.

REFERENCE

FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

Review the state management plan for discussion of the state's intercity bus program. Review the Section 5311 programs of projects in TEAM-Web for the last three years to determine the amount and percentage of funds the state has programmed for its intercity bus program. Complete Exhibit 1.1 (Intercity Bus Expenditures) of the *Program Management* section of the review package. To determine the percentage, compare the amount programmed for intercity bus projects to the annual apportionment, not the total amount of the grant.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

- 29.** *If the state has programmed less than 15 percent on intercity bus projects, when did the governor certify that intercity bus service needs are adequately met in relation to other rural transportation needs?*
- 30.** *If programming less than 15 percent on intercity bus projects, when did the state consult with intercity bus providers? Was the consultation performed before the governor certified? Please describe the state's consultation process.*

EXPLANATION

The state must program no less than 15 percent of its apportionment on intercity bus projects unless, after consulting with affected intercity service providers, the governor (or designee) certifies that the intercity bus service needs of the state are adequately met in relation to other rural transportation needs. The governor can certify that intercity bus needs are partially met and, therefore, program an amount less than the specified percentage for an intercity bus program in that year. The governor must certify in each year that the state does not program the required percentage of funds. The state may include more than one year in a certification.

A state may have obligated and assigned funds to intercity bus projects in prior years or reserved funds for intercity bus projects not yet selected. Note that amounts reserved (Category C funds) cannot exceed 10 percent of the apportionment (see *Grant Administration*). (For MAP-21 funds, FTA has eliminated Category C.) A state may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either case, if the funds committed or reserved for intercity bus projects are later determined to not be needed for intercity bus service, the state may submit a retroactive certification within the period of availability of funds. This action will permit the use of the prior year funds for other nonurbanized transit projects.

Before the governor certifies that intercity bus needs are adequately met, the state must consult with affected intercity bus service providers. FTA has established minimum requirements for the intercity bus consultative process. The process must:

- Identify intercity bus providers in the state
- Consult with identified providers and the intercity bus industry
- Provide an opportunity for intercity bus providers to submit proposals for funding annually
- Demonstrate a direct correlation between the results of the consultation process and a determination that the state's intercity needs are adequately met

The state management plan must document the consultative process. FTA C 9040.1F, Ch. VIII provides additional guidance on the elements of the consultative process.

REFERENCE

FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

Review the governor's certification on file with the regional office. Review the Section 5311 state management plan for documentation of the state's consultative process. On site, review documentation of the consultative process and other documentation supporting the certification. Review any statewide assessment of intercity bus needs. Ensure that certifications occurred within the period of availability of funds. Discuss with the state and review documentation related to the consultative process. Ensure that the consultative process met minimum requirements and that there is a direct correlation between the results of the process and a determination that the state's intercity needs are adequately met in relation to other rural transportation needs.

DETERMINATION

The state is deficient if it did not expend 15 percent of its apportionment on intercity bus projects and did not certify that intercity bus needs are adequately met. (**DEFICIENCY CODE 592:** Intercity bus certification lacking)

The state is deficient if it did not consult with affected private intercity bus operators and the governor certified that the intercity bus service needs are adequately met. The state is deficient if the consultative process does not meet minimum requirements. (**DEFICIENCY CODE 282:** Insufficient intercity consultative process)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA administrator, with a copy to the FTA regional office, a governor's certification for funds within the period of availability. For funds past the period of availability, consult with the FTA regional office regarding the corrective action.

Direct the state to submit to the FTA regional office a revised state management plan that includes a consultative process that meets minimum FTA requirements. Direct the state to submit documentation that it obtained public comment on the revised plan, if applicable.

31. *What activities is the state pursuing to support intercity bus service in rural areas? Are these activities eligible?*

EXPLANATION

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

- Operates with limited stops over fixed routes connecting two or more "urban areas" not in close proximity; **and**
- Has the capacity for transporting baggage carried by passengers; **and**
- Makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.

"Urban area" is defined broadly as an area that includes a municipality or other built-up place that is appropriate for a local public transportation system to serve individuals in the locality.

Commuter service and service which provides extensive circulation within a region are eligible for Section 5311 assistance but cannot be counted toward the required percentage for intercity bus service. Intercity bus does not include air, water, and rail service.

The statute identifies eligible intercity bus activities, including:

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

Other capital and operating projects supporting rural intercity bus service are also permitted, such as operating assistance for the direct operation of intercity service and capital assistance to purchase vehicles or vehicle related equipment such as wheelchair lifts for use in intercity service. Use of

Section 5311(f) funds for capital projects in urbanized areas is limited to those aspects of the project that can be identified as directly benefiting and supporting service to and from nonurbanized areas.

Service that acts as a feeder to intercity bus service and makes meaningful connections with scheduled intercity bus service to more distant points is eligible. Service that only incidentally stops at an intercity bus facility without regard to scheduled connections is not considered feeder service. The feeder service is not required to have the same characteristics as the intercity bus service to which it connects. For example, it can be demand responsive. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service.

REFERENCE

FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

Review the state management plan for a discussion of eligible projects. Review programs of projects in TEAM-Web for a general description of the state's intercity bus projects. On site, obtain information on the proposals received, the projects selected, and the status of projects. Review agreements with subrecipients of Section 5311(f) for a description of the scope of the project and schedule.

DETERMINATION

The state is deficient if projects selected or funded do not meet the definition of intercity bus service or are not consistent with eligible activities. (**DEFICIENCY CODE 287**: Ineligible intercity bus projects)

SUGGESTED CORRECTIVE ACTION

Direct the state to cease counting ineligible service towards the 15 percent requirement in future grants. Direct the state to submit to the FTA regional office documentation that it has modified the service to

comply with the requirements or identified new projects that are eligible.

32. *What documentation does the state have on file when using an unsubsidized portion of privately provided intercity bus service as in-kind local match for intercity bus projects?*

EXPLANATION

MAP-21 codifies the "Intercity Pilot Match Program" established by FTA in March 2007, which permits the cost of an unsubsidized portion of privately provided intercity bus service that connects feeder service to be used as in-kind local match for intercity bus projects. The final FTA C. 9040.1G will provide an additional method/option for calculating the match.

REFERENCE

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

SOURCES OF INFORMATION

Ask the state to provide and explain how it documents in-kind local match for intercity bus projects.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

2. GRANT ADMINISTRATION

BASIC REQUIREMENT

The state must track and report on the progress of projects, expend grant funds on time, and close out projects and grants when project activity is completed.

AREAS TO BE EXAMINED

1. *Reporting*

2. *Category C Funds*

3. *Grant Administration*

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. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
4. Office of Management and Budget Open Government Directive - Federal Spending Transparency
5. FTA Master Agreement
6. FTA C 5010.1D, "Grant Management Requirements"
7. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
8. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
9. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
10. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
11. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"
12. FTA C 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
13. Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance
14. 49 CFR Part 20, "New Restrictions on Lobbying"

USEFUL WEBLINKS

SF-425

FFR Instruction Guide for Grantees

Federal Funding Accountability and Transparency Act Subaward Reporting System

www.USASpending.gov/news

QUESTIONS FOR THE REVIEW

1. *What are the state's procedures for ensuring that milestone progress reports (MPRs) are completed as required?*

What are the state's procedures for obtaining and validating project information for state and subrecipient managed projects for inclusion in progress reports?

Be prepared to demonstrate that applicable progress reports are submitted for each open grant at required intervals and on time.

Be prepared to demonstrate that the reports contain the required information.

EXPLANATION

The state 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 progress reports, which are the primary written communication between states and FTA. The state should have procedures for obtaining and validating project information.

By October 31 each year, states must submit annual program of projects status reports for each open Section 5310, 5311, 5316, and 5317 grant. The progress reports must include:

- a) Updated programs of projects (POPs) that contain active projects reflecting revised project descriptions, changes in projects from one category to another and adjustments within budget categories. Updated POPs can be imported as text into the project summary section of the electronic status report
- b) Revised budgets that reflect changes in line item budgets
- c) Revised milestones for activity line items (ALIs) that require milestones with grant submission (vehicle procurements, construction projects) and, for revised estimated completion dates, an explanation for the revision
- d) Revised budgets that reflect changes in line item budgets
- e) Significant civil rights compliance issues

- f) Additional information requested by the regional office

States must submit MPRs for each open grant. The Common Rule (49 CFR Part 18) and FTA C 5010.1D detail the information that, at a minimum, must be included in milestone progress reports. Reporting on operating assistance is limited to the estimated and actual date when funding has been expended. Reports for other projects must include:

- a) Current status of each open Activity Line Item (ALI) within the active/executed grant
- b) 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) 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 and discussion of completion and acceptance of equipment and construction or other work, together with a breakout of the costs incurred and required to complete the project
- i) 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) List and brief description of all potential and executed change orders of amounts exceeding \$100,000, pending or settled, during the reporting period
- k) 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, or
- Involve a highly publicized matter, irrespective of amount

l) List of all real property acquisition actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel during the reporting period.

The following tables show when milestone progress reports are due to FTA. FTA, at its discretion, can require quarterly reporting. Reports should be submitted electronically using TEAM-Web.

Grant Program	Grants	Frequency	Due Date
5305	All	Annually	October 31
5311	All	Annually	October 31
5310, 5316, 5317	Small urbanized areas (UZAs) and rural	Annually	October 31
	Large UZAs (>200,000)	Quarterly	The last day of the month following the quarter end

Grant Program	Purpose	Frequency	
		Small UZAs and Rural	Large UZAs (>200k)
5307, 5337	All grant activities	Annually by October 31	The last day of the month following the quarter end
5309, 5339	Bus purchases	Annually by October 31	The last day of the month following the quarter end
	Construction	Quarterly	
5324	All grant activities	Monthly	

REFERENCE

49 CFR 18.40

FTA C 9040.1F, Ch. VI, Section 12

FTA C 9070.1F, Ch. VI, Section 17

FTC C 9050.1, Ch. VI, Section 16

FTA C 9045.1, Ch. VI, Section 16

FTA C 8100.1C, Ch. II, Section 7.d(6)

FTA C 5010.1D, Ch. III, Section 3

SOURCES OF INFORMATION

Before the desk review, review progress reports in TEAM-Web. During the desk review, ask regional office staff if reports have been submitted on time and include all of the required information. Ask if the regional office has required additional information to be reported. Review any correspondence from FTA to the state regarding reports. Discuss the reports with the state during the site visit.

DETERMINATION

The state is deficient if its reports are consistently late. (**DEFICIENCY CODE 38:** Late MPRs/FFRs)

The state is deficient if it does not include sufficient detail about schedule delays or omits other required information. (**DEFICIENCY CODE 68:** Progress reports lack required information)

SUGGESTED CORRECTIVE ACTION

Direct the state to notify the FTA regional office when it has submitted the delinquent progress report(s) for the most recent reporting period and to submit to the FTA regional office procedures for submitting progress reports on time.

Direct the state to notify the FTA regional office when it has submitted revised progress reports that include missing information and to submit to the FTA regional office procedures for including all required information, including the missing information, in future progress reports.

2. For FTA Emergency Relief grants, is the state submitting MPRs and Insurance Proceeds Reports (IPRs) monthly?

EXPLANATION

Post-award reporting requirements for 5324 grants include a monthly submission of MPRs in TEAM-Web consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

Grantees that receive FTA Emergency Relief funding are required to submit IPRs to FTA monthly. Both reports are due no later than 30 calendar days after the end of each calendar month.

For Hurricane Sandy funding under Section 5324, IPRs must include, at a minimum, the following information:

- Grantee insurance policies that cover any damage sustained by Hurricane Sandy
- Each insurance claim submitted in connection with damage sustained by Hurricane Sandy, for capital and operating costs, from October 29, 2012, through the date of the IPR
- The status of each insurance claim submitted in connection with damage sustained by Hurricane Sandy from October 29, 2012, through the date of the IPR
- The total amount of insurance proceeds received in connection with damage sustained by Hurricane Sandy, for capital and operating costs, from October 29, 2012, through the date of the IPR
- The status of the allocation of any insurance proceeds from October 29, 2012, through the date of the IPR
- If the grantee allocated insurance proceeds, then it shall identify whether it allocated insurance proceeds towards an FTA funded project activity or a non-FTA funded project activity
- If the grantee allocated insurance proceeds towards an FTA funded project activity, then it shall identify that project activity by Project Number and Activity Line Item, and the grantee shall identify the status of any grant action taken to adjust the Federal share, accordingly

REFERENCES

March 29, 2013 Federal Register Notice
Conditions of Award for FTA Public Transportation
Emergency Relief Programs

SOURCES OF INFORMATION

Review information provided by the FTA regional office about 5324 grants and the grantee's timeliness in submitting required reports in TEAM-Web. Review MPRs and IPRs in TEAM-Web, along with additional insurance policy and insurance claim information provided by the grantee.

DETERMINATION

The state is deficient if it does not submit MPRs and IPRs for each open 5324 grant or does not submit the reports on time at the required intervals.
(DEFICIENCY CODE 568: Late MPRs/IPRs for Section 5324 grants)

The state is deficient if MPRs for FTA Emergency Relief grants are incomplete or inaccurate.
(DEFICIENCY CODE 569: Insufficient MPR reporting for Section 5324 grants)

The state is deficient if IPRs for FTA Emergency Relief grants are incomplete or inaccurate.

(DEFICIENCY CODE 570: Insufficient IPR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit the delinquent report(s) for the most recent reporting period and to submit to the FTA regional office procedures for submitting reports on time. Direct the state to email the FTA regional office when reports are submitted.

Direct the state to submit reports that include the missing information in the current or next submission and to submit to the FTA regional office procedures for ensuring all required information is in future reports, including the missing narrative information.

3. How does the state develop and validate data for Federal Financial Reports (FFRs)?

Be prepared to demonstrate that FFRs are submitted for each open grant at the required intervals (quarterly or annually) and on time? Are FFRs submitted for each open Section 5324 grant monthly?

Be prepare to demonstrate that cumulative federal cash receipts and cash disbursements are reported? If a positive balance of Federal cash is on hand at the end of the reporting period, is the amount reported and an explanation included in the remarks section?

How are unliquidated obligations calculated?

If indirect costs are charged to a grant, is the indirect expense section of the FFR for that grant completed? Are the rates shown consistent with the cost allocation plan or indirect cost rate proposal?

If applicable, how did the state respond to any comments made by FTA regarding a report?

EXPLANATION

The FFR reports on the use of project funds using the standard Office of Management Budget (OMB) form. FFRs are submitted on the same schedule as

progress reports for each open grant. FFRs for FTA Emergency Relief grants are to be submitted monthly. Reports are submitted electronically using TEAM-Web. For an FFR to appear as part of the MPR stored in TEAM-Web as a portable text format (pdf) document, an FFR must be submitted before the MPR.

Federal cash on hand at the beginning of period (line A) is the amount of Federal cash on hand at the beginning of the reporting period. **Federal cash receipts** (line B) are the cumulative amount of FTA funds received. **Federal cash disbursements** (line C) are the cumulative amount of FTA funds disbursed. Lines B and C are reported on a cash basis--when the funds are actually received and disbursed. For grantees that draw funds on a reimbursement basis, report Federal funds as disbursed only after they are received. **Federal cash on hand at the end of period** (line D) is the sum of line A plus line B minus line C and is populated by TEAM-Web. Federal cash on hand should never be a negative number. If there is cash on hand at the end of the quarter, FTA requires an explanation in the remarks and certifications tab describing why drawdowns were made early or other reasons for the excess cash, if any. The cash on hand amount should reflect immediate cash needs. FTA may assess interest charges for excess cash held for more than three business days. Note that Federal share of expenditures (line F) and recipient share of expenditures (line G) are reported on an accrual basis--when goods and services have been received.

Unliquidated obligations (lines I through k) are binding commitments that have been entered into and for which expenditures 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.

Indirect expense is the amount of indirect costs charged to a grant. The rate must be based on a previously approved cost allocation plan or indirect cost proposal. The grantee must report the total amount of indirect expenses incurred on a cumulative basis. The information should include the type of rate (whether it is provisional, predetermined, final or fixed), the rate approved by the cognizant agency, the total base amount from which the indirect cost rate is determined, the period covered by the approved rate, cumulative indirect expenses charged to the grant, and the federal share of the indirect expenses charged.

The grantee should address any **FTA comments** either in a revised or the next report.

REFERENCE

49 CFR 18.41
SF-425, Federal Financial Report
FFR Instruction Guide for Grantees
March 29, 2013 Federal Register Notice
May 29, 2013 Federal Register Notice
49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation
Emergency Relief Programs

SOURCES OF INFORMATION

Before the desk review, review FFRs in TEAM-Web to see if they are submitted on time at the required intervals. Check to see if Federal cash receipts, Federal cash disbursements, Federal cash on hand, unliquidated obligations, indirect expense, and program income entries are reported. If cash on hand is reported, check to see if an adequate explanation is provided in the remarks and certification tab. If unliquidated obligations are not reported, review progress reports to determine if they should be. See if the state responded to FTA remarks. During the desk review, discuss the reports with the regional office. On site, follow up with the state regarding how it defines unliquidated obligations. If the state charges indirect costs to grants, verify that the rates and amounts have been entered into the FFR.

DETERMINATION

The state is deficient if it is not submitting FFRs for each open grant or is not submitting the reports on time at the intervals required. (**DEFICIENCY CODE 38:** Late MPRs/FFRs)

The state is deficient if it is not reporting cash information or if there is an unexplained balance. The state is deficient if it is not reporting unliquidated obligations correctly. The state is deficient if it does not report indirect expense information. The state is deficient if it does not respond to FTA comments. (**DEFICIENCY CODE 122:** Incorrect FFR reporting)

The grantee is deficient if it does not submit FFRs for each open 5324 grant or does not submit the reports on time monthly. (**DEFICIENCY CODE 571:** Late FFRs for Section 5324 grants)

The grantee is deficient if, for 5324 grants, it does not report cumulative federal cash receipts, cumulative cash disbursements or cash on hand, or if there is an unexplained balance. The grantee is deficient if it enters indirect expense information incorrectly. The grantee is deficient if it has not responded to FTA comments regarding a report. (**DEFICIENCY CODE 572:** Incorrect FFR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

Direct the state to notify the FTA regional office when it has submitted the delinquent report(s) for the most recent reporting period and to submit to the FTA

regional office procedures for submitting reports on time.

Direct the state to submit revised reports that include missing information and to submit to the FTA regional office procedures for including all required information, including the missing information, in future reports.

4. How are the data in FFRs reconciled with the data in corresponding MPRs?

EXPLANATION

In many states, program managers prepare progress reports while financial personnel, either inside or outside the transit unit, prepare FFRs. FTA has found frequent instances of data in the progress reports not being reflected in FFRs and vice versa. For example, a progress report may indicate that the state has awarded a construction contract but the FFR does not report unliquidated obligations.

REFERENCE

49 CFR 18.40
49 CFR 18.41
FTA C 9040.1F, Ch. VI, Section 12
FTA C 9070.1F, Ch. VI, Section 17
FTC C 9050.1, Ch. VI, Section 16
FTA C 9045.1, Ch. VI, Section 16
FTA C 8100.1C, Ch. II, Section 7.d(6)
FTA C 5010.1D, Ch. III, Section 3

SOURCES OF INFORMATION

Before the desk review, examine progress reports and FFRs in TEAM-Web to see if the data reported agree. During the desk review, discuss with the regional office. Discuss on site.

DETERMINATION

The state is deficient if the data in progress reports is not reflected in FFRs and vice versa. (**DEFICIENCY CODE 68:** Progress reports lack required information or **DEFICIENCY CODE 122:** Incorrect FFR reporting)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit revised reports that include corrected information and to submit to the FTA regional office procedures for reconciling progress reports and FFRs before submitting them to FTA.

5. For Section 5324 Emergency Relief projects, be prepared to demonstrate that the expenses incurred during the period were consistent with the approved projects contained in the grant. For any budget or scope revisions

made to Section 5324 grant projects since award, be prepared to demonstrate that the items included in the revisions are eligible.

6. For Section 5324 Emergency Relief local priority resiliency projects, when did the state receive FTA approval? Was this prior to incurring costs?

7. For Section 5324 Emergency Relief projects, from what other sources (such as FEMA) has the state received funds to reimburse the total project(s) or a portion of the project(s) receiving 5324 funding?

EXPLANATION

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects, as those terms are defined in 49 CFR 602.5, are eligible for emergency relief funding. For all capital projects, the cost to perform the work, whether by in-house or contracted personnel, is an eligible cost.

FTA's first goal in the Emergency Relief Program is to assist public transportation agencies in restoring public transportation service and in repairing and reconstructing transit assets to a state of good repair as expeditiously as possible. In conjunction with repair and reconstruction activities, a second goal is to increase the resiliency of affected public transportation systems in order to help protect those systems from damage due to future emergencies and major disasters.

"Permanent repairs" are defined as those repairs undertaken following the disaster occurrence for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, to a state of good repair.

Subject to FTA approval, four transit agencies (New York Metropolitan Transportation Authority, New York City Department of Transportation, New Jersey Transit Corporation, and Port Authority of New York/New Jersey) were permitted to use approximately 23 percent of their Hurricane Sandy Emergency Relief allocations for locally prioritized resiliency projects and improvements. A "resiliency project" is a project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in

development patterns, demographics, or extreme weather or other climate patterns.

In its May 29, 2013 allocation notice for the local priority resiliency funding, FTA required grantees to seek FTA prior approval for local priority resiliency projects in advance of incurring costs, but recognized this may not be possible in some cases where work had already begun. This prior approval process is intended to ensure that resilience projects were selected by the grantees in accordance with accepted hazard mitigation principles, were of an appropriate size, scope and complexity for this funding, and had addressed the DOT policy on floodplain management, which requires that projects in the floodplain be built to be resilient to one foot above FEMA's best available 100-year flood elevations. Recipients were instructed to submit detailed project information to FTA for approval in advance of incurring costs, or to notify FTA if project work had already begun prior to the allocation of funds.

Grants awarded with section 5324 funds, as well as grants awarded under sections 5307 and 5311 for emergency relief purposes, may be made only for expenses that are not reimbursed by FEMA under the Stafford Act, or by other Federal agencies, or by insurance proceeds. If an applicant has already received FEMA or other Federal agency funding or insurance proceeds, the applicant may not apply for FTA emergency relief funding for the same project expenses. However, partial compensation for a loss by such other sources will not preclude FTA participation for the part of the loss not compensated. For example, insurance proceeds may only cover the value of a vehicle at the time it was destroyed, and not the cost to replace that vehicle.

Consistent with FTA Circular 5010.1D, FTA may participate in the replacement cost beyond what the insurance proceeds may cover. If FTA makes a grant and the recipient subsequently receives compensation from another source, the grantee must notify FTA and the funds received from the other source must be used to reduce FTA's share of the project cost.

REFERENCE

49 USC Section 5324

49 CFR Part 602, Interim Final Rule

May 29, 2013 Federal Register Notice Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

Review information provided in TEAM-Web, by the FTA regional office, and responses from the state.

DETERMINATION

The state is deficient if projects funded by Section 5324 do not meet the definition of emergency

operations, emergency repairs, permanent repair, or resiliency projects. (**DEFICIENCY CODE 576:** Section 5324 project definition deficiencies)

The state may be deficient if projects funded by Section 5234 are also being reimbursed by other sources and FTA's share of the project costs has not been appropriately reduced, if applicable. FTA issued an Administrator's Policy Letter in February 2014 stating the policy and options for allocating lump-sum insurance proceeds. (**DEFICIENCY CODE 577:** Section 5324 funding deficiencies)

The state may be deficient if it is proceeding with local resiliency projects prior to FTA approval and those projects were found not to be in compliance with Federal requirements or did not have an approved waiver. (**DEFICIENCY CODE 582:** Section 5324 resiliency project deficiencies)

SUGGESTED CORRECTIVE ACTION

For deficiencies in this area, consult with the FTA regional office to address correcting project scopes and/or adjusting the FTA share of funding

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

EXPLANATION

Category C, available for SAFETEA-LU funds, represents a "program reserve" unique to the Section 5310 and 5311 programs. It is designed to allow the state to obligate its entire apportionment in one grant, even if the funds are not completely programmed. The state should not use Category C funds for project contingencies which should be programmed in Category A or B. Category C funds may, however, supplement previously identified projects where original cost estimates were inadequate. Once funds have been programmed in Category A or B, they should not be reprogrammed as Category C.

The state may not include more than 10 percent of the total amount it obligates in the Section 5310 or 5311 grant in Category C.

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

within the period of availability (the year of apportionment plus two years), FTA will deobligate the funds.

FTA has eliminated Category C for MAP-21 funds.

REFERENCE

FTA C 9040.1F, Ch. IV, Section 5.a
FTA C 9070.1F, Ch. IV, Section 4

SOURCES OF INFORMATION

Examine Section 5310 and 5311 grants in TEAM-Web. Ensure that amounts in Category C do not exceed 10 percent of the grant. Discuss with regional office staff the state's allocation of Category C funds to projects within the period of availability and any funds deobligated. On site, review any balances in Category C with staff and discuss when the funds will be assigned to projects and moved to Category A or B.

DETERMINATION

The state is deficient if it has not allocated Category C funds within the period of availability. (**DEFICIENCY CODE 212**: Lapsed Category C funds)

SUGGESTED CORRECTIVE ACTION

The regional office will de-obligate Category C funds that have not been allocated to projects within the period of availability.

For Category C funds approaching the end of the period of availability, direct the state to identify existing or new projects and allocate the funds to these projects.

Direct a state that has incorrectly put funds from approved projects into Category C to revise the grant budget and program of projects to remove the funds from Category C.

Direct the state to submit to the FTA regional office procedures for allocating Category C funds to projects within the period of availability.

9. *If the state is the designated recipient for Section 5310 or 5339 funds for a large urbanized area, how does it ensure that those funds are expended on projects only in the large urbanized area?*

EXPLANATION

Section 5310 funds are apportioned to large urbanized, small urbanized, and rural areas. Section 5339 funds are apportioned statewide and to large urbanized and small urbanized areas. Funds

apportioned to a large urbanized area must be used within the area to which they are apportioned.

REFERENCE

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

FTA Fiscal Year 2014 Apportionments, Allocations, and Program Information (Federal Register notice published 3/10/2014)

SOURCES OF INFORMATION

Check TEAM-Web and with the regional office to determine if the state is a designated recipient in a large urbanized area(s). Examine Section 5310 and 5339 grants in TEAM-Web to determine if it has applied for any MAP-21 funds for a large urbanized area.

DETERMINATION

The state is deficient if it expends funds outside the designated large urbanized area. (**DEFICIENCY CODE 593**: Funds expended outside designated large UZA)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office a revised grant budget that reallocates misallocated funds to projects in the large urbanized area(s) and procedures for using funds in the large urbanized area(s) to they are apportioned.

10. *As part of the development of the annual program of projects, how does the state look to available funds in existing grants before applying for new funds? How does the state take into account the status of current projects before awarding a subrecipient a grant for a new project?*
11. *What procedures are followed to ensure that projects are completed and grants closed on time? Identify and discuss the status of any delayed or inactive grants or grants that should be closed.*
12. *What are the state's procedures for closing out projects with subrecipients within 90 days of completion of project activity and initiating grant close-out with*

FTA within 90 days of completion of all activity in the program of projects?

EXPLANATION

Projects may not require the amount of funds originally requested and obligated by the state. The state may reprogram remaining funds to other projects. When developing a program of projects for the new year, the state should look to available funds in existing grants before applying for new funds. Doing so can minimize the length of time a grant is open and the number of open grants.

States should take into account the status of current projects before awarding a subrecipient a grant for a new project. FTA expects projects to be completed within a reasonable, specified time. Section 5310, 5311, 5316, and 5317 programs of projects should be implemented within two to three years of grant approval. For Section 5311 grants, the state should generally not program projects that will extend for more than two years. The state may seek exceptions from the regional office for proposed projects that may exceed two years. For Section 5305, 5309, and 5339 projects, a good "rule of thumb" is to complete the project within the period of availability of funds. For large, complicated construction or technology projects, completing the project and closing the grant within the period of availability of funds may not be feasible. A subrecipient's inability to implement a project might indicate financial or technical capacity issues.

FTA funds are available to the state during the period of availability of the funds. Therefore, states need not apply for all its funds the year the funds are apportioned. Funds deobligated within the period of availability are available for re-obligation to a new grant. The following table shows the period of availability of funds for selected programs.

Period of Availability of Funds		
Program	SAFETEA-LU	MAP-21
5305	Year of apportionment plus 3	Year of apportionment plus 3
5307	Year of apportionment plus 3	Year of apportionment plus 5
5309 formula	Year of apportionment plus 3	N/A
5309 discretionary/ Capital Investment Grant	Year of apportionment/ allocation plus 2	Year of apportionment plus 4

Period of Availability of Funds		
Program	SAFETEA-LU	MAP-21
5310	Year of apportionment plus 2	Year of apportionment plus 2
5311	Year of apportionment plus 2	Year of apportionment plus 2
5316	Year of apportionment plus 2	N/A
5317	Year of apportionment plus 2	N/A
5337	N/A	Year of apportionment plus 3
5339	N/A	Year of apportionment plus 3

The state must close out projects within 90 days of completion of project activities. Frequently, states allow small balances in completed projects to delay project closeout. The state should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects; however, it should not excessively prolong the life of the grant. States should close out grants within 90 days of completion of program activity.

Examples of good grant management practices include:

- (1) As part of the annual grant development process, identify available funds in existing grants before applying for new funds
- (2) Spend oldest funds first for on-going expenses such as state/program administration (financial purpose code (FPC) 6), operating assistance (FPC 4), ADA complementary paratransit (FPC 8), and preventive maintenance (FPC 0)
- (3) Accumulate state administrative expenses in a generic account and then draw from the oldest grant with available state administrative funds instead of charging the expenses directly to grants
- (4) Tie third party contracts to projects, not directly to grants
- (5) Set project time limits (less than 2 years)
- (6) Move delayed projects to newer grants and active projects to older grants
- (7) Transfer small remaining balances to new line items

- (8) Deobligate project balances and reapply for funds (if within period of availability and allowed by the regional office)
- (9) Regularly reconcile grant balances with those in TEAM-Web
- (10) When funding a project out of multiple grants, develop a grant drawdown plan
- (11) When funding a project 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 places a priority on closing out grants for which activity has ceased. FTA identifies grants that should be potentially closed out as those that are 100% disbursed or those that were obligated more than three years before *and* have not had a disbursement within the past 12 months.

Grants that have been inactive for a substantial length of time also should be closed unless the state 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 state does not have a reasonable explanation, FTA may determine that the funds should be deobligated and the grant closed. Occasionally, a project may be delayed indefinitely because of factors beyond the state's control. If there is no realistic chance of a project 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, Sections 4 and 5
 FTA C 9040.1F, Ch. III, Section 1(c), Ch. IV, Section 5, and Ch. VI, Section 8
 FTA C 9070.1F, Ch. III, Section 3, Ch. IV Sections 3 and 6 and Ch. VI, Section 13
 FTA C 9050.1, Ch. III, Section 7, Ch. IV, Section 6, and Ch. VI, Section 12
 FTA C 9045.1, Ch. III, Section 7, Ch. IV, Section 6, and Ch. VI, Section 12
 FTA C 8100.1C, Ch. II, Section 5.e(1)
 FTA C 9300.1B, Ch. III, Section 2, Ch. IV Section 3 and Ch. V Section 2
 Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

SOURCES OF INFORMATION

Before the site visit, review the state management plans and other policies and procedures for development of annual programs of projects. On site, discuss the procedures with the state.

Before the desk review, complete the Grant Analysis in the review package. For on-going expenses such as state administration and RTAP funds, determine whether the state draws from the oldest funds first. Identify grants that are old, have small balances remaining, or have not had recent disbursement activity. Review progress reports and other correspondence to identify major delays in projects. During the desk review, discuss the status of grants with regional office staff.

Before the site visit, review the state management plans and other policies and procedures for grant administration and closeout procedures. Review subrecipient agreements for time limits on grant projects. Obtain from the state a schedule for closing all open grants.

On site, 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 closeout dates. Have the state identify remaining project activities and the projected dates for project completion and grant closeout. Determine if inactive grants or grants with indefinitely delayed projects should be closed.

DETERMINATION

The state is deficient if it does not close out completed projects and reprogram unused balances, as applicable, to other projects on a timely basis. (**DEFICIENCY CODE 20:** Not using oldest funds first)

The state is deficient if it does not spend the oldest funds first, track the progress of projects, close out completed projects, reprogram unused balances to other projects or initiate grant closeout timely. The state is deficient if there are open grants that should be closed. (**DEFICIENCY CODE 79:** Inactive grants/untimely grant closeouts)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for tracking and reprogramming available funds in existing grants to projects on a timely basis.

Direct the state to submit to the FTA regional office more effective procedures for grant administration (spending older funds first, tracking project progress, identifying project balances, reprogramming unused project funds to other projects, reassigning older projects to newer grants, or closing out projects) to enable it to close grants more timely.

Direct the state to deobligate the funds and close the grant if small amounts of funds remain in an inactive grant or if a project is indefinitely delayed.

Direct the state to submit to the FTA regional office documentation to reprogram funds to projects which

can be completed in a reasonable time and a timetable for grant completion and closeout if the funds are within the scope of the project.

- 13.** *For grants received after October 1, 2010, verify that the state reports sub-awards by the end of the month following the month it made the sub-award in accordance with the Federal Funding Accountability and Transparency Act of 2006 (FFATA).*

EXPLANATION

All direct recipients of FTA grants, grant amendments and cooperative agreements over \$25,000 awarded after October 1, 2010, are subject to the requirement of the Federal Funding Accountability and Transparency Act of 2006 (FFATA). The Act requires recipients to report sub-award information to the Federal Funding Accountability and Transparency Act Sub-award Reporting System (FSRS) at www.FSRS.gov by the end of the month, after the month in which they make any sub-award under the grant. The reporting requirement does not include third party contract data at this time. Grantees must register on-line to use the reporting site. To register, the grantee must have a valid Data Universal Numbering System (DUNS) number and current Central Contractor Registration (CCR). For a direct recipient to report on a subrecipient, the subrecipient must also have a valid DUNS number but is not required to register in CCR.

Grantees must report the information about each first tier sub-award over \$25,000 (funds passed through to other public agencies, private non-profit organizations or, where eligible as subrecipients, private providers of transportation) by the end of the month following the month the direct recipient makes any sub-award or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November and the grantee signed subrecipient agreements in February, the grantee has until March 31 to report the sub-award into FSRS. Once the grantee submits an initial report, it can revise it later to add additional sub-awards as they are made, or to change data previously submitted to reflect adjustments in sub-awards.

The U.S. Department of Transportation submits a file of all awards made the previous month on the fifth day of each month. Grantees will be able to view and report on sub-awards after the information is downloaded to FSRS. The new reporting requirement does not apply to awards made before October 1, 2010, so FTA awards made before FY2011 will not appear in FSRS.

Information and training materials about FFATA sub-award reporting and FSRS are posted on www.USASpending.gov/news. To receive new information on changes and updates to USASpending.gov as soon as it becomes available, subscribe by visiting www.USASpending.gov/news and adding your email address under the "What's New" section.

REFERENCE

P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
Office of Management and Budget Open Government Directive - Federal Spending Transparency

SOURCES OF INFORMATION

Review programs of projects in TEAM-Web. Search www.fsrs.gov for the date that the grantee filed its report for a sample of subrecipients. On site, discuss with the state.

DETERMINATION

The state is deficient if it has not reported sub-awards over \$25,000 from grants or grant amendments awarded by FTA after October 1, 2010. The state is deficient if it has not reported sub-awards on time. **(DEFICIENCY CODE 175:** FFATA reporting deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to notify the FTA regional office when it has reported sub-awards to FSRS.

For Section 5310, 5311, 5316 and 5317 grants, submit to the FTA regional office an updated state management plan that includes procedures for reporting future sub-awards.

For Section 5305, 5309, and ARRA grants, direct the state to submit to the FTA regional office procedures for reporting sub-awards to FSRS by the end of the month following the sub-award.

- 14.** *Provide detailed information on any lobbying activities funded with non-federal funds, and documentation that proper OMB Standard Form LLL disclosures have been made and filed with FTA and are updated quarterly.*
- 15.** *If subrecipients, contractors, and subcontractors used non-federal funds for lobbying activities, provide documentation that proper disclosures have been made and filed with the grantee on OMB Standard Form LLL.*

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, OMB Standard Form LLL (Rev.7-97). 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:

- Awarding of any federal contract or subcontract exceeding \$100,000
- Making of any federal grant or subgrant exceeding \$100,000
- Making of any federal loan exceeding \$150,000
- Entering into any federal cooperative agreement exceeding \$100,000
- Extension, continuation, renewal, amendment, or modification of any federal contract, grant, or cooperative agreement exceeding \$100,000 or of a loan exceeding \$150,000

Updates to OMB 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.

Any subrecipient, contractor, and subcontractor in receipt of a grant or contract exceeding \$100,000 is

subject to the same disclosure and updating requirements as the grantee. All certifying entities must ensure that any quarterly disclosure forms are forwarded to the grantee that must forward them to FTA.

REFERENCES

49 CFR Part 20

OMB Standard Form LLL (Rev. 7/97)

SOURCES OF INFORMATION

The reviewer should confirm with the FTA regional counsel if the grantee has submitted OMB Standard Form LLL disclosures and updates as required. During the site visit, verify details of lobbying activities. For grantees that have forms on file, during the site visit, discuss the process for receiving and forwarding the disclosure statements.

DETERMINATION

The state is deficient if it did not file a Standard Form LLL and/or a quarterly update for an event that should have been reported. (**DEFICIENCY CODE 77:** Grantee did not submit Standard Form LLL/quarterly update)

The state is deficient if it did not obtain a Standard Form LLL or a quarterly report update from a subrecipient, contractor, or subcontractor for an event that should have been reported (**DEFICIENCY CODE 116:** Subgrantee, contractor, or subcontractor did not submit Standard Form LLL/quarterly update)

The state is deficient if it did not forward a Standard Form LLL or quarterly update submitted by a subrecipient, contractor, or subcontractor to FTA. (**DEFICIENCY CODE 128:** Lacking process for receiving and filing lobbying certifications and disclosure statements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office the documentation as required and to develop and/or document the process to ensure timely reporting in the future.

3. PROJECT MANAGEMENT

BASIC REQUIREMENT

The state must be able to implement 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. *Technical Oversight of Capital Projects*
2. *Force Account Activities*

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. 49 CFR 633, *"Project Management Oversight"*

4. FTA Master Agreement
5. FTA C 5010.1D, "Grant Management Requirements"
6. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Construction Project Management Handbook (2009 Update)

Project and Construction Management Guidelines (2003 Update)

Project Management Oversight Lessons

Quality Management System Guidelines

Handbook for Purchasing a Small Transit Vehicle

ER Program Frequently Asked Questions

FTA Emergency Relief Fact Sheet

QUESTIONS FOR THE REVIEW

1. *Provide a brief description of state-managed and subrecipient-managed capital projects **initiated** or **completed** since the last review.*
2. *Provide a brief description of capital projects planned for the next three to five years.*
3. *For planned projects, if the state has not implemented a similar project in the past three years, how does it plan to maintain or increase its technical capacity to ensure project implementation?*
4. *What are the state's procedures for providing technical oversight of directly managed projects? What are the state's procedures for overseeing projects managed by subrecipients? (Please describe each.)*
5. *If projects are not on schedule or on budget, what are the reasons? What are the recovery plans for the schedules and budgets*

EXPLANATION

The state must 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 a New Starts project with a total project cost in excess of \$100 million, or has been determined to be a major capital project by the Administrator, based on criteria in 49 CFR Part 633.

States contracting directly for facility construction or rehabilitation must provide technical oversight of the project. Regular meetings between the project manager and contractor(s) should be held to review project status. States may use internal staff, such as an engineering or construction group, to oversee construction projects. States that do not have the technical expertise or internal resources to manage large projects may hire an architectural/engineering (A&E) consultant to serve as project manager. Even

when not required, some states have project management plans.

The state is responsible for monitoring subrecipients' facility construction and rehabilitation projects. Monitoring mechanisms may include:

- Contracting a consultant to provide project management oversight
- Reviewing requests for proposals and construction contracts
- Reviewing plans and drawings
- Conducting periodic site inspections
- Requiring progress reports
- Conducting regular project review meetings
- Withholding payment of a portion of the grant until final inspection and acceptance of the facility by the state

States buying revenue rolling stock directly must provide for technical oversight of the procurement. When subrecipients buy buses directly, the state must monitor the procurement.

States must provide technical oversight of technology projects implemented by it or its subrecipients. A state's information technology (IT) department may oversee technology projects, sometimes with consultant support.

For procurements for the state-managed programs, the state should document its procedures for administering construction projects, bus procurements and other capital projects in the state management plans.

REFERENCE

49 USC Section 5327
FTA C 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4
49 CFR 18.40
49 CFR Part 633

SOURCES OF INFORMATION

Before the site visit, review MPRs for discussions of delays. Discuss project delays and project management concerns with the FTA regional office. Obtain copies of project management plans and quality control procedures, if written. Review the state management plan(s) and the subrecipient agreement(s) for procedures for administering and monitoring construction projects, bus procurements, and other capital projects. Review project

management plans and quality control procedures, if written.

During the site visit, discuss the state's quality control procedures for construction projects, revenue rolling stock procurements, and technology projects. If the state contracts for such services, review the scope of services of these contracts along with progress reports from the contractors. Discuss the resources the state dedicates or plans to dedicate to project management.

When delays are due to poor performance by contractors, examine how the state managed the delay and tried to improve performance by the contractor. For construction projects, land acquisition zoning changes, environmental studies, weather, and other factors not under the complete control of the grantee can require more time.

Understand the state's process and division of responsibilities for bus procurements. Specifically, ascertain where responsibility lies for:

- Developing bid specifications
- Establishing solicitation/contract terms and conditions
- Soliciting and receiving bids or proposals
- Evaluating responses, determining responsiveness and selecting a contractor
- Executing a contract
- Conducting pre-award audits for compliance with Buy America, Federal Motor Vehicle Safety Standards (FMVSS), and purchaser's requirements
- Receiving, inspecting and accepting revenue rolling stock
- Conducting post-delivery audits for compliance with Buy America, FMVSS, and purchaser's requirements
- Paying the vendor

DETERMINATION

The state is deficient if capital projects have proceeded without proper quality control procedures. (**DEFICIENCY CODE 16:** No procedures for technical inspection/supervision of work in progress)

The state is deficient if it has continuing problems with project delays. (**DEFICIENCY CODE 98:** Excessive delays in project implementation)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office project management procedures for existing or future projects to address deficiencies identified.

Direct the state to submit to the FTA regional office a recovery schedule for the delayed project and to report on progress against the schedule quarterly in progress reports.

6. *If the state's or a subrecipient's work force used in the execution of capital grant projects:*
 - a. *When was a force account plan and justification submitted to FTA for force account work that equals \$10,000,000 or more?*
 - b. *Is a plan on file for force account work of \$100,000 or more but less than \$10,000,000?*
7. *When did the grantee update its existing or develop a new force account plan prior to expending FTA funds due to additional funds received and work performed related to the FTA Emergency Relief program and the available Hurricane Sandy funds if a waiver was not granted?*

EXPLANATION

One of four conditions may warrant the use of a grantee's own labor forces. These are: (1) cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement. Work performed by the grantee's work force on capital projects, other than grant administration, that is included in an approved grant is "force account" work. Force account work may consist of design, construction, refurbishment, 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 preventive maintenance. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account includes major capital project work on rolling stock.

If the cost of force account work is \$100,000 or more, reimbursement is subject to a grantee having a force account plan and justification on file. When the cost of force account work to be performed equals \$10,000,000 or more, prior FTA approval is required. However, for Hurricane Sandy prior FTA approval was not required; instead grantees were required to have force accounts plans in place prior to incurring costs.

Force account plans are prepared at the project level. If a grantee is using multiple grants for the same project, then the grantee should have only one force account plan for the project and distribute the costs among the different grants in a reasonable allocation method documented in the force account plan.

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

If force account amount is \$10,000,000 or more FTA approval is required before incurring costs.

REFERENCE

FTA Master Agreement, Section 17.i
FTA C 5010.1D, Ch. IV, Section 4.d
49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation
Emergency Relief Programs
May 29, 2013 Federal Register Notice

SOURCES OF INFORMATION

Review grant budgets in TEAM-Web for indications of force account plans. The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget. Check with the FTA regional office to ensure that the grantee submitted force account plans for work that equals \$10,000,000 or more. Determine if the FTA regional office has reviewed and approved the plans. Obtain and review force account plans for work below this threshold but equal to or exceeding \$100,000 from the grantee. During the site visit, follow up with the grantee to ensure that it has a plan for all force account work that meets the threshold for a plan.

DETERMINATION

For other-than-Hurricane Sandy projects, the state is deficient if it has not submitted for prior FTA approval, plans for force account projects that cost \$10,000,000 or more. The state is deficient if force account projects costing between \$100,000 and \$10,000,000 are not supported by a proper force account plan and justification. The state is deficient if subrecipients do not have proper force account plans. The state is deficient if the plans are not justified on the basis of cost, exclusive expertise, safety, and efficiency of operations, or union agreement. (**DEFICIENCY CODE 85**: Lacking force account plan/justification)

The state is deficient if it drew down funds (for force account work that required a force account plan approval) prior to FTA's approval of the plan. (**DEFICIENCY CODE 544**: Inappropriate drawdown of force account funds) For Hurricane Sandy funds, the state is deficient only if it incurred costs prior to developing a force account plan. (**DEFICIENCY CODE 588**: Inappropriate drawdown of force account funds for 5324 activities)

SUGGESTED CORRECTIVE ACTION

Direct the state 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 and procedures for developing force account plans when required.

Direct the state to obtain and submit to the FTA regional office subrecipients' force account plans and procedures for ensuring that subrecipients develop plans when required.

Direct the grantee to cease drawing force account funds until applicable plans are approved.

4. FINANCIAL MANAGEMENT AND FINANCIAL CAPACITY

BASIC REQUIREMENT

The state must demonstrate the ability to match and manage FTA grants and expend FTA funds only on eligible activities.

AREAS TO BE EXAMINED

1. *Specialty Reviews*

2. *Financial Management*

3. *Financial Capacity*

4. *Funds Management*

5. *Audits/Reviews*

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. MAP-21 Section 20017
3. Single Audit Act Amendment of 1996
4. 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"
5. 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Non-Profit Organizations"
6. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"
7. 31 CFR Part 205, "Rules and Procedures for Efficient Federal-State Funds Transfers"
8. 51 CFR 552, "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government"
9. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

10. FTA Master Agreement

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

12. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"

13. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"

14. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"

15. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"

16. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"

17. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEB LINKS

Guidance for Transit Financial Plans

Flexible Funds: FHWA and FTA Programs

Revenue Bonds

Debt Service Reserve Financing

ECHO Web User Manual for FTA and FAA Grantees

Federal Audit Clearinghouse

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

ER Program Frequently Asked Questions (FAQs)

FTA Emergency Relief Fact Sheet

QUESTIONS FOR THE REVIEW

1. *If FTA conducted a Financial Management Oversight Review, Financial Condition and Capability Assessment, and Financial Capacity Assessment in the past two federal fiscal years, when was the site visit? Are any such reviews scheduled for the current federal fiscal year (FFY)?*

EXPLANATION

FTA's Office of Transit Safety and Oversight conducts Financial Management Oversight (FMO) reviews and Financial Condition and Capability Assessments (FCCA). These reviews are discretionary, in-depth oversight reviews used by FTA when grantees are considered to have higher risk. The FMO can be a "full scope" review in which all aspects of a grantee's financial management practices are studied and tested, a follow up review, or a "limited scope" review of one area of financial management, such as fixed assets. FTA's Office of Planning and Environment conducts Financial Capacity Assessments (FCA), which are typically performed during the project development phase of New Starts and other major capital projects, prior to receiving a full-funding grant agreement.

It is also important to know if an FMO, FCCA, or FCA has been conducted, or requested but not yet conducted. If a review has been requested, the reasons for such a review should be identified (usually from the FTA regional office).

REFERENCES

None

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak pertaining to previous deficiencies as a result of an FMO review, FCCA, or FCA conducted in the past three years, or planned

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

Part A. Financial Management

2. *If indirect costs of the state agency are being charged to FTA grants:*

- *Does the state have an approved cost allocation plan (CAP) and/or indirect cost rate proposal?*
- *Who is the cognizant Federal agency?*
- *Was the annual cost allocation plan and/or indirect cost rate proposal retained for audit or submitted to the cognizant agency in accordance with the cognizant agency's requirements? What is the status of that submission?*
- *Are state central services costs included in the indirect cost rate? If yes, is there an approved central services plan and are the rates in the plan consistent with the rates charged to the operating agency and included in the operating agency's indirect cost proposal?*

EXPLANATION

Under federally funded grant programs, recipients may incur both direct and indirect costs. A CAP and/or indirect cost rate proposal is required to support the distribution of indirect costs to the grant program. Cost allocation is often found in state departments of transportation and municipal systems where overhead/administrative charges are allocated to the transit program. Two types of CAPs can be used to allocate costs to a transit program: a central service CAP or an indirect cost rate proposal.

A central service CAP, sometimes referred to as a statewide or local-wide CAP, is used by a state or local government to distribute executive and central level support functions to operating units which benefit from them. All statewide central service CAPs must be submitted to the U.S. Department of Health and Human Services (DHHS) annually. Each local government that has been designated a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant federal agency annually. OMB published the list of major local governments and their cognizant federal agencies in the *Federal Register* January 6, 1986 (51 CFR 552, "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government"). The cognizant agency for all governmental units or agencies not identified by OMB

is determined based on the federal agency providing the largest amount of federal funds. Unless required by the cognizant agency, local-wide CAPs do not have to be submitted for review and approval. However, they must be updated annually and maintained for audit. If the cognizant agency does not require the grantee to submit the plan to it for approval, FTA reserves the right to review the plan. FTA approves plans only for grantees for which it is the cognizant agency.

An indirect cost rate proposal is developed annually at the operating agency level to distribute administrative support and/or overhead costs of that agency to the programs (and the grants and contracts) that benefit from them. An indirect cost rate proposal may include the allocable portion of a central service CAP. A governmental unit for which a federal cognizant agency has been designated must submit its indirect cost rate proposal to its federal cognizant agency annually.

A governmental unit or agency that does not have a cognizant federal agency identified by OMB must develop an indirect cost rate proposal annually and maintain the proposal and related supporting documentation for audit. Unless required by FTA or the cognizant agency, these governmental units are not required to submit their proposals for review and approval.

In addition to initial approval, FTA requires updates to be submitted to it or another cognizant agency when:

- the grantee has made a change in its accounting system, thereby affecting the previously approved CAP/indirect cost rate and its basis of application
- the grantee's proposed CAP/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 CAP/indirect cost rate proposal methodology

REFERENCE

2 CFR Part 225 (OMB Circular A-87),
Appendix C and E
2 CFR Part 230 (OMB Circular A-122)
51 CFR 552
FTA C 5010.1D, Ch. VI, Section 6 and Appendix F
FTA C 9040.1F, Ch. VI, Section 7
FTA C 9070.1F, Ch. VI, Section 12
FTA C 9050.1, Ch. VI, Section 11
FTA C 9045.1, Ch. VI, Section 11

SOURCES OF INFORMATION

Review Federal Financial Reports (FFRs) in TEAM-Web to see if the state reports indirect cost charges to grants. During the desk review, ask the regional office if the state has an approved cost allocation plan or an indirect cost rate proposal. Since state-wide central services plans are reviewed and approved by DHHS, the primary responsibility of the SMR reviewer regarding these plans is to ensure that the amounts included in the indirect cost rate proposal accurately reflect the amounts that are included in the central services plan. There is no need for the reviewer to review in detail the central services plan. Review grant files and correspondence. Review the A-133 annual audit regarding the proper implementation of a cost allocation plan. On site, discuss with grantee staff. During the review of ECHO draws, ensure that indirect expenses are charged using the correct rate against the correct base.

DETERMINATION

The state is deficient if it charges indirect costs to FTA grants but has not:

- submitted its initial CAP to FTA for approval if FTA is the cognizant agency
- received approval from the cognizant agency (if other than FTA), if required
- submitted its indirect cost rate proposal to its cognizant agency annually, if required
- updated the plan annually and retained it for audit (those governmental units that do not have a cognizant agency identified by OMB)
- updated and resubmitted the plan, if required

(DEFICIENCY CODE 54: Cost allocation plan deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide documentation that it has complied with the cost allocation plan submission and retention requirements of its cognizant agency or has submitted a plan to comply with the requirements of its cognizant agency.

Direct the state to update the indirect cost rate proposal and CAP annually and retain it for audit, if submittal to the cognizant agency is not required.

Direct the state to update the cost allocation plan annually and retain it for audit.

3. *If subrecipients are charging indirect costs to FTA grants:*

- *What procedures does the state use to review these indirect cost rates or to ensure that they have been submitted to a cognizant agency?*
- *What procedures does the state use to monitor that the correct rate is charged by subrecipients for FTA-funded reimbursements?*

EXPLANATION

States are responsible for oversight of subrecipients' CAPs. This may include, but is not limited to, ensuring that the plan was submitted to a cognizant Federal agency. Where a local government only receives funds as a subrecipient, the primary recipient is responsible for negotiating and/or monitoring the subrecipient's plan. Monitoring can include ensuring that the plan is retained for audit and ensuring that indirect costs are charged at the current rate and against the correct base.

REFERENCE

2 CFR Part 225 (OMB Circular A-87),
Appendix C and E
2 CFR Part 230 (OMB Circular A-122)
51 CFR 552
FTA C 5010.1D, Ch. VI, Section 6 and Appendix F
FTA C 9040.1F, Ch. VI, Section 7
FTA C 9070.1F, Ch. VI, Section 12
FTA C 9050.1, Ch. VI, Section 11
FTA C 9045.1, Ch. VI, Section 11

SOURCES OF INFORMATION

Discuss this during the desk review. Review grant files and correspondence. Discuss the state's process for monitoring subrecipients that charge indirect costs to FTA grants. If the plans are on file with the state, review a copy. During the site visit to a subrecipient, determine whether the subrecipient has a cost allocation plan, the plan was approved by a Federal or other agency, and the plan is updated annually and documentation maintained for audit. During the review of ECHO draws, ensure that indirect expenses are charged using the correct rate against the correct base. During site visits to subrecipients, review the back-up documentation for at least one invoice to the grantee to ensure that the subrecipient can trace amounts invoiced to source documents.

DETERMINATION

The state is deficient if it does not monitor subrecipients' application of indirect costs to FTA grants. (**DEFICIENCY CODE 288:** Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures, along with evidence of its implementation, for ensuring that subrecipients that claim indirect costs have and comply with the requirements of their cost allocation plans.

4. *What are the state's procedures for ensuring that TEAM-Web and state grant balances agree? Are there any discrepancies between TEAM-Web and state grant balances?*
5. *What are the state's procedures for ensuring subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds? Is this documented in the state management plan?*
6. *What are the state's procedures for processing and reviewing subrecipients' reimbursement requests?*

EXPLANATION

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

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

States and subrecipients must be able to trace reimbursements to source documents.

Some states have not effectively tracked grant activity, particularly for older grants. In some cases, a state's grant balances may not reconcile with those in TEAM-Web. Both the state's program and accounting staff should have TEAM-Web access. Direct access to TEAM-Web may help the state improve the tracking of grant balances. In addition, frequent reconciling of internal grant balances with those in TEAM-Web helps the state identify and address any discrepancies quickly and prevent discrepancies from delaying grant close outs.

The state is responsible for ensuring that subrecipients have financial management systems that meet standards for financial reporting, accounting

records, internal control, budget control, allowable cost, source documentation, and cash management. The state is not required to monitor the financial management systems of subrecipients that do not receive federal cash (e.g., subrecipients for which the grantee procures vehicles). Some states require applicants, especially first-time applicants, to describe their accounting systems or may perform a pre-award review of accounting systems. Other states require subrecipients to maintain separate accounting records for projects. In addition to financial and A-133 audits, some states require subrecipients to have their auditors certify year-end financial statements or perform a program audit of their transit operations.

The state is required to ensure that subrecipients can trace funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Some states review single audits. Some states require subrecipients to submit supporting documentation periodically. Some states require new and high-risk grantees to submit supporting documentation with every reimbursement request.

REFERENCE

49 CFR 18.20
FTA C 5010.1D, Ch. VI
FTA C 9040.1F, Ch. VII
FTA C 9070.1F, Ch. VII
FTA C 9050.1, Ch. VII
FTA C 9045.1, Ch. VII

SOURCES OF INFORMATION

Before the desk review, complete the Grant Analysis worksheet (Exhibit 0.9) in Grant Administration and review grant balances. During the desk review, discuss the state'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. Review single audits for findings related to grant accounting. On site, discuss with staff.

Review the state management plan, the state's applications, and monitoring tools, such as a site visit checklist, for discussion of fiscal capability. On site, discuss with staff. During site visits to subrecipients, review the back-up documentation for at least one invoice to the state to ensure that the subrecipient can trace the amounts invoiced to source documents. Review the single audits of the subrecipients to be visited.

DETERMINATION

The state is deficient if its financial management systems do not allow it to accurately track grant

balances. (**DEFICIENCY CODE 106:** Insufficient tracking of grant balances)

The state is deficient if it does not ensure that subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds. The state is deficient if it does not ensure that subrecipients can adequately document reimbursement requests. (**DEFICIENCY CODE 288:** Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office a plan for reconciling the differences between the balances in TEAM-Web and its accounting system and to identify and correct the procedures that allow differences to develop.

Direct the state to submit to the FTA regional office any procedures for ensuring that subrecipients have the financial management systems to carry out the programs, to receive and disburse Federal funds and adequately support reimbursement requests.

Direct the state to submit to the FTA regional office evidence that it follows its financial management oversight procedures.

7. *What is the process for receiving and disbursing FTA funds? Does it address:*

- *Maintaining records to support ECHO requests and the disbursement of funds?*
- *Disbursing funds within three business days of receipt?*
- *Ensuring draw requests are signed by an authorized official other than the individual who requests the payment?*
- *Ensuring only eligible expenses are charged to grants?*

EXPLANATION

Grantees request federal funds through the FTA's web-based Electronic Clearinghouse Operation System (ECHO-Web). 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-Web approving official or a person to whom this person has delegated the authority in writing must approve each ECHO request. The approving/authorizing 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. 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, 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.

REFERENCE

49 CFR 18.21

FTA Master Agreement, Section 9.b

FTA C 5010.1D, Ch. VI, Section 9

31 CFR Part 205

SOURCES OF INFORMATION

When on site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure:

- the funds were disbursed within three business days. In cases where FTA funds were requested in advance of payment to a vendor or contractor, ensure that the check was mailed within three business days. Do not rely on the date of the check. A state may hold onto a check several days before mailing it.
- the approving/authorized official who approved the draw is not the same person who drew the funds
- the approving official designated on the ECHO payment request form actually approved the draw or delegated that authority in writing to the person who approved the draw
- that documentation is adequate to support the draws
- the purpose of the draw was eligible under the grant
- the state's records show funds requested by ALI and the state has made the appropriate requests for budget amendments or revisions

Check to ensure that indirect costs are charged at the current rate, if applicable.

Check the audited financial statements and A-133 audit reports to determine if there are ECHO process findings.

During subrecipient site visits, review the source documents for a reimbursement request to the state.

DETERMINATION

The state is deficient if it held FTA funds for four or more business days after FTA funds were received. The state is deficient if it drew more funds than were allowed. (**DEFICIENCY CODE 56:** Excess cash problems)

The state is deficient if an authorized official does not approve the ECHO draws or if the approving official draws the funds. (**DEFICIENCY CODE 80:** Insufficient effective control)

The state is deficient if it does not maintain documentation adequate to support ECHO draws. (**DEFICIENCY CODE 142:** ECHO documentation deficient)

The state is deficient if funds were drawn down for expenses not eligible under the grant. (**DEFICIENCY CODE 276:** Ineligible expenses charged to grant)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for documenting ECHO draws. In certain cases, FTA may require the state to submit ECHO requests for prior approval.

Direct the state to submit to the FTA regional office procedures for disbursing FTA funds within three business days and to submit to FTA documentation to support that funds were disbursed in accordance with FTA requirements, until further notice.

Direct the state to work with the FTA regional office to determine if interest is owed in accordance with 31 CFR Part 205.

Direct the state to submit to the FTA regional office a process documenting that an authorized official approves each ECHO request.

Direct the state to update the authorizing official in ECHO or have the authorizing official delegate authority in writing to the person approving the requests.

Direct the state to have someone other than the approving official request ECHO funds.

Direct the state to work with the FTA regional office to reimburse FTA for funds that were drawn and not eligible.

8. *A review of ECHO documentation for FTA Emergency Relief Program grants will be conducted to verify that adequate funds management procedures (i.e., adequate documentation, segregation of duties, no excess cash on hand, eligible costs)?*
9. *Verify that the state is utilizing the correct financial purpose codes for FTA Emergency Relief grant drawdowns.*

REFERENCES

May 29, 2013 Federal Register Notice
 May 29, 2013 Federal Register Notice
 49 U.S.C. Section 5324 / MAP-21 Section 20017
 Conditions of Award for FTA Public Transportation
 Emergency Relief Programs

EXPLANATION AND SOURCES OF INFORMATION

The reviewer selects ECHO transactions from each active Hurricane Sandy 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.).

Eligible uses of Emergency Relief funds include:

- (1) Emergency operations
- (2) Emergency protective measures
- (3) Emergency repairs
- (4) Permanent repairs
- (5) Actual engineering and construction costs on approved projects
- (6) Resiliency projects

Ineligible uses of Emergency Relief funds include:

- (1) Heavy maintenance
- (2) Project costs for which the recipient has received funding from another Federal agency
- (3) Project costs for which the recipient has received funding through payments from insurance policies
- (4) Projects that change the function of the original infrastructure
- (5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster

- (6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster
- (7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation
- (8) Other project costs FTA determines are not appropriate for the Emergency Relief Program

The federal share for 5324 grants is identified in each grant and can be up to 90 percent of the net project cost. Recipients are required to maintain records, including but not limited to all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests under the Improper Payment Information Act.

For Emergency Relief grants, recipients are to use specific financial purpose codes (FPC) for drawdowns. Local priority resiliency funding is to be drawn using FPC 03.

DETERMINATION

If the state 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. (**DEFICIENCY CODE 567:** ECHO deficiencies for FTA Emergency Relief grants)

SUGGESTED CORRECTIVE ACTION

Direct the state to work with the FTA regional office to address ECHO deficiencies related to FTA Emergency Relief grants.

Part B: Financial Capacity

10. *For the past three years, what were the amounts and sources of state funds to support transit programs? What are the anticipated amounts and sources for the next three years? If the state does not provide matching funds for transit programs, who provides the funding and what is the source?*
11. *Identify any transit programs or projects that are being delayed or deferred due to unavailable local*

funds. For these programs, what is the plan for mitigating the lack of funds?

12. *Identify any pending legislation or “sunset” provision in existing legislation that could affect the sources of state or local funding or financial capacity?*
13. *Identify any significant changes in the levels of local funding for transit, the sources of local funding for transit or the current transit service levels anticipated in the next few years.*

EXPLANATION

Annually, the state certifies to FTA (as part of the annual certifications and assurance process) that it (and its subrecipients) has the financial capacity to carry out its proposed program of projects. Most states provide financial assistance to support public transit services. State assistance may provide some or the entire non-Federal match. The sources of state funding may differ for capital and operating assistance programs. Operating assistance may be funded through general revenues. Capital assistance may be funded through bond revenues. FTA does not require a dedicated funding source.

States should develop financial plans on the basis of current and projected capability to maintain and operate current assets and service, and to operate and maintain new assets and service.

Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves and the present status of depreciation accounts. Multi-year financial plans should indicate adequate revenues to maintain and operate the existing systems and to complete programs of projects. Revenue sources must be stable and reliable enough to meet future capital and operating costs. Any sign of major decreases in service levels or operations must be explained.

Financial capacity considers the nature of funds used to support operating deficits and capital programs, along with forecasted changes in fare and non-fare revenues. If a state is forecasting new funding sources, strategies for ensuring their availability must be identified.

A state's financial condition, future financial capacity, and ability to match FTA funds could be affected greatly if one or more of its sources of non-FTA funding is impacted by pending legislation or “sunset” provisions in current legislation.

REFERENCE

FTA Master Agreement, Sections 2 and 5
FTA Circular 5010.1D, Ch. VI, Section 4

SOURCES OF INFORMATION

Review annual audit reports, budgets, local or state legislation, multi-year financial plans, A-133 audits and grants. Review the information provided by the state for its description concerning projected grant activity. Review the current year's budget, including capital and operating expenses, and multi-year financial projections for financial condition and capacity. Ask the state about pending legislation or “sunset” provisions in current legislation.

DETERMINATION

The state is deficient if financial deficits or lack of funding is impacting the ability to maintain and operate existing systems or to complete programs of projects, and there is no mitigation plan. The state may be deficient if there is pending legislation that could affect local funding sources negatively, 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. (**DEFICIENCY CODE 7:** Insufficient financial capacity)

The state is deficient if it does not have a multi-year financial plan. (**DEFICIENCY CODE 15:** No existing financial plan)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide to the FTA regional office a plan for reducing expenditures, increasing revenues, or a combination of both to compensate for a budget shortfall.

Direct the state to submit to the FTA regional office a plan for responding to a change in financial circumstances caused by a “sunset” provision in current local funding legislation or pending legislation that will affect local funding negatively.

Direct the state to submit to the FTA regional office a multi-year financial plan.

Part C. Audits/Reviews

14. *Verify that annual single audits have been conducted. Provide information on any unresolved audit issues relating to FTA programs. If there were no findings, verify that the SF-SAC forms were submitted to the FTA*

regional office. If there were findings in audits related to FTA or DOT programs in any of the past three years, verify that a copy of the audit and the SF-SAC form were submitted to the FTA regional office.

EXPLANATION

Non-federal entities that expend \$500,000 or more in federal awards in a year are required to have conducted an independent single audit in accordance with OMB Circular A-133. In the case of a state department of transportation (DOT), the audit will cover all aspects of that DOT, including the federal funds used for transit.

If the annual single audit report contains no FTA or other DOT program findings, grantees are only required to submit a copy of the SF-SAC to the FTA regional office. Single audit reports are to be issued within the earlier of 30 days after report issuance or nine months after the end of the audit period. If the single audit contained FTA or other DOT program findings, grantees are required to submit a copy of the entire audit report, management response, and the single audit reporting form (SF-SAC) to the FTA regional office.

The state must resolve single audit findings promptly. The state's audited financial statement may provide additional information about how well the state has rectified previous audit findings and/or indicate any new areas of concern.

REFERENCES

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

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak pertaining to annual A-133 audit reports. Information on audits can also be retrieved from the Federal Audit Clearinghouse.

DETERMINATION

The state is deficient if it meets the threshold for a single audit and has not had one conducted. (**DEFICIENCY CODE 172:** Annual audit not conducted)

The state is deficient if it has not submitted its single audit reports or SF-SACs to the FTA regional office. (**DEFICIENCY CODE 254:** Single audit submissions deficient)

The grantee is deficient if it has not taken appropriate action to resolve audit issues promptly. (**DEFICIENCY CODE 199:** Outstanding annual audit deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to have annual single audits conducted.

Direct the grantee to submit single audits, and/or SF-SACs to the FTA regional office, along with a process to ensure that future submissions are completed

Direct the grantee to submit to the FTA regional office procedures and a schedule for resolving single audit findings.

15. *What are the state's procedures for ensuring that single audits of subrecipients are conducted and FTA program related findings resolved?*

EXPLANATION

The state must ensure that subrecipients expending \$500,000 or more in federal awards in a federal fiscal year have annual independent audits conducted in accordance with OMB Circular A-133. Items purchased by the state for a subrecipient count towards a subrecipient's single audit threshold. As an exception to this requirement, FTA has not required states to ensure that single audits are conducted when assistance is provided solely in the form of capital equipment procured directly by the state or direct recipient. Single audits are an eligible grant expense only if the subrecipient meets the threshold. Financial audits are an eligible grant expense even if the subrecipient does not meet the threshold for a single audit. The state must ensure that subrecipients resolve audit findings related to FTA funded programs within six months of receipt of the audit report.

REFERENCE

Single Audit Act Amendment of 1996
49 CFR 18.26
FTA C 5010.1D, Ch. VI, Section 8
FTA C 9040.1F, Ch. VI, Section 9
FTA C 9070.1F, Ch. VI, Section 14
FTA C 9050.1, Ch. VI, Section 13
FTA C 9045.1, Ch. VI, Section 13
Dear Colleague Letter, C-05-04, June 17, 2004

SOURCES OF INFORMATION

Review the state management plan for a discussion of the state's process for obtaining and reviewing audits of its subrecipients and monitoring the resolution of findings. On site, discuss the process with the state. Review the single audits and follow-up correspondence for subrecipients visited.

DETERMINATION

The state is deficient if it does not review subrecipient audits and ensure that audit findings related to the FTA funded program are resolved. (**DEFICIENCY CODE 288**: Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for obtaining and reviewing subrecipients' single audits and monitoring the resolution of audit findings.

16. *Provide information on any Governmental Accounting Office (GAO), Office of Inspector General (OIG), or internal reviews or audits been conducted since the last review that included the transit program. Describe any findings related to FTA program requirements along with their resolution.*

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 and extended warranties) where the grantee may have had a specific part of its operation audited. Audit findings should be resolved within one year. Likewise, some states conduct

internal audits and/or reviews. These audits or reviews may address FTA program requirements.

REFERENCE

None

SOURCES OF INFORMATION

Before the site visit, obtain a list of GAO, OIG, or internal audit reports to determine if any of the reports address FTA program requirements. Review reports that address FTA program requirements. During the site visit, discuss specific findings of reports with the internal auditor or staff.

DETERMINATION

The state is deficient if it has not taken appropriate action to resolve GAO or OIG audit findings promptly. (**DEFICIENCY CODE 215**: Unresolved GAO or OIG audit findings)

The state is deficient if it has not taken appropriate action to promptly resolve internal review or audit findings related to FTA program requirements. (**DEFICIENCY CODE 216**: Unresolved internal, state, or local audit findings)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit evidence to the FTA regional office of the resolution of open GAO, OIG, or internal review or audit findings. These findings may relate to other sections of the state management review.

5. PROCUREMENT

BASIC REQUIREMENT

States use their own procurement procedures that reflect applicable state laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law.

AREAS TO BE EXAMINED

1. *Policies and procedures*
2. *Rolling Stock*
3. *Oversight*

COMPLIANCE

If a state fails to comply with FTA procurement requirements, and its own procurement regulations, including in other procurement-related areas such as DBE, Buy America, and lobbying, FTA may decide to not participate in the procurement.

PROCUREMENT REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. Transportation Equity Act for the 21st Century, Public Law No. 105-178
3. 29 CFR Parts 4 and 5, "Labor Standards"
4. 41 CFR Parts 50-201 and 50-206, "Public Contracts and Property Management"
5. 49 CFR Section 18.36, "Procurement"
6. FTA Master Agreement
7. FTA C 4220.1F, "Third-Party Contracting Guidance"
8. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"

9. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
10. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
11. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
12. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"
13. FTA C 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"

BUY AMERICA REFERENCES

1. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"
2. 49 CFR Part 661, "Buy America Requirements"
3. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"
4. FTA "Dear Colleague" Letter, March 18, 1997
5. Federal Register Vol. 71, No. 54, pp. 14112-14118, Buy America Requirements; Amendments to Definitions
6. Federal Register Vol. 72, No. 182, pp. 53688-53698, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule
7. Federal Register Vol. 72, No. 188, pp. 55103-55104, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule correction
8. Federal Register Vol. 77, No. 28, pp. 71673 -71678, Decision To Rescind Buy

America Waiver for Minivans and Minivan Chassis

SUSPENSION/DEBARMENT REFERENCES

1. 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"
2. 2 CFR Part 1200, "Nonprocurement Suspension and Debarment"

USEFUL WEB LINKS

FTA's Best Practice Procurement Manual

FTA Procurement Frequently Asked Questions

Bus Testing Website

National RTAP ProcurementPRO

FTA Buy America Home Page

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

U.S. DOT Buy America Webpage

Guidance on Procurements Following Rescission of the Buy America Waiver for Minivans, FTA, February 14, 2013

Buying Used Buses

System for Award Management (SAM)

SAM User Guide

FTA DBE Website

DOT Office of Small and Disadvantaged Business Utilization (OSDBU)

DOT DBE Regulation Questions and Answers

Tips for Goal Setting

List of Transit Vehicle Manufacturers

Sample DBE Program

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 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.

Compliance

If a grantee fails to comply with FTA procurement requirements, including in other procurement-related areas, such as Buy America, FTA may decide to not participate in the procurement.

QUESTIONS FOR THE REVIEW

1. *If FTA conducted a Procurement System Review (PSR) in the past two Federal fiscal years, what is the status of any corrective actions from the final report of that review?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts PSRs of selected grantees. If a review has been conducted, confer with the FTA regional office and the FTA headquarters subject matter expert (SME) on what follow up activities are appropriate during this review. The reviewer may be requested to validate the implementation of corrective actions for closed deficiencies, follow up on deficiencies that remain open, or a combination of both.

REFERENCE

FTA C 4220.1F, Ch. I, Section 6.c.

SOURCES OF INFORMATION

Review OTrak and information from the FTA regional office for issued reports on PSRs, correspondence between FTA and the state related to corrective actions, and responses to the state management review.

DETERMINATION

If there are outstanding or ongoing PSR deficiencies, confer with the FTA regional office and the FTA headquarters SME to make the following deficiency. **(DEFICIENCY CODE 405: Outstanding procurement specialty review deficiencies)**

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office with documentation to address outstanding or ongoing specialty review deficiencies.

Policies and Procedures

2. *What policies and procedures guide FTA funded procurements conducted by the state? How do these procedures ensure full and open competition? How does the state ensure that those procedures are followed?*

What are the state's key procurement requirements for micro-purchases,

small purchases, sealed bids (IFBs) and competitive proposals (RFPs)?

Over the past three years, how many single bids or sole source procurements were there?

EXPLANATION

When procuring property and services under a grant, a state may use the same procurement policies and procedures that it uses for acquisitions not financed with Federal assistance.

States must conduct procurement transactions in a manner providing full and open competition. States 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.

At a minimum, the state must comply with the federally mandated requirements on contract term limitations for revenue vehicle purchases, competition, prohibitions against geographic preferences, procurement of architectural engineering services, and awards to responsible contractors. The state must also ensure that each purchase order and contract financed with FTA assistance includes all provisions required by Federal statutes and their implementing regulations.

REFERENCE

49 U.S.C. Sections 5325(a) and (h)
FTA C 4220.1F, Ch. II, Sections 2.a(1)(a) and 2(a)(4) and Ch. VI, Section 1
FTA C 9040.1F, Ch. VI, Section 5
FTA C 9070.1F, Ch. VI, Section 9
FTA C 9050.1, Ch. VI, Section 8
FTA C 9045.1, Ch. VI, Section 8
FTA C 9300.1B, Ch. VI Section 17
FTA C 8100.1C, Ch. II, Section 3.b

SOURCES OF INFORMATION

Before the site visit, review the state's written procurement policies, and the list of single and sole source awards. During the site visit, review procurement files, particularly legal notices and solicitation documents, to determine whether procurements have been conducted in accordance with state and FTA procurement requirements. Pay

particular attention to the frequency of sole-source, single bid, and "brand name" procurements to determine how and if the state is providing for full and open competition.

DETERMINATION

The state is deficient if it is not following its written procurement procedures, particularly in areas that impact full and open competition. (**DEFICIENCY CODE 23:** Procurement procedures not followed)

The state is deficient if it has a pattern or practice of not providing for full and open competition. (**DEFICIENCY CODE 37:** Lacking full and open competition for one or more methods of procurement)

SUGGESTED CORRECTIVE ACTION

The state must cease immediately any practice that is in violation of FTA guidelines. Direct the state to provide the FTA regional office with a plan to ensure that existing procurement procedures are followed. Direct the state to provide the FTA regional office revised procurement procedures that ensure full and open competition in all procurement transactions. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

3. *What is the process and horizon for the state's FTA funded procurement planning? What procurements does the state anticipate conducting in the upcoming year? What procurements does the state anticipate its subrecipients to be conducting in the upcoming year? Which of these procurements are of a type and size not recently executed by the state or its subrecipients?*

EXPLANATION

This question provides information on what proactive steps the state uses to mitigate risks associated with future procurements.

REFERENCE

None

SOURCES OF INFORMATION

Before the site visit, examine any information in the state management plan regarding this area. During the desk review, ask this question of the regional staff, particularly for pending grant application information. Examine procurement information provided in response to this question and upcoming projects noted by the state. During the site visit, discuss this with the grantee.

DETERMINATION

None

4. *What processes does the state have in place to prohibit the inclusion of geographic preferences in its FTA-funded procurements?*

EXPLANATION

States 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 law include the following:

- 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.

REFERENCES

49 CFR 18.36 (c)
FTA C 4220.1F , Ch. II, Section 2

SOURCES OF INFORMATION

Before the site visit, review procurement policies and procedures to see if there is information for geographic preferences. These might include verbiage such as local preference or the inclusion of price preferences or bid advantage for local or in-state firms. During the site visit, review procurement files including solicitation and evaluation documents to determine if procurements contain geographic preferences.

DETERMINATION

The state is deficient if it has used geographic preferences in any procurement for other than one of the exceptions. The state is deficient if the use of geographic preferences in A&E procurements restricted competition. (**DEFICIENCY CODE 57:** Improper use of geographic preferences)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide to the FTA regional office documentation of a revised procurement process which prohibits the improper use of geographic preferences. The state must cease any practice that violates FTA guidelines. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

5. *How does the state conduct A&E procurements? If it has a statute prescribing a formal procedure for the procurement of A&E services, do the procedures provide for full and open competition? If it does not have such a statute, did the state use competitive proposal procedures based on the Brooks Act when procuring A&E services with FTA funds?*

EXPLANATION

When using FTA assistance to contract for A&E services, states are required to use competitive proposal procedures based on the Brooks Act or an equivalent qualifications based requirement adopted before August 10, 2005. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services which lead to construction. Unlike other two-step procurement procedures, in which price is an evaluation factor, an offeror's qualifications 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 state may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the state determines is fair and reasonable.

For design/build procurements, FTA expects grantees to use the procurement method appropriate for the services having the greatest cost, even though the other necessary services would not typically be procured by that method.

REFERENCES

49 U.S.C. Section 5325(b)(1)
49 CFR 18.36(t)
FTA C 4220.1F, Ch. IV, Section 2.g and Ch. VI, Sections 3.f and 3.h

SOURCES OF INFORMATION

Review state statutes, the state management plan and other documentation of procurement procedures for a discussion of procedures for contracting for A&E services. Review the list of procurements provided in advance of the review for procurements that would likely require these types of procedures. On site, discuss with the state, and evaluate procurement files to determine what procedures were used.

DETERMINATION

The state is deficient if the procedures for procuring A&E services do not provide for full and open competition. (**DEFICIENCY CODE 37:** Lacking full and open competition for one or more methods of procurement)

The state is deficient if it has not adopted a statute prescribing a formal procedure for the procurement of A&E services before August 10, 2005, and does not follow the Brooks Act when using FTA funds to contract for A&E services. (**DEFICIENCY CODE 349:** Qualifications-based procurement deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for procuring A&E services that provide for full and open competition.

Direct the state to submit to the FTA regional office procedures for following the Brooks Act when using FTA assistance to contract for A&E services. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

6. *Verify that applicable clauses have been included in FTA funded procurements exceeding the micro-purchase limit (\$3,000) and construction contracts over \$2,000, in intergovernmental agreements and subrecipient agreements?*

EXPLANATION

States 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. States

should provide a mechanism to all contractors and subrecipients for access to the Master Agreement.

FTA's 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.

States 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. States 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. Procurements above the micro-purchase thresholds must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA guidelines is not sufficient to meet this requirement.

In addition to other requirements for specific clauses and certifications, states are required to include a lobbying certification in agreements, contracts, and subcontracts exceeding \$100,000. Separate signed certifications regarding lobbying must be obtained by the state from subrecipients and contractors. Subrecipients retain their contractors' certifications and contractors retain subcontractors' certifications. The state is responsible for ensuring that they fulfill the requirements in applicable direct procurements exceeding \$100,000.

At the end of this section, a checklist of required clauses is provided. The checklist provides a citation from the Master Agreement for each required clause. Also provided is a checklist for certifications, reports, and forms that are required for DBE, Buy America, debarment, and suspension, and lobbying. A list of other required items to assist in determining whether the state's policies and procedures are actually being followed is also included.

At the end of this section, a listing showing the applicability of FTA clauses to different types of procurements is provided. 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) and (j-o)
29 CFR Parts 4 and 5
41 CFR Parts 50-201 and 50-206
Master Agreement
FTA C 4220.1F, Ch. IV, Section 2 and Appendix D

SOURCES OF INFORMATION

Before the site visit, review written procurement procedures. During the site visit, examine procurement files for inclusion of required clauses.

DETERMINATION

The state is deficient if it has not included any reference to FTA requirements or any FTA clauses in contracts, intergovernmental agreements, or subrecipient agreements. (**DEFICIENCY CODE 129:** No FTA clauses) The state is deficient if it has not included the lobbying certification in its agreements and procurement solicitations. (**DEFICIENCY CODE 12:** Lobbying certifications not included in agreements/procurement solicitations) The state is deficient if it has not obtained executed certifications from contractors and subrecipients. (**DEFICIENCY CODE 40:** Lobbying certifications not signed by subgrantees, contractors, or subcontractors)

The reviewer should not find the state deficient if it missed some clauses that should have been included. However, refer the state to the matrix at the end of this section and any other resource that may assist it in determining the applicability of clauses in the future. Clauses addressing debarment and suspension, DBE, and Buy America provisions are addressed elsewhere within this guide.

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office revised procurement procedures that address inclusion of all FTA required third party contract clauses. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

7. *What is the state's process for ensuring compliance with Buy America requirements? How does the process ensure that the state includes a Buy America provision in all procurements of steel, iron, and manufactured products, except for products with a waiver or purchases under \$100,000? Does this procedure encompass procurements such as rolling stock and construction? What is the process to obtain 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 purchases under the simplified acquisition threshold (currently \$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 minivans that totals \$120,000, even though each minivan costs \$30,000, must comply with the Buy America requirements. States may not split procurements that exceed the threshold in order to avoid Buy America requirements. For construction projects and projects involving the installation of manufactured products, the small purchase limitation is based on the total value of the project, not the value of the steel, iron, and manufactured products purchased for the project. Buy America provisions apply to:

- All purchases of steel, iron, and manufactured products exceeding the simplified acquisition threshold, regardless of whether they involve capital, operating, or planning funds
- Subcontractors, regardless of the size of the subcontract, if the prime contract is more than the simplified acquisition threshold
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

The state 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 requirements of 49 CFR 663 describe the audit reporting for a procurement of rolling stock.

The state, 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 the simplified acquisition threshold. The contractor is required to certify that the materials provided either comply or do not comply with Buy America requirements. The state is required to retain these certifications in the contract file and make them available for inspection upon request. If a bidder or offeror certifies that it does not comply with the Buy America requirements, then the state must request, receive, and retain a waiver from

FTA before it may award a contract to that bidder or offeror. It should be noted that the Buy America rules apply to utility contracts that are within the scope and budget of an FTA funded project. Buy America applies to the entire project.

States may not obtain signed Buy America certifications after contract award for its own contracts or contracts of other grantees to make the contracts eligible for federal funding. States may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for federal funding. The state should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

The Buy America waiver for minivans was rescinded on December 3, 2012.

REFERENCE

49 CFR 661.6, 661.7, 661.12 and 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118
Federal Register Vol. 77, No. 28, pp. 71673 -71678
Notice of Decision To Rescind Buy America Waiver for Minivans and Minivan Chassis
Best Practices Procurement Manual
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

During the desk review, ask if the state applied for any waivers from Buy America requirements. Review the state's written procurement procedures. On site, discuss the procedures for incorporating Buy America provisions in procurements and obtaining certifications from vendors. Select a sample of procurements and review the files for evidence that Buy America requirements have been met. Focus on procurements of vehicles and other procurements of steel, iron, or manufactured products greater than the \$100,000 threshold. Review invitations for bids to determine if Buy America provisions were included. Examine bid responses and executed contracts to determine if properly executed Buy America certifications were obtained.

DETERMINATION

The state is deficient if it did not include Buy America provisions in solicitations or obtain signed Buy America certifications from vendors. (**DEFICIENCY CODE 138:** Buy America provision not in solicitation and/or contract) (**DEFICIENCY CODE 156:** Contract files lacking Buy America certifications)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office revised procurement procedures that require the state 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.

For procurements for which a Buy America certification was not obtained, direct the state to provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress but not yet awarded, direct the state to submit to the FTA regional office documentation that it obtained signed Buy America certifications.

Direct the state to submit to the FTA regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

8. *As part of its evaluation of bids and proposals prior to award, how does the state ensure award to responsive and 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 determined by the state after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the state 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 U.S. Department of Transportation (DOT) regulations, “Non-procurement Suspension and Debarment.”
- Affirmative Action and DBE. Is in compliance with the Common Grant Rule’s 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.

REFERENCES

49 CFR 18.36(b)(8)

49 USC Section 5325

FTA C 4220.1F, Ch. VI, Section 8.b

SOURCES OF INFORMATION

During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine the extent to which the state makes responsibility determinations prior to awarding contracts, including correspondence between the state and its contractors for evidence of determinations. Some states include this information in evaluation criteria in requests for proposals and some create a responsibility checklist to summarize these determinations.

DETERMINATION

The state is deficient if there is no evidence it makes responsibility determinations prior to award. **(DEFICIENCY CODE 344:** Responsibility determination deficiencies) Note that although a state may not have written procedures addressing these determinations specifically, overall procurement procedures combined with a state’s business practices may ensure that adequate determinations are being made.

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office documentation of an implemented process to make adequate responsibility determinations prior to award of a contract. For the next procurement, submit to FTA documentation that the required process was implemented.

9. *What are the state's procedures for ensuring that subrecipients or contractors are not suspended or debarred? As part of its evaluation of bids and proposals prior to award, does the state search the System for Award Management (SAM) to identify debarred or suspended bidders?*
10. *If subsequent to awarding a contract, the state discovered that a subrecipient or contractor was listed in SAM as an excluded party, when did the state inform FTA in writing of this information?*

EXPLANATION

The state is required to ensure to the best of its knowledge and belief that none of its 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 SAM before entering into any third party contract expected to equal or exceed \$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. [Prior to the implementation of SAM, grantees were required to check the Excluded Parties Listing System (EPLS)]

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 its contractors and subrecipients regarding suspension and debarment.

In the event that a state 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 state may continue any covered transaction in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. The state is not required to continue the transaction and may consider termination. However, the state 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

SOURCES OF INFORMATION

Review the state's written procurement procedures and employment procedures to determine if the

requirement to review the SAM has been included. During the site visit, review contract and subrecipient files to determine if the SAM is being searched before entering into any third party contracts. Ask the state if it has become aware of any situation in which an excluded party is participating in a covered transaction. If so, obtain a copy of the state's written notification to FTA.

DETERMINATION

The state is deficient if it has not reviewed SAM prior to applicable awards or actions. (**DEFICIENCY CODE 183:** No verification that excluded parties are not participating)

The state is deficient if it has not promptly informed FTA in writing after becoming aware that an excluded party is participating in a covered transaction. (**DEFICIENCY CODE 189:** Excluded parties participating in covered transactions)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures to search SAM before entering into applicable transactions. For the next procurement, submit to FTA documentation that the required process was implemented.

Direct the state to submit to the FTA regional office documentation of an implemented process to promptly notify FTA in writing of any excluded party's participation.

11. *What policies and procedures does the state have in place regarding change orders to FTA funded projects? How are these policies monitored for subrecipients administering FTA funded projects?*

EXPLANATION

FTA does not participate in the recipient's decisions involving change orders, constructive changes, or modifications, but reserves the right to review the recipient's supporting documentation as necessary to determine the extent of FTA assistance that may be used to support those costs. To be eligible for FTA assistance under the recipient's grant, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant, and reasonable for the completion of the changed work.

Section 5310, 5311, 5316, and 5317 progress reports must include budget revisions for changes in line item budgets which may be impacted by change orders.

REFERENCE

49 USC 5325(e)(1)
FTA C 4220.1F, Ch. VII, Section 2
FTA C 9040.1F, Ch. VI, Section 12
FTA C 9070.1F, Ch. VI, Section 17
FTA C. 9045.1, Ch. VI, Section 16
FTA C. 9050.1, Ch. VI, Section 16

SOURCES OF INFORMATION

Discuss this question with the regional office in advance of the desk review. Before the site visit, review the list of contract changes and select files for review. Review contract administration and subrecipient oversight procedures. Discuss with the state (and subrecipients) the amount of change orders on current or recent projects. During the site visit, examine change orders to FTA-funded project files to determine how the change order was evaluated prior to execution and whether any change was outside the scope of the grant.

DETERMINATION

The state is deficient if it is funding ineligible change orders with FTA funds. It is also deficient if its processes do not allow it to adequately report on change orders to FTA when applicable. (**DEFICIENCY CODE 277:** Insufficient documentation to support change orders)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office revised procurement procedures that address appropriate funding, tracking, evaluation, and reporting of change orders. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

12. *Identify any FTA funded equipment obtained since the last state management review through a piggyback, state-led, or joint procurement method.*

EXPLANATION

Recipients of FTA financial assistance are required by both 49 U.S.C. § 5325(a) and the common grant rule (49 C.F.R. 18.36(c)) to use full and open competition when making purchases. Usually this requirement is fulfilled by one of four procurement methods: (1) conducting a stand-alone procurement for a finite number of vehicles; (2) jointly procuring a finite number of vehicles with one or more grantees; or (3) accepting the assignment of another grantee's contractual right to purchase a finite number of vehicles (aka "piggybacking"). One common requirement in all methods is that the number of vehicles to be purchased is based on the grantee's actual needs and is advertised with the solicitation.

Thus, all respondents to the solicitation can provide a bid price based on the number of vehicles to be purchased as well as other salient factors contained in the solicitation. When the contract is formed, the grantee commits to purchasing vehicles at the agreed upon price and the vendor commits to furnishing the vehicles at that price. A fourth procurement method, state purchasing schedules, is led by a State for use by in-state entities.

A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor. The parties to a joint procurement may be from more than one state. FTA encourages the use of joint procurements when combining requirements into a larger order can result in a more advantageous contract for the participating recipients. FTA's current guidance does not require the needs of each joint procurement participant to be separately written into the contract. And, as with regular procurements, a joint procurement may take the form of an indefinite delivery/indefinite quantity contract (ID/IQ) if it contains "total minimum and total maximum" terms.

Participation in a joint procurement does not relieve any recipient of the responsibilities it would have if it were procuring goods or services by itself. Recipients that participate in a joint procurement must adhere to all applicable federal requirements, including the prohibition against using federal money to procure unneeded items.

A joint procurement may not be used as an opportunity to improperly expand the scope of a federally assisted contract. A contract has been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

States are accorded substantial deference under the Common Grant Rule at 49 C.F.R. 18.36(a) in the policies and procedures used in state procurements. By this authority, a State may follow the same policies and procedures it uses for procurements from its non-Federal funds, so long as it ensures that every purchase order or similar contract includes any clauses required by Federal law. Many states use this authority to create purchasing schedules by which the state and its subsidiaries may acquire goods.

FTA grantees located outside of a state's borders are not permitted to purchase from that State's schedule. Joint procurements (and in limited circumstances piggybacking) are the only forms of FTA-funded contracts permitted among grantees from different states.

FTA has determined that grantees may not purchase items from certain buying cooperatives such as the

National Joint Powers Alliance (NJPA) and the Houston-Galveston Area Council (HGAC). FTA should be consulted before entering into any agreements with such organizations.

For reasons of economy, FTA permits the assignment of unneeded contract rights, sometimes called “piggybacking.” FTA discourages the assignment of another recipient’s contract rights as a substitute for a stand-alone procurement. Assignments are intended to be used only when a recipient has “inadvertently acquired contract rights in excess of its needs” due to “changed circumstances or honest mistakes.”

Intentionally procuring excessive quantities using federal money is a violation of the Common Grant Rule described above. Furthermore, to the extent that an improper assignment of contract rights enables an assignee to avoid otherwise required procurement procedures, it also undermines the Common Grant Rule’s general purpose of full and open competition in federally assisted procurements.

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 grantee seeks, do not exceed the amounts available under the assigning grantee’s contract. Otherwise, the purchase is a “tag-on” and is considered an improper sole source procurement.

Any changes in the vehicle when assigned must be within the original scope (i.e., no major changes in configuration or design). Although FTA has provided additional guidance in the BPPM, 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, colors, exterior paint schemes, signage, floor covering, and other similar changes to be permissible changes.

Vehicles added to the base or option amounts 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.

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.

Generally speaking, FTA encourages recipients to use joint procurements, particularly among smaller transit agencies. Recipients often can obtain better pricing by combining their requirements into larger joint purchases. However, they must limit their joint procurement to the amount of property and services required to meet each of their reasonably expected needs, and are prohibited from improperly expanding the procurement to include excess capacity simply for the purpose of assigning contract rights to others at a later date. Accordingly, FTA permits the assignment of unneeded contract rights to another transit agency—piggybacking—only when a recipient has unintentionally acquired more goods or options than it needs to support its transit system.

REFERENCES

FTA C. 4220.1F, Ch. V Section 3
FTA C. 4220.1F, Ch. V Section 7(a)(2)(b)(1)
FTA C. 4220.1F, Ch. IV Section 1(c)(1)
FTA C. 4220.1F, Ch. V Section 4
FTA C. 4220.1F, Ch. V Section 7(a)(2)(a)
FTA C. 4220.1F, Ch. V Section 7(a)(2)
FTA C. 4220.1F, Ch. IV Section 1(b)(2)(b)
Piggybacking Worksheet from FTA Best Practices Procurement Manual
FTA Administrator’s Policy Letter March 8, 2013

SOURCES OF INFORMATION

Refer to information obtained from the grantee for any piggyback, state-led, or joint procurements conducted since the last triennial review.

Review the file of a piggyback procurement, if applicable. Review the contract and correspondence between the two agencies involved in the piggyback arrangement to ensure that the original procurement contains an assignability clause and meets FTA requirements (e.g., competitive award, required clauses included, required certifications filed,

cost/price analysis conducted, five or seven year contract term, etc.). Ask the state if any changes to the vehicle were required and determine if these were within the original scope.

DETERMINATION

The state is deficient if it cannot document that the original award contains an assignability clause, vehicles are still available for assignment, or FTA requirements were met. The grantee is deficient if the grantee conducted a "tag-on" purchase. The state is deficient if changes were beyond the original contract scope. The state is deficient if it used FTA funds for an ineligible piggyback, joint, or state-led procurement. (**DEFICIENCY CODE 231**: Improper piggyback purchase)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office with piggybacking, state-led, or joint procurement procedures that comply with FTA requirements.

Direct the state to provide revised procedures that address the requirements for a piggyback, state-led, or joint procurement and continue the process in accordance with federal regulations or possibly terminate the agreement for convenience, if an improper piggyback procurement is in process.

Notify the FTA regional counsel when significant procurements (i.e., exceeding \$100,000) have violated federal requirements.

Rolling Stock Procurements

13. *Since the last state management review, identify any contracts for revenue rolling stock and replacement parts that include ordering periods exceeding five years in total length including base and options for bus procurements or seven years for rail procurements.*

EXPLANATION

States must not enter into contracts for revenue rolling stock and replacement parts with a period of performance exceeding five years for bus procurements inclusive of options, extensions, or renewals. MAP-21, effective July 16, 2012, extended this restriction to seven years for rail procurements. The five- and seven-year rules do not mean the state must obtain delivery, acceptance, or even fabrication in five or seven years. The state, may not exercise the option to acquire buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract. However, the maximum quantity specified in such multi-year contracts must

represent the state's reasonably foreseeable need. Typically, states use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

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

REFERENCES

49 USC 5325(e)(1)
FTA C 4220.1F, Ch. IV, Section 2.e. (10)

SOURCES OF INFORMATION

During the site visit, in accordance with records sampling procedures, examine procurement files for rolling stock and replacement part contracts during to ensure that these meet the five- and seven-year contract term restriction. Review any waiver requests and/or approvals.

DETERMINATION

The state is deficient if a revenue rolling stock contract represents more than five or seven years' requirements. The state is deficient if it has a revenue rolling stock and replacement parts contract with a period of performance exceeding five or seven years and has not obtained prior FTA written approval. (**DEFICIENCY CODE 240**: Contract(s) period of performance exceeds limitation)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office revised procurement procedures that include the five- and seven-year restriction on the period of performance for rolling stock and replacement part contracts supported with FTA funds. Direct the state to provide the FTA regional office with an assurance that unexecuted options will not be executed on an existing contract that exceeds the five- or seven-year restriction.

14. *When does the state obtain the bus testing report (Altoona testing) showing the bus model purchased meets FTA's bus testing requirements?*

EXPLANATION

The state must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle. Testing applies to buses and modified vans used in transit service, including but not limited to new bus and van models using alternative fuels such as methanol, ethanol, compressed natural

gas (CNG), hydrogen, and electricity (if stored and/or generated on-board the vehicle).

FTA does not require a vehicle manufacturer to test its model before bidding. However, recipients of FTA funds acquiring any bus model must certify that an example of that model will have been tested and the recipient will have received a copy of the resulting Bus Testing Report prepared on the bus model before the final acceptance of the first vehicle.

Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA grantees in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

REFERENCES

49 CFR Part 665

FTA C 9030.1E, Chapter VI Section 11.f.

Bus Testing Website

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for a copy of the Altoona Bus Test Report for the specific make/model purchased. Review the state's procurement procedures for a discussion of bus testing. On site, discuss the process for obtaining a copy of the test report.

DETERMINATION

The state is deficient if a copy of the Altoona Bus Test Report is not in the state's procurement files (**DEFICIENCY CODE 317**: Deficiency with bus model testing requirements).

SUGGESTED CORRECTIVE ACTION

Direct the state to obtain the Altoona Bus Test Report for the specific make/model purchased and provide a copy of it and procedures for obtaining the report for future bus purchases to the FTA regional office. If the vehicle has not been tested and the state has taken delivery of the vehicle(s), notify the FTA regional office immediately.

- 15.** *How does the state conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?*

- 16.** *How does the state verify domestic content, final assembly activities, and location of final assembly at the pre-award and post-delivery stages?*

EXPLANATION

A state 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 Federal Motor Vehicle Safety Standards (FMVSS). The state is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The audits require the state to complete two certifications (Buy America and Purchaser's Requirements) at the pre-award stage and three certifications (Buy America, Purchaser's Requirements, and FMVSS) at the post-delivery stage.

These requirements apply to purchases of new and used revenue service rolling stock. However, FTA recognizes that it may be impractical for used vehicles to demonstrate compliance with some of the Buy America requirements, such as the pre-award and post-delivery audit, and having a resident inspector present during the vehicle's construction.

FTA issued a waiver from Buy America requirements for purchases under the simplified acquisition threshold (currently \$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.

Pre-Award Audits and Certifications

States 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 pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

Compliance with purchaser's specifications: The state must complete a pre-award purchaser's requirements certification verifying that the manufacturer's bid specifications comply with the state'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 state's determination that the vendor is responsive and responsible. 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 simplified acquisition threshold. The pre-award audit is required before a state enters into a formal contract with a supplier. If a state is using another state'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 state must review the audit and prepare its own signed certification.

Compliance with Buy America: If the procurement exceeds the simplified acquisition threshold (currently \$100,000), at the pre-award stage, the state must complete:

- A compliance certification verifying that the rolling stock will contain a minimum of 60 percent domestic components, by cost, and that final assembly will take place in the United States; or
- An exemption certification indicating that the state has a letter from FTA granting a waiver from the Buy America requirement.

The state or an independent third party must conduct the Buy America audit. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate. If a state is using another state'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 state must review the audit and prepare its own signed certification.

Compliance with FMVSS: The state must receive a certification from the vehicle manufacturer at the pre-award stage that the vehicles being procured comply with the Federal Motor Vehicle Safety Standards (FMVSS) issued by the National Highway Traffic Safety Administration (49 CFR Part 571).

Post Delivery Audits and Certifications

Compliance with Purchaser's Specifications: The state must complete a post-delivery purchaser's requirements certification verifying that the buses delivered meet the contract specifications. This must be completed before a bus title is transferred to the state or before a bus is placed into revenue service, whichever is first. The post-delivery certification is based on the state'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 simplified acquisition threshold.

Grantees are required to have an inspector during final assembly process if they meet the following criteria:

- Grantees purchasing any number of rail vehicles
- Grantees in an urbanized areas with populations of more than 200,000 that are purchasing more than 10 buses
- Grantees in areas with populations of 200,000 or less that are purchasing more than 20 buses

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.

In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size. One in-plant inspector can meet the requirement for multiple grantees. 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 and operational characteristics of the vehicles met (or did not meet) the contract specifications.

Compliance with Buy America: Required post-delivery 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; a description of final assembly activities; and the cost of final assembly. Final assembly costs are not to be included when calculating the percent domestic content of the vehicle.

The state 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.

FMVSS: The state must complete, at the post-delivery stage, a certification that the state 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 simplified acquisition threshold.

REFERENCES

49 CFR Part 571

49 CFR Part 661
49 CFR Part 663
FTA C 9030.1E, Chapter VI Section 11.e
Dear Colleague letter of March 30, 2001
Dear Colleague Letter, March 18, 1997
FTA Buy America Website
Conducting Pre-Award and Post-Delivery Audits for
Bus Procurements
Conducting Pre-Award and Post-Delivery Audits for
Rail Vehicle Procurements
Buying Used Buses

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for copies of pre-award and post-delivery audits, certifications, and review and inspection forms demonstrating that the state ensured the manufacturer complied with all vehicle specifications, including Buy America.

Review the state's procurement procedures for a discussion of pre-award and post-delivery audits. On site, discuss the process for completing the pre-award and post-delivery audits and certifications. If an in-plant inspector was required, discuss how the requirement for an in-plant inspector was fulfilled. Identify the organization providing the in-plant inspector, e.g., the state, the subrecipient, or third-party contractor to the state or subrecipient.

DETERMINATION

The state is deficient if it did not conduct all of the required audits for revenue rolling stock procurements. The state is deficient if it ordered a group of vehicles from a multi-year procurement before the pre-award audit was conducted. (**DEFICIENCY CODE 253:** Pre-award and/or post-delivery audits not performed)

The state is deficient if it conducted the required pre-award and post-delivery audits and documented the procedures but did not sign all required certifications. (**DEFICIENCY CODE 265:** Pre-award and/or post-delivery certifications lacking)

The state is deficient if it 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. (**DEFICIENCY CODE 360:** Vehicles purchased without in-plant inspectors, as required)

SUGGESTED CORRECTIVE ACTION

Direct the state submit to the FTA regional office procedures for pre-award and post-delivery review and inspection.

Direct the state to submit documentation to the FTA regional office that the procurement complied with Buy America, FMVSS, and purchaser's requirements.

Direct the state to submit to the FTA regional office pre-award audit information and certifications before awarding the contract and the post-delivery audit information and certifications before drawing FTA funds for the next revenue rolling stock procurement.

Direct the state to submit to the FTA regional office procedures for conducting pre-award audits for options and/or multi-year contracts so that future procurements will comply with this requirement.

If the state did not sign the pre-award and/or post-delivery certifications, direct the state to submit to the FTA regional office the certifications for the procurement reviewed and procedures for completing the applicable pre-award and post-delivery audits certifications for future revenue rolling stock procurements.

Direct the state to submit to the FTA regional office the inspector's report before drawing FTA funds for the next procurement requiring in-plant inspectors.

Procurement Oversight

17. *What oversight procedures and processes does the state implement to mitigate the risk associated with subrecipients conducting procurements with FTA funds?*

EXPLANATION

In addition to complying with state and local law, subrecipients, transit management contractors and, depending on the structure of the contract, other contractors to which a state has contracted out a portion of its FTA funded operations must comply with relevant FTA third party contracting requirements when procuring goods and services with FTA assistance. Subrecipients that are public entities and contractors must comply with FTA requirements that apply to states. Subrecipients that are private nonprofit or for profit entities must comply with all the FTA requirements of FTA C 4220.1F. FTA considers all metropolitan planning organizations (MPOs), even those incorporated as a nonprofit organizations under state law, to be "local governments." Consequently, MPOs must comply with the FTA requirements that apply to states.

The state is responsible for ensuring that these organizations are aware of and comply with the requirements. Note that FTA requirements do not apply to procurements funded solely with local funds, including operating procurements.

Procurement requirements that apply to the state, public entity subrecipients, and contractors are:

- Comply with its own procurement regulations
- Conduct all procurements in a manner providing full and open competition
- Exclude the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference
- Use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services, if the state has not adopted a statute governing the procurement of such services before August 10, 2005
- Award to only responsible contractors possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract
- Ensure that every purchase order and contract executed using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations
- Do not enter into any contract for rolling stock with a period of performance for ordering exceeding five years inclusive of options without prior FTA approval
- Comply with Buy America requirements, including pre-award and post-delivery requirements
- Comply with debarment and suspension requirements
- Comply with lobbying requirements
- Comply with piggybacking requirements

In addition to the requirements that apply to states, FTA C 4220.1F requirements that apply to private nonprofit or for-profit entities include, but are not limited to, the following:

- Maintain a written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts
- Have written procurement policies and procedures
- Have written protest procedures to handle and resolve disputes relating to the award of contracts
- Have procedures for settlement of contract issues/disputes (procurements >\$100,000)

- Analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest
- Review procurement requests to avoid duplicative or unnecessary purchases
- Incorporate a clear and accurate description of the material, product, or services being procured; identify all requirements that offerors must fulfill; and identify evaluation factors in solicitations
- Develop an independent cost estimate before receiving bids or proposals
- Conduct a contract cost or price analysis for every procurement
- Evaluate options at the time of bid award, exercise the options at the agreed upon terms, and determine that the option price is better than current market prices before exercising the options
- Maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders
- Maintain a written record of procurement history

FTA C 4220.1F contains a complete list of third party contracting requirements.

Some states provide written guidelines or standard terms and conditions to subrecipients and contractors for direct procurements. Some states review subrecipients' and contractors' direct procurements, particularly for vehicles, equipment and construction. Such reviews, which generally focus on bid evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of compliance with FTA third party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. The state is not required to review each subrecipient's or contractors' procurement to ensure compliance with Federal requirements. The state may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements.

REFERENCES

2 CFR Part 180
 49 CFR Part 20
 49 CFR 18.36
 FTA Master Agreement for FY2011, Sections 2.d-e
 FTA C 4220.1F
 FTA C 9040.1F, Ch. VI, Section 5
 FTA C 9070.1F, Ch. VI, Section 9

FTA C 9050.1, Ch. VI, Section 8
FTA C 9045.1, Ch. VI, Section 8
FTA C 8100.1C, Ch. II, Section 3.b

SOURCES OF INFORMATION

Review the state management plan for a discussion of policies and procedures applicable to procurements with Federal funds by subrecipients. Review the applications and standard agreements for procurement requirements. Review procurement solicitations and contracts for transit management services for procurement requirements. Review other pertinent documents that describe state procurement policies and procedures or provide guidance to subrecipients and contractors regarding applicable Federal and state procurement requirements.

On site, discuss the mechanisms used to inform subrecipients and transit management contractors of procurement requirements and to monitor compliance by subrecipients and transit management contractors. Identify technical assistance provided. If the state provides standard terms and conditions, review them for inclusion of Federally required clauses and clauses that restrict full and open competition. If the

state reviews procurements and procurement procedures during site visits, review any documentation of reviews of subrecipient written procurement procedures. Review a sample of subrecipients' procurement documents if the state has any on file. If not, review a sample of procurements during site visits.

DETERMINATION

The state is deficient if it does not monitor subrecipients and contractors making direct procurements with FTA assistance for compliance with the requirements. (**DEFICIENCY CODE 278:** Insufficient oversight of procurement)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for informing subrecipients and contractors making direct procurements with FTA assistance of Federal procurement requirements and for monitoring them for compliance with the requirements. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

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		§10.a
Federal changes		§2.c(3)(d)
Civil Rights (EEO, Title VI & ADA)		§13
Incorporation of FTA Terms	Per FTA C 4220.1F	§17.a
Energy Conservation		§30
Awards Exceeding \$10,000		
Termination provisions	49 CFR Part 18 Not required of states	§12
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	§16.a
Provisions for resolution of disputes, breaches, or other litigation		§96
Awards Exceeding \$100,000 (by Statute)		
Lobbying		§3.d
Clean Air		§17.m
Clean Water		§17.m
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§16.c

A. REQUIRED THIRD-PARTY CONTRACT CLAUSES

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

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Construction Activities		
<i>Davis Bacon Act</i>	<i>Except for contracts <\$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market</i>	<i>§28.a</i>
<i>Copeland Anti-Kickback Act</i>	<i>Section 1: All Section 2: Contracts >\$2,000</i>	<i>§28.a</i>
<i>Contract Work Hours & Safety Standards Act</i>	<i>Contracts >\$100,000</i>	<i>§28.a</i>
<i>Bonding for construction activities exceeding \$100,000</i>	<i>5% bid guarantee; 100% performance bond; and Payment bond equal to:</i> <ul style="list-style-type: none"> <i>• 50% for contracts < \$1 M</i> <i>• 40% for contracts > \$1 M, but < \$5 M</i> <i>• \$2.5 M for contracts > \$5 M</i> <i>Not required of states</i>	<i>§17.p(1)</i>
<i>Seismic Safety</i>	<i>Contracts for construction of new buildings or additions to existing buildings</i>	<i>§26.e</i>
Nonconstruction Activities		
<i>Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)</i>	<i>Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > \$100,000</i>	<i>§28.b</i>
Transit Operations		
<i>Transit Employee Protective Arrangements</i>	<i>Applies to Section 5307, 5309, 5311 and 5316 projects</i>	<i>§28.d</i>
<i>Charter Service Operations</i>		<i>§32</i>
<i>School Bus Operations</i>		<i>§33</i>
<i>Drug and Alcohol Testing</i>	<i>Safety sensitive functions. Applies to Section 5307, 5309 and 5311 projects</i>	<i>§40.b</i>
Planning, Research, Development, and Documentation Projects		
<i>Patent Rights</i>		<i>§19</i>
<i>Rights in Data and Copyrights</i>		<i>§20</i>
Miscellaneous Special Requirements		
<i>Disadvantaged Business Enterprises (DBEs)</i>	<i>Contracts awarded on the basis of a bid or proposal offering to use DBEs</i>	<i>§13.d</i>

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

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
<i>Prompt Payment and Return of Retainage</i>	<i>Per 49 CFR Part 26, if grantee meets the threshold for a DBE program</i>	<i>§13.d</i>
<i>Recycled Products</i>	<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>	<i>§17.l</i>
<i>ADA Access</i>	<i>Contracts for rolling stock or facilities construction/ renovation</i>	<i>§13.g</i>
<i>Assignability Clause</i>	<i>Piggyback procurements</i>	<i>§17.a</i>
State Requirements		
<i>Special Notification Requirements for States</i>		<i>§42</i>

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

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
<i>Bus Testing Certification and Report</i>	<i>Procurements of buses and modified mass produced vans</i>	<i>§17.o(4)</i>
<i>TVM Certifications</i>	<i>Procurements of buses and modified mass produced vans</i>	<i>§13.d(1)</i>
<i>Buy America Certification</i>	<i>Procurements of steel, iron or manufactured products > \$100,000</i>	<i>§16.a</i>
<i>Pre-Award Audit</i>	<i>Rolling stock procurements</i>	<i>§17.o(3)</i>
<i>Pre-Award Buy America Certification</i>	<i>Rolling stock procurements > \$100,000</i>	<i>§17.o(3)</i>
<i>Pre-Award Purchaser's Requirement Certification</i>	<i>Rolling stock procurements</i>	<i>§17.o(3)</i>
<i>Post-Delivery Audit</i>	<i>Rolling stock procurements</i>	<i>§17.o(3)</i>
<i>Post-Delivery Buy America Certification</i>	<i>Rolling stock procurements > \$100,000</i>	<i>§17.o(3)</i>
<i>Post-Delivery Purchaser's Requirement Certification</i>	<i>Rolling stock procurements</i>	<i>§17.o(3)</i>
<i>On-Site Inspector's Report</i>	<i>Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population</i>	<i>§17.o(3)</i>
<i>Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification</i>	<i>Non-rail rolling stock procurements</i>	<i>§17.o(3)</i>
<i>Excluded Parties Listing System search</i>	<i>Procurements > \$25,000</i>	<i>§3.b</i>
<i>Lobbying Certification</i>	<i>Procurements > \$100,000</i>	<i>§3.d(1)</i>

B. REQUIRED CERTIFICATIONS, REPORTS, AND FORMS

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

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
<i>Standard Form LLL and Quarterly Updates (when required)</i>	<i>Procurements > \$100,000 where contractor engages in lobbying activities</i>	<i>§3.d(1)</i>
<i>Cost effectiveness determination</i>	<i>Facilities or equipment leases</i>	<i>5010.1D, Ch. IV, Section 3.j</i>

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	Revenue Rolling Stock	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
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$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				Section 1: All Section 2: >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)	

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	Revenue Rolling Stock	Construction	Materials & Supplies
Bonding (not required of states)				>\$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				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met
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	A&E	All	All	All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states

6. DISADVANTAGED BUSINESS ENTERPRISE

BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. *DBE Program*
2. *DBE Goals and Reports*
3. *Procurement*
4. *Certification*
5. *DBE Complaints and Protests*

REFERENCES

1. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"
2. Deputy Administrator Letter on TEAM-Web reporting

3. Instructions for uploading programs to TEAM-Web

USEFUL WEBLINKS

FTA DBE Website

DOT Office of Small and Disadvantaged Business Utilization (OSDBU)

OSDBU's Guidance for DBE Program Administrators

OSDBU and Minority Resource Center

DOT DBE Regulation Questions and Answers

Tips for Goal Setting

List of Transit Vehicle Manufacturers

Sample DBE Program

OFFICE OF CIVIL RIGHTS

1200 New Jersey Ave., SE
East Bldg., 5th Floor
Washington, DC 20590

QUESTIONS FOR THE REVIEW

1. *If FTA has conducted a DBE or Unified Certification Program (UCP) review in the past two Federal fiscal years, what is the status of any corrective actions from the final report of that review?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts DBE and UCP reviews of selected grantees. If a review has been conducted, confer with the FTA regional office and the FTA headquarters subject matter expert (SME) on what follow up activities are appropriate during the review. The reviewer may be requested to validate the implementation of corrective actions for closed deficiencies, follow up on deficiencies that remain open, or a combination of both.

REFERENCE

None

SOURCES OF INFORMATION

Review OTrak and information from the FTA regional office for issued reports on DBE and UCP reviews, correspondence between FTA and the state related to corrective actions, and responses to the state management review.

DETERMINATION

If there are outstanding or ongoing DBE or UCP review deficiencies, confer with the FTA regional office and the FTA headquarters SME to make the following deficiency. (**DEFICIENCY CODE 390:** Outstanding DBE specialty review deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office with documentation to address outstanding or ongoing specialty review deficiencies.

2. *When was the state's DBE program approved by FTA? If not approved, provide an explanation. If approved, has the program been uploaded to TEAM-Web?*

EXPLANATION

Written DBE programs are required for 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, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan funded projects, and contracting activities of subrecipients. Micro-purchases are included in this threshold.

The DBE program plan is not an annual submission and states do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted for approval. States that do not meet the threshold are not required to develop a written DBE program. FTA has established a policy that all civil rights programs must be submitted using TEAM-Web.

A state may be allowed to submit a single plan to FHWA if it receives more USDOT funding from FHWA than from FTA.

REFERENCE

49 CFR 26.21

SOURCES OF INFORMATION

Review information provided by the FTA regional office, the state's DBE program, and grant-funded project information in TEAM-Web.

DETERMINATION

The state is deficient if it has \$250,000 of FTA funds in contracting opportunities and a program has not been submitted by the time of the site visit and/or the state has not responded to FTA's request for additional information. (**DEFICIENCY CODE 41:** No approved DBE program)

If a program had not been uploaded to TEAM-Web, the state is deficient (**DEFICIENCY CODE 590:** DBE program not uploaded to TEAM-Web)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit its DBE program to the FTA RCRO and upload it to TEAM-Web.

3. *Who is the state's DBE liaison officer (DBELO)? To whom does the DBELO report?*

EXPLANATION

For states that meet the threshold requiring that they have a DBE program, the state'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. It means that the DBELO must not be required to get anyone's consent or sign-off or "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, 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 manages the overall DBE program and performs an integral oversight function. 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 state should be requested 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

Examine the DBE program submissions and the organizational chart of the agency for the name and reporting relationship of the DBELO. The current DBELO should also be listed in the agency's contact information in TEAM-Web. During the site visit, confirm current staff assignments. An organizational chart can indicate reporting relationships. A job description for the DBELO can confirm responsibilities and reporting relationships.

DETERMINATION

The state is deficient if the DBELO cannot demonstrate direct and independent access to the CEO. The state is also deficient if the DBELO's position presents a conflict of interest relative to the individual's line of work and function in the organization. (**DEFICIENCY CODE 5:** Inadequate designation of DBE Officer)

The state is deficient 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. (**DEFICIENCY CODE 264:** DBE policy not updated)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO evidence of corrective actions taken to designate DBE responsibilities properly.

Direct the state to submit an update of its DBE program to the FTA RCRO for approval.

4. *Verify that the state included an element in its DBE program for fostering small business participation? What effective strategies has the state implemented to foster small business participation?*

EXPLANATION

By February 28, 2012, states were to submit an element to their DBE program for fostering small business participation. This new element, required by a February 2011 change to the DBE regulation, must include provisions to structure contracting requirements to facilitate competition by small business. States must take all reasonable steps to eliminate obstacles to DBE participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

As part of this program element states may include, but are not limited to, the following strategies:

- Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million)
- In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts
- To meet the race-neutral portion of overall agency goal, ensuring that a reasonable number of prime contracts are of a size that small

businesses, including DBEs, can reasonably perform

REFERENCE

49 CFR 26.39

SOURCES OF INFORMATION

During the desk review, examine files for correspondence regarding DBE program submissions for this new requirement. Review program submissions in TEAM-Web. Review information provided by the state to demonstrate implementation of small business participation strategies.

DETERMINATION

The state is deficient if a program element addressing the fostering of small businesses has not been submitted. The state is deficient if it is not implementing small business strategies as described in its program. (**DEFICIENCY CODE 312:** Small business element not submitted and/or implemented)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO a DBE program element that addresses the fostering of small business. Direct the state to submit to the FTA RCRO evidence of implementing its small business participation strategies.

5. *What is the process that the state has in place to ensure that both its own direct FTA-funded contracting activities and those of its subrecipients are incorporated into overall agency goal-setting?*

- a. How does the state's goal submission address details on the data sources used?*
- b. How does the goal submission identify the geographic market area?*
- c. How does the goal submission address race-conscious and race-neutral breakout?*
- d. In setting its most recent overall goal, describe how the state conducted a consultative process, as detailed in 49 CFR 26.45(g)1? When did the state publish a notice of the goal?*

Where was the notice published?

- e. If the state plans to meet DBE goals using race-conscious methods in the 9th circuit or where race-conscious methods are otherwise limited or prohibited, when was a disparity study conducted?*

EXPLANATION

An overall three-year agency goal methodology (triennial goal) is required of FTA grantees receiving planning, capital, and/or operating assistance that project contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in any of the three Federal fiscal years. Beginning with FY 2011, states will submit their triennial goal every three fiscal years in lieu of each fiscal year if a state projects that it will meet the threshold in any of the three years in its cycle. FTA provides a document on its website indicating which fiscal year each state is required to make this submission. Waivers may be sought by states from RCROs as appropriate for goal submissions.

Triennial goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. 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 state if the triennial 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 state, adjust the overall three-year goal or require the state to make the adjustment.

Contracting opportunities are counted in the aggregate, and include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects, conducted by both the state and its subrecipients. The triennial goal should be calculated as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles) that the state (and its subrecipients) will expend in FTA-assisted contracts during the period covered. With prior FTA approval or at FTA's direction, states may also be permitted or required to express an overall goal as a percentage of funds for a particular grant and/or project. An example of this may occur with a major project such as a New Start project. For states that meet the threshold, the triennial goal must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due.

- a. The submittal must include a description of the methodology used to establish the goal and other*

items detailed in 49 CFR 26.45. DBE goals must be partially based on the availability of DBEs or potential DBEs. States are not allowed to simply rely on past participation or past goal methodologies when they establish their goal. Recipients who are unable to meet their goal using race-neutral means alone must establish contract goals per 49 CFR §26.51(d).

- b. States must identify the area in which the substantial majority of the contractors, subcontractors, and contracting dollars are expended (i.e., geographic market area).
- c. States must project which portion of that goal will be accomplished through race-neutral means and which will be accomplished through race-conscious means.
- d. States must actively engage the DBE community to facilitate participation, whether they are operating programs with race-conscious and race-neutral measures or they are operating a solely race-neutral program. 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 agency's principal office for 30 days following the date of the notice, and informing the public that they and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and must be published in general circulation media and available minority-focused media and trade association publications. Lack of DBE participation in past cycles should not be used as the sole reason to justify lowering DBE goals or outreach.
- e. Note: For grantees in the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, the Ninth 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. States must consider the disparity studies of neighboring recipients that contain relevant information during goal setting. Consult with the RCRO to determine the appropriate approach for grantees in these states.

REFERENCE

49 CFR 26.45

SOURCES OF INFORMATION

Review the state's current and previous goal submissions in TEAM-Web. Review grant-funded project information in TEAM-Web and information provided on funding provided to subrecipients.

DETERMINATION

The state is deficient if overall DBE goals were not submitted to FTA by August 1 (or by another date established by FTA based on an extension request). (**DEFICIENCY CODE 100:** DBE goal not submitted to FTA)

The state is deficient if overall DBE goals exclude "reasonably anticipated contracting opportunities" for itself and its subrecipients. The state is deficient if DBE submissions did not include data sources or a race-neutral/race-conscious projection, when applicable. (**DEFICIENCY CODE 548:** DBE goal submission not complete)

The state is deficient for lowering DBE goal values in subsequent cycles without considering alternative measures such as race-conscious measures. (**DEFICIENCY CODE 548:** DBE goal submission not complete)

The state is deficient if it has not exhibited due diligence to consult with interested parties during its goal-setting process or adequately provide opportunity to comment on its overall goal. (**DEFICIENCY CODE 279:** DBE public participation process deficiencies)

The state is deficient if it uses race-conscious measures in the 9th circuit without having evidence to support their use. (**DEFICIENCY CODE 549:** Insufficient support for 9th Circuit RC goals)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO its triennial DBE goal, or adjusted goal, and implement a procedure to ensure that future goals will be submitted by August 1.

For incomplete goal submissions, direct the state to reevaluate its triennial goal, the race-conscious and race-neutral split, and/or create a method for establishing contract goals if subcontracting opportunities are available.

Direct the state to develop a timeline for facilitating public participation, including a schedule for consultative meetings and a timeline for issuing a public notice for future cycles.

Direct the state to examine disparity studies within its area prior to setting race-conscious goals, if in the 9th circuit. If applicable, suggest that a new disparity study be considered.

6. *Has the state submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually?*
7. *What are the procedures used to ensure that semi-annual DBE reports are complete and include all FTA-funded contracting activity of the state and any applicable subrecipients?*

EXPLANATION

Each state that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TEAM-Web. The report addresses the contracting opportunities of the state and its subrecipients. It includes information on awarded and completed contracts; *those that included DBE participation, as well as those that did not*. 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).

On March 22, 2011, FTA's Deputy Administrator issued a letter informing grantees that paper DBE reports would no longer be accepted and must be entered in TEAM-Web's DBE reporting module.

REFERENCE

49 CFR 26.11
DBE Semi-Annual Reporting Form

SOURCES OF INFORMATION

Examine the DBE files and TEAM-Web for correspondence regarding semi-annual report submittals. Verify that semi-annual reports are submitted in TEAM-Web, beginning with the report due June 1, 2011. Discuss any issues the RCRO has identified with the timeliness or adequacy of DBE reporting. During the site visit, obtain information on how state and subrecipient contracting activities are included in the state's reports. Examine documentation and procedures demonstrating how DBE reporting data is reconciled to state procurement records.

DETERMINATION

The state is deficient if it has not submitted the reports semi-annually, has not submitted them timely, or is not using the electronic module in TEAM-Web (**DEFICIENCY CODE 327**: DBE uniform reports not submitted semi-annually)

The state is deficient if its reports do not include all applicable FTA funded contracting activity undertaken by itself and any subrecipients and the state cannot demonstrate how these reports are reconciled to

procurement records. (**DEFICIENCY CODE 329**: DBE uniform reports do not include required information)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1) in TEAM-Web, along with an implemented procedure to ensure future reports are submitted on time.

Direct the state to submit to the FTA RCRO procedures for including all applicable FTA funded contracting activity, including the activity of subrecipients, in future reports and inform the RCRO of the implementation of these procedures with the submission of the next semi-annual report. This may include submission of supporting documentation demonstrating how procurement records reconcile with DBE reports.

8. *If the state's DBE reports for FY2013 indicate that its awards to DBEs were less than the overall goal applicable to that year, when did the state conduct the required analysis? When did it provide this analysis to its RCRO, if applicable?*

EXPLANATION

Beginning with reports for FY 2011, if the awards and commitments shown on a state's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that three-year period, it must do the following:

- Analyze in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year
- Establish specific steps and milestones to correct the problems identified in the analysis and to enable the state to meet fully the goal for the new fiscal year

State highway agencies and the 50 largest transit agencies as determined by the FTA must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions described above for review. All other grantees must retain the analysis and corrective actions in their records for three years.

REFERENCE

49 CFR 26.47
FTA DBE Website

SOURCES OF INFORMATION

FTA's DBE website contains the list of top 50 transit agencies and a shortfall analysis presentation/technical assistance tool. Using this tool, review analysis submissions by applicable states. When on site, review the analysis if it has not been submitted.

DETERMINATION

The state is deficient if its achievements were less than its overall goal, and the analysis was not conducted. The state is deficient if it is required to submit the analysis to FTA and did not. The state is deficient if it does not analyze, in detail, the reasons for the shortfall and establish specific steps to correct the problems identified. (**DEFICIENCY CODE 308**: DBE goal achievement analysis not completed or not submitted)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO the required analysis and a description of the actions taken to implement the process for completing and submitting future annual reports, as applicable.

9. *Identify any contracts the state awarded to firms that did not meet the specified DBE contract goal. How did the state determine if "good faith efforts" were sufficient?*

EXPLANATION

Not every FTA funded contract is required to have a DBE goal. However, prior to awarding a contract to a firm that did not meet a specific DBE contract goal, the state must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goal. Examples of efforts the state may consider include whether the contractor attended any pre-bid meetings held by the state 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

During the site visit, ask the state to explain its methods for determining "good faith efforts." During

the review of the procurement area, if any solicitations include a DBE contract goal, document the goal and the DBE commitment stated in the award documents. Determine how the state verifies that DBEs are certified for the type of work they are being named for prior to award. For a procurement where the awarded DBE amount is less than the goal stated in the solicitation, examine the state's documented good faith efforts review.

DETERMINATION

The state is deficient if it cannot describe the methods for, or applicable procurement files do not include documentation of, the consideration of "good faith efforts." The state is deficient if it does not verify that DBEs are certified to perform the type of work they are being named for prior to award. (**DEFICIENCY CODE 176**: Inadequate implementation of DBE contract compliance)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO a method for determining "good faith efforts" and/or evidence that it has included documentation in applicable procurement files.

10. *How does the state monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? What enforcement mechanisms does the state use for DBE requirements? Since the last review, how many times has the state provided written consent to contractors allowing termination or substitution of a DBE firm after contract award?*

EXPLANATION

Recent investigations by the U.S. DOT Office of the Inspector General (OIG) have raised concerns about the administration of DBE programs. States must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. States must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under federal, state, and local laws). These mechanisms must be set forth in the state's DBE program. A state 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 state 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

state should document efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed.

In February 2011, the regulation added the requirement that states must require that a prime contractor not terminate or substitute a DBE subcontractor listed on a contract with a DBE goal without good cause and prior written consent from the state. Details on what constitutes good cause is contained in 49 CFR Part 26.53 (f). A state's written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the state) in writing of its intent to request substitution or termination and allows the DBE five days to respond. States must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

The state 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
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state's DBE program to identify the methods that the state uses to monitor contractors and subrecipients. At the site visit, have the state provide examples of actual monitoring activities/reports from the past three years. Have the state provide documentation related to removals of DBEs on projects with DBE contract goals.

DETERMINATION

The state is deficient if it cannot demonstrate how it is monitoring its contractors and subrecipients. (**DEFICIENCY CODE 162:** Grantee does not monitor DBE compliance)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures for contractors and subrecipients (if applicable). Direct the state to submit to the FTA RCRO implemented procedures for ensuring good cause and due process for termination or substitution of DBEs.

11. What prompt payment and return of retainage clauses are included in FTA-funded procurements? How does the state monitor and enforce these

clauses?

EXPLANATION

States must have a contract clause that requires prime contractors to pay all subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the state.

States 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 state must use one of the following methods to comply with the return of retainage 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 state's 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 state. When a state 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.

A state's DBE program must provide appropriate means to enforce prompt payment. The state should be able to document implemented processes for monitoring and enforcement to ensure contractor compliance with prompt payment and prompt return of retainage requirements.

REFERENCE

49 CFR 26.29

SOURCES OF INFORMATION

Review the state's DBE program plan for clauses and methods described for monitoring and enforcement. During the site visit, examine procurement files for the

inclusion of appropriate prompt payment and return of retainage clauses and policies. Note in Procurement Exhibit A. Required Third Party Contract Clauses (in the review package) whether the clause is included. Review contract administration or contract compliance documentation for verification of the state's implementation of monitoring and enforcement.

DETERMINATION

The state is deficient if it has not included appropriate prompt payment and return of retainage clauses in its contracts. The state is deficient if it does not have and/or has not implemented an active monitoring and enforcement process for ensuring prompt payment and return of retainage. (**DEFICIENCY CODE 268:** Grantee not ensuring prompt payment)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO documentation of efforts to ensure compliance with prompt payment and return of retainage requirements.

- 12.** *How does the state monitor projects to ensure that DBEs are actually performing the work committed to at the time of contract award? How often does the state review contracting records for compliance with DBE requirements? How does the state monitor worksites for compliance with DBE requirements? What documentation does the state have of monitoring activities?*

EXPLANATION

Investigations by the OIG 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 state's responsibility for monitoring DBE participation does not end with the certification process.

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

In February 2011, the regulation added the requirement that the state include a written certification that it has reviewed contracting records and monitored work sites for this purpose. The

monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

REFERENCE

49 CFR 26.37

SOURCES OF INFORMATION

Review the state's DBE program to identify the methods that the state states it will use to monitor that DBEs are actually performing the stated work on contracts. At the site visit, ask the state to provide examples of actual monitoring activities/reports from the past three years. At the site visit, review contract files for evidence of on-site monitoring and written certifications for recent contracts with DBE contract goals.

DETERMINATION

The state is deficient if it cannot demonstrate how it is monitoring that DBEs are actually performing the stated work. The state is deficient if it does not perform on-site and contract document monitoring and make a written certification that the monitoring activities have occurred. (**DEFICIENCY CODE 162:** Grantee does not monitor DBE compliance)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO documentation that it has implemented a monitoring process to ensure that DBEs are actually performing the stated work. This process must include review of contracting records and site visits. Direct the state to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures. Direct the state to submit to the FTA RCRO the implemented process for making written certifications of monitoring.

- 13.** *How does the state ensure that transit vehicle manufacturer(s) have complied with DBE requirements?*

EXPLANATION

All states must require that each transit vehicle manufacturer (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 state is required to include a provision in its bid specifications requiring the certification from TVMs as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23). Currently, dealers and manufacturers of unmodified, mass produced vehicles such as vans and sedans are not classified as TVMs for the DBE regulation. Contracting opportunities for modification of mass produced vehicles after

purchase should be included in a state's overall agency three-year goal calculation.

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. FTA has instructed TVMs to submit to grantees a copy of their FTA approval letters along with the TVM certifications.

Note that FTA is working with USDOT to formalize the definition of TVM. In particular, states using FTA funds for the purchase of ferries should include the contracting opportunities associated with these procurements in their overall three-year agency goal-setting methodology.

REFERENCE

49 CFR 26.49
FTA's DBE Website

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for signed TVM certifications and evidence that TVM had an approved DBE plan, either a signed approval letter or evidence that FTA's DBE website was checked.

DETERMINATION

The state is deficient if it 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 state is deficient if it cannot provide evidence that it ensured that the manufacturer was an eligible TVM. (**DEFICIENCY CODE 272:** No TVM certification)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional civil rights officer (RCRO) a signed TVM certification from the manufacturer and procedures for obtaining signed TVM certifications and for ensuring that manufacturers are eligible TVMs before contract award.

Direct the state to submit to the RCRO an updated TVM certification to be used in future revenue rolling stock procurements.

14. *Who is the lead agency for the Unified Certification Program (UCP)? Is the state a signatory to its state's UCP?*

15. *If the state certifies DBEs, verify that it:*

- *uses the correct application form, instructions and document checklist;*
- *conducts site visits prior to certification;*
- *obtains annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation;*
- *complies with the requirements of interstate certification; and*
- *includes the NAICS codes of DBEs in the UCP directory?*

EXPLANATION

The regulation requires that all DOT grantees participate in a UCP within their state. Even if a state does not certify DBEs, it is required to be signatory to its state's UCP agreement. Any state that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs, consistent with the standards of Subpart D, participate as DBEs in 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 states 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. A DBE's initial certification must be from its home state's UCP. 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.

In February 2011, USDOT implemented a new section of the DBE regulation (49 CFR Part 26.85 – Interstate Certification) providing information on how UCPs were to handle certification requests for out of state firms that were currently certified by their home state UCP. The UCPs were instructed to either accept

the determination of the applicant's home state UCP and list the firm in its directory, or perform a series of processes (with required timeframes) that include making a determination of good cause that the home state's certification was erroneous or should not apply to their state.

By August 26, 2011, the UCP DBE directory must list each type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work.

REFERENCE

49 CFR 26.61-26.91

USDOT DBE Certification Form

SOURCES OF INFORMATION

Have the state provide information regarding its participation in a UCP. Obtain a copy of the signed UCP agreement.

If a state certifies DBEs, obtain a copy of its DBE application and instructions to verify that the correct form is being used by comparing it with the USDOT form noted in the above explanation. Review 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. Examine a sample of annual affidavits for DBE firms that have performed work during the past three years and record the dates that these were submitted. Review the state's process for interstate certifications. Review the UCP directory to determine if NAICS codes for DBEs are being listed.

DETERMINATION

The state is deficient if it is not participating (through at least being signatory to the state's agreement) in the UCP. (**DEFICIENCY CODE 343:** Not participating in a UCP)

The state is deficient if it certifies DBEs and is not using the correct forms or has not followed the procedures. (**DEFICIENCY CODE 345:** DBE certifications not adequate)

The state is deficient if it has not implemented the requirements in 49 CFR Part 26.85 on interstate certifications. (**DEFICIENCY CODE 560:** Interstate certification deficiencies)

The state is deficient if it certifies DBEs but does not include their NAICS codes on the UCP directory. (**DEFICIENCY CODE 322:** DBE directory does not include NAICS codes)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters a description of how it will participate in the UCP, along with copies of signed UCP agreements. Direct the state to submit to the FTA evidence that it has implemented standards and procedures to determine initial and continued DBE eligibility in accordance with 49 CFR Part 26.61-26.91 and that it has updated the DBE program to reflect the new procedures.

Direct the state to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters implemented procedures for correct interstate certification procedures.

Direct the state to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters implemented procedures to ensure that DBE directory information contains all applicable NAICS codes.

In addition to the RCRO, corrective actions to deficiencies related to these certification questions should be submitted to: FTA DBE Technical Lead, 1200 New Jersey Ave., SE, East Bldg., 5th Floor, Washington, DC 20590.

7. ASSET MANAGEMENT

BASIC REQUIREMENT

The state must maintain control over real property and other assets (rolling stock and equipment) and ensure that they are used in transit service. States must keep federally funded assets in good operating order.

FTA Emergency Relief Program

A grant awarded under 49 U.S.C. section 5324 (Emergency Relief Program) or under Section 5307 or Section 5311 that is made to address an emergency defined under Section 5324 (a)(2) is subject to the terms and conditions the Secretary determines are necessary and made only for expenses that are not reimbursed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

AREAS TO BE EXAMINED

1. ***Real Property***
2. ***Other Assets (Rolling Stock and Equipment)***
3. ***Maintenance***

REFERENCE

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 Master Agreement
4. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
5. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
6. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
7. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
8. FTA C 5010.1D, "Grant Management Requirements"
9. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"
10. Executive Order 11988
11. May 29, 2013 Federal Register Notice
12. 49 U.S.C. Section 5324 / MAP-21 Section 20017
13. Conditions of Award for FTA Public Transportation Emergency Relief Programs

QUESTIONS FOR THE REVIEW

Part A: Real Property

1. *What are the state's procedures for monitoring the use of FTA funded real property by subrecipients?*
2. *If the state or a subrecipient use any FTA funded real property for non-transit purposes (i.e., incidental use), provide documentation that FTA approval was obtained. How does the state or subrecipient document that it maintains continuing control over the property, that the property is also being used for transit purpose (if applicable), and that costs are recovered and the revenues applied to transit planning, capital, or operating expenses?*

EXPLANATION

The state must ensure that subrecipients use FTA funded real property for project purposes. Examples of monitoring procedures include: annual certifications of use, site visit inspections, or deed restrictions. Title to real property acquired under a grant will vest with the grantee or the subrecipient. The FTA interest in real property continues until it is sold.

Incidental use is defined as the authorized use of real property (and equipment) acquired or improved with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Real property includes land, affixed land improvements, structures and appurtenances. 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.) Such use must be compatible with the approved purposes of the project, must not interfere with intended public transportation uses of project assets, and must not in any way interfere with the grantee's continuing control over the use of the property. FTA encourages grantees to make incidental use of real property (FTA funded land and/or buildings) when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership.

Proceeds should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized

incidental or joint development uses may be retained by the grantees (without returning the federal share) if the income is used for eligible transit capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.

FTA's written approval is required for incidental use of real property. If the incidental use is implemented as described in the grant application, FTA approval of the grant constitutes approval of the incidental use. 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, with FTA approval.

REFERENCES

FTA C 9040.1F, Ch. VI, Section 4 and Ch. VIII
FTA C 9070.1F, Ch. VI, Section 8
FTA C 9050.1, Ch. VI, Section 7
FTA C 9045.1, Ch. VI, Section 7
49 CFR 18.25 (g) and 18.31
FTA Master Agreement, Section 19
FTA C 5010.1D, Ch. I, Section 5.hh and Ch. IV, Section 2.i

SOURCES OF INFORMATION

During the desk review, examine grantee files or TEAM-Web for correspondence regarding incidental use. Review programs of projects for any notation of real property use. Review the state management plan and subrecipient agreements for discussion of procedures used to control the use of real property.

Review subrecipient agreements, contracts, or lease agreements for requirements imposed on the use of FTA funded real property. Review oversight procedures, such as reports or site visit checklists. On site, discuss the procedures with the state. If incidental use of project property is observed, ask the grantee to provide documentation that FTA approved the incidental use that includes the appraisal and appraisal review. Review budgets or financial reports to ensure that proceeds are used to support the transit program.

DETERMINATION

The state is deficient if it does not adequately control its own use or the use of FTA funded real property by subrecipients. (**DEFICIENCY CODE 4:** Inadequate control of real property)

The state is deficient if FTA did not approve of the incidental use, the incidental use interferes with transit purposes, the state does not maintain control over the leased property, or the state does not ensure that revenues are used for transit purposes. (**DEFICIENCY CODE 25:** Violation of incidental use requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for controlling the use of its FTA funded real property or that used by subrecipients.

Direct the state to submit to the FTA regional office procedures for obtaining prior FTA approval for future incidental uses and to obtain FTA approval for any unapproved incidental uses.

Direct the state to submit documentation to the FTA regional office that incidental uses that interfere with transit purposes have ceased.

Direct the state to submit to the FTA regional office procedures for maintaining continuing control over real property used for incidental purposes.

Direct the state to submit to the FTA regional office procedures for ensuring that lease income is applied to transit purposes.

3. *Provide the following details on any FTA funded real property the state or a subrecipient dispose of since the last review:*

- *Description of what was disposed.*
- *Documentation of FTA prior concurrence in the method of disposition of real property.*
- *Documentation that FTA was reimbursed for its share of disposition proceeds, if required.*

4. *For any real property that the state or a subrecipient removed from the service originally intended at the time of grant approval or put to additional or substitute uses since the last review, provide:*

- *FTA prior concurrence for change in the use of real property,*

property removed from the service originally intended at grant approval or property put to additional or substitute uses.

- *An updated utilization plan for any excess FTA funded real property.*

EXPLANATION

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

States 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, states are required to prepare or update an excess property inventory and utilization plan. The 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, the Federal participation ratio, FTA grant number, appraised value and date, description of improvements, current use of the property, and anticipated or proposed disposition or action. Unless FTA and the state agree otherwise, the excess real property inventory and updated excess property utilization plan should be retained by the state and made available upon request and during an FTA review.

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, examine grant files for notification of change of use of real property and excess property utilization plans. Check previous review files for any unresolved issues. Ask the state to provide a list of real property removed from the service originally intended or put to additional or substitute uses since the last review. Ask the state to provide excess property utilization plans and documentation of disposition of FTA funded property. Discuss during the site visit.

DETERMINATION

The state is deficient if it did not obtain prior FTA approval for the method of disposition of FTA funded

real property or did not reimburse FTA for its share of disposition proceeds. (**DEFICIENCY CODE 99:** Failure to comply with property disposal requirements)

The state is deficient if it did not notify FTA when real property was removed from the service originally intended or when property was put to additional or substitute uses. (**DEFICIENCY CODE 69:** Real property use issues)

The state is deficient if it 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. The state is deficient if the plan is out of date. (**DEFICIENCY CODE 84:** Lacking excess real property utilization inventory/plan out of date)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for obtaining FTA approval for the method of disposition of FTA funded real property.

Direct the state to work with the FTA regional office to determine proceeds owed FTA from the disposition of FTA funded real property.

Direct the state to inform FTA of real property that has been removed from service or put to additional or substitute uses without FTA approval and to submit to the FTA regional office an updated state management plan(s) that includes procedures for notifying FTA when FTA funded real property has been removed from service or put to additional or substitute uses.

Direct the state to submit to the FTA regional office a written excess real property utilization plan or to implement the existing plan.

5. *For any state or subrecipient buildings located in an area that has been identified as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, verify that:*

The state or subrecipient complied with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any project activity involving construction, or an acquisition having an insurable cost of \$10,000 or more

6. *Describe any FTA Emergency Relief funds that have been used to repair or replace a facility which was not properly insured and that was located in special flood hazard area.*

EXPLANATION

Section 102 of the Flood Disaster Protection Act of 1973 (FDPA) prohibits the Federal government from providing funds for acquisition or construction of buildings located in a special flood hazard area (100-year flood zone) unless the owner of the property first has obtained flood insurance. Specifically, Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building unless the recipient has first acquired flood insurance under the National Flood Insurance Act to cover the buildings constructed or repaired with Federal funds. The Federal Emergency Management Agency (FEMA) has defined "building" in its regulations implementing the National Flood Insurance Program (NFIP) as "a building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site." In addition, where structures are both above and below ground, the flood insurance requirement applies where at least 51 percent of the cash value of the structure, less land value, is above ground.

States shall not use grant funds for any activity in an area delineated as a 'special flood hazard area or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain, in accordance with Executive Order 11988.

REFERENCES

Executive Order 11988
May 29, 2013 Federal Register Notice
49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation
Emergency Relief Programs

SOURCES OF INFORMATION

Review information provided by the state to determine if any construction projects or acquisitions over \$10,000 since the last review are covered by the National Flood Protection Act. If so, review insurance coverage information provided by the state.

DETERMINATION

The state is deficient if it or a subrecipient is required to have flood insurance, and does not have adequate coverage. (**DEFICIENCY CODE 586:** Flood insurance insufficient)

The state is deficient if FTA Emergency Relief funds were used to repair or replace a facility that was located in special flood hazard area and it was not properly insured. (**DEFICIENCY CODE 578:** Flood insurance deficiencies for Section 5324 funded projects)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide documentation of adequate flood protection to the FTA regional office.

Part B: Equipment

7. *What procedures does the state follow to manage and maintain control over FTA funded equipment and ensure its continued use?*

EXPLANATION

Under the common grant rule, states may use, manage, and dispose of equipment acquired under an FTA grant according to State law and procedures. States are free to adopt the procedures established in 49 CFR Part 18 for other public body recipients or use them as a guide in developing state procedures for equipment use, management, and disposition, but they are not required to do so. States may use the same procedures for private and non-profit subrecipients as for public body subrecipients, so long as those procedures are consistent with 49 CFR Part 19. Common grant rule procedures and requirements for However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA funded equipment.

Examples of procedures used by states to maintain control over FTA funded equipment operated by subrecipients include:

- **Equipment inventories.** Many states use inventories to track how many vehicles and other equipment a subrecipient has, including those not purchased with FTA or state assistance. Many states require subrecipients to provide an equipment inventory with each application. Some

states reconcile the subrecipients' inventories to the state's inventory.

- **Annual vehicle use certifications.** Many states require subrecipients to submit annual vehicle use certifications. The certifications are particularly important for tracking vehicles acquired by subrecipients who generally do not apply for assistance on an annual basis. The state can use the certifications to update the state's inventory.
- **Periodic reporting of vehicle use.** Many states require periodic reports of vehicle use (miles, hours, passengers, trip purpose) to ensure that vehicles are used in accordance with program requirements and are not underused.
- **Retention of or liens on titles.** The state or the subrecipient may hold title to the vehicles acquired with FTA assistance. When subrecipients hold title to FTA funded vehicles, FTA recommends that states place a lien on the title. Either the state or subrecipient must hold title to any vehicle leased to public bodies or nonprofit organizations.
- **Disposition requirements.** States use disposition procedures to ensure vehicles are used until the end of their useful lives, to ensure vehicles that are no longer needed by a subrecipient can be transferred to another subrecipient, and to ensure that proceeds are used for transit purposes.
- **Lease restrictions.** States use lease restrictions to control vehicles that are used and maintained by entities other than subrecipients.
- **Productivity standards.** States use productivity standards to ensure that vehicles serve a minimum number of riders. States may transfer vehicles that are underused.
- **Site visits.** States use site visits to visually inspect vehicles to ensure their continued use in transit service.
- **Insurance.** Most states have insurance requirements. Insurance coverage for equipment purchased with Section 5310, 5311, 5316, and 5317 funds must be adequate to protect the Federal interest in the vehicle within the useful life determined by the state.

REFERENCES

49 CFR 18.32(a), 18.32(b)
FTA C 9040.1F, Ch. VI, Section 3, 4
FTA C 9070.1F, Ch. VI, Section 4, 5, 7, 8
FTA C 9050.1, Ch. VI, Section 4, 5, 6, 7
FTA C 9045.1, Ch. VI, Section 4, 5, 6, 7
FTA C 5010.1D, Ch. II, Section 3.a

SOURCES OF INFORMATION

Review the state management plan(s) for procedures on how the state tracks, controls, and monitors equipment controlled by subrecipients. Review application package(s), subrecipient agreements, and other documents such as sales records and financial reports and other requirements. Review oversight tools, such as site visit questionnaires, periodic reports, annual vehicle use certifications, title liens, disposition requirements, lease restrictions, and insurance requirements. Review the state's equipment inventory and document the data elements tracked. On site, confirm the procedures with the state.

Examine grant files for approval of like-kind exchange of rolling stock or retention of the proceeds from the sale of assets. Review the list of FTA funded equipment removed from transit service since the last review. Obtain a list of equipment disposed of before the end of useful life and associated proceeds. During the site visit, follow up with the state on the use of disposition proceeds.

DETERMINATION

The state is deficient if it does not have or implement procedures for maintaining control of FTA funded equipment or the procedures are inadequate to maintain satisfactory continuing control of FTA funded equipment, that is, ensure that the equipment is used for project purposes throughout its useful life. (**DEFICIENCY CODE 120:** Inadequate property control system)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office revised procedures for maintaining control over FTA funded equipment and evidence that the procedures have been implemented.

8. *What are the state's useful life standards for rolling stock? Do they follow FTA's standards or has the state developed its own? For rolling stock purchased with Section 5309 or 5339 assistance, verify that the state's standards meet or exceed FTA's standards.*

EXPLANATION

In keeping with the intent of the Common Rule that states be given greater flexibility in managing and disposing of equipment, FTA delegates to the states the responsibility for establishing and implementing useful life standards for vehicles purchased with Section 5310, 5311, 5316, or 5317 assistance. States must follow useful life standards for vehicles

purchased with Section 5309 and 5339 assistance that meet or exceed FTA requirements.

Most states have adopted FTA's useful life standards for all vehicles, regardless of funding source. Many states have adopted stricter (longer) useful life standards for vehicles. The following table presents FTA useful life standards for vehicles and ferries.

Vehicle	FTA-Defined Useful Life
35'-40' heavy duty bus and articulated transit buses	12 years or 500,000 mile
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 (body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (small buses, vans, sedans)	4 years or 100,000 miles
Rail vehicles	25 years
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
Note: A heavy duty transit bus is built as a bus whereas a medium duty bus is built on a truck chassis.	

FTA requires grantees to use vehicles purchased with FTA funds for at least their minimum normal useful lives. Only time spent in normal service can be counted towards meeting the standards. Time spent stockpiled or otherwise unavailable for regular transit duty does not count towards meeting the standards. The state should have a mechanism to adjust the service life of any FTA funded vehicle that is removed from service for an extended period of time.

Per the Common Rule, states do not owe FTA proceeds for disposal of equipment, even equipment disposed of before the end of useful service life. However, FTA may decide not to replace Section 5309 or 5339 funded equipment removed from service before the end of useful service life unless the state applies the proceeds to a grant for replacement equipment (like-kind exchange).

REFERENCES

49 CFR 18.32(b)

FTA C 9040.1F, Ch. VI, Section 3.c
FTA C 9070.1F, Ch. VI, Section 4.c
FTA C 9050.1, Ch. VI, Section 4.b
FTA C 9045.1, Ch. VI, Section 4.b
FTA C 5010.1D, Ch. IV, Section 3
FTA C 9300.1B, Ch. III, Section 7.b

SOURCES OF INFORMATION

Review the state management plan, the subrecipient agreements, and other documentation for minimum useful life standards for vehicles. On site, confirm the requirements with the state. If the state removed vehicles before the end of useful life, during the maintenance review, determine if the reason was for lack of maintenance.

DETERMINATION

The state is deficient if it has not established its own minimum useful life standards for 5310, 5311, 5316, and 5317 vehicles. (**DEFICIENCY CODE 154:** Useful life standards not established)

The state is deficient if it has not adopted useful life standards for Section 5309 or 5339 funded vehicles that meet or exceed FTA requirements. (**DEFICIENCY CODE 170:** Useful life standards not followed)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes state useful life standards.

Direct the state to submit to the FTA regional office adopted useful life standards that meet or exceed FTA requirements for Section 5309 funded vehicles.

9. *If the state or a subrecipient leases FTA funded assets to other public entities, nonprofit organizations, or private for-profit operators, verify that the state agreed in writing to the lease of any Section 5310 vehicles. What are the state's procedures for monitoring subrecipients' leases?*
10. *If the state leases FTA assets to private operators, including intercity bus operators, provide documentation of prior concurrence obtained from FTA for leases entered into on or after November 1, 2008. Verify that the leases include the required provisions?*

EXPLANATION

Assets acquired with FTA funds may be leased to other entities such as local public bodies or agencies, private nonprofit organizations, or private for-profit operators. Under a lease acquired with FTA assistance, the lessee operates the assets on behalf of the state or subrecipient and provides transportation as described in the grant application.

FTA requires states to exercise control over FTA-funded assets leased by subrecipients to ensure that they are used for project purposes. Many states require subrecipients who are leasing FTA-funded assets to submit a copy of the lease to the state for review. Other states provide a standard lease that subrecipients are required to use.

FTA has established specific requirements for leases of Section 5310 vehicles. The state must agree in writing to the lease between the Section 5310 subrecipient and the lessee. The vehicle may be used for incidental purposes only after grant needs have been met. The state and subrecipients are responsible for ensuring that adequate control is exercised over use of the leased equipment. Either the state or the subrecipient must retain title to the vehicle.

States may lease FTA funded assets to private operators. Prior FTA concurrence is required for equipment leased on or after November 1, 2008. If the lease is described in the grant application, FTA approval of the grant constitutes approval of the lease. When FTA funded property is leased to a private operator, including management contractors, the lease should contain the following provisions:

- A requirement for the lessee to operate the project property to serve the best interest and welfare of the state and the public. The terms and conditions for operation of service imposed by the agency 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.
- A requirement that the leased property may not be subleased without the state's written approval

and may not be otherwise encumbered without FTA written approval.

REFERENCES

FTA C 9040.1F, Ch. VI, Section 4
FTA C 9070.1F, Ch. VI, Section 6
FTA C 9050.1, Ch. VI, Section 7
FTA C 9045.1, Ch. VI, Section 7
FTA C 5010.1D, Ch. IV, Sections 3.e(1) and 3.j(1)

SOURCES OF INFORMATION

Review the state management plan and subrecipient agreements for the state's policy regarding the lease of FTA funded assets and its procedures for monitoring subrecipients' leases. Review sample leases. Review a Section 5310 lease to ensure that it was approved in writing by the state and it contains the required terms and conditions. During the desk review, determine if the state obtained prior FTA approval for leases of FTA funded equipment to private operators. Review a state lease to ensure it includes the required provisions. Identify subrecipients that are currently leasing assets to other public or private operators. On site, discuss with the state its current policies and procedures.

DETERMINATION

The state is deficient if it does not oversee the leasing of FTA funded equipment. The state is deficient if it does not approve in writing subrecipients' leases of Section 5310 funded vehicles. The state is deficient if it does not obtain prior FTA approval before leasing FTA funded equipment to private operators. The state is deficient if leases to private operators of FTA funded assets do not include the required terms and conditions. (**DEFICIENCY CODE 180:** Lease issues)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for overseeing leases of FTA funded equipment.

Direct the state to submit to the FTA regional office procedures for approving in writing leases of FTA funded vehicles by Section 5310 subrecipients.

Direct the state to obtain approval for leases of FTA-funded assets to private operators from the regional office and to submit to the FTA regional office procedures for obtaining prior FTA approval before leasing FTA-funded assets to private operators.

Direct the state to submit to the FTA regional office revised leases that include the required terms and conditions.

Part C: Maintenance

11. *What are the state's requirements for subrecipients, including intercity bus operators, for the maintenance of FTA funded vehicles? Demonstrate that the requirements are adequate to protect the Federal interest and maintain property in good operating order?*

EXPLANATION

The state must develop maintenance requirements for FTA funded vehicles that are adequate to protect the Federal interest and to ensure that the equipment is maintained in good operating order.

Generally, subrecipient agreements require equipment to be maintained in good operating order. Many states require subrecipients to follow manufacturers' suggested maintenance activities and schedules. Some states require applicants to document their maintenance procedures in the application and may evaluate the ability to maintain vehicles as part of the project selection process. Some states have developed maintenance procedures that they require subrecipients to follow or require the development of maintenance plans.

REFERENCE

49 CFR 18.32(a)
Master Agreement Section 19.c
FTA C 9040.1F, Ch. VI, Section 3a
FTA C 9070.1F, Ch. VI, Section 4a
FTA C 9050.1, Ch. VI, Section 4a
FTA C 9045.1, Ch. VI, Section 4a
FTA C 5010.1D, Ch. II, Section 3.a(11) and Ch. IV Sections 3.a and 3.m

SOURCES OF INFORMATION

Review the state management plan, subrecipient application packages, subrecipient agreements, maintenance plans and other documentation of maintenance requirements. On site, discuss maintenance requirements.

DETERMINATION

The state is deficient if it does not have requirements for maintenance of FTA funded equipment that are adequate to protect the Federal interest and ensure vehicles are maintained in good operating order. (**DEFICIENCY CODE 48:** Vehicle maintenance plan incomplete or out of date)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) and subrecipient agreements with maintenance requirements for subrecipients.

12. *Describe any requirements the state has or places upon its subrecipients to develop maintenance plans for FTA funded facilities and facility related equipment.*

EXPLANATION

States or their subrecipients are required to develop written maintenance plans for FTA funded facilities and facility related equipment. The plan should identify the goals and objectives of a maintenance program and establish the means by which such goals and objectives will be attained.

REFERENCE

Master Agreement Section 19.c
49 CFR 37.161
FTA C 5010.1D, Ch. II, Section 3.a(11) and Ch. IV, Sections 3.k and m

SOURCES OF INFORMATION

Review the state management plan, subrecipient application packages subrecipient agreements, maintenance plans, and other documentation of maintenance requirements. On site, discuss maintenance requirements with state staff. Review a sample of written subrecipient facility maintenance plans.

DETERMINATION

The state is deficient if it does not have or does not ensure that subrecipients have written maintenance procedures for FTA funded facilities and facility related equipment. (**DEFICIENCY CODE 117:** Facility/equipment maintenance plan lacking or inadequate)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office written maintenance plans for FTA funded facilities and facility related equipment.

13. *What procedures do the state use to monitor maintenance of vehicles, facilities and facility related equipment?*

EXPLANATION

The state is responsible for ensuring that subrecipients maintain FTA funded vehicles, facilities and facility related equipment in good operating order. FTA does not prescribe a monitoring system or specific monitoring activities. Each state is responsible for developing and implementing a monitoring system that provides adequate assurance that FTA funded equipment and facilities are properly maintained. Most states use a combination of

monitoring mechanisms: periodic reporting, maintenance record review, visual inspections, and maintenance audits.

REFERENCE

49 CFR 18.37
Master Agreement, Section 2.e

SOURCES OF INFORMATION

Review the state management plans, which should identify the monitoring mechanisms used by the state to ensure that subrecipients maintain equipment and facilities. Review monitoring mechanisms, such as reports and site visit checklists.

On site, discuss the state's monitoring approach. Review reporting requirements, including the frequency of reporting, the information required, how the state analyzes the information, and the actions the state may take for insufficient maintenance. If the state conducts site visits, determine: how often site visits are conducted, the activities undertaken during the site visits, and any finding resolution processes. Review samples of completed forms, reports or other documentation of site visit findings.

Review sample records and visually inspect vehicles and facilities during site visits to determine whether the state is following its procedures.

DETERMINATION

The state is deficient if it does not have or follow procedures for monitoring maintenance activities to ensure that FTA funded vehicles, facilities and facility related equipment are adequately maintained. (**DEFICIENCY CODE 191:** Inadequate oversight of contracted or subrecipient maintenance activities)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for effectively monitoring maintenance activities and ensuring that FTA funded vehicles, facilities, and facility related equipment are maintained in good operating order.

14. *Identify any FTA funded equipment operated by a subrecipient that is under warranty. What is/are the system(s) for recovering warranty claims? Are claims pursued satisfactorily?*

EXPLANATION

If a subrecipient has equipment under warranty, FTA requires that there be 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 subrecipient, state 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

SOURCES OF INFORMATION

Identify the vehicles and equipment under warranty. Review the state management plans for warranty recovery procedures or requirements. Ask the state for a copy of warranty recovery programs, or, if the programs are not in writing, to describe the warranty recovery system.

During site visits, review warranty claims to learn how timely and aggressive warranty claims have been

pursued and collected. Compare the records of claims submitted with claims settled.

DETERMINATION

The state is deficient if it or its subrecipient does not have a warranty recovery system, does not have records documenting that warranty claims are pursued, or is not pursuing warranty claims diligently. (**DEFICIENCY CODE 187:** Warranty claims not pursued effectively)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for managing and documenting warranty claims, along with a plan for implementation.

Direct the state to report to the FTA regional office on the pursuit of warranty claims for each month for three months to demonstrate it is pursuing claims.

8. CHARTER BUS

BASIC REQUIREMENT

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. *Oversight*
2. *Charter Service*
3. *Complaints*
4. *Reporting*

REFERENCES

1. 49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

USEFUL WEBLINKS

Charter Home Page (includes dockets, reporting forms and instructions, and other resources)

Charter Registration Website

Questions and Answers

QUESTIONS FOR THE REVIEW

1. *What are the state's procedures for ensuring that subrecipients comply with charter regulations? How does the state handle charter complaints/violations by subrecipients?*
2. *For any subrecipients that operate any charter service, as defined in the regulation, under which allowed exception(s) is it operating? How does the state verify that the requirements of the exception were followed?*
3. *How does the state obtain information to report all charter services provided by subrecipients under the exceptions?*

EXPLANATION

As part of its oversight responsibilities, the state shall ensure that any subrecipient providing charter service operates the service in accordance with the regulation. The charter service regulations apply to all grantees and subrecipients that receive Section 5307, 5309, 5310, 5311, 5316, 5317, or 5339 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 third party pays a negotiated price for the group
 - Any fares charged to individual members of the group are collected by a third party
 - The service is not part of the regularly scheduled service, or is offered for a limited period of time
 - 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 premium fare is charged that is greater than the usual or customary fixed route fare, or
 - The service is paid for in whole or in part by a third party.

Examples of services that do not meet the definition of charter service and, therefore, are not considered charter service by FTA are:

- Service requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and 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

Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. 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 the over-the-road bus accessibility program 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

Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements. The charter regulation treats as exceptions 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 state, on behalf of a subrecipient, 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 all of 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; and

- 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, and
- 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, it shall provide email notice to registered charter providers in the grantee's geographic service area by the close of business on the day it received the request unless the request was received after 2:00 p.m., 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, it 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 it 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 state (on behalf of its subrecipients) 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, which can be accessed through the FTA charter website, so they are not reported in quarterly reports. The state shall retain a copy of the Administrator's approval for a period of at least three years.

The state reports to FTA on charter activity on behalf of its subrecipients— except subrecipients that are also direct FTA grantees for Section 5307 or 5311(c) formula funds – for charter service provided under 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).

States must 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

Reports are only required for quarters during which charter service was provided. 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.

When charter service is provided under one or more of the exceptions under this regulation, the grantee, 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.

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)
Petitions to the Administrator
49 CFR Part 604.12
FTA Charter Reports

SOURCES OF INFORMATION

Review oversight materials such as reports, questionnaires, and site visit checklists. Review the subrecipient grant agreements to ensure that they contain the required charter bus clause. On site review and discuss the state's oversight procedures, if written, to ensure that they comply with the charter regulation. Review charter reports submitted to FTA in TEAM-Web to provide information on types of charter services provided and to ensure that the state submitted information for all exceptions under which its subrecipients provided charter service. Review the state's procedure for obtaining the information from subrecipients for reporting to FTA.

Prior to subrecipient site visits, check brochures, the website, other online sources, and the local telephone listings to determine if the subrecipient advertises charter service. On site, look for indications that charter service is operated. Ask the subrecipient if it operates charter service and, if so, under what exception. Ask if the subrecipient reported the information to the state for reporting to FTA. Review information on charter complaint filed.

DETERMINATION

The state is deficient if it does not ensure that subrecipients operate charter service in accordance with the regulation. (**DEFICIENCY CODE 9:** Insufficient oversight of charter service)

The state is deficient if it does not have a process to address charter complaints. (**DEFICIENCY CODE 35:** Insufficient oversight of charter complaints)

The state is deficient if it did not submit information for subrecipients for all applicable exceptions on time.
(**DEFICIENCY CODE 53:** Charter reporting issues)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that subrecipients comply with the charter regulations.

Direct the state to submit to the FTA regional office procedures for addressing charter complaints.

Direct the state to submit missing quarterly reports in TEAM-Web and to submit to the FTA regional office procedures for submitting the required information for all applicable exceptions on time.

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 of the charter regulation or was registered at least 60 days before the date of the first request
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
6. Petition to the Administrator	Yes	No	No	The 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. The grantee must also certify that it has exhausted available registered charter providers' vehicles in the area.

Instructions for filling out the FTA Charter Exceptions Quarterly Reporting Form

There are four exceptions for which a quarterly report is required:

1. government officials (Section 604.6);
2. qualified human service organizations (Section 604.7);
3. leasing (Section 604.8); and
4. 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:
 - a. government officials - **GO**
 - b. qualified human service organizations - **QH**
 - c. leasing – **LE**
 - d. 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 to 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														
8														
9														
10														
11														
12														
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9. 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. *Oversight*
2. *School Bus Service*

3. *Tripper Service*

REFERENCES

1. 49 CFR Part 605 "School Bus Operations"
2. "Final Policy Statement on FTA's School Bus Operations Regulations" 73 FR 53384 September 16, 2008

USEFUL WEBLINKS

FTA School Bus Operations Home Page

Questions and answers

School bus decisions

QUESTIONS FOR REVIEW

1. *What are state's procedures for ensuring that subrecipients comply with school bus regulations?*
2. *If any subrecipients operate exclusive school bus service, does the service qualify for one of the statutory exemptions? Demonstrate that the state received approval from the FTA Administrator? Demonstrate that the service operates only with non-FTA funded equipment and facilities?*
3. *For any subrecipients that provide school "tripper service", how is the service promoted to the general public?*

EXPLANATION

The state must ensure that exclusive school bus service operated by subrecipients is provided under one of the statutory exemptions and does not involve FTA funded equipment or facilities. The state must ensure that school tripper service operated by subrecipients operates and looks like all other regular service.

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 at a reasonable rate.
- The grantee, a public entity, has operated the service at any time during the twelve-month period preceding August 13, 1973, or anytime during the twelve-month period preceding November 26, 1974. There are two dates under this particular exemption because this exemption is based on the dates that two separate legislative measures relating to the Federal Highway Administration (FHWA) and (then) Urban Mass Transportation Administrations (UMTA) were enacted; both legislative measures independently included the school bus condition and this exemption.

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 and publishing notice in the local newspaper.

The FTA Administrator makes the determination of whether to permit a public transit agency 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.

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 that is open to the public and is designed or modified to accommodate the needs of school students and personnel. Tripper service allows a grantee to

- Utilize various fare collections or subsidy systems
- Modify the frequency of service
- Make de minimus route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools

Buses used in tripper service must:

- Be open and promoted to the public
- Not carry designations such as "school bus" or "school special"
- Stop at regular bus stops

School tripper service should operate and look like all other regular service. 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 regular published schedules or on separately published schedules that are available to the public with all other schedules, including on the website.

REFERENCES

49 CFR Part 605

"Final Policy Statement on FTA's School Bus Operations Regulations" 73 FR 53384 September 16, 2008

SOURCES OF INFORMATION

Review subrecipient agreements for the required school bus clause. Review state management plans for a discussion of school bus restrictions and oversight procedures. Review oversight materials, such as reports, questionnaires, and site visit checklists. Ask the state to identify any subrecipients operating exclusive school bus service. Ask the state to identify subrecipients that operate school tripper service. During subrecipient site visits, look for indications that exclusive school bus or tripper service is operated. Ask the subrecipient if it operates

exclusive school bus service or tripper service. If exclusive school or tripper service is provided, ensure that it complies with the regulation.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with the regulations. (**DEFICIENCY CODE 10:** Insufficient oversight of school bus)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for ensuring that subrecipients comply with the school bus regulations.

10. 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 access to fixed route bus and rail and complementary paratransit service.

AREAS TO BE EXAMINED

1. *Complaints and Lawsuits*
2. *Vehicle Accessibility*
3. *Facility Accessibility*
4. *Subrecipient Oversight*
5. *Ferry Service*

REFERENCES

1. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
2. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
3. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility

Specifications for Transportation Vehicles"

4. 49 CFR Part 39, "Transportation for individuals with Disabilities: Passenger Vessels"
5. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"

USEFUL WEB LINKS

FTA ADA Website

Department of Transportation Disability Law Guidance

ADA Standards for Transportation Facilities

Project ACTION

Disability Rights Education & Defense Fund – Topic Guides on ADA Transportation

U.S. Department of Justice ADA Homepage

OFFICE OF CIVIL RIGHTS ADA TEAM LEADER

Mr. John Day
202-366-1671
John.Day@dot.gov

QUESTIONS FOR THE REVIEW

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last state management review (including ADA reviews and the most recent triennial review) identified significant deficiencies, material weaknesses, and/or repeat findings in the area of ADA? Are any such reviews scheduled during this federal fiscal year?*
2. *Did the state or subrecipient experience difficulty resolving or closing any oversight review, investigation, or audit findings? Are any findings currently open?*
3. *Are any issues related to ADA indicated in the Grantee Oversight Assessment?*
4. *What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?*
5. *Have any ADA complaints been filed with FTA against the state or its subrecipients?*

EXPLANATION

If the prior state management review had deficiencies in the area of ADA, compliance issues may still exist because a grantee did not implement the corrective actions properly.

FTA regional office staff prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the ADA portion of the GOA could indicate additional issues in this area.

The FTA Office of Civil Rights conducts on-site assessments of grantees' compliance with ADA requirements for lift/ramp use and maintenance, stop announcements and route identification, ADA paratransit, and rail stations. The Office of Civil Rights also investigates complaints of noncompliance received from individuals who believe they have been subject to discrimination prohibited by the ADA. Both of these activities can result in findings requiring

corrective actions on the part of the grantee, which are detailed in complaint resolution letters and compliance review findings transmitted to the grantee.

REFERENCE

49 CFR Parts 27, 37, 38 & 39

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak pertaining to previous findings as a result of:

- The most recent state management review
- ADA reviews conducted in the past three years
- GOA in OTrak
- Complaints submitted to the Office of Civil Rights

The prior state management review report and worksheets, and supplemental information provided by the Office of Civil Rights will provide information on any findings concerning ADA compliance. The FTA regional office's files on the grantee should contain information submitted by the grantee on the any corrective actions taken. The files may also contain correspondence between the FTA regional office and the grantee concerning implementation of corrective actions.

The FTA regional civil rights officer (RCRO) and the FTA Office of Civil Rights-ADA Team, will also provide additional information. This information will include information regarding compliance review final reports, open findings, complaint decisions, and corrective action letters issued by the FTA Office of Civil Rights, as well as details on any potential deficiencies the office has identified through media reports and other sources.

DETERMINATION

Input into the review

SUGGESTED CORRECTIVE ACTION

None

Part A: Complaints/Lawsuits

6. *How does the state ensure its subrecipients have a process in place to resolve disability-related complaints*

from the public? Does the state require subrecipients to report complaints?

7. *If subrecipients received any complaints of discrimination due to disability, what is the status of the complaints?*
8. *If there are any lawsuits alleging discrimination on the basis of disability, identify parties to suits and issues.*

EXPLANATION

Grantees are required to have an internal complaint review system, and to retain copies of complaints for at least one year and a summary of all complaints for at least five years. 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.

REFERENCE

49 CFR 27.13, 27.123
FTA Master Agreement, Section 96

SOURCES OF INFORMATION

During the desk review, obtain information regarding complaints filed with TCR from the ADA Team Leader. Obtain information on lawsuits from TCR headquarters and the regional civil rights officer (RCRO). During the site visit, discuss with the state how it ensures subrecipients have an effective complaint process in place and how it monitors complaint activity among subrecipients.

DETERMINATION

The state is deficient if it has not or does not ensure that subrecipients have adopted procedures to promptly and equitably resolve complaints based on disability. (**DEFICIENCY CODE 596**: Insufficient oversight of ADA complaint procedures)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO its process for resolving complaints or ensuring that subrecipients have adopted complaint procedures that provide for the equitable and prompt resolution of disability-related complaints.

Part B: Buses and Vans

9. *What are the state's procedures for ensuring that subrecipients comply with the ADA requirements for the acquisition of accessible vehicles?*

10. *How does the state obtain a certification of equivalent service from Section 5311 subrecipients that acquire non-accessible vehicles for demand-responsive service?*

11. *If subrecipients use inaccessible vehicles in demand-responsive service, how does the state monitor their compliance with equivalent service provisions?*

EXPLANATION

49 CFR Part 37 includes specific requirements for the acquisition of accessible vehicles. 49 CFR Part 38 contains accessibility standards for transportation vehicles. States must ensure that subrecipients comply with the ADA requirements when acquiring vehicles and must ensure that subrecipients provide equivalent service when acquiring non-accessible vehicles for general public demand responsive service.

Public Entities

All new buses and vans purchased or leased by public entities operating fixed route service must be accessible and must comply with the standards found in 49 CFR Part 38 of the ADA regulations.

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. Demand-responsive service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. The service for the general public 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 constraints on capacity or service availability

Before procuring any non-accessible vehicle for demand responsive service, the entity must file an equivalent service certification with FTA. A state must obtain certifications from Section 5307 and 5311 subrecipients. Appendix C to 49 CFR Part 37 of the Department of Transportation (DOT) ADA regulations includes a copy of the certification of equivalent service. Grantees are required to file certifications of equivalent service by checking the appropriate category of the annual certifications and assurances. The grantee should monitor its service to ensure that

equivalent service, that is, equal opportunity for each individual with a disability to use the transportation service and that the service provided to individuals with disabilities and those without disabilities meet the same service characteristics described above. The grantee should document its analysis.

Vanpool systems operated by public entities or in which public entities own, purchase, or lease the vehicles are subject to equivalent service requirements. A vehicle that an individual with disabilities can use must be made available to and used by a vanpool in which such an individual chooses to participate.

Intercity Bus Operators

The ADA has separate bus accessibility requirements for private entities, including intercity bus operators that operate over the road buses in fixed route service. New buses purchased or leased by large operators (Class I carriers) must be accessible. Small operators must either purchase or lease new accessible vehicles or ensure that equivalent service is provided to individuals with disabilities, including persons using wheelchairs. This requirement applies to intercity bus operators who are providing service in their own right. Intercity bus operators who are providing service on behalf of a public entity under a contract or other arrangement are subject to the same requirements as the public entity itself.

REFERENCE

49 CFR Part 37.23
49 CFR Part 37.31
49 CFR Part 37, Subpart D
49 CFR Part 37, Subpart E
49 CFR Part 37, Subpart H
49 CFR Part 37, Appendix C
49 CFR Part 38
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review programs of projects in TEAM-Web to determine the types of vehicles acquired. If subrecipients have acquired non-accessible vehicles, on site discuss how the state monitors equivalent service and review a sample of certifications of equivalent service.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with the ADA requirements for acquisition of accessible vehicles, including the provision of equivalent service. The state is deficient if it did not obtain a certification of equivalent service from a 5311 subrecipient acquiring a non-accessible vehicle for demand responsive service. (**DEFICIENCY CODE 8:** Insufficient oversight of ADA vehicle accessibility requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO procedures for ensuring that subrecipients provide equivalent service when acquiring non-accessible vehicles for demand responsive service.

Direct the state to submit to the FTA RCRO a procedure for obtaining a certification of equivalent service from 5311 subrecipients acquiring non-accessible vehicles for demand responsive service.

Part C: Facilities

12. If the state or a subrecipient constructed any new transit facilities since the last state management review, how did the state ensure that the facilities meet the appropriate accessibility requirements under DOT ADA regulations?

13. For facilities constructed or altered by the grantee or a subrecipient that did not meet the requirements of 49 CFR 37.9 and Subpart C to 49 CFR Part 37, provide documentation sufficient to support the determination that the facility was made accessible to the maximum extent feasible or that the cost of alterations required to the path of travel were disproportionate to the overall alterations in terms of cost and scope.

14. When subrecipients construct or modify facilities, how does the state ensure that they comply with ADA requirements as incorporated into 49 CFR Part 37?

EXPLANATION

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9 and Subpart C to 49 CFR Part 37.

If the entity 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. Section 49 CFR 37.43(b) defines "to the maximum extent feasible" as "the occasional case where the nature of an existing facility makes it impossible to fully comply with applicable standards through a planned alteration."

If the area being altered contains a primary function, such as a station platform, the path of travel to the altered area and the bathrooms, telephones and drinking fountains is required to be made accessible, unless the costs are disproportionate to the alteration, in which case whatever is not disproportionate must be made accessible. The regulations define “disproportionate” as exceeding 20 percent of the cost of the alteration to the area containing the primary function. The DOT ADA regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility to provide the greatest access.

An entity must provide documentation sufficient to support that it has made the facility (or altered portion(s) of the facility) accessible to the maximum extent feasible or that alterations required but not made to the path of travel were disproportionate to the overall alterations in terms of cost and scope.

Grantees must ensure that subrecipients comply with ADA requirements when constructing or altering a facility. If there are parties other than the grantee or subrecipients responsible for portions of the facility, the grantee must ensure that they also comply with the ADA requirements.

States must ensure that subrecipients comply with ADA requirements when constructing or altering a facility. If there are parties other than the state or subrecipients responsible for portions of the facility, the state must ensure that they also comply with the ADA requirements.

Note that there are differences between the standards required under DOT ADA regulations and those issued by other federal agencies; and state, county, and municipal building codes cannot be relied upon to ensure compliance with ADA requirements.

REFERENCE

49 CFR 37.9
49 CFR Part 37 Subpart C
49 CFR Part 37, Appendix A
DOT’s ADA Standards for Transportation Facilities
DOT Final Rule Adopting New Accessibility Standards – Effective November 29, 2006
49 CFR Part 39.61
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Before the site visit, review grants in TEAM-Web for facility projects. Obtain a list of facility construction or modification projects begun since the last site visit. During the site visit, discuss with the state and inspect the facility if it is included in a site visit. Ensure that procurement documents for architectural/engineering services reference the ADA requirements. If the state has undertaken alterations to an area that serves a primary function but has not made the path of travel

accessible due to disproportionality, examine supporting documentation, including the cost calculations. Discuss subrecipient oversight procedures. Tour facilities during site visits.

DETERMINATION

The state is deficient if the new facilities do not comply with the standards referenced in 49 CFR 37.9. The state is deficient if alterations do not comply with the standards referenced in 49 CFR 37.9, and it does not have documentation supporting the reasons for not making alterations fully accessible. (**DEFICIENCY CODE 30:** Facility accessibility standards deficiency)

The state is deficient if it has not ensured that subrecipients that construct or modify facilities comply with ADA requirements. (**DEFICIENCY CODE 60:** Insufficient oversight of ADA facility accessibility requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO a schedule for making the necessary modifications to bring the facility into compliance and report quarterly on progress until full compliance is attained.

Direct the state to submit to the FTA RCRO documentation supporting the reasons for not making facility alterations fully accessible.

Direct the state to submit to the FTA RCRO procedures for overseeing subrecipients to ensure that they comply with facility accessibility requirements when constructing or altering a facility.

For noncompliant new construction or alterations, and paths of travel, the regional office and headquarters will determine corrective actions.

Part D: Subrecipient Oversight

15. Describe the state’s procedures for ensuring that subrecipients comply with the general service provision requirements in Subpart G of Part 37?

16. Describe the state’s procedures for ensuring that subrecipients are 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 and courtesy? What training does the state provide? How often? How does the state define proficiency?

EXPLANATION

The DOT ADA regulations (49 CFR 37.161-167) detail specific general service requirements for bus and rail service. The state must monitor subrecipients for compliance with applicable ADA service provision and training requirements.

- **Stop announcements and route identification.** Stop announcements are required for fixed route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, and any stop upon request. The ADA supersedes any union agreement that prevents the entity from requiring operators to call stops.

When more than one route serves a stop, the entity 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.

Entities relying on automated annunciator systems to meet this requirement must ensure that such systems are accurate, reliable and used for their intended purpose. In the event of a failure, the grantee must ensure that drivers announce stops and ensure an alternative mechanism for route identification at stops served by multiple vehicles and multiple routes.

- **Transporting of wheelchairs.** DOT's Final Rule amending 49 CFR Part 37, which went into effect October 19, 2011, prohibits public entities from setting weight or size limitations on wheelchairs it will transport that understate the capacity that the vehicle fleet can actually accommodate (e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The Final Rule deletes the sentence containing "common wheelchair" from Part 37, recognizing that some vehicles used in public transit could accommodate wheelchairs that did not meet the definition of "common wheelchair." Wheelchairs that exceeded the weight or dimensional requirements of a "common wheelchair" could be transported on and be used on such vehicles. In such cases, the grantee must change its operating policies so as not to limit service accessibility by the term "common wheelchair."

[Note that it may be helpful for a grantee to publicize the capacities of its vehicles, so that passengers using wheelchairs can determine whether their mobility devices will fit aboard the grantee's vehicles. As long as this information does not understate the actual dimensions and design load of the vehicles in the grantee's fleet, a grantee that does so is not deficient. Because

the minimum standards for vehicle lifts and ramps have not been changed, such a grantee may accurately report that its vehicles can accommodate wheelchairs measuring 30" x 48" and weighing up to 600 lbs. when occupied.]

- **Priority seating.** When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the entity 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. Drivers are not required to compel the person to move, however, the entity is permitted to adopt a policy requiring individuals to move in response to such requests.
- **Lift deployment.** Entities must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp 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). The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.
- **Service to persons using respirators or portable oxygen.** Entities may not deny service to individuals using respirators or portable oxygen.
- **Time for boarding/disembarking a vehicle.** Entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.
- **Public information.** Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use. Entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.
- **Training.** 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 entity 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.

REFERENCE

49 CFR 37.161-167

49 CFR 37.173

Disability Law Guidance on Use of Segways

49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding service provision. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with the ADA service provisions in Subpart G of Part 37. The state is deficient if it does not ensure that subrecipients have trained personnel, as appropriate to their duties, to operate vehicles and equipment safely and to appropriately interact with and assist persons with disabilities. (**DEFICIENCY CODE 81:** Insufficient oversight of ADA service provision/training requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO procedures for ensuring that subrecipients comply with required service provisions.

Direct the state to submit to the FTA RCRO procedures for confirming that subrecipient training programs ensure personnel remain trained to proficiency in operating vehicles and equipment safely, and in interacting with and assisting persons with disabilities.

17. Describe the state's procedures for:

- *Ensuring that subrecipients comply with ADA vehicle and facility maintenance requirements.*
- *Ensuring subrecipients comply with ADA requirements regarding lift and ramp failures on in-service vehicles, and the provision of alternate transportation.*

EXPLANATION

Entities must maintain in operative condition those features of vehicles and facilities that are required to make them accessible to and usable by persons with disabilities, including wheelchair users. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage, and systems to facilitate communications with persons with vision or hearing impairments. Accessibility features must be repaired promptly if they are damaged or out of order. (Isolated or temporary interruptions in-service or access due to maintenance or repairs are not prohibited.) When an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

Public entities are required to 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 entities have adopted this practice to meet this requirement.

Public entities and private entities operating service under contract to a public entity must ensure that operators report immediately any in-service lift and ramp failures. In any case where a vehicle with an inoperable lift is in service and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity is required to provide alternative accessible service to individuals with disabilities needing an accessible vehicle within 30 minutes. The vehicle with the inoperable lift or ramp must be removed from service before the beginning of the next service day and the entity must repair the lift or ramp before the vehicle is returned to service.

In the event that there is no spare vehicle available and the entity 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 three days (if the entity serves an area of over 50,000 population) or five days (if the entity serves an area of 50,000 or less population). If the state has Section 5309, 5339, 5316, or 5317 subrecipients that are not public entities, consult the Office of Civil Rights ADA Team Leader in FTA's Headquarters Office.

FTA does not prescribe a monitoring system or specific monitoring activities. Each state is responsible for developing and implementing a monitoring system that provides adequate assurance that ADA features are maintained in operative condition. Most states use a combination of monitoring mechanisms: periodic reporting, maintenance record review, visual inspections, and maintenance audits.

REFERENCE

49 CFR 37.161-163
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding maintenance of ADA accessibility features and lift and ramp failures on in-service vehicles. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with ADA maintenance requirements. The state is deficient if it does not ensure that subrecipients comply with ADA requirements regarding in-service lift or ramp failures. **(DEFICIENCY CODE 104:** Insufficient oversight of ADA maintenance requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO procedures for ensuring that subrecipients comply with ADA maintenance requirements.

Direct the state to submit to the FTA RCRO procedures for ensuring that subrecipients comply with ADA requirements regarding in-service lift or ramp failures.

18. *Identify any subrecipients that provide route deviation service. What are the state's procedures for ensuring that route deviation service provided by subrecipients has the characteristics of demand responsive service, i.e., that the service deviates for people with and without disabilities and the service is advertised as route deviation service?*

EXPLANATION

The DOT ADA regulations regard a system that permits user-initiated deviations from routes or schedules as demand responsive, for which ADA complementary paratransit is not required. One key factor to consider in determining whether 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 that service. In contrast, 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 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. If deviations are restricted to a particular group, the service ceases to be a form of demand responsive service for the general public. Systems must provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for people without disabilities as specified in 49 CFR 37.77.

The state must ensure that route deviation service provided by subrecipients has the characteristics of demand responsive service.

REFERENCE

49 CFR Part 37.77
49 CFR Part 37 Appendix D to §37.3
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
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding route deviation service. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited. Review schedules, timetables, system maps, the website and other public information for up to three subrecipients to ensure that the service is promoted as general public route deviation service. Discuss during the site visit with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients deviate for the general public, promote the

service as route deviation service, and provide equivalent service to persons with disabilities. (**DEFICIENCY CODE 125:** Insufficient oversight of route deviation service)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO procedures for ensuring that route deviation service provided by subrecipients has the characteristics of demand responsive service.

19. Identify any subrecipients that provide fixed route service. Do they also provide ADA complementary paratransit service? If not, do the subrecipients provide commuter or "university" service? Describe the state's procedures for ensuring that commuter service is properly classified and meets the characteristics specified in the DOT ADA regulations?

EXPLANATION

The state must monitor subrecipients that provide fixed route service for compliance with applicable ADA requirements.

Each public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. This requirement also applies to all Section 5311 subrecipients of FTA funding, including those that are private nonprofit entities. The requirement to provide complementary paratransit service does not apply to intercity bus, commuter bus and rail, or university service.

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. An entity operating commuter bus service must be able to demonstrate that the service can be characterized as such.

49 CFR 37.25 specifies that "university transportation systems" are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating "university service." In order for routes operated by a transit provider to be

covered by this provision, an institution of higher education would have to have a formal arrangement with the transit operator. In some cases, the transit provider may provide funding directly to an institution of higher education for purposes of providing university transportation service.

If the subrecipient is not required to provide ADA complementary paratransit services, the state must still ensure that the services described as commuter or university service provided have 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 to §37.3
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
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding fixed route and ADA complementary paratransit service. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients that operate fixed route service that is not commuter or university service provide ADA complementary paratransit service. The state 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. (**DEFICIENCY CODE 146:** Insufficient oversight of fixed route service)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO procedures for ensuring that subrecipients that operate fixed route service provide ADA complementary paratransit service. Direct the state to submit to the FTA RCRO subrecipient plans for implementing ADA complementary paratransit service and to report quarterly on the progress in meeting the plans.

Direct the state to submit to the FTA RCRO procedures for ensuring that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

20. What are the state's procedures for ensuring that the complementary paratransit service provided by subrecipients meets ADA requirements in the following areas:

- *Eligibility determinations*
- *Service criteria*
- *Service capacity*
- *Origin-to-destination service*
- *Visitors' service*
- *No-show policies*

EXPLANATION

The state must monitor subrecipients that provide complementary paratransit service for compliance with applicable ADA requirements.

Eligibility Determinations

Each entity 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 as described in Section 37.123(e) of the DOT ADA regulations:

- 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

Individuals may be ADA paratransit eligible on the basis of a temporary or permanent disability. There are many ways that the entity can determine eligibility. The process may include functional evaluation or testing of applicants. Verification of disability from a physician or health professional may be part of the process; however, a diagnosis of a disability in and of itself does not establish eligibility. What is needed is a determination of whether, as a practical matter, the individual can independently use the regular fixed route transit service.

The entity must process a completed application within 21 days of submittal. If after 21 days, the entity has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the entity later denies the application. The entity may require passengers to be recertified at reasonable intervals.

Conditional eligibility must account for all factors that may prevent a given individual from using the accessible fixed route system. In many cases, conditional eligibility will be required based on environmental conditions, such as when snow prevents a wheelchair user from traveling to and from a bus stop. However, the process must also recognize that there may be trip-specific conditions that prevent an individual from using the fixed-route system as well. For example, a wheelchair user may be able to use the fixed route system for regular travel between home and work, but may require paratransit service when traveling to areas where the interaction of a lack of pedestrian infrastructure and the applicant's disability prevents him or her from reaching a bus stop. This individual would therefore be eligible for paratransit service for trips to and from those areas. If the grantee elects not to implement conditional eligibility appropriately, it must grant applicants who can use fixed route in certain situations unconditional eligibility.

The applicant must be given a written reason for the determination and information on the right to an appeal. The written determination cannot just state that it has been determined that the applicant can use fixed route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed route transit is not sufficient. The reasons for denial must specifically convey the evidence in the matter to the eligibility criteria.

The entity is required to establish an appeals process for persons denied eligibility or granted conditional or temporary eligibility. Applicants can be required to submit written notice that they intend to exercise their appeal rights. However, an applicant is not required to submit a written justification prior to the hearing, as this would constitute a prohibited unreasonable administrative burden on the applicant. The entity may require that an appeal be filed within 60 days of the denial of a person's application. The process must include a hearing to present information and "separation of authority" between those hearing the appeal and the person who made the original decision to deny eligibility. An individual may also waive the in-person hearing and proceed on the basis of a written presentation.

The entity 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.

Service Criteria

ADA complementary paratransit must be provided to at least one other individual accompanying an eligible individual. If a personal care attendant (PCA) accompanies an individual, the service must be provided to the PCA and at least one additional individual accompanying the ADA eligible individual, if requested. Additional companions must be provided service if space is available, unless doing so would displace other ADA paratransit eligible individuals.

Requests for reservations must be accepted during normal business hours on a “next day” basis (not 24 hours in advance) on all days prior to days of service (e.g., weekends, holidays). Reservations for next day service must be taken during administrative office hours. Reservations can be accepted using mechanical means (e.g., answering machines).

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. Companions can be charged the same fare as the eligible individual with whom they are traveling. A fare cannot be charged for PCAs.

ADA complementary paratransit must run during the same hours and days as the corresponding fixed route service. The ADA service area at a minimum includes all origins and destinations within $\frac{3}{4}$ mile corridors on each side 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 entity may designate corridors with widths of up to $1\frac{1}{2}$ miles on each side of the fixed route, based on local circumstances. For rail systems (except commuter rail), the service area consists of a circle with a radius of $\frac{3}{4}$ mile around each rail station for trips provided between origins and destinations in different station service areas. At end stations, the entity may designate circles up to $1\frac{1}{2}$ miles. The entity may also provide additional service. The entity is not required to provide paratransit service in areas it does not have the legal authority to operate, but the entity is expected to cross jurisdictional boundaries unless there is a legal bar to the entity providing service on the other side of the boundary.

The existence of ADA complementary paratransit must be clearly distinguished from any other type of demand response service being provided.

Service Capacity

The DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit

to eligible individuals by placing restrictions on the number of trips an individual will be provided, implementing wait lists for access to non-subscription service, and using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability, such as limited phone reservation capacity is also prohibited.

If on a regular basis, the phone lines are busy, the average hold times or long hold times are excessive, the 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. Grantees also must ensure that an ADA eligible individual can reach a reservation agent to cancel a trip. Grantees should be able to provide data on the performance of its phone reservation system. Grantees may not limit the number of reservations made during a phone call. Policies limiting the number of reservations on a phone call suggest the existence of a capacity constraint due to unreasonably long telephone hold times.

Restrictions may not be placed on the number of trips taken by a rider. Waiting lists for non-subscription service are prohibited.

The regulations allow grantees to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the grantee cannot schedule a ride that is within 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 entity'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 must 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.

The DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability is also prohibited (e.g., trip denials, late pick-ups, 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. A substantial number of late arrivals that are significantly late can trigger this provision.

In order to determine whether capacity constraints exist, grantees should have a definition of ADA trip denial, missed trip (i.e., trip missed by the grantee), on-time performance, and excessively long trip. The grantee's definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) from late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Grantees are required to plan and budget for 100 percent of demand for next day service. The grantee is deficient if it intentionally plans to deny, miss, or otherwise not serve a percentage of trips.

Grantees should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, the entity must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA trips separately from non-ADA trips

Origin-to-Destination 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 entity's basic mode of service is curb to curb, the entity must have policies and procedures in place to provide assistance from the vehicle to the first doorway for customers who need additional assistance to complete the trip. The entity cannot charge individuals needing door to door service an extra fee as this violates the nondiscrimination provisions of 49 CFR 37.5.

Visitors' Service

Service 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 entity may request proof of residency, and if the disability is not apparent, proof of disability. The entity must accept a certification by the visitor that he or she is unable to use fixed route transit. The entity 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.

No-Show Policies

Many transit providers have a suspension policy for a pattern or practice of no-shows, as allowed by 49 CFR 37.125(h). Such a policy must be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. 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 may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g., scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. In most cases, a provider should be able to absorb the capacity of a trip cancelled two hours or less before the scheduled pickup.

Systems may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

REFERENCE

49 CFR 37.123-133
DOT Disability Law Guidance on Origin-to-Destination Service
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding ADA complementary paratransit service. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients provide ADA complementary paratransit service in accordance with the regulations. (**DEFICIENCY CODE 165:** Insufficient oversight of ADA complementary paratransit service requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO procedures for ensuring that subrecipients that operate complementary paratransit service do so in accordance with the ADA regulations.

Part E: Ferry Service

21. *If the state operates or oversees the operation of ferry service:*

a. Indicate if any of the following applies:

1. Limitations on the number of persons with disabilities who may board?

2. Medical documentation or advance notice, or other special requirements for individuals with disabilities?

3. Higher fares, surcharges, or other fees for persons with disabilities?

b. What is the policy for determining how reasonable modifications will be made to accommodate individuals with disabilities, and the basis for determining whether specific modifications would fundamentally alter the nature of the service?

c. If transportation service is provided to and from a ferry, is the transfer service accessible?

d. Does the entity provide assistance as requested to passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas?

e. How does the entity ensure that assistance is promptly provided to passengers with disabilities who are

not able to board or disembark without assistance?

f. How does the entity effectively provide briefings and other safety-related information to passengers with hearing or vision impairments? What written materials are provided in alternative formats?

g. Has the entity had to restrict persons with wheelchairs (power and manual) and mobility aids such as walkers, crutches, canes, braces, or similar devices from using any areas that are open to pedestrians?

h. How does the entity make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal? Does the CRO have the power to overrule the decisions of any other personnel, excluding the master of the vessel, with respect to safety matters?

EXPLANATION

Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," which became effective November 10, 2010. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the DOT ADA regulations. Accessibility of landside facilities are addressed by Subpart D, and requirements for assistance and services to passengers with disabilities are contained in Subpart F.

a. Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with another person, subject passengers with disabilities to restrictions

that do not apply to other passengers, or impose higher fares, surcharges or other fees.

- b. 49 CFR 39.21(b)(2) requires public operators of passenger vessels to make reasonable modifications in policies, practices, or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that making such modifications would fundamentally alter the nature of the service.
- c. If a passenger vessel operator provides, contracts for, or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.
- d. The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.
- e. Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance, and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs, or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.
- f. Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers. Passengers with disabilities must be provided with whatever assistance is necessary to enable their full participation in safety or emergency evacuation drills that are provided to all passengers, and maintain evacuation programs, information, and equipment in locations that passengers with disabilities can readily access and use.
- g. Passenger vessel operators must permit individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids

such as walkers, crutches, canes, braces, or similar devices in any areas that are open to pedestrian use. In addition, the entity must also make reasonable modifications to its policies, practices, or procedures to permit the use of other powered mobility devices used by persons with mobility impairments (e.g., Segways), unless it can be demonstrated that a specific device cannot be operated on board the vessel consistent with legitimate safety requirements.

- h. Passenger vessel operators are required to make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal. The CRO may be available in person or via telephone. If a telephone link is used, text telephone (TTY) or telecommunications relay service (TRS) must be available so that persons with hearing impairments are able to communicate readily with the CRO. The CRO must have the authority to make dispositive resolution of complaints on the entity's behalf, including the power to overrule the decisions of any other personnel (but cannot countermand a decision of the master of the vessel with respect to safety matters). In any situation in which any person complains or raises concern with the entity's personnel about discrimination, policies, or services with respect to passengers with a disability, and personnel do not immediately resolve the issue to the passenger's satisfaction or do not provide a requested accommodation, the entity's personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the available CRO.

REFERENCES

49 CFR Part 39 Subparts B, C, D, F, & G
49 CFR 18.37 and 18.40
Use of "Segways" on Transportation Vehicles

SOURCES OF INFORMATION

During the desk review, obtain information regarding complaints and lawsuits from the RCRO. Before the site visit, review policies regarding serving passengers with disabilities. Review fares for surcharges. Review contracts with ferry shuttle services. Review an organization chart showing the designation of a CRO. Review policies relating to responsibilities of the CRO. During the site visit, discuss with the state what modifications to policies were made to comply with Part 39. For modifications not made, discuss the basis for determining they would fundamentally alter the nature of the service. Discuss procedures for making safety briefings available in alternative formats.

DETERMINATION

The state is deficient if any required procedures are not in effect. The state is deficient if there are policies

or procedures that are contrary to the ADA requirements. The state is deficient if policies are not enforced or internal operations are not monitored. (**DEFICIENCY CODE 174:** ADA ferry service deficiencies)

The state is deficient if it does not ensure that the ferry service provided by subrecipients meets ADA requirements. (**DEFICIENCY CODE 194:** Insufficient oversight of ADA ferry service requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO evidence that policies have been rescinded that: limit the number of persons with disabilities on a vessel, require medical documentation, require advance notice, require passengers to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

Direct the state to submit to the FTA RCRO a plan for providing reasonable modifications to policies and practices for its ferry services.

Direct the state to submit to the FTA RCRO procedures for ensuring that transfer service is accessible to and usable by persons with disabilities.

Direct the state to submit to the FTA RCRO its procedures for ensuring that assistance is provided as needed to passengers with disabilities in boarding and disembarking, moving between the terminal and the boarding point, and accessing key functional areas of the terminal.

Direct the state to submit to the FTA RCRO its procedures for providing briefings and safety-related materials in alternative formats.

Direct the state to submit to the FTA RCRO procedures for permitting individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids.

Direct the state to submit to the FTA RCRO documentation of the availability and responsibilities of its CROs, including the ability to override any other personnel.

Direct the state to submit to the FTA RCRO procedures for ensuring that the ferry service provided by subrecipients complies with ADA requirements.

11. TITLE VI

BASIC REQUIREMENT

The grantee must ensure that no person 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. *Public Information and Complaint Procedures*
2. *Limited English Proficiency (LEP)*
3. *Outreach*
4. *Subrecipient Monitoring*
5. *Program Specific Requirements for State Programs*

REFERENCES

1. FTA C 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
2. FTA C 4703.1 "Environmental Justice Policy Guidance For Federal Transit Administration Recipients"

3. 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"
4. 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"
5. Executive Order 13166: "Improving Access to Services for Persons with Limited English Proficiency"
6. Federal Register: December 14, 2005 (Volume 70, Number 239, pp. 74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"

USEFUL WEB LINKS

FTA Title VI page

DOT Limited English Proficiency (LEP) Guidance

Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs

Title VI Frequently Asked Questions

QUESTIONS FOR THE REVIEW

1. *How do the state and its subrecipients implement the procedures in its Title VI plan for identifying, investigating, and tracking complaints? How 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 4702.1B 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 process for filing a complaint should be easy to understand for the general public and not include unnecessary obstacles. The state 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 state. Although the complainant may not refer to Title VI in the complaint to the state, the state should be able to identify and classify this type of complaint as a Title VI complaint.

Most states have a well-established process and schedule for receiving, acknowledging, and screening complaints, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints as long as it provides an adequate process for complaints.

REFERENCE

49 CFR 21.9(b)
FTA C 4702.1B,

SOURCES OF INFORMATION

Review the state's instructions for filing complaints and its procedures for receiving, investigating and tracking complaints in its Title VI submission. During the site visit, verify implementation. Request a copy of Title VI complaints received since the last review. Ask the state who or what office receives complaints and how staff is trained to identify complaints of discrimination under Title VI.

DETERMINATION

The state is deficient if it cannot provide information on how it receives, identifies, and investigates Title VI

complaints and/or if the state cannot demonstrate that it has a process for tracking discrimination complaints on the basis of race, color, or national origin. The state is deficient if the process for filing a complaint includes unnecessary timeframes or barriers or requires the complainant to enter into any agreements with the state prior to complaint resolution. (**DEFICIENCY CODE 594:** Title VI complaints not addressed properly)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO a written document that describes its procedures for investigating and tracking Title VI complaints.

2. *How does the state and subrecipients notify the public of its 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. States and subrecipients shall at a minimum, disseminate information by posting a Title VI notice on the agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc. Grantees and subrecipients should also post Title VI notices at stations or stops, and/or on transit vehicles. The notice shall include:

- A statement that the agency operates programs without regard to race, color, or national origin.
- A description of the procedures that members of the public should follow in order to request additional information on the grantee's Title VI obligations.
- A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the grantee.

Notices detailing a grantee's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed, and be consistent with the Circular and the grantee's language assistance plan.

REFERENCES

49 CFR 21.9(d)
FTA C 4702.1B Ch. III, Section 5

SOURCES OF INFORMATION

Review the state's Title VI program for a description of how this notification requirement is implemented. Review a copy of the materials that the state uses to inform the public of its rights under Title VI and a description of how these materials are disseminated. During the site visit, review marketing materials and postings on vehicles and public facilities.

DETERMINATION

The state is deficient if it or its subrecipient(s) has not disseminated a Title VI notification. The state is also deficient if its only means of dissemination consists of publishing the notice on the agency's website. The state is deficient if the Title VI notice is missing required elements. If the agency does not provide a translation as needed and consistent with DOT LEP Guidance, it is deficient. (**DEFICIENCY CODE 203:** Title VI public notification deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the RCRO documentation of having notified the public of its rights under Title VI. Direct the state to submit to the RCRO a revised Title VI notification and verification that the document has been disseminated. Direct the state to submit to the RCRO procedures to provide translation for Title VI information as needed.

3. *Is the state and its subrecipients implementing the procedures in its Title VI plan to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are LEP? How did the results of the four-factor analysis influence the steps taken?*

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). FTA's Circular 4702.1B states that grantees shall document the steps undertaken to implement the DOT LEP Guidance necessary to provide "meaningful access" on the basis of four factors:

- the number and proportion of LEP persons served or encountered in the eligible service population
- the frequency with which LEP individuals come into contact with the program
- the nature and importance to people's lives of the program, activity, or service provided

- the resources available to the recipient for LEP outreach and the associated costs

Grantees are required to ensure meaningful access to the LEP persons. A means to ensure meaningful access is to develop and carry out a Language Assistance Plan. FTA grantees must develop a Language Assistance Plan to ensure compliance with the requirement. Grantees have considerable flexibility in developing a plan, but at a minimum it must:

- Include the results of the four factor analysis, with a description of the LEP population(s) served
- Describe how it provides language assistance services by language
- Describe how LEP persons are notified about the availability of language assistance
- Describe how it monitors, evaluates and updates the language access plan, and
- Describe how it trains employees to provide timely and reasonable language assistance.

The program needs to be based on the results of the analysis of how the four factors apply to the grantee's programs and activities. FTA will determine, at the time the grantee submits its Title VI program or subsequent to a complaint investigation or compliance review, whether a grantee's plan is sufficient to ensure meaningful access and thus ensure that the grantee is not engaging in discrimination on the basis of national origin.

REFERENCES

Executive Order 13166
DOT LEP Guidance
LEP Handbook for Public Transportation Providers
FTA C 4702.1B, Ch. III, Section 9

SOURCES OF INFORMATION

Review documentation of how the agency has analyzed the four factors presented in the DOT LEP Guidance. Determine whether the state developed an implementation plan on language assistance. Review examples of language assistance measures that have been implemented, including a listing of vital documents.

DETERMINATION

The state is deficient if it has not prepared a language assistance plan and not received an exemption from FTA. (**DEFICIENCY CODE 289:** Lacking a language assistance plan.)

Even if the state has taken specific actions to provide language assistance, it is deficient if it has not

conducted the four factor analysis. (**DEFICIENCY CODE 11:** Lacking assessment or provisions for LEP persons).

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the RCRO a language assistance plan. Direct the state to submit to the RCRO the completed four factor analysis, along with a list of language assistance it has provided or intends to provide, based on the analysis and a timeline for providing this assistance.

4. *In the implementation of FTA programs, how do the state and its subrecipients conduct public outreach and involvement activities? How have they sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of these activities? Is this consistent with the Title VI program?*

EXPLANATION

States 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:

- Scheduling meetings at times and locations that are convenient and accessible for minority and LEP communities.
- Employing different meeting sizes and formats.
- Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected minority and/or LEP communities.
- Considering radio, television, or newspaper ads on stations and in publications that serve LEP populations. Outreach to LEP populations could also include audio programming available on podcasts.
- 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.

REFERENCE

EO 12898, DOT Order 5610.2
FTA C 4702.1B,

SOURCES OF INFORMATION

Review the state's procedures for outreach in its Title VI program submissions. 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. Review public hearings, planning activities and program of projects and STIP development.

DETERMINATION

The state 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 the bulleted list above. (**DEFICIENCY CODE 45:** Title VI public outreach deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA 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.

5. *Since October 1, 2012, grantees that made decisions concerning the location of transit facilities (including but not limited to, storage facilities, maintenance facilities, operations centers, etc.) had to conduct an equity analysis. If the state or subrecipient have not made a decision, proceed to the next question. If the location decision has been made, how was the equity analysis conducted and how did the impacts across various sites affect the final decision for location?*

EXPLANATION

FTA C 4702.1B describes the requirements for complying with the regulations in 49 CFR Section 21.9(b)(3), which states, "In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the

grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.”

Grantees are required to complete a Title VI equity analysis during the planning stages with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Grantees must engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

When evaluating locations of facilities:

- Grantees should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result.
- Analysis should be done at the census tract or block group, where appropriate, to ensure that proper perspective is given to localized impacts.
- If the grantee determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the grantee may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The grantee must show how both elements are met. In order to make this showing, the grantee must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

REFERENCES

49 CFR 21.9
FTA C 4702.1B, Ch. III, Section 13

SOURCES OF INFORMATION

Review the Title VI equity analysis to determine that all the requirement's elements have been met. Review correspondence with residents, public meeting documentation and other documents related to siting decisions.

DETERMINATION

The grantee is deficient if all the requirements have not been met. (**DEFICIENCY CODE 293:** Failure to comply with Title VI determination of site or location of facilities requirements)

SUGGESTED CORRECTIVE ACTION

For facilities still in the process of siting, direct the grantee to meet Title VI requirements before proceeding to making a siting decision. For facilities that were sited after October 1, 2012 and the analysis was not completed, consult the RCRO to discuss the corrective action.

6. *How does the state monitor to ensure that subrecipients comply with Title VI requirements? Does this monitoring include MPOs? What process does the state have in place to be made aware of Title VI complaints received by its subrecipients?*
7. *How does the state collect and maintain Title VI plans from all of its subrecipients?*

EXPLANATION

The state is responsible for ensuring that subrecipients that provide transit service comply with Title VI requirements. In order to ensure the primary and subrecipient are in compliance with Title VI requirements, the primary recipient shall undertake the following activities:

- Document its process for ensuring that all subrecipients are complying with the general reporting requirements, as well as other requirements that apply to the subrecipient based on the type of entity and the number of fixed route vehicles it operates in peak service
- Establish a timeframe to collect Title VI programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI programs may be electronic, at the option of the primary recipient.

When a subrecipient is also a direct recipient of FTA funds, the entity reports directly to FTA and the primary recipient is not responsible for monitoring compliance of that subrecipient. The supplemental agreement signed by both entities in their roles as designated recipient and direct recipient relieves the primary recipient/designated recipient of this oversight responsibility, with a special caveat for MPOs receiving planning funds through State DOTs.

REFERENCE

49 CFR 18.37 and 18.40
49 CFR 21.9(b) (d)
FTA C 4702.1B
Executive Order 13166
DOT LEP Guidance
EO 12898, DOT Order 5610.2

SOURCES OF INFORMATION

During the site visit, discuss the state's procedures, along with documentation that the procedures have been implemented. Review the state's monitoring tools and the oversight files on subrecipients.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with applicable Title VI requirements. (**DEFICIENCY CODE 62:** Insufficient oversight of Title VI)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the RCRO a schedule for receiving, reviewing, and approving Title VI plans from subrecipients. Direct the state to provide the RCRO a document that describes the measures it will take to monitor subrecipients for compliance with applicable Title VI requirements. When appropriate, direct the state to also provide evidence of assistance such as providing subrecipients sample notices to the public informing beneficiaries of their rights under DOT's Title VI, procedures on how to file a Title VI complaint, and the grantee's complaint form; sample procedures for tracking and investigating Title VI complaints filed with a subrecipient, and when the primary recipient expects the subrecipient to notify the primary recipient of complaints received by the subrecipient; demographic information on the race and English proficiency of residents served by the subrecipient; and any other recipient-generated or obtained data, such as travel patterns, surveys, etc., that will assist subrecipients in complying with Title VI.

8. *What processes does the state use to evaluate if it is distributing funds in a nondiscriminatory manner? How does it analyze the overall allocation of the benefits and burdens of transportation investments in light of Title VI considerations?*

EXPLANATION

States must have a basis for certifying their state-wide compliance with Title VI. As a starting point for much of this analysis, the state should have a demographic profile of the state that includes identification of the locations of socioeconomic groups, including low-income and minority populations, along with how it uses that data. For many state DOTs, this information may not be generated by the transit division, but may be generated or assisted by the highway or planning division of the state. Examples of this analysis can include:

- A demographic profile of the state that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI.
- A statewide transportation planning process that identifies the needs of low-income and minority populations.
- An analytical process that identifies the benefits and burdens of the state's transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced.

In addition to demographic data showing a profile of the state and how its FTA funds are distributed, the Title VI Circular includes information that should be evaluated in order for the state to determine its compliance with and efforts regarding Title VI principles. These include:

- efforts to receive applications from agencies serving predominantly minority and low-income populations
- fair and equitable competitive selection or annual program of projects processes
- maintenance of the record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income communities

REFERENCE

FTA C. 4702.1B,
FTA C 4703.1

SOURCES OF INFORMATION

Review the state's most recent Title VI program submission. The state should be able to provide recent demographic and analytical data to support its certification that it is in compliance with Title VI.

DETERMINATION

The state is deficient if it cannot provide the analytical information on which it has based its certification. (**DEFICIENCY CODE 90:** No existing basis for Title VI certification of equitable distribution)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the RCRO the analytical data on which it is certifying its compliance with Title VI.

12. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The state 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 under the Federal transit laws. (Note: The Equal Employment Opportunity Commission's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. *Oversight of Subrecipients*

REFERENCES

1. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"

USEFUL WEB LINKS

FTA EEO page
EEO Compliance Reviews

Instructions for uploading programs to
TEAM-Web

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Washington DC 20590

QUESTIONS FOR THE REVIEW

1. *Which subrecipients meet the threshold for submission of a formal EEO program? For those subrecipients:*

- *What is the process the state uses to receive and review the EEO plans?*
- *Does the state's oversight process include obtaining program updates every three years? If not, provide an explanation.*

EXPLANATION

Subrecipients that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit-related employees must submit to the state an EEO plan. Program updates are due every three years. The state is required to review and approve the plan. This approval needs to be done by someone with knowledge of EEO requirements.

Note: In some circumstances, the RCRO may require grantees to submit the EEO program of a subrecipient 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 its program.

REFERENCES

49 CFR 18.37 and 18.40
FTA C 4704.1, Ch II, Section 2

SOURCES OF INFORMATION

During the desk review, review information to determine whether any subrecipient 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 or constructed by the state for use by a subrecipient, are counted towards the subrecipient's threshold. Ask if the subrecipients have approved EEO plans on file with FTA or if they are on file with the state.

DETERMINATION

The state is deficient if it (or FTA, if requested) does not have on file an approved EEO plan from subrecipients that meet threshold requirements. (**DEFICIENCY CODE 144:** Failure to obtain EEO plans from subrecipients/contractors exceeding threshold)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO documentation that it has reviewed and approved EEO plans from subrecipients that meet threshold requirements. Confer with the RCRO to determine if a plan should be submitted to FTA.

2. *How does the state adequately review applicable subrecipient EEO plans for compliance in the following areas:*

- *EEO Officer designation*
- *Utilization analysis and goals*
- *Narrative and statistical assessment of employment practices*
- *Monitoring and reporting system?*

EXPLANATION

For subrecipients that meet the threshold described in Question 1, the state must review the adequacy of their plans. That review should include the following items at a minimum.

EEO Officer

The importance of an EEO program is indicated by the individual named to manage the program and the authority he or she possesses. The EEO officer should be identified in the grantee's policy statement. The EEO officer should be an executive and must report directly to the CEO. The EEO officer should be identified by name in all internal and external communications regarding the grantee's EEO program.

Care should be taken to avoid conflicts of interest when assigning responsibility for administering the EEO program as a collateral duty assignment. Collateral duty means the person has other responsibilities rather than being a full time EEO officer. The EEO officer should serve as a check and balance on employment practices. Since one of the EEO officer's minimum responsibilities includes reporting periodically to the CEO on the progress of each unit in relation to the agency's EEO goals, conflicts of interest could arise if the EEO officer is located in the human resources or administrative office. For example, many of the employment practices may be, in large part, the responsibility of the human resource department.

Additionally, the EEO officer is responsible for processing employment discrimination complaints.

Underutilization Analysis and Goals

The purpose of the utilization analysis is to identify those job categories where underutilization and/or concentration of women or minorities exist in relation to their availability in the relevant labor market. It is also to establish the framework for goals and timetables and other affirmative actions to correct employment practices that contributed to any underutilization or concentration. Specific 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.

Generally, long-range goals (to be obtained in four to five years) are usually stated as percentages. Qualitatively, short-term goals should be set and pursued in order to ensure accomplishment of long-range goals. Quantitatively, short-term goals represent the net increase in minority and/or women's employment in a particular job category within the next 12 months. Short-term goals should be stated as both actual numbers and percentages and should be based on anticipated job openings, job group availability, and the long-range goals. If the goals that were set in the previous submission were not met, there is an obligation to explain what efforts were taken to meet the goal and fully explain and justify why the goal was not met.

Narrative and Statistical Assessment

In conjunction with the utilization analysis and EEO goal establishment, agencies must conduct a detailed narrative and statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. For example, the narrative assessment of the employment practices may include the agency's current practices in recruitment, selection, promotion, termination, transfers, layoffs, disciplinary actions, compensation and benefits, training.

The analyses must contain statistical data to document the impact of employment practices. At a minimum, the analyses must contain the following:

- The number of individuals by race and sex applying for employment and the number who were actually hired
- The number of individuals by race and sex who applied for a promotion or transfer within the past year and the number who were promoted or transferred
- The number and types of disciplinary actions and terminations by race and sex

All problem areas must be identified and a proposed program of remedial, affirmative actions enumerated in the agency's EEO plan.

Monitoring and Reporting

An important part of any successful EEO program is an effective internal monitoring and reporting system. This system should:

- assess EEO accomplishments
- report accomplishments and lack of accomplishments to management
- enable the evaluation of the program during the year
- enable the taking of necessary action regarding goals and timetables
- provide a factual database for future projections

The monitoring and reporting system should be used to prescribe and revise short-term goals. The system should allow for revision of long-range goals to reflect availability of traditionally underutilized persons. The reporting system should provide documentation to support actions that affect women and minority job applicants or employees. Management should be kept informed of program effectiveness.

REFERENCE

FTA C 4704.1, Ch III, Page III-3(c)
FTA C 4704.1, Ch III, Pages III-5(d) and III-7(e)
FTA C 4704.1, Ch III, Page III-9 (f)
FTA C 4704.1, Ch VI

SOURCES OF INFORMATION

Review the following: 1) How the state reviews the plans of applicable subrecipients (for example, does it use checklists, does it request additional information on EEO submissions, does it acknowledge receipt and review of subrecipient plans?); 2) How often the EEO Officer of the subrecipient provide updates to the state on the status of its EEO goals and timetables; 3) The state's mechanisms for receiving information on subrecipient EEO complaints; and 4) Additional state processes for monitoring subrecipients for compliance.

DETERMINATION

The state is deficient if it does not have documentation supporting its review of EEO plans from subrecipients that meet threshold requirements. (**DEFICIENCY CODE 31**: Failure to adequately review EEO plans)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO an updated state management plan(s) that documents the process for adequately reviewing EEO plans from subrecipients that meet threshold requirements.

13. DRUG FREE WORKPLACE ACT AND DRUG AND ALCOHOL PROGRAMS

BASIC REQUIREMENT

States are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program. Grantees receiving Section 5307, 5309 or 5311 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

AREAS TO BE EXAMINED

1. *Drug-free Workplace Act Policy and Program*
2. *Drug and Alcohol Oversight Program*
3. *MIS Reporting*

REFERENCES

1. 49 CFR Part 32 "Government wide Requirements for a Drug-free Workplace (Grants)"
2. 41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988
3. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"
4. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"
5. Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

USEFUL WEBLINKS

FTA Drug and Alcohol Testing Homepage

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

Office of Drug and Alcohol Policy and Compliance

Release of Information Form 49 CFR Part 40 – Drug and Alcohol Testing

List of Department of Health and Human Services Certified Laboratories

APPLICABILITY

The Drug Free Workplace Act (DFWA) applies to direct recipients but not subrecipients or contractors.

FTA drug and alcohol testing requirements apply to states, subrecipients, and contractors with safety sensitive employees that receive FTA funds under Sections 5307, 5309, or 5311, except where funds are used exclusively for facilities or planning.

QUESTIONS FOR THE REVIEW

DRUG-FREE WORKPLACE

1. *How does the state comply with its obligations to have a written policy as prescribed in the Drug-Free Workplace Act that is distributed to all transit-related employees?*

EXPLANATION

The state is required to have and distribute to transit related employees a written policy that states that:

- the workplace is drug-free
- the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
- employees must abide by the terms of the policy statement as a condition of employment
- if convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction

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 state's payroll, or employees of subrecipients or contractors in covered workplaces.

The DFWA 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.

REFERENCES

49 CFR 32.200; 215; and 220

SOURCES OF INFORMATION

Obtain and review a copy of the state's drug-free workplace policy.

DETERMINATION

The state is deficient if it does not have a written policy. (**DEFICIENCY CODE 311**: No Drug-Free Workplace written policy).

The state is deficient if it 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. (**DEFICIENCY CODE 206**: Drug-free workplace policy lacking required elements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office a written policy that includes all required elements along with documentation that the amended policy has been distributed to all grant-related employees.

2. *What is the state's ongoing drug-free awareness program? How does the state inform 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 state 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, states 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.

REFERENCES

49 CFR 32.200; 215; and 220

SOURCES OF INFORMATION

Review the written policy, employee handbooks, brochures, posters, and other information on bulletin boards, employee assistance program information, and other material distributed to employees.

DETERMINATION

The state is deficient if it does not periodically inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, and the opportunities for assistance. It is deficient if it has provided such information in the past but has not provided information on a consistent basis. **(DEFICIENCY CODE 226:** No ongoing drug-free awareness program)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office evidence that it has implemented an ongoing drug-free awareness program and informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs.

3. *Since the last review, has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely? When did the state provide FTA timely notice of the conviction? What action was taken against personnel that reported such a conviction?*

EXPLANATION

When the state 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. States must provide the individual's position title and the grants in which the individual was involved. Further, the state 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

Review information provided by the state and follow up during the site visit.

DETERMINATION

The state is deficient if it reports that a conviction has occurred but did not notify FTA or take appropriate personnel actions. The state is deficient if it has reported a conviction or has taken personnel actions, but not within the appropriate time frames. **(DEFICIENCY CODE 323:** Inadequate criminal drug statute violation reporting)

SUGGESTED CORRECTIVE ACTION

Direct the state to report to the FTA regional office outstanding convictions and/or take appropriate personnel actions and to develop procedures to do so in the future within the required timeframes.

DRUG AND ALCOHOL OVERSIGHT PROGRAM

4. *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 an audit is scheduled for the current federal fiscal year or has been recently conducted, all questions in this section are still asked. If an audit has been recently conducted, obtain a copy of the most recent report for input into the review.

REFERENCE

None

SOURCES OF INFORMATION

Contact the FTA regional office to determine if a drug and alcohol program compliance audit is scheduled for the current federal fiscal year or has been conducted during the past two federal fiscal years.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

5. *How does the state monitor subrecipients, contractors, subcontractors, and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*
6. *If the state contracts private carriers, how does it ensure that they comply with FTA drug and alcohol requirements?*

EXPLANATION

Subrecipients are required to have a drug and alcohol testing program for safety-sensitive employees. States are responsible for passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, reporting to FTA on the testing programs, 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 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 states 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)

If a state contracts a private carrier, the carrier's CDL holders, which are already covered by FMCSA drug and alcohol testing requirements (49 CFR Part 382), may be subject to FTA drug and alcohol requirements. CDL holders who spend more than half of their time in transit service must be covered by an FTA drug and alcohol testing program. Once determined, the employee will be subject to pre-employment and random testing under FTA authority.

For private carriers, 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 state must collect, retain, and submit MIS reports annually for the private carrier. Private carrier employees that perform FTA safety-sensitive functions and are not part of an FMCSA drug and alcohol program (those without CDLs), must be covered by an FTA drug and alcohol program.

REFERENCES

49 CFR 18.37 and 18.40

49 CFR 655.81

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit

Drug and Alcohol program compliance audit questionnaires

SOURCES OF INFORMATION

Request a list of all subrecipients in order to determine if the requirement for drug and alcohol testing applies. Review subrecipient agreements and monitoring documents (reports, questionnaires, site visit checklists) for a description and the details of the state's drug and alcohol oversight program. Discuss the oversight program with the state. Review MIS reports and the oversight files for the subrecipients, contractors, and lessees to be visited during the site visit.

DETERMINATION

The state is deficient if it does not oversee the drug and alcohol programs or if its oversight program is inadequate to ensure minimal compliance. **(DEFICIENCY CODE 157:** Drug and Alcohol contractors, subrecipients, and/or lessees not properly monitored)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office a drug and alcohol oversight program for its subrecipients.

7. How does the state monitor vendors (e.g., consortia, third party administrators, collection sites, medical review officers, etc.) that support its subrecipients' programs to ensure compliance with program requirements?

EXPLANATION

The state is responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors for its subrecipients' programs. Consequently, the state should have a contract with its own vendors and should ensure that subrecipients have contracts with their vendors that reference 49 CFR Part 40, as amended. The state should not assume that vendors are following the

correct procedures or that they are knowledgeable about FTA regulations. The state should monitor the quality of the testing service vendors for its program and the programs of subrecipients, including collection sites, medical review officers, and substance abuse professionals. States need only ensure that testing laboratories are U.S. Department of Health and Human Services (HHS) certified.

FTA does not prescribe how a state must monitor vendors. The state 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 from subrecipients of flawed procedures; requiring detailed explanations for cancelled tests; or documenting error correction training. This oversight can be done by the third-party administrator.

It is the responsibility of the state to ensure that program records are accurate and current and that they comply fully with FTA regulations. The state or its subrecipients should review copies of custody and control forms and alcohol testing forms to ensure they are completed accurately and legibly, and should follow up with collection sites when forms are not completed correctly or indicate improper procedures (drug tests conducted before alcohol tests, seals dated and initialed after being placed on the bottles (no carbon bleeds) have been followed. The state should either ensure that subrecipients the forms or review the forms itself.

REFERENCES

49 CFR 18.40
49 CFR 40.15
HHS certified laboratories

SOURCES OF INFORMATION

Review copies of contracts and monitoring reports.

DETERMINATION

The state is deficient if it does not have contracts with vendors and/or it cannot show that it is monitoring vendor operations. (**DEFICIENCY CODE 173:** Drug and/or alcohol program vendors not properly monitored)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office executed contract(s) with vendor(s) and/or monitoring procedures.

8. *During the review period, when did the state submit annual calendar year MIS reports for its subrecipients, summarizing drug and alcohol test results as requested by FTA?*

EXPLANATION

The state must collect, maintain, and submit annual MIS reports for Section 5307, 5309, and 5311 subrecipients with safety sensitive employees summarizing drug and alcohol program testing results. The reports cover the prior calendar year. For FTA-funded ferry operations, states must submit the reports for random alcohol tests only. States 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 state and must be filled out completely. Subrecipients that provide FTA-covered service to more than one state or other recipient must break out their information so as not to double-report data. 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 states to submit via the Internet at <http://damis.dot.gov>.

REFERENCES

49 CFR 655.72
MIS report forms

SOURCES OF INFORMATION

Review copies of MIS reports submitted since the last review. Discuss the state's process for obtaining MIS reports from subrecipients with safety sensitive employees and ensuring the reports are forwarded to FTA by March 15. Review the MIS reports for the subrecipient(s) to be visited.

DETERMINATION

The state is deficient if the MIS reports for subrecipients were not submitted. (**DEFICIENCY CODE 298:** MIS reports not properly submitted)

SUGGESTED CORRECTIVE ACTION

Direct the state to collect and submit all delinquent MIS forms, develop a procedure for timely MIS reporting, and submit the new procedure, along with documentation of its implementation to the FTA regional office.