

FTA

FEDERAL TRANSIT ADMINISTRATION

FY2015 State Management Review Workshop Workbook



United States Department of Transportation
Federal Transit Administration

TABLE OF CONTENTS

- 0. SUMMARY OF CHANGES**
- 1. PROGRAM MANAGEMENT**
- 2. GRANT ADMINISTRATION**
- 3. PROJECT MANAGEMENT**
- 4. FINANCIAL MANAGEMENT AND CAPACITY**
- 5. PROCUREMENT**
- 6. DISADVANTAGED BUSINESS ENTERPRISE**
- 7. ASSET MANAGEMENT**
- 8. CHARTER BUS**
- 9. SCHOOL BUS**
- 10. AMERICANS WITH DISABILITIES ACT**
- 11. TITLE VI**
- 12. EQUAL EMPLOYMENT OPPORTUNITY**
- 13. DRUG FREE WORKPLACE ACT/DRUG AND ALCOHOL PROGRAMS**

SUMMARY OF CHANGES

Overall

- Updated references to incorporate FTA Circulars 9040.1G and 9070.1G
- Updated references to the FY2015 Master Agreement
- Changed reference from Grantee Oversight Assessment to Oversight Assessment Tool (OAT)
- Included general statement about references in Guide linking to newest circular

Program Management

- Added new guidance on using an unsubsidized portion of privately provided intercity bus service as in-kind local match for intercity bus projects
- Moved question regarding eligibility of State matching funds to Financial Management and Capacity

Project Management

- No new questions

Grant Administration

- Clarified due dates and reporting frequencies for Milestone Progress Reports
- Moved questions regarding eligibility of Section 5324 Emergency Relief projects to Financial Management and Capacity

Financial Management and Capacity

- Added question regarding eligibility of State matching funds from Program Management
- Updated information on what is eligible for local match to reflect MAP-21 changes
- Added questions regarding eligibility of Section 5324 Emergency Relief projects from Grant Administration

Procurement and Buy America

- In several areas, included in corrective action the requirement to demonstrate implementation of new procedures in the next procurement
- Added question on administration of A&E on-call contracts
- Expanded question on responsibility determinations
- Added deficiency code for lack of debarment and suspension clause
- Updated the explanation of the piggybacking question based on recent determinations by FTA

Disadvantaged Business Enterprise

- In the overall goal-setting question, added question on goal including all projects, and existence of zero-percent overall goal

- Added notation in goal-setting consultation question regarding new 2014 issuance of regulation
- Added notation in DBE reporting question regarding new 2014 issuance of regulation which included new reporting form to be used starting June 1, 2015
- Added information and questions about shortfall corrective action letters
- Added new question regarding steps taken to achieve any race-neutral portion of a state's overall goal
- Added question relating to DBEs reporting on not receiving committed work to existing monitoring questions
- Added question regarding setting of DBE goals on transit vehicle purchases
- Added to certification questions a question regarding use of Personal Net Worth form included in 2014 regulation update
- Added new question on requirement for annual UCP report based on 2014 new final rule

Asset Management

- Updated to reflect new reimbursement requirements for equipment with a disposal value that exceeds \$5,000

Charter Bus

- No new questions

School Bus

- No new questions

Americans with Disabilities Act

- Clarified requirement for certifications of equivalent service
- Clarified visitor eligibility for ADA complementary paratransit
- Clarified guidance on the use of route deviation as a means to provide ADA paratransit

Title VI

- Added to several questions that the grantee is deficient if it is not following what is in their approved Title VI plan
- Added information to sources of information and corrective actions to focus on subrecipient compliance with specific elements
- Added additional explanation to Question 5 on facility siting on impact of NEPA process analysis with Title VI requirements

Equal Employment Opportunity

- Added information on reporting relationship of EEO Officer to CEO regarding dotted line reporting relationship
- Included information on frequency of monitoring and reporting

Drug Free Workplace and Drug and Alcohol Program

- Added information on applicability of drug and alcohol testing program requirements to subrecipients of Section 5307 and 5311 funds for job access-reverse commute projects

- Added corrective action to submit amended MIS reports if reports reviewed are not correct
- Consolidated subrecipient, contractor, subcontractor, and lessee oversight questions and corrective actions into one oversight question

NOTE: In several places the Conditions of Award for FTA Public Transportation Emergency Relief Programs are referenced in relation to Emergency Relief questions. Because this document is an attachment to awarded grants, there is no web hyperlink available.

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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

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 Circular 5010.1D, "Grant Management Requirements"

7. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
8. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
9. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
10. FTA Circular 9050.1, "The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions"
11. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
12. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"

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

United We Ride

Small Urban and Rural Transit Center

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, 5316, 5317, and 5339. Current Sections 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. 5010.1D, Ch. II, Section 3
FTA C. 9040.1G, Ch. III, Section 1a
FTA C. 9045.1, Ch. III, Section 1
FTA C. 9050.1, Ch. III, Section 1
FTA C. 9070.1G, Ch. III, Section 1
FTA C. 9300.1B, Ch. II, Sections 1 and 9
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 March 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 8.)

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 Sections 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 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. 9040.1G, Ch. VI
FTA C. 9045.1, Ch. VII
FTA C. 9050.1, Ch. VII
FTA C. 9070.1G, Ch. VII

SOURCES OF INFORMATION

Review 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. Before the site visit, review the plan(s), review the State's responses to the grantee information request (GIR), and note in each section of the GIR 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(s) with the responses of State staff to specific questions in each review area, and discussions with regional office staff. This only applies to consistency in the plan and implemented policies. If the SMP does not address the required areas, it is deficient in and of itself.

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, or 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 that it 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 Sections 5305 and 5339 programs?*

States may have or plan to develop state management plans or other documents to support management of the Sections 5305 and 5339 programs. Many of the policies developed for other FTA programs may also apply to the Sections 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. *Do the coordinated plans for the Section 5310 program address the required elements?*

What measures were taken to ensure that plans 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: (1) projects selected for funding under the 5310 program are included in a locally developed, coordinated public transit-human services transportation plan, and, (2) that 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 to be served with the funding sought, that is, persons with disabilities, older adults, and people with low incomes

- 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. 9045.1 Ch. V
FTA C. 9050.1 Ch. V
FTA C. 9070.1G 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.

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.

Direct the State to submit to the FTA regional office procedures for developing and approving plans with representation from seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public.

5. *Has the State entered into a written agreement with each subrecipient stating the terms and conditions of assistance? Do the agreements address Federal requirements? If not, how does the State make subrecipients aware of 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. 8100.1C, Ch. II, Section 7.b(2)
FTA C. 9040.1G, Ch. VI, Section 2
FTA C. 9045.1, Ch. VI, Section 2
FTA C. 9050.1, Ch. VI, Section 2
FTA C. 9070.1G, Ch. VI, Section 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 submit documentation to the regional office that the amended agreement has been used in 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

FTA provides Rural Transportation Assistance Program (RTAP) funds to assist states in providing technical assistance to transit operators in rural areas. In addition, state administrative expenses for the Sections 5310, 5311, 5316 and 5317 programs can be used for technical assistance. Technical assistance may be provided through orientations, informal conversations, formal correspondence, on-site performance reviews, conferences, etc. States sometimes provide detailed guidance for specific activities, such as vehicle procurement or maintenance. Many states sponsor annual conferences, frequently in conjunction with the state transit association, at which training in Federal requirements is provided.

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 9040.1G, Ch. II, Section 3.b; Ch. IX

FTA C. 9045.1, Ch. III, Section 10

FTA C. 9050.1, Ch. III, Section 10

FTA C. 9070.1G, Ch. III, Section 12

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. *Has the State taken on new subrecipients since the last review? 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 for ensuring compliance, it does expect the State to look behind certifications and assurances and subrecipient agreements. 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 to ensure that

corrective action is taken. Efforts, including 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 Parts 18.37 and 18.40
FTA Master Agreement, Subsection 2e
FTA C. 5010.1D, Ch. II, Section 3
FTA C. 8100.1C, Ch. II, Section 7.b and 7.e (5)
FTA C. 9040.1G, Ch. II, Section 3.a
FTA C. 9045.1, Ch. II, Section 4
FTA C. 9050.1, Ch. II, Section 4
FTA C. 9070.1G, Ch. II, Section 4

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 subrecipient applications and 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 files for the subrecipients to be visited during the site visit.

DETERMINATION

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

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.

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office an updated state management and resources 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, increases in delays in submission of information to FTA, and an increase in deficiencies over the last State Management Review 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. 8100.1C, Ch. II Section 7.b
FTA C. 9040.1G, Ch. II, Section 3.a
FTA C. 9045.1, Ch. II, Section 4
FTA C. 9050.1, Ch. II, Section 4
FTA C. 9070.1G, Ch. II, Section 4
FTA C. 9300.1B, Ch. II, Section 9(c)

SOURCES OF INFORMATION

Responses to other questions in *Program Management, Grant Administration, Project Administration*, and other review areas provide the basis for making a determination. Discussions with regional office and State staff support the determination. Review grant budget in TEAM-Web to determine if the State applies for state administrative

funding. Discuss the adequacy of resources the State is applying to the programs with the FTA regional office. On site, discuss with the State.

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. FTA does not require a dedicated funding source.

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.

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; revenue bond proceeds; transportation development (toll) credits; program income generated from an earlier grant; non-DOT Federal funds if authorized by the originating program to be used for transportation, funds used to purchase vanpool vehicles by private providers of public vanpools (capital match only), and in-kind match for intercity bus service. 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.

States generally require applicants to list the sources of funding that will be applied to the project in grant applications. 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. 5010.1D, Ch. VI, Section 3
FTA C. 9040.1G, Ch. III, Section 4, and Ch. VIII, Section 5
FTA C. 9045.1, Ch. III, Section 12
FTA C. 9050.1, Ch. III, Section 12
FTA C. 9070.1G, Ch. III, Section 1 and 16
FTA C. 9300.1B, Ch. II, Sections 7 and 9.b

SOURCES OF INFORMATION

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 programs. 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 for FTA funded programs and projects.

DETERMINATION

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 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.

Section 5311 - Rural Area Formula Program

10. *How does the State define eligible subrecipients under Section 5311?*

11. *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)(1)) 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. 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. 9040.1G, 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. 9040.1G, Ch. IV, Section 1

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, project administration, and planning). 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 (including Job Access Reverse Commute) and intercity bus projects for people living in any area outside 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 promoted 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. 9040.1G, Ch. III, Section 2

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. 9040.1G, Ch. III, Section 2.d

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, what are the sources of funding for the incidental service, and if the incidental service detracts from the provision of public transportation.

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 Sections 5307 and 5311 funding to provide public transportation to an urbanized area and surrounding rural 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 rural 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 rural areas. The State may require subrecipients to report total expenses and show the allocation of expenses between urbanized and rural areas when requesting reimbursement. The State may review financial information and the allocation of costs between urbanized and rural areas during site visits.

REFERENCE

FTA C. 9040.1G, Ch. III, Section 2.e

SOURCES OF INFORMATION

Ask the State to identify any Section 5311 subrecipients that provide service in both urbanized and rural 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 rural 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 rural 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?*
18. *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?*
19. *What is the process used to allocate funds? Is the distribution of funds fair and equitable?*

20. *How does the State ensure that Section 5310 subrecipients have the technical capacity to carry out the proposed projects?*
21. *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 floor. A recipient may use more of its Section 5310 funds for these capital projects, but may not use less. Three categories of subrecipients are eligible for these (Section 5310(b)) funds:

- 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. 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.

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 may also observe a subrecipient's service during site visits.

FTA encourages maximum use of Section 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.

REFERENCE

49 U.S.C. 5310 (b)(2)(A) and (B)
FTA C. 9070.1G, Ch. II, Section 4; Ch. III, Sections 5-7, 13-15; Ch. VI Section 5
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 it has awarded Section 5310 projects to ineligible subrecipients. The State is deficient if it does not have the appropriate documentation for governmental authorities receiving "traditional" Section 5310 assistance. (**DEFICIENCY CODE 554:** Ineligible Section 5310 subrecipients)

The State is deficient if it does not allocate 55 percent of the funds to traditional 5310 capital projects undertaken by eligible subrecipients. (**DEFICIENCY CODE 553:** Section 5310 project deficiencies)

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 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 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 ensuring that governmental authorities that receive "traditional" Section 5310 assistance are eligible. 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 "traditional" 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 work with the FTA regional office to properly allocate Section 5310 funds and/or identify eligible subrecipients.

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

22. *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?

23. *How does the State ensure that Section 5316 subrecipients have the technical capacity to carry out the proposed projects?*

24. *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. 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

25. *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?*
26. *How does the State ensure that Section 5317 subrecipients have the technical capacity to carry out the proposed projects?*
27. *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 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. 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

28. *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 Sections 5309 or 5339 subrecipients must ensure that 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
FTA C. 5010.1D, Ch. II, Section 3
FTA C. 9300.1B, Ch. II, Section 9

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

29. *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. 9040.1G, 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. 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

30. *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?*

31. *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. 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 rural 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 bus needs are adequately met

The state management plan must document the procedure to be implemented for the consultative process.

REFERENCE

FTA C. 9040.1G, Ch. VIII

SOURCES OF INFORMATION

Confer with the FTA regional office regarding the governor's certification. Review the Section 5311 state management plan for documentation of how the State implements its 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 bus 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 bus 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.

32. *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. 9040.1G 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, has the capacity

for transporting baggage carried by passengers, and makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available. Commuter service is 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 bus service and capital assistance to purchase vehicles or vehicle related equipment such as wheelchair lifts for use in intercity bus 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 rural 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. 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. 9040.1G, 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.

33. *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

Section 5311 provides that in the case of an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, the local match may be derived from the costs of a private operator for the unsubsidized segment of intercity bus service as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under 5311(f). To use the net project cost provided by a private operator as in-kind match, the FTA-assisted project must be defined as including both the feeder service and an unsubsidized segment of the intercity bus network to which it connects.

The unsubsidized private operator costs can be used as the local match only if the private operator agrees in writing to the use of the costs of the private operator for the unsubsidized segment of intercity bus service as an in-kind match. In order to be eligible to be used as in-kind match, a cost must be otherwise allowable under the project. Thus to be eligible under Section 5311, the net project costs contributed by the private operator as in-kind match must connect the rural community to further points.

Fare revenues of the private operator for the unsubsidized segment must be subtracted from the total cost to operate the unsubsidized segment to determine the eligible amount of in-kind match. For administrative simplicity, FTA allows two methods for the private operator to determine its eligible net cost that can be used as local match.

Under the first method, the private operator is presumed to be collecting at least enough in fares to cover the operating costs of the unsubsidized service,

and thus only the capital costs of the unsubsidized service may be used as in-kind match. To simplify matters, FTA will use the percentages allowed in the capital cost of contracting guidance to determine how much of the private operator's total costs are attributable to capital (e.g., 50 percent where the operator provides and maintains all the equipment, less if FTA funded equipment is provided).

Under the second method, the private operator can directly calculate the net project cost of the unsubsidized segment and must provide to FTA verifiable information showing the eligible capital and operating expenses as well as fare revenues attributable to the unsubsidized segment that were used to make the calculation.

REFERENCE

FTA C. 9040.1G, Ch. VIII

SOURCES OF INFORMATION

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

DETERMINATION

The State is deficient if the project is not defined as including the unsubsidized segment of the intercity bus network, if the private operator did not agree in writing to the use of the in-kind match, the in-kind

match is not allowable under the project, the fare revenues of the private operator are not subtracted from the total cost to operate the unsubsidized segment, or one of the two approved methods are not used to determine eligible net cost (**DEFICIENCY CODE 670**: Intercity bus in-kind match issues)

SUGGESTED CORRECTIVE ACTION

Direct the State to revise the project cost to include the unsubsidized segment of the intercity bus network and to upload to TEAM-Web a revised program of projects. Notify the FTA regional office that the revised program of projects was uploaded.

Direct the State to submit to the FTA regional office a written agreement with the private operator regarding the use of the in-kind match.

Direct the State to cease using FTA funds for the project or to submit to the FTA regional office documentation of eligible in-kind match.

Direct the State to submit to the FTA regional office documentation showing that the fare revenues of the private operator are subtracted from the total cost to operate the unsubsidized segment.

Direct the State to submit to the FTA regional office a revised eligible net project cost using one of the two approved methods.

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.

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.).

Beyond programmatic waivers and any other waivers addressed in the FAQs (TIP/STIP) or on the docket, FTA expects FTA administrative and statutory requirements to apply. However, recipients have the ability to request waivers of administrative requirements when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster.

AREAS TO BE EXAMINED

1. *Reporting*
2. *Category C Funds*
3. *Grant Administration*
4. *Restrictions on Lobbying*

REFERENCES

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. 49 U.S.C. Chapter 53, Federal Transit Laws

2. MAP-21 Section 20017
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. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
6. 49 CFR Part 20, "New Restrictions on Lobbying"
7. FTA Master Agreement
8. FTA Circular 5010.1D, "Grant Management Requirements"
9. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
10. FTA Circular 9040.1G, Formula Program for Rural Areas: Program Guidance and Application Instructions
11. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
12. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
13. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
14. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
15. 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

Federal Funding Accountability and
Transparency Act Subaward Reporting
System

www.USASpending.gov/news

Office of Management and Budget Open
Government Directive - Federal Spending
Transparency

The Federal Financial Report

FFR Instruction Guide for Grantees

Emergency Relief (ER) Program Frequently
Asked Questions (FAQs)

FTA ER Fact Sheet

Office of Management and Budget (OMB)
Standard Form LLL (Rev. 7/97)

QUESTIONS FOR THE REVIEW

1. *Are progress reports submitted for each open grant at the required intervals (annually or quarterly) and on time? Do the reports contain all required information?*
2. *For FTA Emergency Relief grants, is the State submitting Milestone Progress Reports (MPRs) and Insurance Proceeds Reports (IPRs) monthly?*

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.

Annual Program of Projects Status Reports

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

- a) Updated programs of projects that contain active projects reflecting revised project descriptions, changes in projects from one category to another and adjustments within budget categories
- b) Budget revisions that reflect changes in line item budgets
- c) Significant civil rights compliance issues, such as Title VI, Equal Employment Opportunity (EEO), or Disadvantaged Business Enterprise (DBE) complaints against the State or subrecipients
- d) Notable accomplishments or problems involving subrecipients

MPRs

States must submit MPRs in TEAM-Web for each open grant within 30 days of the end of the reporting period. The Common Rule (49 CFR Part 18) and FTA C. 5010.1D detail the information that, at a minimum, must be included in MPRs. 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

Emergency Relief Grants

Post-award reporting requirements for Section 5324 grants include a monthly submission of MPRs consistent with FTA C. 5010.1D, as well as any other reporting requirements FTA determines are necessary, and a monthly submission of IPRs. Both reports are due in TEAM-Web no later than 30 calendar days after the end of each calendar month.

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 ALI, and the grantee shall identify the status of any grant action taken to adjust the Federal share, accordingly

Reporting Intervals

The following table shows the reporting frequency by program. FTA, at its discretion, can require more frequent reporting.

| Grant Program | Who Reports | How Often |
|-----------------------------------|---|-----------|
| 5305 | All | Annually |
| 5311 | All | Annually |
| 5310, 5316, 5317 | Grants for small urbanized areas (UZAs) and rural | Annually |
| | Grants for large UZAs (>200,000) | Quarterly |
| 5309/5339 Facilities Construction | All | Quarterly |
| 5309, 5339 Bus Purchases | Grants for small urbanized areas (UZAs) and rural | Annually |
| | Grants for large UZAs (>200,000) | Quarterly |
| 5324 | All | Monthly |

REFERENCE

49 CFR Part 18.40
 FTA C. 5010.1D, Ch. III, Section 3
 FTA C. 8100.1C, Ch. II, Section 7.d(6)
 FTA C. 9040.1G, Ch. V, Section 19
 FTA C. 9045.1, Ch. VI, Section 16
 FTC C. 9050.1, Ch. VI, Section 16
 FTA C. 9070.1G, Ch. VI, Section 23
 March 29, 2013 Federal Register Notice
 Conditions of Award for FTA Public Transportation
 Emergency Relief Programs

SOURCES OF INFORMATION

Review progress reports in TEAM-Web. 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.

Review information provided by the FTA regional office about Section 5324 grants and the State'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 State.

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)

The State is deficient if it does not submit MPRs and IPRs for each open Section 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 progress reports on time. Direct the State to email the FTA regional office when reports are submitted.

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

3. *Are Federal Financial Reports (FFRs) submitted for each open grant at the required intervals (annually or quarterly) and on time? Are FFRs submitted for each open Section 5324 grant monthly?*
4. *Are cumulative Federal cash receipts and cash disbursements reported? If there is a positive balance of federal 'cash on hand' at the end of the reporting period, is this reported with an explanation included in the 'remarks' section of the FFR?*
5. *How are unliquidated obligations calculated?*
6. *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*

approved cost allocation plan or indirect cost rate proposal?

7. *If applicable, how did the State respond to any comments made by FTA regarding a report?*
8. *How does the State develop and validate data for FFRs? How are the data in FFRs reconciled with the data in corresponding MPRs?*

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 milestone progress reports for each open grant. 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.

Grantees report the following financial data in FFRs:

- **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 and is populated by TEAM-Web.
- **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 lines A and 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 l 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 State 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 State should address any **FTA comments** either in a revised or the next report.

The State should have procedures to ensure that FFRs are accurate. 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 MPRs not being reflected in FFRs and vice versa. For example, an MPR may indicate that the State has awarded a construction contract but the FFR does not report unliquidated obligations.

REFERENCE

49 U.S.C. Section 5324 / MAP-21 Section 20017
 Conditions of Award for FTA Public Transportation
 Emergency Relief Programs
 49 CFR Part 18.41
 SF-425, Federal Financial Report
 FFR Instruction Guide for Grantees
 March 29, 2013 Federal Register Notice
 FTA C. 5010.1D, Ch. III, Section 3
 FTA C. 8100.1C, Ch. II, Section 7.d(6)
 FTA C. 9040.1G, Ch. V, Section 19
 FTA C. 9045.1, Ch. VI, Section 16
 FTC C. 9050.1, Ch. VI, Section 16
 FTA C. 9070.1G, Ch. VI, Section 23
 May 29, 2013 Federal Register Notice

SOURCES OF INFORMATION

Review FFRs in TEAM-Web to see if they are submitted on time at the required intervals. Determine if Federal cash receipts, Federal cash disbursements, Federal cash on hand, unliquidated obligations, and indirect expense are reported. If cash on hand is reported, determine if an adequate explanation is

provided in the remarks and certification tab. See if the State responded to FTA remarks. Examine MPRs and FFRs to see if the data reported agree. Discuss the reports with the regional office. On site, follow up with the State regarding how it defines unliquidated obligations and any issues identified during review of the reports. 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 does not submit FFRs for each open grant or does not submit the reports on time at the intervals required. (**DEFICIENCY CODE 38**: Late MPRs/FFRs)

The State is deficient if it does not report cumulative Federal cash receipts or cumulative Federal cash disbursements, or does not explain Federal cash on hand. The State is deficient if it does not report 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 State is deficient if the data in MPRs are not reflected in FFRs and vice versa. (**DEFICIENCY CODE 68**: Progress reports lack required information or **DEFICIENCY CODE 122**: Incorrect FFR reporting)

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

The State is deficient if, for Section 5324 grants, it does not report cumulative Federal cash receipts or cumulative cash disbursements, or if there is an unexplained balance. The State is deficient if it enters indirect expense information incorrectly. The State 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 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. Until further notice, direct the State to email the FTA regional office when reports are submitted.

Direct the State to submit corrected 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.

Direct the State to submit corrected MPRs or FFRs in TEAM-Web and to submit procedures for reconciling progress reports and FFRs to the FTA regional office.

Direct the State to submit corrected FFRs in TEAM-Web and procedures for validating FFR data to the FTA regional office.

9. *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 Sections 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 program of projects for Section 5310 and 5311 grants in TEAM-Web. 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 reported funds from approved projects in Category C to revise the grant budget and program of projects to remove the funds from Category C.

10. *If the State is the designated recipient for Sections 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

Sections 5310 and 5339 funds are apportioned to the State and to large urbanized areas. Funds apportioned to a large urbanized area must be used within the area to which they are apportioned.

REFERENCE

FTA C. 9070.1G, Ch. III, Section 10
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 March 10, 2014)
FTA Fiscal Year 2015 Apportionments, Allocations, and Program Information (Federal Register notice published February 9, 2015)

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), along with procedures for using funds in the large urbanized area(s) to which they are apportioned.

- 11. *As part of the development of the annual program of projects, 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?*
- 12. *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.*
- 13. *What are the State’s procedures for initiating closeout with subrecipients within 90 days of completion of project activity and initiating grant closeout 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 and therefore funds may remain after the project is completed. 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. Sections 5310, 5311, 5316, and 5317 programs of projects should be implemented within two to three years of grant approval. For Sections 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 FTA 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 |
| 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 should initiate project closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed. 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. The State should initiate closeout with FTA 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 FTA 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 percent 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 Part 18.50
FTA C. 5010.1D, Ch. III, Sections 4 and 5
FTA C. 8100.1C, Ch. II, Section 5.e(1)
FTA C. 9040.1G, Ch. III, Section 1(c), Ch. IV, Section 5, and Ch. V, Section 15
FTA C. 9045.1, Ch. III, Section 7, Ch. IV, Section 6, and Ch. VI, Section 12
FTA C. 9050.1, Ch. III, Section 7, Ch. IV, Section 6, and Ch. VI, Section 12
FTA C. 9070.1G, Ch. III, Section 6, Ch. IV Section 6 and Ch. VI, Section 19
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 plan(s) and other policies and procedures for grant development, administration, and closeout procedures. For on-going expenses such as state administration and Rural Transit Assistance Program funds, determine whether the State draws from the oldest funds first. Identify grants that have small balances remaining, or are more than three years old have not had disbursement activity within the past 12 months. Review progress reports and other correspondence to identify major delays in projects. Prior to the site visit, discuss the status of grants with FTA regional office staff. 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 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 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 work with the FTA regional office 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.

14. *Provide documentation that verifies that the State reports subawards using the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) by the end of the month following the month it made the sub-award.*

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 subaward information to FSRS at www.FSRS.gov by the end of the month, after the month in which they make any subaward 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 System for Award Management (SAM) registration. Grantees must update their SAM information annually. 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 SAM.

Grantees must report the information about each first tier subaward 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 subaward 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 subaward into FSRS. Once the grantee submits an initial report, it can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.

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 subawards after the information is downloaded to 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
FTA C. 9040.1G, Ch. V, Section 13
FTA C. 9070.1G, Ch. VI, Section 17

SOURCES OF INFORMATION

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

DETERMINATION

The State is deficient if it has not reported subawards over \$25,000. The State is deficient if it has not reported sub-awards on time. (**DEFICIENCY CODE 175**: FFATA reporting deficiencies)

The State is deficient if it does not ensure that all subrecipients have a DUNS. (**DEFICIENCY CODE 671**: Subrecipients without a DUNS)

SUGGESTED CORRECTIVE ACTION

Direct the State to notify the FTA regional office when it has reported subawards to FSRS and to develop and submit to the FTA regional office procedures for

reporting subawards to FSRS by the end of the month following the subaward.

Direct the State to develop and submit an implemented process for ensuring that its subrecipients have a valid DUNS number.

15. *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.*

16. *If subrecipients, contractors, and subcontractors used non-Federal funds for lobbying activities, provide documentation that proper disclosures have been made and filed with the State 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 that must forward disclosure forms to FTA, must ensure that they are forwarded to the grantee.

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 State has submitted OMB Standard Form LLL disclosures and updates as required. During the site visit, verify details of lobbying activities. For states 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 an OMB 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 an OMB 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 documentation as required and to develop and/or document the process to ensure timely reporting in the future.

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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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. 49 U.S.C. 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 Part 633, "Project Management Oversight"

4. FTA Master Agreement
5. FTA Circular 5010.1D, "Grant Management Requirements"
6. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
7. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
8. 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
- Emergency Relief Program Frequently Asked Questions
- FTA Emergency Relief Fact Sheet

QUESTIONS FOR THE REVIEW

1. *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?*
2. *How does the State provide technical oversight of directly managed capital projects, such as construction, rolling stock, and technology projects? How does the State oversee capital projects managed by subrecipients?*
3. *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
- Attending project review meetings
- Withholding payment of a portion of the grant until final inspection and acceptance of the facility by the State

States must provide technical oversight of revenue rolling stock implemented by it or its subrecipients. Some states involve fleet management personnel in the process or contract for on-line bus inspections.

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

The State should document its procedures for administering construction projects, bus procurements and other capital projects in the state management plans.

REFERENCE

49 U.S.C. Section 5327

49 CFR Part 18.40

49 CFR Part 633

FTA C. 9040.1G, Ch. VI

FTA C. 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4

FTA C. 9070.1G, Ch VIII

SOURCES OF INFORMATION

Review Milestone/Progress Reports (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.

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 may cause the delay.

DETERMINATION

The State is deficient if capital projects 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.

4. *Is the State's or a subrecipient's work force used in the execution of capital grant projects? If yes, what is the annual amount of force account work being completed?*
5. *If the amount of force account required the submission of the force account plan to FTA, what is the status of its review? Was the plan approved prior to the State drawing down funds for force account?*
6. *Did the State or subrecipient 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

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, if eligible for reimbursement under the grant. 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, or grant or project administration activities which are otherwise direct project costs. Force account includes major capital project work on rolling stock.

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.

When the cost of force account work for a project is greater than \$100,000 but less than \$10,000,000, the grantee is required to develop and maintain on file a force account plan and justification prior to incurring costs. Prior FTA approval is not required. When the cost of force account work to be performed equals \$10,000,000 or more, prior FTA approval is required before incurring costs. For Hurricane Sandy, prior FTA approval was not required; instead grantees were required to have force account 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 prepare and have on file a force account plan and justification prior to incurring costs.

REFERENCE

49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation
Emergency Relief Programs
FTA Master Agreement, Section 17.j
FTA C. 5010.1D, Ch. IV, Section 4.d
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 MPRs, 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. During the site visit, follow up with the State to ensure that it has a plan for all force account work that meets the threshold for a plan.

Review the state management plan(s) for discussion of requirements for subrecipients to develop force account plans and to submit to the State, as applicable.

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 or **DEFICIENCY CODE 573**: Lacking force account plan/justification for FTA Emergency Relief activities)

For force account work that required prior FTA approval of a force account plan, the State is deficient if it drew down funds) prior to FTA's approval. (**DEFICIENCY CODE 544**: Inappropriate drawdown of force account funds)

For Hurricane Sandy funds, the State is deficient 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 C 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 State to cease drawing force account funds until applicable plans are approved.

4. FINANCIAL MANAGEMENT AND CAPACITY

BASIC REQUIREMENT

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

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.).

Beyond programmatic waivers and any other waivers addressed in the FAQs (TIP/STIP) or on the docket, FTA expects FTA administrative and statutory requirements to apply. However, recipients have the ability to request waivers of administrative requirements when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster.

AREAS TO BE EXAMINED

1. ***Financial Capacity***
2. ***Financial Management***
3. ***Emergency Relief Grants***
4. ***Audits/Reviews***

REFERENCES

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

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. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
9. 49 CFR Part 602, Interim Final Rule
10. 51 CFR Part 552, "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government"
11. FTA Master Agreement
12. FTA Circular 5010.1D, "Grant Management Requirements"
13. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
14. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
15. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
16. FTA Circular 9070.1G, "Enhanced Mobility of Senior and Individuals with

- Disabilities Program Guidance and Application Instructions”
17. FTA Circular 9300.1B, “Capital Investment Program Guidance and Application Instructions”
 18. May 29, 2013 Federal Register Notice
 19. 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

Emergency Relief 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 Capacity

2. *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?

3. *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?*
4. *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.*
5. *Identify any pending legislation or "sunset" provision in existing legislation that could affect the sources of state or local funding or financial capacity?*

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, Section 5
FTA Circular 5010.1D, Ch. VI, Section 4

SOURCES OF INFORMATION

Review annual audit reports, local or state legislation, multi-year financial plans, A-133 audits and grants. 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 submit 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.

6. *Are the funds the State uses for local match eligible? How does the State fully document volunteered services or in-kind revenue used as local match?*

EXPLANATION

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; non-DOT Federal funds if authorized by the originating program to be used for transportation, funds used to purchase vanpool vehicles by private providers of public vanpools (capital match only), and in-kind match for intercity bus service. 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.

REFERENCES

FTA Master Agreement, Section 5
FTA C. 5010.1D, Ch. VI, Section 3
FTA C. 9030.1E, Ch. III, Sections 7 and 8, Ch. VI, Section 1.a. (2)
FTA C. 9040.1G, Ch. III, Sections 4
FTA C. 9045.1, Ch. III, Section 12
FTA C. 9050.1, Ch. III, Section 12
FTA C. 9070.1G, Ch. III, Sections 16
FTA C. 9300.1B, Ch. II, Sections 7 and 9.b

SOURCES OF INFORMATION

Review the state management plans, annual audit reports, budgets, multi-year financial plans, and the TIP for information on state funding sources. 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. Review documentation for volunteered services or in-kind match.

DETERMINATION

The State is deficient if it cannot document that the funds used 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 that 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 296:** Ineligible local match)

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 plan.

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 that would otherwise be eligible under the program, and the non-cash share is included in the net project costs of the project budget.

Part B. Financial Management

7. *Describe the financial systems used to carry out the FTA funded programs and to receive and disburse Federal funds. Are there any discrepancies between TEAM-Web and State grant balances?*
8. *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?*
9. *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 closeouts.

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 State 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. 9030.1E, Ch. II, Section 8.b

FTA C. 9040.1G, Ch. VI, Sections 14 and 16
FTA C. 9045.1, Ch. VI, Sections 11 and 13
FTA C. 9050.1, Ch. VI, Sections 11 and 13
FTA C. 9070.1G, Ch. VI, Section 10 and 20; Ch. III,
Section 12

SOURCES OF INFORMATION

Query TEAM-Web for the State's grant balances. 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 procedures for ensuring that subrecipients have the financial management systems to carry out the programs, receive and disburse Federal funds, and adequately support reimbursement requests.

10. *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 rate 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 Part 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 the cognizant agency** 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 C. A-87), Attachments C and E
2 CFR Part 230 (OMB C. A-122)
51 CFR 552
FTA C. 5010.1D, Ch. VI, Section 6 and Appendix F
FTA C. 9040.1G, Ch. V, Section 14
FTA C. 9045.1, Ch. VI, Section 11
FTA C. 9050.1, Ch. VI, Section 11
FTA C. 9070.1G, Ch. III, Section 12

SOURCES OF INFORMATION

Review Federal Financial Reports (FFRs) in TEAM-Web to determine if the State reports indirect cost charges to grants. Ask the regional office if the State has an approved cost allocation plan or an indirect cost rate proposal. Since statewide central services plans are reviewed and approved by DHHS, the primary responsibility of the 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 the State 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 submit to the FTA regional office procedures for complying with the submission and retention requirements of its cognizant agency.

Direct the State to provide documentation that it has complied with the cost allocation plan submission and retention requirements of its cognizant agency.

Direct the State to provide evidence to the FTA regional office of a process to update the indirect cost rate proposal and CAP annually and retain it for audit, if submittal to the cognizant agency is not required.

11. *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 C. A-87), Attachments C and E
2 CFR Part 230 (OMB C. A-122)
51 CFR Part 552
Annual Certifications and Assurances
Single Audit Act Amendment of 1996
FTA C. 5010.1D, Ch. VI
FTA C. 9030.1E, Ch. II, Section 8.b
FTA C. 9040.1G, Ch. V, Sections 14 and 16
FTA C. 9045.1, Ch. VI, Sections 11 and 13
FTA C. 9050.1, Ch. VI, Sections 11 and 13
FTA C. 9070.1G, Ch. VI, Section 10 and 20; Ch. III, Section 12
Dear Colleague Letter, C-05-04, June 17, 2004

SOURCES OF INFORMATION

Review the state management plan. 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. Review the back-up documentation for at least one invoice to the State to ensure that the subrecipient is using the approved rate.

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.

12. *Describe the State's process for receiving and disbursing FTA funds? Does it address:*

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

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.

Grantees may only request funds for expenses that are eligible under the grant. Similarly, funds in a grant project to purchase vehicles may not be used to purchase bus shelters.

A grantee may not use FTA assistance to support ineligible activities. FTA defines public transportation as transportation by a conveyance that provides regular and continuing general or special transportation to the public. It does not include sightseeing, school bus, charter or intercity bus transportation, or intercity passenger and intercity rail transportation provided by Amtrak.

It is incumbent upon the grantee to have internal controls that monitor these data to determine expenditures by line item. When a grantee requests funds from FTA, the request is made for planning, capital, or operating funds. TEAM-Web does not track drawdowns by ALI so the grantee must maintain this information, to monitor expenses and to know where FTA approval may be needed to request a budget amendment or budget revision that exceeds twenty percent of a scope.

REFERENCE

31 CFR Part 205

49 CFR Part 18.21

FTA Master Agreement, Section 7.f

FTA C. 5010.1D, Ch. II, Section 3.a and Ch. VI, Section 9

SOURCES OF INFORMATION

Check the audited financial statements and A-133 audit reports to determine if there are ECHO process findings. On site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure:

- 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
- 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
- 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.

- indirect costs are charged at the current and correct rate and against the correct base, if applicable.

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

Part C. Emergency Relief Grants

13. *For Section 5324 Emergency Relief projects, were the expenses incurred during the period consistent with the approved projects contained in the grant? Have any budget revisions been processed for, or scope revisions made to, Section 5324 grant projects since award? If so, are the items included in the revisions are eligible?*
14. *For Section 5324 Emergency Relief local priority resiliency projects, did the State receive FTA approval prior to incurring costs?*
15. *For Section 5324 Emergency Relief projects, has the State received funds from other sources (such as Federal Emergency Management Agency (FEMA)), to reimburse the total project(s) or a portion of the project(s) receiving Section 5324 funding?*

EXPLANATION

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects, as those terms are defined in 49 CFR Part 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 5324 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.

16. *A review of ECHO documentation for FTA Emergency Relief Program grants will be conducted to verify that the State has adequate funds management procedures (i.e., adequate documentation, segregation of duties, no excess cash on hand, eligible costs).*

17. *Verify that the State is utilizing the correct financial purpose codes for FTA Emergency Relief grant drawdowns.*

EXPLANATION

Grantees may only request funds for expenses that are eligible under the grant. Eligible uses of Emergency Relief funds include:

- Emergency operations
- Emergency protective measures
- Emergency repairs
- Permanent repairs
- Actual engineering and construction costs on approved projects
- Resiliency projects

Ineligible uses of Emergency Relief funds include:

- Heavy maintenance
- Project costs for which the recipient has received funding from another Federal agency
- Project costs for which the recipient has received funding through payments from insurance policies
- Projects that change the function of the original infrastructure
- Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster
- Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster
- 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
- Other project costs FTA determines are not appropriate for the Emergency Relief Program

The Federal share for Section 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.

SOURCES OF INFORMATION

When on site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure that documentation supports the draws. Refer to the Sources of Information for Question 12 for additional information on reviewing ECHO documentation.

REFERENCES

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

DETERMINATION

The State is deficient if it does not maintain documentation adequate to support the ECHO draws, demonstrate sufficient internal controls, or disburse Federal funds within three business days of receipt. (**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 D. Audits/Reviews

18. *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 State 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 State to have annual single audits conducted.

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

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

19. 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 Part 18.26
FTA C 5010.1D, Ch. VI, Section 8
FTA C 9040.1G, Ch. V, Section 16
FTA C 9045.1, Ch. VI, Section 13
FTA C 9050.1, Ch. VI, Section 13
FTA C 9070.1F, Ch. VI, Section 14
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.

20. Provide information on any Governmental Accounting Office (GAO), Office of Inspector General (OIG), or internal reviews or audits 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.

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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. *Procurement Policies and Procedures*
2. *Third-Party Contracts*
3. *Bus Testing*
4. *Buy America*
5. *Suspension/Debarment*
6. *Lobbying Certification*

APPLICABILITY OF REQUIREMENTS

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

When FTA assistance for preventive maintenance is being applied as a percentage of total maintenance, all preventive maintenance contracts must comply with FTA Circular 4220.1F.

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

- Provide full and open competition
- Include all applicable FTA clauses
- Comply with the Brooks Act if the State does not have a statute governing the procurement of architectural and engineering services
- Prohibit geographic preferences
- Comply with the five- and seven- year limitation on purchases of rolling stock or replacement parts
- Award only to responsible contractors

- Comply with Buy America
- Comply with debarment and suspension
- Comply with restrictions on lobbying

Instrumentalities of the State are considered State agencies.

Guidance on procurements of works of art and artist services is included in FTA Circular 4220.1F, Ch. IV, Section 2.g.

Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA Circular 4220.1F. Real property acquisition is addressed in 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." For further guidance, see also FTA Circular 5010.1D, "Grant Management Requirements."

COMPLIANCE

If a State or its subrecipient 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.

REFERENCES

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

Note: The United States Office of Management and Budget (OMB) has issued its "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, which directs Federal agencies to issue regulations implementing this OMB guidance. We expect that the United States Department of Transportation (DOT) will promulgate new

regulations that will supersede and apply in lieu of U.S. DOT's common grant rules, 49 CFR Parts 18 and 19, and the Federal Cost Principles Circulars, 2 CFR Parts 220, 225, and 230. When this happens, notice of the changes will be published on the DOT and FTA websites along with a citation reference chart to show the appropriate new 2 CFR citation that replaces the old 49 CFR citation. At that time, incorporate the new citation references instead of the ones currently included in this guide.

PROCUREMENT

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. Transportation Equity Act for the 21st Century, Public Law No. 105-178
3. 49 U.S.C. Section 5325
4. 29 CFR Parts 4 and 5, "Labor Standards"
5. 41 CFR Parts 50-201 and 50-206, "Public Contracts and Property Management"
6. 49 CFR Part 18.36, "Procurement"
7. FTA Circular 4220.1F, "Third-Party Contracting Guidance"
8. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
9. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
10. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
11. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
12. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
13. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"

14. FTA Master Agreement

BUY AMERICA

15. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"
16. 49 CFR Part 661, "Buy America Requirements"
17. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"
18. FTA "Dear Colleague" Letter, March 18, 1997
19. FTA Dear Colleague Letter, March 30, 2001
20. Federal Register Vol. 71, No. 54, pp. 14112-14118, Buy America Requirements; Amendments to Definitions
21. Federal Register Vol. 72, No. 182, pp. 53688-53698, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule
22. Federal Register Vol. 72, No. 188, pp. 55103-55104, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule correction
23. Federal Register Vol. 77, No. 28, pp. 71673 -71678, Decision To Rescind Buy America Waiver for Minivans and Minivan Chassis

FEDERAL MOTOR VEHICLE SAFETY STANDARDS

24. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"

SUSPENSION/DEBARMENT

25. 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"
26. 2 CFR Part 1200, "Nonprocurement Suspension and Debarment"

LOBBYING

27. 49 CFR Part 20, "New Restrictions on Lobbying"

USEFUL WEB LINKS

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

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 States. 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. 8100.1C, Ch. II, Section 3.b
FTA C. 9040.1G, Ch. V, Section 5
FTA C. 9045.1, Ch. VI, Section 8
FTA C. 9050.1, Ch. VI, Section 8
FTA C. 9070.1G, Ch. VI, Section 9
FTA C. 9300.1B, Ch. VI Section 17

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 State.

DETERMINATION

Input into the review

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 Part 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. For the next procurement, submit to FTA documentation that the required process was implemented.

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.

Unless FTA determines otherwise in writing, a state or its subrecipient may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. For design/build procurements, FTA expects states and their subrecipients 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.

States or subrecipients may make multiple awards to cover needs for various disciplines under an "on-call" type of contract. Typically, these contracts would not be used to procure design and engineering work for major projects. Large projects should be competed separately, with the most highly qualified A&E firm chosen for that specific project. On-call contracts would be suited for smaller jobs that would be too expensive (administratively) to compete individually.

Solicitations for on-call awards must describe how the work will actually be assigned, and not leave the process undefined. For example, if company A is initially evaluated as being the best for geothermal work, then all such work should be given to that company as tasks are defined, assuming the company can perform within the timeframes required for the task. The procurement officials should not leave it to someone's judgment later to withhold work from company A and give it to company B based on a subjective judgment that B would be better than A for this job even though A was evaluated first initially. The selected companies should also not be allowed to update their qualifications during the term of the contract and so be rated higher than they were initially. There should be a finite period for these contract awards, after which a new round of qualifications-based awards would be made.

REFERENCES

49 CFR Part 18.36(d)(1)(2)(3)
FTA C. 4220.1F, Ch. VI, Sections 1 and 3.f
FTA Third Party Contracting FAQs

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. The State is deficient if it does not have its own statute and it did not follow the Brooks Act when using FTA assistance to contract for A&E services or has used qualifications-based procedures when not appropriate. (**DEFICIENCY CODE 349:** Qualifications-based procurement deficiencies)

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). For the next procurement, submit to FTA documentation that the required process was implemented.

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 in 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.

Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website. Through the National Rural Transportation Assistance Program (RTAP), FTA developed ProcurementPRO, an on-line procurement tool that assists states in developing procurement packages. Using ProcurementPRO, a state can develop a procurement package that includes federally required clauses.

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.

States or subrecipients are required to include a debarment and suspension clause in agreements and procurement solicitations that exceed \$25,000.

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

29 CFR Parts 4 and 5, 41 CFR Parts 50-201 and 50-206, Amendments to Federal Contract Labor Laws by the Federal Acquisition Act Streamlining Act of 1994; Final Rule
49 CFR Part 18.36(i)(1-13)
49 CFR Part 18.36(j-o)
49 CFR Part 20
FTA Master Agreement, Section 17
FTA C. 4220.1F, Appendix D
FTA Third Party Contracting FAQs
National RTAP ProcurementPRO

SOURCES OF INFORMATION

Before the site visit, review written procurement procedures. During the site visit, examine procurement files for inclusion of required clauses. Note that this also includes reviewing the State's or subrecipient's compliance with Buy America, suspension/ debarment, and lobbying.

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 State is deficient if it has not included the debarment and suspension clause in its agreements and procurement solicitations that exceed \$25,000. (**DEFICIENCY CODE 494:** Debarment and suspension clause not included in agreements/procurement solicitations)

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 Part 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 Part 661.6. The specific text for rolling stock can be found at 49 CFR Part 661.12. The requirements of 49 CFR Part 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 States 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 Part 661.6
49 CFR Part 661.7
49 CFR Part 661.12
49 CFR Part 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118
FTA Third Party Contracting FAQs
FTA Buy America Website

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 the next procurement, submit to the FTA regional office documentation that the required process was implemented.

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 do the State and its subrecipients determine whether a contractor is responsible and is able to perform the work?

- a. *What criteria are used?*
- b. *When is the determination of responsibility made?*
- c. *Who makes the determination?*

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 Part 18.36(b)(8)
 49 U.S.C. 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 states and its subrecipients to review SAM before entering into any third party contract expected to equal or exceed \$25,000. A good practice is to print the screen with the results of the search to include in the grant or procurement file. [Prior to the implementation of SAM, states 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 State 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 U.S.C. 5325(e)(1)
FTA C. 4220.1F, Ch. VII, Section 2
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 CFR Part 18.36(c)) to use full and open

competition when making purchases. Usually a state or its subrecipient fulfills this requirement by one of three 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 states; or (3) accepting the assignment of another State'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 State's or subrecipient'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 State or subrecipient commits to purchasing vehicles at the agreed upon price and the vendor commits to furnishing the vehicles at that price. A fourth method is state purchasing schedules which are procurements conducted by states and available to recipients within that State.

Joint procurements

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.

FTA has determined that states may not purchase items from certain buying cooperatives such as the National Joint Powers Alliance (NJPA) and the Houston-Galveston Area Council (HGAC). The FTA regional office should be consulted before entering into any agreements with such organizations.

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. 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.

Piggybacking

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. 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 states to acquire vehicles through this method of procurement, piggybacking can also occur for purchases of services and property. A state 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 State need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the State to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

FTA expects the State seeking the assignment to review the original contract to be sure that the quantities the assigning State acquired, coupled with the quantities the acquiring State seeks, do not exceed the amounts available under the assigning State'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). 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 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 certifications.

State-led procurements

States are accorded substantial deference under the Common Grant Rule at 49 CFR Part 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 (out-of-state-grantees) 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.

REFERENCES

FTA C. 4220.1F, Ch. IV Section 1(b)(2)(b)
FTA C. 4220.1F, Ch. IV Section 1(c)(1)
FTA C. 4220.1F, Ch. V Section 3
FTA C. 4220.1F, Ch. V Section 4
FTA C. 4220.1F, Ch. V Section 7(a)(2)
FTA C. 4220.1F, Ch. V Section 7(a)(2)(b)(1)
FTA Administrator's Policy Letter March 8, 2013
FTA Chief Counsel Policy Letter July 8, 2013

SOURCES OF INFORMATION

Refer to information obtained from the State 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 State is deficient if it 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. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

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. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

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 U.S.C. 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 regional office 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. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

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 test 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, Ch. 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. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

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.

States and subrecipients may not modify their own contracts after award to add federally required clauses or to obtain a Buy America certification and

so make them eligible for procuring goods and services with Federal funds. States or subrecipients may, however, obtain a Buy America certification before buying off of 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 the purchase, when determining whether Buy America requirements apply to those purchases.

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.

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 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.

States or subrecipients 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, Ch. VI, Section 11.e
- Dear Colleague Letter, March 18, 1997
- Dear Colleague Letter, March 30, 2001
- 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
- FTA Third Party Contracting FAQs

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 to submit documentation to the FTA regional office that the procurement complied with Buy America, FMVSS, and purchaser's requirements.

Direct the State submit to the FTA regional office procedures for pre-award and post-delivery review and inspection. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the State to submit documentation to the FTA regional office that the procurement complied with Buy America, FMVSS, and purchaser's requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

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. For the next procurement, submit to the FTA regional

office documentation that the required process was implemented.

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 18.36
49 CFR Part 20
FTA C. 4220.1F
FTA C. 8100.1C, Ch. II, Section 3.b
FTA C. 9040.1G, Ch. V, Section 5
FTA C. 9045.1, Ch. VI, Section 8
FTA C. 9050.1, Ch. VI, Section 8
FTA C. 9070.1G, Ch. VI, Section 9
FTA Master Agreement, Sections 2.h-i

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.m |
| Program fraud and false or fraudulent statements and related acts | | §3.f |
| Access to Records | | §10.a |
| Federal changes | | §2.(g) |
| 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 | | §44 |
| Awards Exceeding \$100,000 by Statute | | |
| Lobbying | | §3.d |
| Clean Air | | §17.n |
| Clean Water | | §17.n |
| 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 |
| Construction Activities | | |
| Davis Bacon Act | Except for contracts <\$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market | §28.a |
| Copeland Anti-Kickback Act Section 1 Section 2 | All Contracts >\$2,000 | §28.a |

A. REQUIRED THIRD-PARTY CONTRACT CLAUSES

(EXCLUDING MICRO-PURCHASES, EXCEPT FOR CONSTRUCTION CONTRACTS OVER \$2,000)

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCE |
|--|---|----------------------------|
| Contract Work Hours & Safety Standards Act | Contracts >\$100,000 | §28.a |
| Bonding for construction activities exceeding \$100,000 | 5% bid guarantee; 100% performance bond; and Payment bond equal to: <ul style="list-style-type: none"> • 50% for contracts < \$1 M • 40% for contracts > \$1 M, but < \$5 M • \$2.5 M for contracts > \$5 M Not required of States | § 17.q |
| Seismic Safety | Contracts for construction of new buildings or additions to existing buildings | §26.b |
| Special DOL Clause | Contracts >\$10,000- | §13.c(3) |
| Nonconstruction Activities | | |
| Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act) | Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > \$100,000 | §28.b |
| Transit Operations | | |
| Transit Employee Protective Arrangements | Applies to Section 5307, 5309, 5311 and 5316 projects | §28.d |
| Charter Service Operations | | §32 |
| School Bus Operations | | §33 |
| Drug and Alcohol Testing | Safety sensitive functions. Applies to Section 5307, 5309 and 5311 projects | §40.b |
| Planning, Research, Development, and Documentation Projects | | |
| Patent Rights | | §19 |
| Rights in Data and Copyrights | | §20 |

| Miscellaneous Special Requirements | | |
|--|---|-------|
| Disadvantaged Business Enterprises (DBEs) | Contracts awarded on the basis of a bid or proposal offering to use DBEs | §13.d |
| Prompt Payment and Return of Retainage | Per 49 CFR Part 26, if the State meets the threshold for a DBE program | §13.d |
| Recycled Products | Contracts for items designated by EPA, when procuring \$10,000 or more per year | §17.m |
| ADA Access | Contracts for rolling stock or facilities construction/ renovation | §13.g |
| Assignability Clause | Piggyback procurements | §17.a |
| State Requirements | | |
| Special Notification Requirements for States | | §42 |

Note: The United States Office of Management and Budget (OMB) has issued its "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, which directs Federal agencies to issue regulations implementing this OMB guidance. FTA expects that the United States Department of Transportation (DOT) will promulgate new regulations that will supersede and apply in lieu of U.S. DOT's common grant rules, 49 CFR Parts 18 and 19, and the Federal Cost Principles Circulars, 2 CFR Parts 220, 225, and 230. When this happens, notice of the changes will be published on the DOT and FTA websites along with a citation reference chart to show the appropriate new 2 CFR citation that replaces the old 49 CFR citation. At that time, incorporate the new citation references instead of the ones currently included in this guide.

Exhibit 6.2

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

| REQUIREMENT | COMMENTS | MASTER AGREEMENT REFERENCE |
|---|---|----------------------------|
| Bus Testing Certification and Report | Procurements of buses and modified mass produced vans | §17.p(4) |
| TVM Certifications | Procurements of buses and modified mass produced vans | §13.d(3) |
| Buy America Certification | Procurements of steel, iron or manufactured products > \$100,000 | §16.a |
| Pre-Award Audit | Rolling stock procurements | §17.p(3) |
| Pre-Award Buy America Certification | Rolling stock procurements>\$100,000 | §17.p(3) |
| Pre-Award Purchaser's Requirement Certification | Rolling stock procurements | §17.p(3) |
| Post-Delivery Audit | Rolling stock procurements | §17.p(3) |
| Post-Delivery Buy America Certification | Rolling stock procurements >\$100,000 | §17.p(3) |
| Post-Delivery Purchaser's Requirement Certification | Rolling stock procurements | §17.p(3) |
| On-Site Inspector's Report | Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population | §17.p(3) |
| Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification | Non-rail rolling stock procurements | §17.p(3) |
| Excluded Parties Listing System search | Procurements > \$25,000 | §3.b |
| Lobbying Certification | Procurements > \$100,000 | §3.d |
| Standard Form LLL and Quarterly Updates (when required) | Procurements > \$100,000 where contractor engages in lobbying activities | §3.d |

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

| CLAUSE | TYPE OF PROCUREMENT | | | | |
|---|--|--|--|--|--|
| | Professional Services/A&E | Operations/ Management/ Subrecipients | Rolling Stock Purchase | Construction | Materials & Supplies |
| No Federal government obligations to third-parties by use of a disclaimer | All | All | All | All | All |
| Program fraud and false or fraudulent statements and related acts | All | All | All | All | All |
| Access to Records | All | All | All | All | All |
| Federal changes | All | All | All | All | All |
| Civil Rights (EEO, Title VI & ADA) | All | All | All | All | All |
| 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) | |

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

| CLAUSE | TYPE OF PROCUREMENT | | | | |
|--|--------------------------------------|---|--------------------------------------|--|--------------------------------------|
| | Professional Services/A&E | Operations/ Management/ Subrecipients | Rolling Stock Purchase | Construction | Materials & Supplies |
| Copeland Anti-Kickback Act Section 1 Section 2 | | | | All >\$2,000 (including ferry vessels) | |
| Contract Work Hours & Safety Standards Act | | >\$100,000 | >\$100,000 | >\$100,000 (including ferry vessels) | |
| 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 | Planning, research & development | | | | |
| Rights in Data and Copyrights requirements | Planning, research & development | | | | |
| Special DOL EEO clause for construction projects | | | | >\$10,000 | |
| Disadvantaged Business Enterprises (DBEs) | All | All | All | All | All |
| Prompt Payment | All if threshold for DBE program met | All if threshold for DBE program met | All if threshold for DBE program met | All if threshold for DBE program met | All if threshold for DBE program met |

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

| CLAUSE | TYPE OF PROCUREMENT | | | | |
|--|---------------------------|---|------------------------|---|---|
| | Professional Services/A&E | Operations/ Management/ Subrecipients | Rolling Stock Purchase | Construction | Materials & Supplies |
| 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 disadvantaged business enterprises (DBEs) can compete fairly for DOT-assisted contracts.

AREAS TO BE EXAMINED

1. *DBE Program*
2. *DBE Goals and Reports*
3. *Monitoring and Procurement*
4. *Certification*

REFERENCES

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

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 States. 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. *Has the State submitted a DBE program to FTA? If no, does it appear that it met the threshold for submitting a program to FTA? If yes, was it submitted on time? Was the program uploaded to FTA's Transportation Electronic Award Management (TEAM-Web) system? Has FTA approved the program?*

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 to FTA 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 both FTA and FHWA if that plan addresses FTA-specific areas such as reporting and transit-related contracting. It still must submit transit-specific overall three-year agency goals to FTA, if applicable.

REFERENCE

49 CFR Part 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. *Is the State's DBE liaison officer (DBELO) the person listed in the DBE program? To whom does the DBELO report? Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

EXPLANATION

For states that meet the threshold requiring that they have a DBE program, the 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 performs an 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.

States are required to follow their approved DBE programs, and such programs need to be updated when significant changes occur. FTA has found in its DBE reviews that organizational changes have occurred and states have not updated their programs. A typical organizational change has been a revision to the position of the DBELO and the resulting reporting relationship to the CEO. FTA considers this to be a significant change.

REFERENCE

49 CFR Part 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. *How has the State implemented the element in its DBE program for fostering 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 Part 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. *Were the overall DBE goals submitted to FTA by August 1 preceding the designated submission year? Do the projects/work areas discussed in the goal correspond to programmed projects in current grants?*
 - a. *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?

- b. *How does the State's goal submission address details on the data sources used?*
- c. *How does the goal submission identify the geographic market area?*
- d. *How does the goal submission address race-conscious and race-neutral breakout?*
- e. *Does the State have a zero percent DBE goal?*

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 FTA 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 Part 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.

- a. 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.

- b. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR Part 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.
- c. States must identify the area in which the substantial majority of the contractors, subcontractors, and contracting dollars are expended (i.e., geographic market area).
- d. States must project which portion of that goal will be accomplished through race-neutral means and which will be accomplished through race-conscious means.
- e. On rare occasion, a state may submit a zero percent DBE goal. It is important for states to consider all contracting opportunities funded with its FTA capital, operating, and planning grants during its goal-setting process. The regulation defines a contract as any legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this 49 CFR Part 26, a lease is considered to be a contract.

Additionally, states that are using DBE directories and census data in goal setting that are concerned that these sources do not accurately reflect the number of potential DBEs in their area should seriously consider supplementing the number of firms in these sources for the purposes of goal-setting. This could be done by carefully examining lists of other DBEs and MBE/WBEs (Minority Business Enterprises/Women Business Enterprises) from other sources, such as other state or local transportation agencies (if the contracting opportunities are comparable), to determine whether they contain firms which should be considered ready, willing, and able DBEs. These additional steps should be for the purpose of goal setting only. In order to actually be included in a UCP Directory, an otherwise eligible firm must take the additional steps of going through the certification process.

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. Lack of DBE participation in past cycles should not be used as the sole reason to justify

lowering DBE goals or outreach. States that are unable to meet their goal using race-neutral means alone must establish contract goals per 49 CFR Part 26.51(d).

REFERENCE

49 CFR Part 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)

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.

6. *In setting its most recent overall goal, did the State conduct a consultative process, as detailed in 49 CFR Part 26.45(g)1? Prior to submission of the goal to FTA, did the State publish a notice of the goal? Was the notice published in general circulation media, available minority focused media, and trade association publications?*

7. *If the State plans to meet DBE goals using race-conscious methods in the 9th circuit or where race-conscious methods are otherwise prohibited, was a disparity study conducted?*

EXPLANATION

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

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

If the State is in the 9th circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, or Washington), a disparity study or similar analysis is required before race-conscious goals can be established. Neighboring recipients may have already conducted disparity studies that contain relevant information, and must be considered during goal setting.

Note: In 2014 a new Final Rule was issued that provided additional requirements for the consultation process and additional requirements and options for publication of the goal. These provisions will become effective for goal submissions due August 1, 2015.

REFERENCES

49 CFR Part 26.45

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the State's DBE program and goal submission in TEAM-Web. Review additional information provided by the State.

DETERMINATION

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 race conscious goals)

For deficiencies related to goals due August 1, 2015 consult with the RCRO for appropriate determination and corrective action.

SUGGESTED CORRECTIVE ACTION

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.

8. *Has the State submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually?*
9. *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.

Note: In 2014 a new Final Rule was issued that included a new reporting form. The use of this form will be required starting with reports due June 1, 2015.

REFERENCE

49 CFR Part 26.11
DBE Semi-Annual Reporting Form
New 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.

10. *For each of the past three completed Federal fiscal years, what has been the State's goal achievement? Is it below the overall goal established in the applicable goal submittal? If the State's DBE reports for FY2014 indicate that its awards to DBEs were less than the overall goal applicable to that year, when did the State conduct the required shortfall analysis?*

If the State is one of the top 50 transit grantees:

- *Did it provide this analysis to FTA?*
- *Did FTA issue an FTA Shortfall Corrective Action letter to the State based on its review of the analysis?*

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

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.

If the shortfall analysis submitted by a state is not sufficient, FTA issues a Shortfall Corrective Action letter.

REFERENCE

49 CFR Part 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.

To compare the annual DBE achievement of a state to its overall applicable goal, review both semi-annual reports for the fiscal year (the report due June 1 and the report due Dec 1). The overall goal is stated at the top of the report. The annual percentage awarded to DBEs is calculated by adding the total dollars awarded to DBEs (cells 8C and 9C totaled for both reports) divided by the total prime contract dollars awarded (cell 8A for both reports). For the top 50 FTA grantees, FTA publishes the past three years' overall goals and attainment.

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. The State is deficient if it has not addressed deficiencies in its shortfall analysis as identified by FTA. (**DEFICIENCY CODE 308:** DBE goal achievement analysis and corrective action plan not completed or not submitted)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO the required analysis for the missing year(s), along with a process for timely completing and submitting future analyses, as applicable. Direct the State to demonstrate that it has implemented a corrective action plan establishing specific steps and milestones to correct the problems identified in the analysis, or to correct issues identified in an FTA Shortfall Corrective Action letter.

- 11. 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? At what point did the State make the good faith efforts determination?*

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 Part 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 654:** Inadequate implementation of good faith efforts determinations)

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.

- 12. What portion of its overall goal did the State project meeting race neutrally? What steps has the State taken to implement the race neutral measures noted in its goal submission?*

EXPLANATION

States are to meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime

contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

In their overall goal submission, states must include the projection of the portions of the overall goal they expect to meet through race-neutral means and the basis for that projection. If a state projects meeting part of their goal through race-neutral means and the remainder through contract goals, they must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

REFERENCES

49 CFR Part 26.51

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the State's DBE program, goal submission, and reports in TEAM-Web. Review additional information provided by the State.

DETERMINATION

The State is deficient if it is not meeting the race-neutral portion of its overall goal and cannot provide documentation of implementing the measures it described in its goal submission. (**DEFICIENCY CODE 656**: Inadequate implementation of race-neutral measures)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO an implementation plan for race-neutral measures and evidence that these measures have been implemented.

13. *What prompt payment and return of retainage clauses are included in FTA-funded procurements? How does the State monitor and enforce these clauses?*

Since the last review, how many times have DBE subcontractors notified the State of issues related to prompt payment and/or return of retainage? What steps were taken to address these issues?

EXPLANATION

States that meet the threshold requiring a DBE program 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 the 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 Part 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.

14. *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?

Since the last review, how many times has the State been notified by a DBE subcontractor that it was not receiving work committed to it? What actions did the State take?

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 grantee'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 contract with a DBE goal to a contractor, the State is required to collect from the awardee:

- the names and addresses of DBE firms that will participate in the contract;

- a description of the work that each DBE will perform;
- the dollar amount of the participation of each DBE firm participating;
- written documentation of the bidder/offeree's commitment to use the DBE subcontractor whose participation it submits to meet a contract goal; and
- written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment

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.

REFERENCES

49 CFR Part 26.37
49 CFR Part 26.53
49 CFR Parts 18.37 and 18.40

SOURCES OF INFORMATION

Review the State's DBE program to identify the methods that the State will use to monitor contractors and subrecipients. At the site visit, review examples of actual monitoring activities/reports from the past three years. Review 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)

The State is deficient if it does not implement the procedures for termination or substitution in accordance with 49 CFR Part 26.53(f). (**DEFICIENCY CODE 657:** Grantee does not implement DBE termination/substitution provisions)

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 and evidence of implementation (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.

15. *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 Part 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, review 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.

16. *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 Part 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.

States using FTA funds for the purchase of ferries should not include the contracting opportunities associated with these procurements in their overall three-year agency goal-setting methodology.

Note: In 2014 a new Final Rule was issued that revised the definition for transit vehicles. The Rule defines ferries as vehicles subject to the TVM provisions of 49 CFR Part 26.49. This definition does not otherwise impact vehicle procurements. FTA will provide additional information on establishing project goals for ferry purchases.

REFERENCE

49 CFR Part 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.

17. *Did the State or a subrecipient set a DBE goal on a transit vehicle procurement without an approval letter from FTA?*

EXPLANATION

FTA grantees must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with 49 CFR Part 26.49. Grantees do not include FTA assistance used in transit vehicle procurements in the base amount from which overall goals are calculated, nor in their semi-annual reports.

States and/or their subrecipients may, *with FTA approval*, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of having TVMs certify their compliance.

REFERENCES

49 CFR Part 26.49

SOURCES OF INFORMATION

During the site visit, review FTA-funded transit vehicle procurement files.

DETERMINATION

The State is deficient if it or a subrecipient included DBE goals on an FTA-funded transit vehicle purchase prior to receiving approval from FTA. (**DEFICIENCY CODE NEW:** Unapproved DBE goals on transit vehicle purchases)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO an implemented process to ensure that future FTA-funded transit vehicle purchases do not include DBE goals unless approval has been obtained from FTA.

18. *Who is the lead agency for the Unified Certification Program (UCP)? Is the State a signatory to its State's UCP?*

19. *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?*
- *uses the required personal net worth (PNW) form*

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.

Note: In 2014 a new Final Rule was issued that included a new DOT PNW form that that must be used without change or revision. The form is included as Appendix G to 49 CFR Part 26.

REFERENCE

49 CFR Parts 26.61-26.91
USDOT DBE Certification Form
DOT PNW Form

SOURCES OF INFORMATION

Review information regarding the State's 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.

20. *Did the State submit to the USDOT (OST) Office of Civil Rights the report on DBEs in the State's UCP Directory?*

EXPLANATION

The state department of transportation in each UCP must report to the OST Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- Women;
- Socially and economically disadvantaged individuals (other than women); and
- Individuals who are women and are otherwise socially and economically disadvantaged individuals.

These reports are to be submitted to DBE@dot.gov.

REFERENCES

49 CFR Part 26.11(e)

SOURCES OF INFORMATION

During the site visit, review evidence that this report was submitted.

DETERMINATION

The State is deficient does not have documentation that the UCP report was submitted by January 1, 2015. (**DEFICIENCY CODE 655:** Unapproved DBE goals on transit vehicle purchases)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO an implemented process to ensure that the report is submitted.

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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 49 U.S.C. Section 5324 / MAP-21 Section 20017

3. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
4. FTA Master Agreement
5. FTA Circular 5010.1D, "Grant Management Requirements"
6. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Grant Application Instructions"
7. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
8. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
9. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
10. FTA Circular 9300.1B, ["Capital Investment Program Guidance and Application Instructions"]
11. Executive Order 11988
12. May 29, 2013 Federal Register Notice
13. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Emergency Relief Program Frequently Asked Questions (FAQs)

FTA Emergency Relief Fact Sheet

QUESTIONS FOR THE REVIEW

Part A: Real Property

1. *How does the State monitor the use of FTA funded real property by subrecipients?*
2. *If the State or a subrecipient uses 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. Real property includes land, affixed land improvements, structures and appurtenances. 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 State or the subrecipient. The FTA interest in real property continues until disposition.

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. 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

49 CFR Parts 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
FTA C. 9040.1G, Ch. V, Section FTA C. 9045.1, Ch. VI, Section 7
FTA C. 9050.1, Ch. VI, Section 7
FTA C. 9070.1G, Ch. VI, Section 8

SOURCES OF INFORMATION

Review the state management plan, 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. Discuss the procedures with the State.

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.

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 FTA funded real property by subrecipients.

Direct the State to obtain FTA approval for any unapproved incidental uses and to submit to the FTA regional office procedures for obtaining prior FTA approval for future 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 documentation to the FTA regional office that it has applied lease income to transit purposes.

3. *Since the last State Management Review, did the State or a subrecipient remove real property from the service originally intended at the time of grant approval or put property to additional or substitute uses?*
4. *Does the State or a subrecipient have any excess FTA funded real property? Has the plan been updated, if necessary?*
5. *Since the last State Management Review, did the State or a subrecipient dispose of any FTA funded real property? If yes, provide documentation of FTA prior concurrence in the method of disposition of real property. Was FTA reimbursed for its share of disposition proceeds, if required?*

EXPLANATION

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, the State or subrecipient is

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.

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.

REFERENCE

49 CFR Part 18.31
Master Agreement, Section 21.l
FTA C. 5010.1D, Ch. IV, Section 2.j

SOURCES OF INFORMATION

Ask the State to provide a copy of all notifications to FTA of any change from the approved use of FTA funded real property. 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 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)

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)

SUGGESTED CORRECTIVE ACTION

Direct the State to inform the FTA regional office 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.

Direct the State to submit to the FTA regional office information on the method of disposition of real property for which it did not obtain prior FTA approval and 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.

6. *Does the State or subrecipient have any 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?*

If yes, has the State 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?

7. *Have any FTA Emergency Relief funds 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 FEMA's 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
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 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: Other Assets (Rolling Stock and Equipment)

8. *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. 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 as like-kind exchange or 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 FTA funds must be adequate to protect the Federal interest in the vehicle within the useful life determined by the State.

REFERENCES

49 CFR Parts 18.32(a), 18.32(b)
FTA C. 5010.1D, Ch. II, Section 3.a
FTA C. 9040.1G, Ch. V, Sections 3 and 4
FTA C. 9045.1, Ch. VI, Sections 4, 5, 6, and 7
FTA C. 9050.1, Ch. VI, Sections 4, 5, 6, and 7
FTA C. 9070.1G, Ch. VI, Sections 4, 5, 7, and 8

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.

9. *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 Sections 5309 or 5339 assistance, do 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 Sections 5310, 5311, 5316, or 5317 assistance. States must follow useful life standards for vehicles purchased with Sections 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 |

| Vehicle | FTA-Defined Useful Life |
|---|-------------------------|
| 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.

REFERENCES

- 49 CFR Part 18.32(b)
- FTA C. 5010.1D, Ch. IV, Section 3
- FTA C. 9040.1G, Ch. V, Section 3.c
- FTA C. 9045.1, Ch. VI, Section 4.b
- FTA C. 9050.1, Ch. VI, Section 4.b
- FTA C. 9070.1G, Ch. VI, Section 4.c
- 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. Confirm the requirements with the State.

DETERMINATION

The State is deficient if it has not established its own minimum useful life standards for Sections 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 Sections 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 or 5339 funded vehicles.

10. *Did the State notify FTA when it or a subrecipient withdrew equipment with remaining useful life from project use or applied it to a different use? If yes, documentation will be examined during the review.*
11. *Did the State or a subrecipient dispose of any FTA funded equipment or supplies since the last State Management Review? If yes, when did FTA provide prior concurrence in the method of disposition for equipment removed from service before the end of service life? When was FTA reimbursed for its share of proceeds, if required? For retained proceeds, how did the State apply the proceeds to reduce the gross project cost?*
12. *If applicable, did the State or subrecipient apply insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock? If yes, how were the insurance funds recorded in financial records and when (if required) were funds equal to the remaining Federal interest in the lost, damaged, or destroyed project property returned to FTA?*

EXPLANATION

States are required to follow the equipment use and disposition requirements in FTA C. 5010.1D. The requirement applies to all equipment currently in use that was purchased with these funds.

FTA C. 5010.1D requires that states and their subrecipients must use project property (equipment, rolling stock, etc.) for appropriate project purposes for the duration of the useful life of that property. If the State or subrecipient unreasonably delays or fails to use the project property during the useful life of that property, the State may be required to return the Federal assistance expended on that property. The State must notify FTA immediately when any project property is withdrawn from project use prior to the end of its useful life or when any project property is used in a manner substantially different from the representations the grantee made in the grantee agreement or cooperative agreement for the project.

Disposition of equipment before the end of useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C.

5010.1D Appendix D, must accompany the request. Service life for rolling stock and facilities is defined at the end of this section. The useful life in years refers to total time in service, not time spent otherwise unavailable for regular transit use. The grantee should have a mechanism to adjust the service life of any FTA funded vehicle for significant time (i.e., six months) not spent in regular transit use.

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

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

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

REFERENCES

49 CFR Part 18.32(b)
 FTA C. 5010.1D, Ch. IV, Section 3
 FTA C. 9040.1G, Ch. V, Section 3.d

SOURCES OF INFORMATION

Review the Section 5311 state management plan, subrecipient agreements, and other documentation for disposition requirements. Confirm the requirements 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. Verify that the State followed proper disposal procedures. Examine sales records and financial reports. Review

records documenting how fair market value was arrived at for any equipment not sold competitively

DETERMINATION

The following deficiencies are for Section 5309, 5311, and 5339 funded equipment. The State is deficient if equipment has been removed from service prematurely without FTA approval. The State is deficient if it has not reimbursed FTA proportionately for the depreciated value of items that have not yet reached the end of service life and has not received permission for a like-kind vehicle exchange. The State is deficient if it has not reimbursed FTA proportionately for items valued greater than \$5,000 that have reached the end of service life and has not obtained approval for retaining the proceeds. The State is deficient if it has disposed of unneeded supplies with a total aggregate fair market value that exceeds \$5,000 and has not reimbursed FTA proportionately and has not received approval for retaining the proceeds. The State is deficient if it has neither applied insurance proceeds to the cost of replacing the lost, damaged, or destroyed property nor returned to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed property. (**DEFICIENCY CODE 99:** Failure to comply with property disposal requirements)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office a list of equipment prematurely removed from service and procedures for notifying FTA of any premature removal of equipment from service.

Direct the State to work with the FTA regional office for reimbursement of FTA's share of disposed property or to obtain approval for retaining the proceeds to apply to another capital project, and to submit to the FTA regional office procedures for reimbursing FTA for disposition proceeds or applying the proceeds to another capital project.

Direct the State to work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. Direct that State to submit to the FTA regional office procedures for addressing insurance proceeds.

- 13.** *Did the State dispose of any FTA funded equipment or supplies because of damage from Hurricane Sandy? When was FTA reimbursed for its share of proceeds, if required? For retained proceeds, how did the State*

apply the proceeds to reduce the gross project cost?

- 14.** *If applicable, did the State apply insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock eligible for funding under the Emergency Relief Program? If yes, how were the insurance funds recorded in financial records and when (if required) were funds equal to the remaining Federal interest in the lost, damaged, or destroyed project property returned to FTA?*

EXPLANATION

If the State disposes of a previously FTA funded asset that was damaged during Hurricane Sandy and receives more than \$5,000 for the asset, it will promptly notify FTA and reimburse FTA for its proportionate share in accordance with FTA C. 5010.1D.

As authorized by 49 U.S.C. Section 5324(d)(1) and FTA C. 5010.1D, FTA's useful life requirements do not apply to any assets that were destroyed or seriously damaged as a result of Hurricane Sandy and were taken out of service prior to the end of their useful lives.

If a state receives an insurance settlement that is not entirely allocable to specific losses, FTA may require the recipient to allocate a percentage of the settlement to response, recovery and resiliency projects funded by FTA in proportion to the amount of damage that is eligible for funding under the Emergency Relief Program relative to the overall damage sustained by the transit agency. FTA will publish further guidance regarding the treatment of insurance proceeds.

REFERENCES

49 CFR Part 18.32
49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation
Emergency Relief Programs
FTA C. 5010.1D, Ch. IV, Section 3.k
May 29, 2013 Federal Register Notice

SOURCES OF INFORMATION

Review information provided by the State and the FTA regional office on property and equipment damaged or disposed of as a result of Hurricane Sandy. Review property records and disposition records.

DETERMINATION

The State is deficient if it has not reimbursed FTA proportionately for items valued greater than \$5,000 that have reached the end of service life and has not obtained approval for retaining the proceeds. The State is deficient if it has disposed of unneeded supplies with a total aggregate fair market value that exceeds \$5,000 and has not reimbursed FTA proportionately and has not received approval for retaining the proceeds. The State is deficient if it has neither applied insurance proceeds to the cost of replacing the lost, damaged, or destroyed property nor returned to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed property. (**DEFICIENCY CODE 589:** Disposal deficiencies for property damaged by Hurricane Sandy)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office updated records with the required information.

15. *What are the State's procedures for monitoring subrecipients' leases? Do leases of Section 5310-funded vehicles contain the terms and conditions that must be met for providing transportation service to seniors and people with disabilities? Does the State agree to the leases of Section 5310-funded vehicles in writing?*
16. *If the State leases FTA assets to private operators, including intercity bus operators, provide documentation of prior concurrence obtained from FTA. 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 lease must contain the terms and conditions that must be met in providing transportation service to seniors and people with disabilities. 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. 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 State. 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. 5010.1D, Ch. IV, Sections 3.e(1) and 3.j(1)
FTA C. 9040.1G, Ch. V, Section 4
FTA C. 9045.1, Ch. VI, Section 7
FTA C. 9050.1, Ch. VI, Section 7
FTA C. 9070.1G, Ch. VI, Section 6

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 contains the required terms and conditions. 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. 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 written approvals of leases of Section 5310 funded vehicles and procedures for approving leases of Section 5310 funded vehicles in writing.

Direct the State to submit to the FTA regional office amended leases of Section 5310 funded vehicles that include the required terms and conditions that must be met in providing transportation service to seniors and people with disabilities and procedures for including the terms and conditions in future leases.

Direct the State to obtain approval for leases of FTA-funded assets to private operators and 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 amended leases of FTA-funded assets that include the required terms and conditions and procedures for including the terms and conditions in future leases.

Part C: Maintenance

17. *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 Part 18.32(a)
Master Agreement Section 19.c
FTA C. 5010.1D, Ch. II, Section 3.a(11) and Ch. IV Sections 3.a and 3.m
FTA C. 9040.1G, Ch. V, Section 3c
FTA C. 9045.1, Ch. VI, Section 4a
FTA C. 9050.1, Ch. VI, Section 4a
FTA C. 9070.1G, Ch. VI, Section 4c

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.

18. *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 Part 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.

19. *How does the State 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 Part 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. Assess the timeliness of preventive maintenance using the State's standard.

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.

20. *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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most

recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. MAP-21 Section 20017
2. 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?*
2. *How does the State handle charter complaints/violations by subrecipients?*
3. *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?*
4. *How does the State obtain information to report all charter services provided by subrecipients under the exceptions?*

- 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.

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. Though the Sections 5309, 5316 and 5317 programs were repealed by MAP-21, funding remains available and therefore, the charter regulations still apply.

Complaints

A registered charter provider or its duly authorized representative may file a Notice of Charter Service Complaint with the Office of the Chief Counsel. Unless the complaint is dismissed, FTA shall notify the grantee within 30 days after receiving the complaint that the complaint has been docketed. The grantee shall have 30 days from the date of the FTA notification to file an answer. The complainant may file a reply within 20 days. The grantee may subsequently file a reply within 20 days of the date of service of the respondent's answer. There are no requirements for the grantee in the complaint process for a subrecipient.

Charter Definition

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

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 and there is no third party involvement

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.

Reporting

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 Part 604.12
- 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
- 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 # (separate by semicolon) | # of Vehicles | Supporting Documentation (Document Title) |
| 1 | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | |
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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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance

documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

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. Demand response service does not qualify for the tripper service exemption.

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.

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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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
5. 49 CFR Part 39, "Transportation for individuals with Disabilities: Passenger Vessels"

USEFUL WEB LINKS

FTA ADA Website

U.S. 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 State conducted since the last State Management Review (including ADA reviews and the most recent State Management 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 Oversight Assessment Tool (OAT)?*
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 OAT for each grantee that focuses on several areas of importance for FTA. Items identified in the ADA portion of the OAT 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
- OAT 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 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. *Are there any lawsuits alleging discrimination on the basis of disability*

by the State or a subrecipient? If so, identify parties to suits and issues.

7. *What are the procedures for tracking and resolving complaints filed with the State or a subrecipient? Who handles the complaints?*
8. *What are the State's standards for the prompt and equitable resolution of complaints?*
9. *What are the State's document retention policies for complaints?*
10. *How does the State ensure that subrecipients have ADA-compliant complaint procedures?*

EXPLANATION

Grantees are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. Grantees must retain copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years. Complaints or legal actions may indicate a problem with implementation of the ADA requirements.

REFERENCE

49 CFR 27.13
49 CFR 27.121(b)
FTA Master Agreement, Section 44

SOURCES OF INFORMATION

Review and discuss the procedures with the State. 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 there is no internal process in place for reviewing and retaining complaints. (**DEFICIENCY CODE 324**: Insufficient ADA complaint process)

The State is deficient if it does not ensure that subrecipients have adopted procedures to promptly and equitably resolve complaints based on disability. (**DEFICIENCY CODE 653**: Insufficient oversight of subrecipients for ADA complaint procedures)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO its process for resolving complaints.

Direct the State to submit to the FTA RCRO procedures for ensuring that subrecipients have adopted complaint procedures that provide for the equitable and prompt resolution of disability-related complaints.

Part B: Revenue Service Vehicles

11. *Since the last State Management Review, has the State or a subrecipient purchased or leased any new or used bus or rail vehicles for use in fixed route service? If yes, were all of the vehicles accessible? For used vehicles acquired or leased that do not meet accessibility standards under 49 CFR Part 38, provide documentation of good-faith efforts meeting the requirements of 49 CFR Parts 37.73(c), 37.81(c) or 37.87(c).*
12. *Since the last State Management Review, has the State or a subrecipient remanufactured any existing buses or rail vehicles (or acquired any remanufactured buses or rail vehicles) for use in fixed route service? If yes, are the vehicles readily accessible to people with disabilities, including those who use wheelchairs? If no, provide the results of the engineering analysis demonstrating a significant adverse impact on the integrity of the vehicle as required under 49 CFR Parts 37.75(c), 37.83 (c), or 37.89(c).*
13. *If a subrecipient contracts for fixed route service, including commuter bus service, how does the State know that the buses used for the service are accessible?*
14. *Since the last State Management Review, has the State or a subrecipient purchased or leased any new inaccessible vehicles for demand-responsive service, including route deviation service? If yes, provide the documented analysis of equivalent service and the date of the analysis. When was the certification of equivalent*

service filed? How does the State monitor its subrecipients' compliance with equivalent service provisions?

15. How does the State ensure that subrecipients comply with the ADA requirements for the acquisition of accessible vehicles?

EXPLANATION

49 CFR Part 37 includes specific requirements for the acquisition of accessible vehicles by public and private entities. 49 CFR Part 38 contains accessibility standards for transportation vehicles. Grantees must comply with the requirements, as must all affiliated contractors and subrecipients.

Private nonprofit entities are eligible subrecipients under several FTA programs. Private for profit entities are eligible subrecipients under Sections 5310, 5316 and 5317. All Section 5311 subrecipients, including private nonprofit entities, follow the rules for public entities. For subrecipients that are private entities that operate service for the general public, consult the Office of Civil Rights ADA Team Leader in FTA's Headquarters Office for technical assistance.

All new bus and rail vehicles 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 DOT ADA regulations.

All used bus and rail vehicles must be accessible. Inaccessible used bus and rail vehicles may only be purchased or leased if, after making demonstrated good-faith efforts to obtain an accessible vehicle, the entity is unable to do so. Good-faith efforts are defined in 49 CFR Parts 37.73(c) and 37.81(c) as including at least the following steps:

- An initial solicitation or documented communication for used vehicles specifying that all used vehicles are to be lift equipped or otherwise accessible to and usable by individuals with disabilities
- A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers
- Advertising in trade publications and contacting trade associations

The entity must keep records documenting good-faith efforts for three years.

Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible,

unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicles are established by 49 CFR Part 38.

When an entity contracts for fixed route service, including commuter bus service, all of the buses acquired and used in the service must be accessible. The contractor must meet the entity's obligations as it "stands in the shoes" of the entity and the entity cannot contract away its obligations to provide accessible service.

Entities operating demand-responsive service must purchase or lease accessible vehicles unless they can demonstrate 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 does not include ADA complementary paratransit service, which is subject to specific requirements. The service for people with and without disabilities must be provided in the most integrated setting feasible and must 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 inaccessible vehicle for demand-responsive service, the entity must file a certification of equivalent service with FTA. Grantees must file a certification of equivalent service for each procurement of inaccessible vehicles. A state must obtain certifications from Sections 5307 and 5311 subrecipients. Appendix C to 49 CFR Part 37 of the DOT ADA regulations includes a copy of the certification of equivalent service. The grantee must monitor its service to ensure that equivalent service exists; that is, there is an 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 must 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.

States must ensure that subrecipients comply with the DOT ADA requirements when acquiring new, used, or remanufactured vehicles, or when remanufacturing vehicles. The State must ensure that subrecipients

meet the service characteristics and provide equivalent service prior to acquiring inaccessible vehicles for use in general public demand-responsive service.

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 37.7
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 grants to determine whether accessible or inaccessible vehicles were acquired and if the State has filed the certification of equivalent service with FTA. While on site, discuss each instance in which an inaccessible vehicle was acquired since the last review. For each procurement of inaccessible vehicles, review the supporting documentation. For vehicles used in demand-responsive service, documentation includes the certification of equivalent service. For acquisition of used vehicles, this includes documentation of good faith efforts to obtain an accessible used vehicle meeting all of the requirements of 49 CFR 37.73(c) (for non-rail vehicles) or 37.81(c) (for rail vehicles). For remanufactured vehicles, documentation includes an engineering analysis demonstrating that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle.

For demand-responsive service, discuss how the State monitors equivalent service. For each procurement of inaccessible vehicles, determine whether the conditions permitting the acquisition of an inaccessible vehicle were met, and ensure that the State filed the certification of equivalent service found in Appendix C to 49 CFR Part 37.

If subrecipients have acquired inaccessible vehicles, review supporting documentation, including procurement documents, documentation of good faith efforts to acquire accessible vehicles, and 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 Section 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 acquire accessible vehicles and for ensuring that subrecipients meet the specific required conditions that permit the acquisition of inaccessible vehicles prior to acquiring them.

Direct the State to submit to the FTA RCRO a procedure for obtaining a certification of equivalent service from Section 5311 subrecipients acquiring non-accessible vehicles for demand responsive service.

Part C: Facilities

- 16. Has the State or subrecipient constructed or altered any facilities since the last triennial review? If so, how did the grantee ensure that the facility meets the appropriate accessibility requirements under DOT ADA regulations?*
- 17. For facilities constructed by the State or a subrecipient that did not meet the requirements of 49 CFR Parts 37.9 and 37.41, provide documentation sufficient to support the determination that the facility was made accessible to the maximum extent feasible as defined under 49 CFR Part 37.41(b)*
- 18. For facilities altered by the State or a subrecipient that did not meet the requirements of 49 CFR Part 37.9 and 49 CFR Part 37.43, provide documentation to support the*

determination that the facility was made accessible to the maximum extent feasible as defined under 49 CFR Part 37.43(b).

19. *For facilities altered by the State or subrecipient, where an area containing a primary function as defined in 49 CFR Part 37.43(c) was altered, and for which the path of travel to and from the altered area is not accessible and was not otherwise replaced or altered, provide documentation that the cost of alterations required to the path of travel were disproportionate to the overall alterations in terms of cost and scope as defined in 49 CFR Part 37.43 (e).*

20. *When subrecipients construct or modify facilities, how does the State ensure that subrecipients 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 Part 37.9, as required by 49 CFR Part 37.41. Under 49 CFR Part 37.41(b), full compliance with these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. "Structurally impracticable" is defined in 49 CFR Part 37.41(b)(1) as "those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features."

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 Part 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, an additional requirement is triggered to make the path of travel to and from the altered area accessible, unless the cost of doing so is disproportionate to the cost of the alterations to the primary function. 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 elements to provide 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.

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 Parts 18.37 and 18.40

49 CFR Part 37.9

49 CFR Part 37 Subpart C and 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

SOURCES OF INFORMATION

Examine grants for new and altered facility projects. During the site visit, discuss with the State construction or alteration of any facilities and, if part of a subrecipient site visit, inspect those facilities. Ensure that the documents for architectural and engineering services are consistent with and reference the DOT ADA requirements.

For states that have undertaken alterations to an area that serves a primary function and have not made the path of travel accessible due to disproportionate cost (exceeds 20 percent of the total alteration cost), examine supporting documentation for this decision, including the cost calculation to show why accessibility of the path of travel was not achieved. If the altered area itself is not accessible, examine documentation supporting the infeasibility of meeting specific requirements.

Review and discuss subrecipient oversight procedures. Obtain an understanding of who performs the oversight and at what stages of the facility design and construction the oversight occurs.

DETERMINATION

The State is deficient if the new facilities do not comply with the standards referenced in 49 CFR Part 37.9 and the conditions of 49 CFR Part 37.41(b) are not met. The State is deficient if alterations do not comply with the standards referenced in 49 CFR Part 37.9, and/or 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 for reporting 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

21. How does the State ensure that subrecipients comply with the general service provision requirements in Subpart G of 49 CFR Part 37?

EXPLANATION

The ADA regulations (49 CFR Part 37.161-167) detail specific requirements for bus and rail service. (For ferry service requirements see Question 27.) The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should be able to demonstrate that it has policies and procedures in place to enable it to meet these requirements. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and explains how the entity enforces their implementation.

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 must provide a means by which an individual with a visual impairment or other disability waiting at a stop can identify the route on which he or she wants to travel.

Where automated stop annunciators are used, 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 when annunciators are out of service.

Priority Seating

When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the entity must 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 persons with disabilities (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.

Wheelchair Transport

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 weight 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 49 CFR Part 37, recognizing that some vehicles used in public transit can accommodate wheelchairs that did not meet the definition of "common wheelchair." Wheelchairs that exceed the weight or dimensional requirements of a "common wheelchair" can 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, and as long as these vehicles meet the requirements of 49 CFR Part 38, a grantee that does so is not deficient. Because the minimum standards for vehicle lifts and ramps have not 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, if that represents their actual capacities.]

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.

Respirators or Portable Oxygen

Entities may not deny service to individuals using respirators, concentrators, or portable oxygen.

Boarding/Disembarking Time

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.

REFERENCE

49 CFR Part 37.165-167
49 CFR Parts 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. 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. (**DEFICIENCY CODE 646**: Insufficient oversight of subrecipients for service provisions)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO procedures for ensuring that subrecipients comply with required service provisions.

22. *How does the State ensure 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 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.

REFERENCES

49 CFR Part 37.173
49 CFR Parts 18.37 and 18.40

SOURCES OF INFORMATION

Review State training materials. Discuss with the State and subrecipients visited.

SOURCES OF INFORMATION

Review training materials provided by the State. Discuss with the State and subrecipients visited.

DETERMINATION

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 647**: Insufficient oversight of subrecipients for ADA training)

SUGGESTED CORRECTIVE ACTION

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.

23. How does the State ensure that subrecipients comply with:

- *ADA vehicle and facility maintenance requirements?*
- *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 operational. The adequacy of the procedures may be reflected in the frequency of in-service failures. There is no specific requirement for daily cycling of lifts and ramps, though many entities have adopted this practice to meet this requirement for regular and frequent maintenance checks.

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. 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).

In any case in which a vehicle is operating on a fixed route with an inoperative lift (including in-service failures), and the headway to the next accessible vehicle exceeds 30 minutes, the grantee must promptly (i.e., within 30 minutes) provide alternative transportation to persons with disabilities who are unable to use the vehicle.

States must monitor its subrecipients' compliance with the ADA maintenance requirements, including the requirements to take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature and to provide alternative service for in-service lift and ramp failures. In addition subrecipients are responsible for ensuring that it and its contractors and lessees meet the requirements.

REFERENCE

49 CFR Part 18.37 and 18.40
49 CFR Part 37.161-163

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. 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 648:** Insufficient oversight of subrecipients for maintenance of accessibility features)

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.

24. Identify any subrecipients that provide route deviation service. How does the State ensure 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 Part 37.77.

In limited circumstances, a grantee may be able to provide both ADA complementary paratransit service and fixed route service using the same vehicle. In these situations, the fixed route bus would go off route (or "deviate") only for people with disabilities who have been determined to be ADA paratransit eligible. In this scenario, service to such persons must be provided according to the same requirements in 49 CFR Subpart F of Part 37 for complementary paratransit (e.g., service area, response time, fares, hours and days of service, absence of capacity constraints and absence of trip purpose restrictions).

REFERENCE

49 CFR Parts 18.37 and 18.40
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, September 1, 2005

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. 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 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 649:** Insufficient oversight of subrecipients for route deviation)

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.

25. 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? How does the State ensure that commuter and "university" service is properly classified and meets the characteristics specified in the DOT ADA regulations?

EXPLANATION

Each public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. 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, 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 limited attempts to comprehensively cover a service area, restricted purposes of travel, and a coordinated relationship to another mode of transportation. An entity operating commuter bus service must be able to demonstrate the rationale for characterizing the service as such.

49 CFR Part 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 be required to have a formal arrangement with the transit operator. In some cases, the grantee may provide funding directly to an institution of higher education for purposes of providing university transportation service.

REFERENCE

49 CFR Part 37.25
49 CFR Part 37.121-131
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
49 CFR Parts 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. 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.

26. How does the State ensure that the complementary paratransit service provided by subrecipients meets ADA requirements in the following areas:

- *Eligibility determinations*
- *Visitors’ service*
- *Service criteria*
- *Origin-to-destination service*
- *Service capacity*
- *No-show policies*

EXPLANATION

The State must monitor subrecipients that provide ADA 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 grantee can determine

eligibility. The process may include a 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 calendar days of submittal. If after 21 calendar days, the entity has not made an eligibility determination, the applicant must be treated as eligible and must be provided service until and unless the entity denies the application. The entity is permitted to 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, 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 Part 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.

Visitor's Service

Service must be provided to visitors. A visitor can become eligible in one of two ways. The first is to present documentation from his or her "home" jurisdiction's paratransit system. The local provider will give "full faith and credit" to the ID card or other documentation from the other entity. If the individual has no such documentation, the local provider may require the provision of proof of visitor status (i.e., proof of residence somewhere else) and, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional). Once this documentation is presented and is satisfactory, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed route transit system. 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.

Service Criteria

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 responsive service that may also be provided.

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.

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 Part 37.5.

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.

Practices such as failing to provide an agreed-upon pickup time at the time the rider calls to reserve a trip, or requiring riders to call back later to obtain their pickup times, would constitute a prohibited waiting list, and do not provide the required opportunity for the rider to negotiate an acceptable pickup time. The grantee may adjust the passenger’s pickup time for scheduling purposes, but only within the agreed-upon pickup window. In other words, if a passenger agreed upon a 1:00 pickup time, and the pickup window is +/- 15 minutes, the vehicle could arrive as early as 12:45 or as late as 1:15. The grantee may adjust the pickup time within that 30-minute window, but may not adjust the actual pickup window itself. In other words, the grantee may schedule the vehicle to arrive at 1:10, but the pickup window – the time during which the rider has already been told the vehicle will arrive – remains 12:45-1:15.

Restrictions may not be placed on the number of trips taken by a rider. Waiting lists for non-subscription service are prohibited.

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

may not intentionally plan to deny, miss, or otherwise not serve a percentage of trips.

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 no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the 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 to take both trips, it must be tracked as two denials. (If the rider accepts the "return" trip, only one trip has been denied). 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.

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.

No-Show Policies

Under 49 CFR Part 37.125(h), a grantee may establish an administrative procedure to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a *pattern or practice* of missing scheduled trips.

As explained in Appendix D to this section, a "pattern or practice" involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. An entity's no-show policy must therefore 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.

Any suspensions must be "for a reasonable period of time." Suspension of service for 30 days for a first "offense," for example, is not "reasonable." A reasonable suspension for a first instance of a pattern or practice of no-shows might be a few days to a week. In no case should suspension periods exceed 30 days, and then only in the most extreme cases.

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. FTA has found it acceptable to consider a late cancellation as one made within an hour or two before the pickup time provided to the rider.

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 Part 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.

It is important to note that 49 CFR Part 37.125(h) *permits* an entity to establish a no-show policy; it does not require one to do so.

REFERENCE

49 CFR Parts 18.37 and 18.40
49 CFR Part 37.25
49 CFR Parts 37.123-133
DOT Disability Law Guidance on Origin-to-Destination Service

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. 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 650:** Insufficient oversight of subrecipients for ADA complementary paratransit)

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

27. *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 State 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 State ensure that assistance is promptly provided to passengers with disabilities who are

not able to board or disembark without assistance?

f. How does the State 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 State 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 State 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." 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 Part 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 Parts 18.37 and 18.40
 49 CFR Part 39 Subparts B, C, D, F, & G
 Use of "Segways" on Transportation Vehicles

SOURCES OF INFORMATION

Review policies regarding serving passengers with disabilities, fares for surcharges, contracts with ferry shuttle services, an organization chart showing the designation of a CRO and policies relating to responsibilities of the CRO. Discuss with the State what modifications to policies were made to comply with 49 CFR Part 39. For modifications not made, discuss the basis for determining that 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 652:** Insufficient oversight of subrecipients for ferry service)

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, practices, and procedures 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.

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11. TITLE VI

BASIC REQUIREMENT

The State 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 State must ensure that all transit services and related benefits are distributed in an equitable manner.

Note: The 2015 State Management Review covers a three-year period in which the FTA issued a revised circular for Title VI, which provided more information on how to comply and changed requirements for some States with populations over 200,000 persons. FTA C. 4702.1B became effective on October 1, 2012. Title VI programs submitted to FTA after this date must comply with the requirements of this circular. The State Management Review will look at compliance with the requirement of FTA C. 4702.1A for the period prior to October 1, 2012, and compliance with the revised circular for activities after this date.

AREAS TO BE EXAMINED

1. ***Public Information and Complaint Procedures***
2. ***Limited English Proficiency (LEP)***
3. ***Outreach***
4. ***Transit Facilities***
5. ***Subrecipient Monitoring***
6. ***Program Specific Requirements for State Programs***

REFERENCES

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will

only be applied to activities conducted after the effective date of those related requirements.

1. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
2. FTA Circular 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

FTA Civil Rights Training Materials

FTA Civil Rights Video Training Series

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 Part 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. Compare the provided complaint material to the information reported to FTA in the last Title VI program submission and/or last review.

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. The State is deficient if the complaints, lawsuits, and/or investigations are not resolved in a timely manner, adequately, and appropriately reported in the subsequent Title VI program. (**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 do 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. Chapter 5 b. (1) also includes additional effective practices for notice dissemination for grantees to consider.

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 State.

Notices detailing a state'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 State's language assistance plan.

REFERENCES

49 CFR Part 21.9(d)

FTA C. 4702.1B, Ch. III, Section 5

FTA C. 4702.1B, Appendix B

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 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. The State is deficient, regardless of its own compliance, if any subrecipient is deficient with the required Title VI notice requirements. (**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. *What steps have the State and its subrecipients taken 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

FTA Circular 4702.1B provides information on how a transit system can analyze information to address the four factors.

FTA Circular 4702.1B requires grantees to develop an implementation plan to address the identified needs of the population it serves. The plan should:

- Identify LEP individuals who need language assistance
- Develop language assistance measures
- Address staff training
- Detail how to provide notice to LEP persons
- Address procedures for monitoring implementation and updating the plan.

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 State's programs and activities. FTA will determine, at the time the State submits its Title VI program or subsequent to a complaint investigation or compliance review, whether a state's plan is sufficient to ensure meaningful access and thus ensure that the State is not engaging in discrimination on the basis of national origin.

REFERENCES

Limited English Proficiency (LEP): A Federal Interagency Website
 US Census American FactFinder "Percent of Specific Language Speakers in the Region" (S1601):
 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. Review a sample or sampling of subrecipient(s) LEP efforts to ensure the State is appropriately monitoring subrecipients.

DETERMINATION

The State is deficient if it has not prepared a language assistance plan and not received an exemption from FTA. The State is deficient if there is not an adequate mechanism to ensure subrecipient compliance and/or the review of subrecipient material is noncompliant. (**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. If the issue revolves around a subrecipient's compliance, direct the State to develop a schedule for the subrecipient to provide the State with a compliant Four Factor analysis and Language Assistance Plan, and policies and procedures that ensure the State will have

sufficient monitoring to avoid a lapse in subrecipient language assistance compliance.

4. *In the implementation of transit related programs and activities, 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

The content and considerations of Title VI, the Executive Order on LEP, and the DOT LEP Guidance shall be integrated into each state's established public participation plan or process. 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.

States and subrecipients have wide latitude to determine how, when, and how often specific public participation activities should take place, and which specific measures are most appropriate. States should make these determinations based on a demographic analysis of the population(s) affected, the type of plan, program, and/or service under consideration, and the resources available. Efforts to involve minority and LEP populations in public participation activities can include both comprehensive measures, such as placing public notices at all transit stations, stops, and vehicles, as well as targeted measures to address linguistic, institutional, cultural, economic, historical, or other barriers that may prevent minority and LEP persons from effectively participating in a state's decision-making process.

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

Executive Order 13166

DOT LEP Guidance

LEP Handbook for Public Transportation Providers

FTA C. 4702.1B, Ch. III, Section 8

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. Review the State's policies and procedures to ensure subrecipient(s) comply with the Title VI outreach requirements. Review a subrecipient's public outreach procedures and activities to determine the subrecipient's Title VI compliance.

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. The State is deficient if the procedure to ensure subrecipient compliance is inadequate and/or a subrecipient's outreach efforts are noncompliant. (**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, for itself and/or its subrecipient(s), as well as a timeline for implementing the proposed procedures.

5. *Has the State or a subrecipient constructed transit facilities such as storage facilities, maintenance facilities, operations centers, etc., since October 1, 2012, or does it plan to in FFY 2015? If yes:*

- *Was a Title VI equity analysis completed, or when is it anticipated to be completed?*
- *If an analysis has not been or is not anticipated to be completed, what factors led to this conclusion?*
- *If an analysis has been completed, how did the State conduct the equity analysis 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."

The State or a subrecipient is 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.

If a state or subrecipient conducted an analysis during the National Environmental Policy Act (NEPA) process, then this can substitute for the Title VI equity analysis requirement, as long as the NEPA analysis encompasses the necessary information required in a Title VI equity analysis. Along these lines, if a facility exempted from the Title VI equity analysis, due to the assumption it will be analyzed during the NEPA process, does not in fact trigger NEPA, then said facility will require a Title VI equity analysis.

When evaluating locations of facilities:

- Attention should be given 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 State or subrecipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the State 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 State or subrecipient must show how both elements are met. In order to make this showing, the State 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 Part 21.9
FTA C. 4702.1B, Ch. III, Section 13

SOURCES OF INFORMATION

Review information received from the State in response to this question. If completed, review any Title VI equity analysis to determine that all requirements have been met. Review correspondence with residents, public meeting documentation and other documents related to siting decisions. Review subrecipient(s) who indicated a facility triggering a Title VI equity analysis was undertaken. Review the provided information to determine all requirements have been met.

DETERMINATION

The State is deficient if an equity analysis should have been conducted but was not, or if the analysis was not conducted in accordance with Chapter III of FTA C 4702.1B. The State is deficient if the subrecipient(s) did not comply with the Title VI facility requirements. (**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 State 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 comply with the 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 Parts 18.37 and 18.40
49 CFR Part 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 State'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 statewide 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, Ch. V
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.

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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*

REFERENCE

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars,

as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"

USEFUL WEBLINKS

FTA EEO web page

EEO Compliance Reviews

QUESTIONS FOR THE REVIEW

1. *List any subrecipients that meet the threshold for submission of an EEO program. For those subrecipients:*

- *Who at the agency receives, reviews, and approves subrecipient EEO plans?*
- *Does the State obtain program updates every three years? If no, 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 states to submit the EEO program of a subrecipient to FTA for review. If the State has a subrecipient that meets the employee threshold, seek additional guidance from the RCRO on the submittal of its program.

REFERENCES

49 CFR Parts 18.37 and 18.40
FTA C. 4704.1, Ch. II, Section 2

SOURCES OF INFORMATION

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 by the State for use by a subrecipient, should be 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. Ensure that the person reviewing the EEO program(s) has the expertise to evaluate and approve the program.

DETERMINATION

The State is deficient if it (or FTA, if requested) does not have on file a properly approved EEO plan for 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 (i.e. approval letter) 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 State's policy statement. The EEO officer should be an executive and must report directly to the CEO or have dotted line access, meaning they can bypass managers and go directly to the CEO. The EEO officer should be identified by name in all internal and external communications regarding the State'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, States 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 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.

Because the monitoring and reporting system should be used to prescribe and revise short-term goals (which typically have a 12-month range), it is expected that these activities occur at least annually.

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:

- 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?)
- How often the EEO Officer of the subrecipient provide updates to the State on the status of its EEO goals and timetables
- The State's mechanisms for receiving information on subrecipient EEO complaints
- 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 grant-related employees and to have an ongoing drug-free awareness program. Grantees receiving Sections 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

FY 2015 State Management Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. 41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 49 CFR Part 32, "Government wide Requirements for a Drug-free Workplace (Grants)"
4. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"
5. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"

6. 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 and the grantee does not fund operations.

MAP-21 consolidated the Section 5316 Job Access and Reverse Commute Program into

the Section 5307 and 5311 programs, FTA intends for those recipients solely engaged in JARC activities to continue to be exempt

from drug and alcohol testing applicability as this is not currently considered a safety sensitive function per 49 CFR 655.4.

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 (DFWA) that is distributed to all grant-related employees?*

EXPLANATION

The State is required to have and distribute to grant-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 Parts 32.200; 215; and 220
41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988

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 DFWA 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 or amended DFWA policy that includes all required elements along with documentation that it 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 Parts 32.200; 215; and 220

SOURCES OF INFORMATION

Review the written policy, employee handbooks, brochures, posters, 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 Part 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 PROGRAM OVERSIGHT

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 49 CFR 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 Parts 18.37, 18.40 and 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 the oversight files and drug and alcohol policies for the subrecipients, 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)

The State is deficient if the policies of subrecipients, contractors, subcontractors, or lessees that were reviewed do not include all of the required provisions required by the regulations or have not been updated to reflect updates and/or amendments to the regulations. (**DEFICIENCY CODE 157:** Drug and Alcohol contractors, subrecipients, and/or lessees not properly monitored for D&A program)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office a drug and alcohol oversight program for its subrecipients.

Direct the State to submit to the FTA regional office the amended policy of the subrecipient, contractor, subcontractor, or lessee and procedures to ensure oversight of subrecipients, contractors, subcontractors, and/or lessees

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 review the forms or review the forms itself.

REFERENCES

49 CFR Parts 18.40 and 40.15
HHS certified laboratories

SOURCES OF INFORMATION

Review copies of contracts and monitoring reports.

DETERMINATION

The State is deficient if it or its subrecipients do not have contracts with vendors and/or do not monitor 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 Part 655.72
MIS report forms

SOURCES OF INFORMATION

Review copies of MIS reports submitted since the last review for the grantee and subrecipients to be visited during the 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.

DETERMINATION

The State is deficient if the MIS reports for subrecipients were not submitted or were incorrect. (**DEFICIENCY CODE 298:** MIS reports not properly submitted)

SUGGESTED CORRECTIVE ACTION

Direct the State to collect and submit all delinquent MIS forms in DAMIS, develop a procedure for timely MIS reporting, and submit the new procedure, along with documentation of its implementation to the FTA regional office. Direct the State to submit amended MIS reports in DAMIS and copies of the amended reports and procedures for completing the reports correctly to the FTA regional office.

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