

Federal Transit
Administration

2013

Triennial Review

Workshop
Workbook

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
INTRODUCTION	1
1. LEGAL.....	1-1
2. FINANCIAL MANAGEMENT AND FINANCIAL CAPACITY.....	2-1
3. TECHNICAL	3-1
4. SATISFACTORY CONTINUING CONTROL	4-1
5. MAINTENANCE	5-1
6. PROCUREMENT.....	6-1
7. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....	7-1
8. PLANNING/PROGRAM OF PROJECTS	8-1
9. TITLE VI.....	9-1
10. PUBLIC COMMENT ON FARE AND SERVICE CHANGES	10-1
11. HALF FARE	11-1
12. AMERICANS WITH DISABILITIES ACT (ADA).....	12-1
13. CHARTER BUS.....	13-1
14. SCHOOL BUS.....	14-1
15. NATIONAL TRANSIT DATABASE.....	15-1
16. SAFETY AND SECURITY	16-1

17. DRUG FREE WORKPLACE DRUG AND ALCOHOL PROGRAM..... 17-1

18. EQUAL EMPLOYMENT OPPORTUNITIES..... 18-1

APPENDIX:..... 1

DOCUMENTS TO BE REVIEWED..... 1

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INTRODUCTION

The triennial review is one of the Federal Transit Administration's (FTA) management tools for examining grantee performance and adherence to current FTA requirements and policies. Mandated by Congress in 1982, the triennial review occurs once every three years. It examines how recipients of Urbanized Area Formula Program funds meet statutory and administrative requirements, especially those that are included in the Annual Certifications and Assurances that grantees submit.

Section 5307 of the Federal Transit Act requires that at least once every three years, the Secretary of Transportation shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed. In addition to helping evaluate grantees, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements and aids FTA in reporting to the Congress, Secretary, oversight agencies, and the transit community on the Urbanized Area Formula Program.

In 1989, FTA issued Order 9010.1A to provide guidance to FTA staff on conducting triennial reviews. Regional office and headquarters staff performed these original reviews. The following year, FTA began using contractors to assist with triennial reviews. By 1996, contractors participated in all reviews. The Triennial Review Order was updated and superseded by FTA Order 9010.1B, issued in April 1993. This guidance was later rescinded, and as of November 1, 1994, requisite guidance FTA Order 5400.1 "Oversight Reviews" was provided.

The triennial review process has continuously evolved since its inception. Each year, the review areas and specific questions are modified to reflect new statutory or regulatory requirements and changes in FTA policy. The format and delivery schedule for the draft and final reports have changed as have the terms used when making findings. In 1993, FTA issued the first annual detailed Triennial Review Handbook, now known as the Contractors' Guide. From 1989-1999, FTA required reviewers to prepare a comprehensive draft triennial review report that addressed the grantee's performance in each triennial review area and specified corrective actions. These reports, due within 30 days after the site visit, documented the grantee's activities and procedures for each particular area, including actions that were in compliance. During this decade, reviewers made determinations that the grantee was in compliance, in compliance with follow up, or not in compliance in each review area. In April 1999, FTA instituted major changes in the Triennial Review process that revised the report format and time frame as well as the nature of the findings. With these changes, FTA instructed reviewers to deliver draft reports on site at the exit conference, with regional office concurrence. The report format was streamlined. The new reports documented deficiencies only; narrative information not pertinent to deficiencies was omitted. The grantee was required to submit comments on the draft report to the FTA regional office within seven days. The regional office had another seven days to forward comments to the lead reviewer, and the final report was due 30 days after the site visit. A standard 90-day time frame for responding to the corrective actions was established as a guideline. Concurrent with these changes, areas were categorized as in compliance, deficient, not applicable, or not reviewed. Reviewers no longer made findings of non-compliance, and the follow-up category was eliminated. Similarly, though the final report would acknowledge any actions taken by the grantee to close deficiencies before the issuance of the final report, the discussion of the deficiencies and the deficiency codes shown on the report's summary table remained unchanged and were included in OTrak, FTA's automated oversight tracking system. In May 2000, FTA instituted an additional change in the triennial review finding categories. The finding of in compliance was changed to not deficient. The other finding categories remained as before. Beginning with the reviews for FY2001, FTA also added questions in the Safety and Security area for which advisory comments are made. Beginning in FY2010, FTA eliminated the finding of not reviewed and added the ARRA review area.

For FY 2013, FTA has made several innovations to the triennial review process including adding a pre-review phase that will be used to determine the need for enhanced review modules in priority areas;

providing a summary of preliminary findings at the exit conference; and developing the draft report after the conclusion of the site visit. FTA has streamlined the review by combining some areas and eliminating some questions. The FY 2013 review addresses 18 areas.

The triennial review requires the grantee to answer written questions prior to a site visit, review these answers with the reviewer during the site visit, and answer additional questions on site. The grantee is required to provide documentation to support the answers before and during the site visit. Appendix ___ shows the documentation FTA expects to review. This is a comprehensive list and not every document will be applicable to every grantee. Grantees are not required to maintain records that are not applicable.

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

1. LEGAL

PART 1 – BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

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

REFERENCES

49 USC Chapter 53, Federal Transit Laws (SAFETEA-LU)

FTA Master Agreement

Annual List of Certifications and Assurances

FTA Circular 9030.1D, “Urbanized Area Formula Program: Program Guidance and Application Instructions”

FTA Circular 9300.1B “Capital Investment Program Guidance and Application Instructions”

FTA C 9050.1 “The Job Access and Reverse Commute Program Guidance and Application Instruction”

FTA C 9045.1 “New Freedom Program Guidance and Application Instructions”

FTA C 9070.1F “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions”

FTA Team-Web

49 CFR Part 20, “New Restrictions on Lobbying”

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer will use information on file with FTA to determine compliance with most legal requirements. The grantee should notify the reviewer of any changes in law or litigation affecting the recipient’s status that were not previously communicated to FTA.

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

Activities that are required to be disclosed include the hiring of any third party (i.e., lobbyist) for the purposes of attempting to influence a covered federal action. Disclosure is not required for activities performed by the grantee's own regularly employed officers and employees. Covered federal action means any of the following federal actions:

- (1) The awarding of any federal contract
- (2) The making of any federal grant
- (3) The making of any federal loan
- (4) The entering into any federal cooperative agreement, and
- (5) The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Updates to Standard Form LLL are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include:

- (1) 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;"
- (2) A change in the person(s) attempting to influence such action; and
- (3) A change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action.

Any subrecipient, contractor, or subcontractor in receipt of a grant or contract exceeding \$100,000 is subject to the same disclosure and updating requirements as the grantee.

All certifying entities must ensure that any quarterly disclosure forms are forwarded to the grantee, which must forward them to FTA.

REFERENCES

[49 CFR Part 20](#)
[Standard Form LLL](#)

SOURCES OF INFORMATION

Standard Form LLL and quarterly reports updates.

2. FINANCIAL MANAGEMENT AND FINANCIAL CAPACITY

PART 1 – BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. Financial Capacity
2. Eligible Expenditures
3. Funds Management
4. Audits/Oversight Reports

REFERENCES

[49 USC Chapter 53](#), Federal Transit Laws

[Single Audit Act Amendment of 1996](#)

[2 CFR Part 225](#) (OMB Circular A-87), “Cost Principles for State, Local, and Indian Tribal Governments”

[2 CFR Part 230](#) (OMB Circular A-122), “Cost Principles for Non-Profit Organizations”

[OMB Circular A-133](#) “Audits of States, Local Governments, and Non-Profit Organizations”

[49 CFR Part 18](#), “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

[FTA Master Agreement](#)

[FTA Circular 5010.1D](#), “Grant Management Requirements”

[FTA Circular 7008.1A](#), “Financial Capacity Policy”

[FTA Circular 9030.1D](#), “Urbanized Area Formula Program: Program Guidance and Application Instructions”

[FTA Circular 9300.1B](#), “Capital Investment Program Guidance and Application Instructions”

[FTA Circular 9040.1F](#), “Nonurbanized Area Formula Program Guidance and Grant Application Instructions”

[FTA C 9070.1F](#), “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions”

USEFUL WEBLINKS

[Guidance for Transit Financial Plans Flexible Funds: FHWA and FTA Programs Revenue Bonds](#)

[Debt Service Reserve Financing](#)

[51 CFR 552](#), “Federal Agencies Responsible for Cost Negotiations and Audit of State and Local Government”

[ECHO Web User Manual for FTA and FAA Grantees](#)

[Federal Audit Clearinghouse](#)

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the contractor will determine if other oversight reviews or audits of the grantee have identified significant deficiencies, material weaknesses, or repeat findings. Also, the reviewer will review any open findings and examine all requested documents to assess if the grantee has the financial capacity and procedures to manage FTA funds. On site, the reviewer will examine ECHO drawdown procedures and documentation.

- 1. In the short term financial plan (three to five years) what issues or underlying assumptions could affect the financial conditions of the grantee including significant decreases in local and state funding? What steps has the grantee planned to address these issues.?***

EXPLANATION

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

A grantee's financial condition, future financial capacity, and ability to match FTA funds could be impacted greatly if one of its sources of non-FTA funding is affected by pending legislation or "sunset" provisions in current legislation. Similarly, the grantee's eligible and available non-federal funds may be diverted from serving as match for an FTA grant if there are other federal grants which are at risk of lapsing.

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

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

When state and local sources of funding decrease, the grantee may be unable to meet the non-federal match requirements for existing FTA grants, implementing or planning for service reductions, redirecting funds to meet critical operating and maintenance needs, and/or experiencing staff reductions.

REFERENCES

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

SOURCES OF INFORMATION

Financial plans projecting revenues and expenses for the next three years (or longer); current year's budget and/or financial statements; comprehensive annual financial report (CAFR) and TIP for levels of transit funding.

2. What are the grantee's sources of non-FTA funding for operating and capital expenses? Identify any changes that have occurred in the past three years.

EXPLANATION

Annually, the grantee certifies to FTA (as part of the annual certifications and assurances process) that it has the financial capacity to carry out its proposed program of projects. Grantees generally have three basic sources of local funding: a perpetual or permanent local tax (e.g., a sales tax, income tax, or property tax); a limited or "sunset" source of funding that expires at some future date; and/or annual appropriations from local, regional, and state governments. FTA does not require a dedicated funding source.

All local share must come from non-U.S. Department of Transportation (DOT) sources, except for Federal Lands Highway Program funds. SAFETEA-LU permitted 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 (capital only); transportation development (toll) credits; program income generated from an earlier grant; Temporary Assistance for Needy Families (TANF) funds; and other non-DOT federal funds, such as Community Development Block Grant funds, if authorized by the originating program to be used for transportation. No FTA program funds can be used as a source of local match for other FTA programs, even when used to contract for service. In-kind contributions are eligible as long as the value of each is documented and supported, represents a cost that would otherwise be eligible under the program, and is included in the net project costs in the project budget.

Revenue sources should be stable and reliable enough to meet future annual operating and routine capital costs.

REFERENCE

[Annual Certifications and Assurances](#)

[49 USC 5307\(d\)\(1\)\(a\) FTA Circular 7008.1A](#)

[FTA Master Agreement, Section 5](#)

[FTA Circular 5010.1D, Ch. VI, Section 4](#)

[FTA C 9030.1D, Ch. III, Sections 11 and 12, Ch. IV, Section 8.a\(2\)](#)

[FTA C 9300.1B, Ch. II, Sections 7 and 9.b](#)

[FTA C 9050.1, Ch. III, Section 12](#)

[FTA C 9045.1, Ch. III, Section 12](#)

[FTA C 9040.1F, Ch. III, Sections 1.a and 3](#)

[FTA C 9070.1F, Ch. III, Sections 1 and 9](#)

SOURCES OF INFORMATION

Annual audit reports, budgets, multi-year financial plans, National Transit Database (NTD) reports, and the TIP.

3. Provide evidence that the service supported with FTA operating and capital assistance meets the definition of "public transportation" and any ineligible activities are incidental to the delivery of public transportation.

EXPLANATION

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

Intercity bus services are eligible under Section 5311(f) and intercity bus stations and terminals are eligible under Section 5309 as part of a joint development project. Intercity bus and intercity rail stations are eligible under Section 5307.

A grantee may not use FTA operating assistance to support ineligible activities. A grantee may use FTA-funded equipment and facilities to support incidental activities that do not detract from the provision of public transportation. Unless required by regulation, classes of people, including residents of an area, cannot be given preferential treatment for service.

REFERENCES

49 USC 5302(a)(10)

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

FTA C 9030.1D, Ch. I, Section 5 and Ch. III, Sections 5, 6, 7, 8 and 9

FTA C 9300.1B, Ch. I, Section 5 and Ch. III, Section 4

FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

Grantee marketing materials and website,

4. For grantees receiving Section 5307, 5316, or 5317 operating assistance, how is the amount eligible for operating assistance calculated?

EXPLANATION

Section 5307 operating assistance was available to all grantees in urbanized areas (UZAs) with populations under 200,000 through FY2012. Section 5307 operating assistance is also provided in UZAs with populations over 200,000 under the following circumstances:

- a. The UZA had a population of less than 200,000, as determined by the 1990 decennial census of population. The UZA may expend for operating expenses not more than 50 percent of the amount apportioned to it in FY2002.
- b. A portion of the UZA was a separate UZA with a population of less than 200,000, as determined by the 1990 decennial census of population. The UZA may expend for operating expenses not more than 50 percent of the amount apportioned to it in FY2002.
- c. The area was not designated as a UZA, as determined by the 1990 decennial census of population. Such an area may expend for operating expenses not more than 50 percent of the amount apportioned to it in FY2003.
- d. A portion of the area was not designated as a UZA, as determined by the 1990 decennial census. The portion of the area shall receive for operating expenses not less than 50 percent of the amount the portion of the area received under Section 5311 in FY2002.

Section 5316 and 5317 operating assistance was available to all UZAs through FY2012.

It is the responsibility of the grantee to calculate net eligible operating costs properly. The amount of funds requested for operating assistance must be no more than half the operating expenses, after fare revenues are credited and ineligible costs (such as costs for charter, school bus, sightseeing service and lobbying activities) are deducted to arrive at the net project cost. Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses are eligible operating costs. FTA C 9030.1D Appendix C provides a worksheet for calculating eligible operating expenses.

The FTA share of any operating assistance project shall not exceed the lesser of: a) the local match, b) the currently available apportionment to the urbanized area plus any carryover funds available from past

years, or c) 50 percent of the net project cost incurred on an accrual basis in the provision of transit services during the period. The remainder must be paid with the grantee's local share.

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

REFERENCES

[FTA C 9030.1D](#), Ch. III, Sections 6.m, 6.o, 7.d and 8, Appendices C and E

[FTA C 9040.1F](#), Ch. III Sections 2.e and 3.b, Appendix G

[FTA C 9050.1](#), Ch. III, Section 12

[FTA C 9045.1](#), Ch. III, Section 12

SOURCES OF INFORMATION

Operating budgets for the past three years showing eligible operating expenses. ECHO documentation should show that the correct amounts have been drawn for operating expenses.

- 5. *What is the process for receiving and disbursing FTA funds?***
- 6. *How does the grantee ensure that only eligible expenses are charged to grants?***
- 7. *How does the grantee track expenditures by ALI?***

EXPLANATION

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

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

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

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 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.

REFERENCES

49 CFR 18.21

FTA Master Agreement, Section 9.b

FTA C 5010.1D, Ch. VI, Section 9

SOURCES OF INFORMATION

For all ECHO draws maintain records to demonstrate that:

- The 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 purpose of the draw was eligible under the grant
- Funds are requested by ALL and if required the appropriate requests were made to FTA for budget amendments or revisions, and
- The funds were disbursed within three business days. In cases where FTA funds were requested in advance of payment to a vendor or contractor, the check was mailed within three business days.
- Indirect costs are charged at the current rate, if applicable.

Audited financial statements and A-133 audit reports may show ECHO process findings.

- 8. *If the grantee is charging indirect costs to one or more FTA grants, does the grantee have an up-to-date approved cost allocation plan; or evidence that a cost allocation plan has been submitted to the cognizant agency for approval, if required? Provide documentation.***

EXPLANATION

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

A central service cost allocation plan, sometimes referred to as a statewide or local-wide cost allocation plan, 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 cost allocation plans must be submitted to the U.S. Department of Health and Human Services (DHHS) annually. Each local government that has been designated a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant federal agency annually. OMB published the list of major local governments and their cognizant federal agencies in the *Federal Register* January 6, 1986 (51 CFR 552, "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government"). The cognizant agency for all governmental units or agencies not identified by OMB is determined based on the federal agency providing the largest amount of federal funds. Unless required by the cognizant agency, local-wide cost allocation plans 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 cost allocation plan. 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.

Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant federal 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 cost allocation plan/indirect cost rate and its basis of application.
- The grantee's proposed cost allocation plan/indirect cost rate exceeds the amounts approved previously by more than 20 percent (e.g., if the previously approved rate is 10 percent, approval is needed once the rate exceeds 12 percent).
- The grantee changes the cost allocation plan/indirect cost rate proposal methodology.

REFERENCES

[2 CFR Part 225](#) (OMB Circular A-87), Attachments C and E

[2 CFR Part 230](#) (OMB Circular A-122)

[51 CFR 552](#)

[FTA C 5010.1D](#), Ch. VI, Section 6 and Appendix E [FTA C 9050.1](#), Ch. VI, Section 11

[FTA C 9045.1](#), Ch. VI, Section 11

[FTA C 9040.1F](#), Ch. VI, Section 7

[FTA C 9070.1F](#), Ch VI, Section 12

SOURCES OF INFORMATION

Federal Financial Reports (FFRs) should show if the grantee is charging indirect costs to FTA grants. Maintain documentation that a CAP has been approved or at least submitted for approval.

ECHO records should indicate if indirect charges are being applied to grants in accordance with the approved CAP.

9. If the grantee has subrecipients, how does the grantee ensure its subrecipients:

- Have eligible funds available for local match?*
- Fully document volunteered services or in-kind revenue used as local match?*
- Conduct annual A-133 audits and promptly address/resolve/close findings?*
- Have the financial management systems to carry out the programs and to receive and disburse federal funds?*
- Only charge indirect costs to FTA grants based on an approved cost allocation plan?*

EXPLANATION

Annually, the grantee certifies to FTA (as part of the annual certifications and assurances process) that its subrecipients have the financial capacity to carry out its proposed program of projects. Subrecipients generally have three basic sources of local funding: a perpetual or permanent local tax (e.g., a sales tax, income tax, or property tax); a limited or "sunset" source of funding that expires at some future date; and/or annual appropriations from local, regional, and state governments. FTA does not require a dedicated funding source.

All local share must come from non-U.S. Department of Transportation (DOT) sources, except for Federal Lands Highway Program funds. SAFETEA-LU permitted 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 (capital only); transportation development (toll) credits; program income generated from an earlier grant; Temporary Assistance for Needy Families (TANF) funds; and other non-DOT federal funds, such as Community Development Block Grant funds, if authorized by the originating program to be used for transportation. No FTA program funds can be used as a source of local match for other FTA programs, even when used to contract for service.

The grantee 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 grantee must obtain and maintain sufficient documentation from each subrecipient to support its certification to FTA. Generally, grantees require applicants to list the sources of funding that will be applied to the project. For capital items, such as vehicle purchases or facility construction, a grantee may request a three to five year financial plan.

In-kind contributions are eligible as long as the value of each is documented and supported, represents a cost that would otherwise be eligible under the program, and is included in the net project costs in the project budget. The grantee must ensure that subrecipients use only eligible funds as local match and that volunteer or in-kind services are fully documented.

The grantee 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 grantee for a subrecipient count towards a subrecipient's single audit threshold. As an exception to this requirement, FTA has not required an annual financial audit of a subrecipient 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 grantee must ensure that subrecipients resolve audit findings related to FTA funded programs within six months of receipt of the audit report.

The grantee 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 grantee is not required to monitor the financial management systems of subrecipients that do not receive federal cash (e.g., subrecipients for which the grantee procures vehicles). Some grantees require applicants, especially first-time applicants, to describe their accounting systems or may perform a pre-award review of accounting systems. Other grantees require subrecipients to maintain separate accounting records for projects. In addition to an audit, some grantees require subrecipients to have their auditors certify year-end financial statements for their transit operations.

Grantees are responsible for monitoring subrecipients' cost allocation plans. This monitoring may include, but is not limited to, ensuring that the plan was approved by a federal or state agency or the plan was retained for audit and ensuring that indirect costs are charged at the current rate.

REFERENCES

[2 CFR Part 225](#) (OMB Circular A-87), Attachments C and E

[2 CFR Part 230](#) (OMB Circular A-122)

[51 CFR 552](#)

[Annual Certifications and Assurances](#)

Single Audit Act Amendment of 1996

49 USC 5307(d)(1)(a)

49 CFR 18.20

49 CFR 18.26

FTA Circular 7008.1A

FTA Master Agreement, Section 5

FTA Circular 5010.1D, Ch. VI

FTA C 9030.1D, Ch. III, Sections 11 and 12, Ch. IV, Section 8.a(2)

FTA C 9300.1B, Ch. II, Sections 7 and 9.b

FTA C 9050.1, Ch. III, Section 12 and Ch VI, Sections 11 and 13

FTA C 9045.1, Ch. III, Section 12 and Ch VI, Sections 11 and 13

FTA C 9040.1F, Ch. III, Sections 1.a and 3 and http://www.fta.dot.gov/documents/FTA_C_9040.1F.pdf Ch VI, Sections 7 and 9

FTA C 9070.1F, Ch. III, Sections 1 and 9 and Ch VI, Sections 12 and 14

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

SOURCES OF INFORMATION

Project/state management plan(s), application package(s), standard subrecipient agreement(s), site visit checklists and other written policies and procedures should document how the grantee monitors its subrecipients to ensure they have the necessary local match, sufficient funds, and accounting systems to operate and maintain capital projects; as well as how they monitor subrecipients A-133 audit activities.

Project/state management plans should indicate the grantee's process for obtaining and reviewing audits and monitoring the resolution of findings related to FTA funded programs.

Subrecipients should maintain the back-up documentation for invoices submitted to the grantee. Subrecipients that charge indirect costs should have an approved cost allocation plan.

PILOT

3. TECHNICAL

PART 1 – BASIC REQUIREMENT

The grantee 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. Grant Reporting and Administration
2. Force Account Activities
3. Capital Leasing
4. Technical Oversight of Capital Projects
5. Oversight of Subrecipients, Transit Management and Service Contractors, and Lessees

REFERENCES

[49 USC Chapter 53, Section 5307](#)

[49 CFR Part 18](#) “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

[49 CFR Part 639](#), “Capital Leases”

[FTA Master Agreement](#)

[FTA Circular 5010.1D](#) “Grant Management Requirements”

[FTA C 9050.1](#), “The Job Access and Reverse Commute Program Guidance and Application Instructions”

[FTA C 9045.1](#), “New Freedom Program Guidance and Application Instructions”

[FTA Circular 5800.1](#), “Safety and Security Management Guidance for Major Capital Projects”

USEFUL WEBLINKS

[Section 5316 Frequently Asked Questions](#)

[Section 5317 Frequently Asked Questions](#)[Section 5316 and 5317 Performance Reporting](#)[Federal Funding Accountability and Transparency Act Subaward Reporting System](#)

www.USASpending.gov/news

[Office of Management and Budget Open Government Directive — Federal Spending Transparency Construction Project Management Handbook \(2009 Update\)](#)

[Project and Construction Management Guidelines \(2003 Update\)](#)

[Project Management Oversight Lessons](#)

[Quality Management System Guidelines](#)

[The Federal Financial Report](#)

[FFR Instruction Guide for Grantees](#)

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer will examine Milestone Progress Reports and Federal Financial Reports in TEAM; force account plans on file with FTA; and cost effectiveness documentation submitted to FTA.

1. **What procedures are followed to ensure that projects are completed and grants closed on time? Be prepared to discuss the status of any delayed or inactive grants or grants that should be closed.**

EXPLANATION

- a. FTA expects projects to be completed as scheduled in the grant agreement and as updated in the MPRs. Section 5307 and 5309 projects should be complete the within the period of availability, which is the time funds are available for obligation. Once grant funds are past the period of availability, the ability to amend the grant to change the scope is limited, thus restricting the use of remaining grant funds to the original scope of the grant.
- b. FTA expects ARRA grants to be completed by September 30, 2013. FTA will allow budget revisions to ARRA grants under limited circumstances:
 - (1) When the budget revision does not require prior FTA approval per FTA Circular 5010.1D;
 - (2) To add an activity line item or modify an existing ALI in the existing grant that will be funded using the cost savings from bids that come in under the current budget and can be documented with bid and contract documents for activities included in the same grant. These require prior FTA approval. Where a budget revision is initiated as a result of cost savings, documentation should be included in the TEAM grant file.
 - (3) A budget revision that includes the addition of an activity line item is subject to FTA review and approval on a case-by-case basis.
 - (4) FTA will consider approving budget revisions beyond those previously allowed if the budget revision will facilitate earlier drawdown of the ARRA grant funds. These need to be presented to Regional staff to determine whether they need prior approval from FTA Headquarters.
- c. For large, complicated construction projects, completing the project and closing the grant within the period of availability may not be feasible. Section 5316 and 5317 programs of projects should be implemented within two years of grant approval. FTA may terminate and close out grants not implemented within two years and deobligate the funds. The following table shows the period of availability of funds for selected programs.

Period of Availability of Funds	
5307	Year of apportionment plus 3
5309 fixed guideway modernization	Year of apportionment plus 3
5309 discretionary	Year of apportionment plus 2
5310	Year of apportionment plus 2
5311	Year of apportionment plus 2
5316	Year of apportionment plus 2
5317	Year of apportionment plus 2

- d. Funds deobligated within the period of availability are available for reobligation to a new grant.
- e. The grantee should initiate closeout with FTA within 90 days after all work activities for a program of projects (POP) are completed. A final FSR, budget, and, for Section 5316 and 5317 grants, POP are required at the time of closeout. *It is not necessary to wait for the single audit before closing a grant.*
- f. Sometimes projects may not require the amount of funds originally requested and obligated and therefore funds may remain after the project is completed. The grantee may reprogram remaining funds to other projects. However, it should not excessively prolong the life of the grant. Frequently, grantees allow small balances in completed projects to delay project closeout. The grantee should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects.
 - (1) Examples of good grant management practices include:

- (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 that are then tied to grants, not directly to grants
 - (5) Set project time limits (less than 2 years)
 - (6) Add new projects to older grants with available funds
 - (7) Transfer small remaining balances to new line items
 - (8) Deobligate project balances and reapply for funds (if within period of availability and allowed by the regional office)
 - (9) Regularly reconcile grant balances with those in TEAM-Web to the FPC level
 - (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
- g. FTA places a priority on closing out grants for which activity has ceased. FTA defines an inactive grant as a grant that was obligated more than five years before and has not had a disbursement within the past 18 months. Grants that have been inactive for a substantial length of time also should be closed unless the grantee has a good explanation, and activity is likely to resume soon. Grant inactivity may be a result of delays in project implementation or lack of resources. If a grant has been delayed for a substantial period of time and the grantee does not have a reasonable explanation, FTA may determine that the funds should be deobligated and the grant closed. Occasionally, a project may be delayed indefinitely because of factors beyond the grantee'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.

REFERENCES

[49 CFR 18.20\(4\)](#)

[49 CFR 18.50](#)

[FTA C 5010.1D](#), Ch. III, Section 5

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

[FTA C 9300.1B](#), Ch. III, Section 2, Ch. IV Section 3, Ch. V Section 2

[FTA C 9050.1](#), Ch. III, Section 7

[FTA C 9045.1](#), Ch. III, Section 7

SOURCES OF INFORMATION

Documentation of grant administration procedures and closeout processes.

2. ***Is the grantee's or a subrecipient's work force used in the execution of capital grant projects? If yes, what is the annual amount of force work being completed?***

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. Incremental labor costs from flagging protection, service diversions or other activities directly related to a capital grant may also be defined as force account work. Force account work does not include grant or project administration

activities that are otherwise direct project costs. Force account includes major capital project work on rolling stock.

- a. If the cost of force account work is \$100,000 or more, reimbursement is subject to a grantee having a force account plan and justification on file.
- b. When the cost of force account work to be performed equals \$10,000,000 or more, prior FTA approval is required.
- c. Use the full cost of the project, not just labor costs, when determining whether the project meets the threshold for a force account plan. Justification of a force account plan may be on the basis of cost, exclusive expertise, safety and efficiency of operations, or union agreement.
- d. Force account plans are prepared at the project level.
- e. 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.
- f. The grantee must ensure that subrecipients that have force account work of \$100,000 or more have on file a force account plan and justification.

REFERENCES

[FTA Master Agreement](#), Section 17. i
[FTA C 5010.1D](#), Ch. IV, Section 4.d
[FTA C 9030.1D](#), Appendix E

SOURCES OF INFORMATION

Force account plans

3. ***During the review period, did the grantee or a subrecipient use FTA capital assistance to finance the lease of any transit facilities or equipment? If yes, provide documentation of FTA review of the cost-effectiveness determination.***

EXPLANATION

- a. A lease may qualify for capital assistance if it meets the following criteria:
 - (1) The capital asset to be acquired by lease is eligible for capital assistance;
 - (2) There is or will be no existing federal interest in the capital asset as of the date the lease will take effect; and
 - (3) Leasing the capital asset is more cost-effective than purchase or construction of the asset.
- b. Grantees shall obtain FTA review of the cost- effectiveness determination prior to entering into any capital lease, including for tires.
- c. Grantees should refer to the guidance in OMB Circular A-94 and obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit.

REFERENCES

[OMB Circular A-94](#)
[49 CFR 639](#)
[FTA C 5010.1D](#), Ch. IV, Section 3.j

SOURCES OF INFORMATION

Grantees must have on file documentation of any cost-effectiveness evaluations submitted for FTA review

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

EXPLANATION

The grantee must ensure continuous management of grant projects. Grantees are required to have a formal Project Management Plan (PMP) for all major capital projects.

- a. 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 the Administrator determines it to be a major capital project based on criteria in 49 CFR Part 633.
- b. Grantees with smaller capital projects, such as construction projects, rolling stock procurements, and technology projects, should have a mechanism for technical oversight of the projects.
 - (1) Regular meetings between the project manager and contractor(s) should be held to review project status.
 - (2) Even though not required, some grantees have project management plans, especially for construction projects.
- c. Many grantees that do not have the technical expertise or internal resources to manage large projects hire an architectural/engineering (A/E) or other consultant to serve as project manager or provide technical oversight.
- d. A grantee that is a county or city may rely on the county or city engineer to manage a construction project.
- e. The transit system's own maintenance and operations directors typically oversee the inspection and acceptance of rolling stock, sometimes with consultant support.
- f. A grantee's information technology (IT) department may oversee technology projects, also sometimes with consultant support.
- g. If project delays are the result of inadequate actions by the grantee or failure in performance by a contractor, there may be deficiencies in the grantee's technical oversight of projects.
 - (1) The grantee's organizational structure and actions may contribute to continuing problems with project delays.
 - (2) When delays are due to poor performance by contractors, examine how the grantee managed the delay and tried to improve performance by the contractor. Note that delays are not unusual in major construction and technology projects.
 - (3) 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.
- h. When projects are implemented by an entity on behalf of a grantee, such as by a subrecipient or a management contractor, the grantee is ultimately responsible for and must ensure technical oversight of the project.

REFERENCES

[49 USC Section 5327](#)

[FTA C 5010.1D](#), Ch. II, Section 3 and Ch. IV, Section 4

[FTA C 5800.1](#)

SOURCES OF INFORMATION

Grantees should have documentation of quality control procedures for construction projects, revenue rolling stock procurements, and technology projects.

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

EXPLANATION

Many FTA requirements flow through the grantee to subrecipients, transit management or service contractors, and lessees. The grantee is responsible for ensuring that these entities are aware of and comply with the requirements.

- a. Before expending any FTA funds on projects, the grantee certifies to FTA that it and others operating on its behalf (subrecipients, contractors and lessees) have met all statutory and program requirements. The grantee must have sufficient documentation to support the certifications to FTA.
- b. The grantee must have an ongoing system to ensure that subrecipients, transit management or service contractors, and lessees adhere to federal requirements.
 - (1) While FTA does not prescribe specific monitoring activities for ensuring compliance, it does expect the grantee to look behind certifications and assurances.
 - (2) FTA relies on each grantee to develop and implement effective systems for monitoring and ensuring compliance with requirements.
- c. The issue of monitoring compliance with federal requirements is a continuing, critical theme throughout the Triennial Review. In each review area, the grantee is asked to provide information on the specific mechanisms in place for monitoring compliance with the federal requirements in that area. The examination under Technical takes an overall look at the systems in place for monitoring compliance with a range of federal requirements. Appropriate systems may include:
 - (1) applications/requests for proposals
 - (2) monthly, quarterly or annual reports
 - (3) meetings
 - (4) site visits
 - (5) vehicle/facility inspections
- d. Once an issue is discovered, FTA expects the grantee to follow up with the subrecipient, transit management or service contractor, or lessee to ensure that corrective action is taken.
 - (1) Efforts, including the follow-up on findings, should be documented.
 - (2) It is not necessary for the grantee to perform all of its monitoring functions in-house.
- e. Large grantees may have written procedures for oversight of subrecipients, transit management or service contractors, or lessees. Smaller grantees may have informal oversight mechanisms, such as periodic meetings.
- f. FTA expects grantees with a significant number of subrecipients, transit management or service contractors, and/or lessees to have formal oversight mechanisms.

REFERENCES

[49 CFR 18.37 and 18.40](#)
[FTA Master Agreement](#), Section 2.e
[FTA C 5010.1D](#), Ch. II, Section 3

SOURCES OF INFORMATION

Subrecipient agreements, transit management or service contracts, and leases should address monitoring procedures. Grantees should keep on file monthly, quarterly, or annual reports from subrecipients and contractors, site visit checklists, and any follow-up letters regarding a compliance issues.

- 6. Have designated and direct recipients of Section 5316 and 5317 funds submitted annual performance reports? Provide documentation.***

EXPLANATION

Designated and direct recipients with active Section 5316 and/or 5317 projects were required through FY 2010 to report on activities of themselves and their subrecipients via FTA's JARC and New Freedom Report Support Center. Designated recipients were to report information on behalf of subrecipients or forward the reporting portal to subrecipients to allow them to enter information themselves. Although MAP-21 repealed these grant programs, previously appropriated funds may be obligated through the period of availability (year of apportionment plus two). Recipients of Section 5316 and 5317 funds must comply with any guidance from the regional office for ongoing reporting requirements.

REFERENCES

[FTA C 9050.1](#), Ch. VI, Section 16

[FTA C 9045.1](#), Ch. VI, Section 16

SOURCES OF INFORMATION

Grantees in small urbanized areas apply for Section 5316 and 5317 in a Section 5307 grant. If a Section 5307 grant contains Section 5316 or 5317 funds, this information should be indicated in the project description or account classification codes.

- 7. For grants received after October 1, 2010, provide documentation that the grantee reported subawards by the end of the month following the month it made the subaward.***

EXPLANATION

All direct recipients of FTA grants, grant amendments and cooperative agreements over \$25,000 awarded on or 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 the Federal Funding Accountability and Transparency Act Subaward Reporting System (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 Central Contractor Registration (CCR). Grantees must update their CCRs annually.
- For a direct recipient to report on a subrecipient, the subrecipient must also have DUNS but is not required to register in CCR.
- 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.

- (2) 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.
- d. 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.
- e. The new reporting requirement does not apply to awards made before October 1, 2010, so FTA awards made before FY2011 will not appear in FSRS.

Information and training materials about FFATA subaward 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.

REFERENCES

P.L. 109-282

Federal Accountability and Transparency Act of 2006

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

SOURCES OF INFORMATION

Records of subrecipients awarded subgrants over \$25,000 and copies of the required FSRS subaward reports should be on file

4. SATISFACTORY CONTINUING CONTROL

PART 1 – BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. Real Property

- a. Incidental use
- b. Project use
- c. Excess real property
- d. Disposition
- e. Oversight

2. Equipment

- a. State procedures
- b. Equipment records
- c. Biennial physical inventory and reconciliation
- d. Property control system
- e. Oversight
- f. Leases
- g. Project use
- h. Disposition
- i. Insurance proceeds
- j. Fixed route bus spare ratio
- k. Contingency fleet
- l. Rail fleet management plan

Applicability: Under 49 CFR 18.32(b), a state will use, manage and dispose of equipment acquired under a grant by the state in accordance with state laws and procedures. Therefore, grantees that are a state or receive FTA funds as a subrecipient to a state follow state, not FTA equipment management procedures. If the grantee is a state agency, ask the questions in Part A and B and skip Part B questions 2, 3, 4, 7, 8 and 9. If the grantee is a subrecipient of a state, ask the above questions for equipment purchased with assistance received directly from FTA.

REFERENCES

[49 USC Chapter 53](#), Federal Transit Laws, Section 5307

[49 CFR Part 18](#), “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

[FY 2013 Master Agreement](#)

[FTA Circular 5010.1D](#) “Grant Management Requirements”

[FTA Circular 9030.1D](#), “Urbanized Area Formula Program: Program Guidance and Application Instructions” [FTA Circular 9300.1B](#), “Capital Investment Program Guidance and Application Instructions”

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the contractor will determine if the grantee’s equipment records and property disposal activities meet FTA requirements and if the spare ratio conforms to FTA guidelines.

PART A: REAL PROPERTY

1. *Does the grantee or a subrecipient use any FTA funded real property for non-transit purposes (incidental use)? If yes, provide documentation that FTA approval was obtained? How does*

the grantee document that it maintains continuing control over the property; that the property is also being used for transit purpose (if applicable); and that the grantee is recovering the costs of the use and applying the revenues for transit planning, capital or operating expenses,

EXPLANATION

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

Proceeds should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental or joint development uses may be retained by the grantees (without returning the Federal share) if the income is used for eligible transit capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.

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

REFERENCES

49 CFR 18.25 (g) and 18.31

FTA Master Agreement, Section 19

FTA Circular 5010.1D "Grant Management Requirements", Ch. I, Section 5.hh and Ch. IV, Section 2.i

FTA Circular 9040.1F, Ch. VIII

SOURCES OF INFORMATION

Grantee files or TEAM-Web for correspondence regarding incidental use

Sample lease agreement

Budgets or financial reports to ensure that proceeds are used to support the transit program

- 2. *Since the last review, did the grantee remove real property from the service originally intended at grant approval or put property to additional or substitute uses? If yes, please provide a copy of the notification of such change in the use of property sent to FTA.***
- 3. *Does the grantee or a subrecipient have any excess FTA funded real property? If yes, the reviewer(s) will examine the excess real property inventory and utilization plan during the review process. Has the plan been updated, if necessary?***
- 4. *Since the last review, did the grantee 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

Grantees are required to notify FTA when property is removed from the service originally intended at grant approval or if property is put to additional or substitute uses.

If FTA funded real property is no longer needed for any transit purpose, grantees are required to prepare or update an excess property inventory and utilization plan. The grantee's plan should identify and explain the reason for excess property. FTA C 5010.1D describes that the inventory list should include such things as: property location, summary of any conditions on the title, original acquisition cost, 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 grantee agree otherwise, the excess real property inventory and updated excess property utilization plan should be retained by the grantee and made available upon request and during an FTA review.

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

REFERENCES

[49 CFR 18.31](#)

[FTA Master Agreement](#), Section 19

[FTA Circular 5010.1D](#) "Grant Management Requirements", Ch. IV, Section 2.j

SOURCES OF INFORMATION

Grant files for notification of change of use of real property and excess property utilization plans

List of real property removed from the service originally intended or put to additional or substitute uses

Excess property utilization plans and documentation of disposition of FTA funded property

5. *How does the grantee monitor use of FTA funded real property used by subrecipients, contractors, and lessees?*

EXPLANATION

The grantee must ensure that subrecipients, contractors, and lessees use FTA funded real property (land and/or buildings) for project purposes. Examples of procedures include: annual certifications of use, site visit inspections, or a deed restriction. Title to real property acquired under a grant will vest with the grantee or the subrecipient. The FTA interest in real property continues until it is sold.

REFERENCES

[FTA Circular 5010.1D](#) "Grant Management Requirements", Ch. IV, Section 2.i

[FTA Circular 9070.1F](#) [FTA C 9070.1F](#), Ch. VI, Section 8

[FTA Circular 9050.1](#), Ch. VI, Section 7

[FTA Circular 9045.1](#), Ch. VI, Section 7

SOURCES OF INFORMATION

Subrecipient agreements, contracts, or lease agreements, for requirements imposed on the use of FTA funded real property.

Oversight procedures, such as reports or site visit checklists.

PART B: EQUIPMENT

6. If the grantee is a state, explain how it maintains control over FTA funded equipment and rolling stock.

EXPLANATION

Under the Common Rule, states use, manage and dispose of equipment in accordance with state laws and procedures. However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA funded equipment.

REFERENCES

[49 CFR 18.32\(a\)](#)

[FTA Circular 5010.1D](#) "Grant Management Requirements", Ch. II, Section 3.a

SOURCES OF INFORMATION

Equipment management procedures, if written, and sample records

State's equipment inventory

Disposition procedures, if written

7. Be prepared to demonstrate that the grantee's equipment records provide the required information.

EXPLANATION

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

- description
- I.D. number
- acquisition date
- cost
- Federal percentage
- grant number
- location
- use and condition
- disposition action
- vested title
- useful life

FTA strongly recommends, but does not require, that grantees update their property records to include useful life for all items put into service prior to November 1, 2008. Equipment purchased after October 2008 must have useful life in the records. A grantee's records must include leased assets funded with FTA dollars and equipment purchased or used by subrecipients. These records must include all of the required information.

Many grantees have computerized databases for property records. It is acceptable if no single report shows all the required data as long as the grantee can demonstrate that the records are complete.

REFERENCES

[49 CFR 18.32](#)

[FTA Circular 5010.1D](#) "Grant Management Requirements", Ch. IV, Section 3.k

SOURCES OF INFORMATION

Property records

Recent grant purchases in TEAM-Web Milestone Progress Reports

- 8. *What are the dates of the last two physical inventories of FTA funded equipment and rolling stock? During the review documentation that the results of the inventory were reconciled and equipment records updated will be examined.***
- 9. *What is the grantee's control system to prevent loss, damage or theft of FTA funded property, equipment and rolling stock? How does the grantee investigate and document any loss, damage or theft of FTA funded property, equipment and rolling stock,***
- 10. *How does the grantee maintain control of FTA funded contractor, lessee or subrecipient operated equipment and rolling stock?***
- 11. *Does the grantee lease FTA funded equipment and/or rolling stock to private operators? If yes, was prior concurrence from FTA obtained for leases entered into on or after November 1, 2008? During the review such releases will be reviewed to determine if they contain all FTA required provisions***

EXPLANATION

The Common Rule and FTA C 5010.1D require grantees to conduct a physical inventory of equipment and to reconcile the results to equipment records at least once every two years. The inventory should be done by someone other than the person responsible for the equipment records. Once the inventory results are reconciled, the equipment records need to be updated.

The grantee must have a control system to prevent loss, damage, or theft of equipment. Typically, grantees tag all FTA funded equipment with a property control number, but other systems can be used such as serial numbers or vehicle identification numbers; tags are not required. Additional control procedures include secure storage, surveillance systems, fencing, security forces, and insurance. Any loss, damage, or theft must be investigated and documented by the grantee.

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

Grantees may lease FTA funded assets to private operators. Prior FTA concurrence is required for equipment leased on or after November 1, 2008. If the lease is described in the grant application, FTA approval of the grant constitutes approval of the lease. Prior FTA approval is not required when equipment is leased to a transit management contractor that operates the service on behalf of the grantee. When FTA funded equipment and rolling stock 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 grantee and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
- A requirement for the lessee to maintain project property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project equipment.

- A cross reference to a service agreement. A default under the lease is a default under the service agreement and vice versa.
- A requirement that the leased property may not be subleased without grantee written approval and may not be otherwise encumbered without FTA written approval.

REFERENCES

49 CFR 18.32

FTA Circular 5010.1D "Grant Management Requirements", Ch. II, Section 3 and Ch. IV, Sections 3.e(1), 3.j(1), and 3.k

SOURCES OF INFORMATION

State-obtained prior FTA approval for leases of FTA funded equipment to private operators
 Fixed asset procedures
 Biennial inventory and inventory results reconciliation
 Annual financial audit reports and internal audit reports
 Documentation of control over contractor-, lessee-, and subrecipient-operated equipment
 Lease of an FTA funded asset to a private operator

- 12. Did the grantee notify FTA when it 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.*
- 13. Did the grantee or a subrecipient dispose of any FTA funded equipment or supplies during the past three years? If yes, when did FTA provide prior concurrence in the method of disposition of 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 grantee apply the proceeds to reduce the gross project cost?*
- 14. Did the grantee apply insurance proceeds to the cost of replacing 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

The grantee must use project property (equipment, rolling stock, etc.) for appropriate project purposes for the duration of the useful life of that property. If the grantee unreasonably delays or fails to use the project property during the useful life of that property, the grantee may be required to return the Federal assistance expended on that property. The grantee 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 grantee can use sale proceeds to reduce the gross project cost of future FTA eligible capital transit grants. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital grant, and reduce the liability as the proceeds are applied to one or more FTA approved capital grants. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.

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

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

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

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received. The following table defines the useful life of several typical FTA-funded items based on FTA C 5010 1.D. For items not listed by FTA, useful life definitions may be obtained from other reasonable sources including DOD and IRS based on acceptable accounting principles. It should be noted that the Altoona Bus Test Reports for individual bus models do not define the useful life of rolling stock.

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

Note: A heavy-duty transit bus is built as a bus whereas a medium-duty bus is built on a truck chassis.

REFERENCES

49 USC 5334

FTA Circular 5010.1D "Grant Management Requirements", Ch. IV, Section 3.I and Appendix D

FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions", Ch. VI, Section 4.a and b

FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions", Ch. III, Section 7.b(1)

FTA Master Agreement, Section 19

SOURCES OF INFORMATION

Approvals of like-kind exchange of rolling stock or retention of the proceeds from the sale of assets

List of FTA funded equipment removed from transit service since the last review

Fleet availability reports and maintenance records

Sales records and financial reports

Documentation of how fair market value was arrived at for any equipment not sold competitively.

15. Is there a bus contingency fleet? If yes, the contingency plan will be reviewed to ensure it is up to date and includes the required elements.

EXPLANATION

Buses may be stockpiled in an inactive contingency fleet in preparation for emergencies. No bus may be stockpiled before it has reached the end of its service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan. The plan should identify the contingency vehicles, storage location(s) and maintenance activities. The plan should be updated as necessary to support the continuation of a contingency fleet.

REFERENCES

49 CFR 18.32

FTA Circular 5010.1D "Grant Management Requirements", Ch. IV, Section 3.i

FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions", Ch. VI, Section 4.c (1) and (3)

FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions", Ch. III, Section 7.b (2) and (3)

SOURCES OF INFORMATION

Fleet status report in TEAM-Web

Rolling stock roster

Pullout logs or fueling logs

Documentation of the peak of the peak

Equipment records for a listing of the fleet

Contingency plan.

16. If the grantee is a rail operator, have available the rail fleet management plan. Does the plan include the required elements and is it up to date to reflect the current operating environment?

EXPLANATION

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

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

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

REFERENCES

[49 CFR 18.32](#)

[FTA Circular 5010.1D](#) “Grant Management Requirements”, Ch. IV, Sections 3.i and k

[FTA Circular 9030.1D](#), “Urbanized Area Formula Program: Program Guidance and Application Instructions”, Ch. VI, Section 4.c (2)

SOURCES OF INFORMATION

Rail fleet management plan

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5. MAINTENANCE

PART 1 – BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. Vehicle Maintenance
2. Facility and Equipment Maintenance
3. Warranty Program
4. Oversight

REFERENCES

[49 USC Chapter 53, Federal Transit Laws \(SAFETEA-LU\)](#)

[49 CFR Part 18](#) “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

[49 CFR 37](#) “Transportation Services for Individuals With Disabilities (ADA)”

[FTA Circular 5010.1D](#) “Grant Management Requirements”

[FTA Circular 9030.1D](#), “Urbanized Area Formula Program: Program Guidance and Application Instructions”

[FTA Master Agreement](#)

USEFUL WEBLINKS

[Transit State of Good Repair--Beginning the Dialogue](#)

PART 2 – QUESTIONS FOR THE REVIEW

PART A: VEHICLE MAINTENANCE

1. *When was the written maintenance program/plan for FTA funded rolling stock last updated? Does the program include goals and objectives? Are the plan and preventive maintenance checklists consistent with the current operating fleet? Are the plan and checklists consistent with manufacturers’ minimum maintenance requirements for vehicles under warranty? How does the grantee track the manufacturer’s recommendations and updates on requirements? Does the grantee have a maintenance management reporting system in place that informs senior management about preventive maintenance activities? If yes, what performance measures are used in these reports to compare actual preventive maintenance with the grantee’s maintenance plans and manufacturer’s recommendations?*

EXPLANATION

- a. Grantees are required to have a current written maintenance program for FTA funded rolling stock for all modes and fleets that documents the maintenance plan. The vehicle maintenance program should:

- (1) Include goals and objectives, such as extending vehicle life, reducing the frequency of road calls, and tracking maintenance costs compared to total operating costs.
 - (2) Detail how such goals and objectives are achieved.
 - (3) Be updated with the purchase of new rolling stock to account for new technology and/or new manufacturer's recommended maintenance intervals and programs.
 - (4) Incorporate actions to maintain each vehicle type and model on a specific cycle. These actions should be designed to ensure proper care and maximize vehicle longevity.
- b. For vehicles under warranty, the grantee typically must perform a series of preventive maintenance actions if the warranty is to remain valid.
 - (1) If the grantee either does not perform these required maintenance routines, or performs them at greater intervals than the manufacturer's maximum intervals, the grantee runs the risk of invalidating vehicle warranty provisions.
 - (2) Some operators have relied on oil analysis to extend the interval between oil changes beyond the engine manufacturer's recommended interval. This is acceptable provided the grantee has a letter from the manufacturer of the vehicles' engines stating that this practice will not void the engine warranty.
 - c. Grantees' senior management should be well informed on matters pertaining to preventive maintenance of all FTA-funded assets.
 - d. The presence of regularly recurring reports with specific performance measures tied to the grantee's written maintenance plans, including manufacturer's recommendations, and other actionable management data, indicates that senior management is monitoring maintenance activities.
 - e. FTA requires that rail operators purchasing vehicles with FTA funds have a rail fleet management plan that has been reviewed by FTA. FTA has extended this requirement to "new start" bus operations. These plans make brief mention of maintenance procedures. Normally, rail operators rely on more extensive written maintenance policies and procedures than those included in the fleet management plan.

REFERENCES

[49 CFR Part 18.32 \(d\)\(4\)](#)
[FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m](#)
[FTA C 9030.1D, Ch. IV, Section 8.c](#)

SOURCES OF INFORMATION

Vehicle maintenance plan(s) and/or program(s), the maintenance checklists, and the recommended maintenance procedures and updates of the manufacturer.

2. ***What is the grantee's schedule for vehicle preventive maintenance inspections? Maintenance will be reviewed on site to evaluate performance. What proportion of the grantee's FTA-funded assets is being managed by subrecipients, lessees or contractors?***

EXPLANATION

- a. Fleet deterioration takes a long time to occur and even longer time to correct [or is even irreversible] after the deterioration has taken place. Both take a toll on the grantee's resources and put FTA's investment at risk.

- b. Actual maintenance practices should be consistent with the written plan. If the grantee performs preventive maintenance inspections as planned, the grantee's entire maintenance program may be effective. If preventive maintenance inspections are not scheduled or performed as planned, it is probable that other aspects of the maintenance program are lacking as well and the grantee is putting FTA's investment and its warranties at risk
- c. Preventive maintenance is scheduled and completed differently for bus and rail vehicles based on manufacturers' recommendations and physical components.
- d. A sound preventive maintenance program will reduce the incidence of unscheduled repairs and extend the vehicles' useful life.
- e. Grantees may elect to hire third-party contractors to perform maintenance functions.
- f. Grantees may also have leased assets maintained by a lessee. The grantee is still responsible for the manner in which those FTA-funded assets are maintained and if not properly monitored, those assets may be at higher risk of not being properly maintained.
- g. The level of funds a grantee budgets for maintenance activities should be commensurate with the composition of assets being managed including average age of those assets. Maintenance budget cuts may indicate preventive maintenance activities are being deferred.
- h. Grantees are required to submit very specific data on the number, type and condition of their FTA-funded assets. This information, which is housed in the FTA's National Transit Database (NTD), allows for trends analysis across time by grantee and by asset type.
- i. Asset deterioration may occur in small increments each year, but a multi-year analysis can reveal negative trends. This is most often an indication that preventive maintenance is being deferred.

REFERENCES

49 CFR Part 18.32 (d)(4)
 FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
 FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION

- a. Maintenance plan(s) for the interval (miles or operated hours) between preventive maintenance inspections
 - b. Annual maintenance budgets for vehicles (bus, rail, ferry) and for facilities for each year since the last triennial review
 - c. Recurring preventive maintenance management reports for FTA-funded rolling stock, facilities and facility-related equipment
 - d. Management reports used by the grantee for monitoring preventive maintenance inspections and records for a selected sample of FTA funded vehicles
 - e. Preventive maintenance history for the preceding 12 months for each vehicle selected
 - f. Federal Railroad Administration (FRA) inspection records for commuter rail locomotives and cars
 - g. Maintenance records of ferry vessels
3. *How does the grantee's vehicle maintenance program address wheelchair lifts and other accessibility features? Do maintenance records indicate regular and periodic maintenance checks for lifts and ramps? Do maintenance records indicate that other accessibility features (e.g., lifts, ramps kneelers, public address systems, voice annunciation systems, etc.) are maintained in operative condition?*

EXPLANATION

The DOT ADA regulations require all vehicle accessibility features, such as wheelchair lifts, ramps, securement devices, signs, and communication equipment for persons with disabilities, be maintained and operational.

- a. The accessibility features must be repaired promptly if they are damaged or out of order.
- b. When ADA equipment is not working, the grantee must take reasonable steps to accommodate persons with disabilities who would otherwise use it.
- c. The ADA maintenance elements may be incorporated into the regular maintenance plan or addressed separately with specific checklists. At a minimum, the grantee must show that accessibility features are checked regularly for proper operation and receive periodic maintenance.

REFERENCES

49 CFR 37.161-163

SOURCES OF INFORMATION

Maintenance plan(s) and the maintenance checklists for ADA equipment

PART B: FACILITY AND EQUIPMENT MAINTENANCE

4. *When was the written maintenance program for its FTA funded facilities and facility-related equipment last updated? How is the program documented? Does the program include inspections and preventive maintenance activities to ensure that assets are protected from deterioration and reach their maximum useful life? Is the program consistent with manufacturers' minimum maintenance requirements for equipment under warranty? Where does the grantee maintain records of the maintenance history of facilities and equipment. How long are the records kept?*

EXPLANATION

Public transit requires a considerable investment in buildings, equipment, and machinery. As with vehicle maintenance, the proper maintenance of facilities, machinery, and equipment is key to protecting the FTA investment and prolonging the useful life of the asset. Grantees are required to have a current written maintenance program for FTA funded facilities and facility-related equipment.

- a. A model program for FTA funded facilities would include:
 - (1) An organization and assignment of responsibility for facility and equipment maintenance
 - (2) A series of inspections and routine maintenance actions designed to ensure proper care and maximize useful service life of facilities and equipment, and
 - (3) A record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment.
- b. The facility/equipment maintenance program should identify specific mission critical (as defined by the grantee) and safety items, which include, but are not limited to:
 - (1) Buildings
 - (2) Elevators
 - (3) Escalators
 - (4) Passenger Stations/Shelters

- (5) Parking lots
 - (6) Rights-of-Way (guideway, track, ballast, etc.)
 - (7) Electric distribution and control equipment
 - (8) Plumbing systems
 - (9) Overhead doors
 - (10) Vehicle maintenance lifts
 - (11) Vehicle washers and wash water recycling systems
 - (12) Heating and/or air conditioning units, and
 - (13) Power substations, etc.
- c. The facility/equipment maintenance program should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Such a system may be part of a grantees' maintenance management information system.
- (1) Maintenance intervals might be measured in terms of time (daily, monthly, annually) or
 - (2) In terms of usage (hours of use).
- d. In the case of rail systems, FTA's investment often involves the construction of passenger stations, rights-of-way, signals, and other related facilities and equipment.
- e. FRA regulates commuter rail systems and has detailed maintenance requirements for rolling stock, signals, and right-of-way that it enforces with a frequent inspection program. However, proper maintenance is needed by grantees for those components of the rail system not subject to FRA maintenance requirements, such as passenger stations, maintenance facilities, buildings, and equipment.

REFERENCES

49 CFR Part 18.32 (d) (4)
 FTA Master Agreement Section 19.c
 FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
 FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION

Facility and equipment maintenance plan and/or program
 Maintenance checklists

5. What is the grantee's schedule for facility and equipment preventive maintenance inspections? Records will be reviewed onsite to evaluate performance

EXPLANATION

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

REFERENCES

49 CFR Part 18.32 (d)(4)
 FTA Master Agreement Section 19.c
 FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
 FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION

Facility and equipment maintenance records or management reports.

6. *How does the grantee ensure that accessibility features are maintained in operative condition?*

EXPLANATION

The DOT ADA regulations require all facility accessibility features, such as escalators and elevators in the grantee's facilities, be maintained and operational. The maintenance plan and practices should ensure:

- a. The accessibility features must be promptly repaired if they are damaged or out of order.
- b. When the equipment is not working, the grantee must take reasonable steps to accommodate persons with disabilities who would otherwise use it.
- c. The ADA maintenance elements may be incorporated into the regular maintenance program or addressed separately with specific checklists.
- d. At a minimum, the grantee must show that accessibility features are checked regularly for proper operation and receive periodic maintenance. These requirements apply to both FTA and non-FTA funded facilities.

REFERENCES

[49 CFR 37.161](#)

SOURCES OF INFORMATION

Maintenance program and the maintenance checklists.

PART C: WARRANTY PROGRAM

7. *What is the grantee's system for tracking warranty issues and recovering warranty claims? Are claims pursued satisfactorily? Identify any fleet components under warranty. What other FTA-funded equipment is under warranty?*

EXPLANATION

If the grantee has equipment under warranty, FTA requires that the grantee have a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers.

- a. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the grantee and FTA.
- b. 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.

REFERENCES

[FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k](#)
[FTA C 9030.1D, Ch. IV, Section 8.c](#)

SOURCES OF INFORMATION

Vehicles and equipment under warranty.

Warranty recovery program.

PART D: OVERSIGHT

- 8. *If the grantee has FTA funded vehicles or facilities that are maintained by subrecipients, leased to service providers, or maintained under contract by other than the grantee's employees; what process does the grantee use to monitor compliance with FTA maintenance requirements include ADA requirements***

EXPLANATION

FTA funded vehicles and facilities must be maintained regardless of who operates and maintains them. Subrecipients, third-party contractors, and lessees “stand in the shoes” of the grantee as far as FTA maintenance requirements are concerned.

- a. The grantee must require subrecipients, contractors, and lessees to follow acceptable maintenance standards.
- b. The subrecipient agreement, contract or lease should address maintenance standards or maintenance performance indicators. The grantee may have its own maintenance plan or require its subrecipients, contractors, and lessees to develop their own maintenance plans.
- c. The grantee must have an effective mechanism to monitor subrecipients', contractors', and lessees' maintenance activities.
- d. An acceptable program would consist of periodic written reports on maintenance activities submitted to the grantee, supplemented by review of maintenance records and periodic inspections of the FTA funded vehicles and facilities.

REFERENCES

[49 CFR Part 18.37 and 18.40](#)
[FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m](#)
[FTA C 9030.1D, Ch. IV, Section 8.c](#)
[FTA Master Agreement Section 19.c](#)

SOURCES OF INFORMATION

Subrecipient/Contractor/Lessee agreements, contracts, and leases for maintenance requirements

Subrecipient/Contractor/ Lessee maintenance plans

- a. Monitoring activities of subrecipients, contractors, and lessees

PILOT

6. PROCUREMENT

PART 1 - BASIC REQUIREMENT

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

Federal funds may not be obligated unless steel, iron and manufactured products used in FTA funded projects are produced in the United States. Grantees must conduct pre-award and post-delivery audits of purchases of revenue rolling stock in order to verify that Buy America provisions, Federal Motor Vehicle Safety Standards and purchaser's requirements are met.

Debarment and suspension are tools used to protect the public from fraud, waste, and abuse in federal transactions. Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

Recipients of federal grants and contracts exceeding \$100,000 must certify compliance with restrictions on lobbying before they can receive funds.

AREAS TO BE EXAMINED

1. Procurement Policies and Procedures
2. Third-Party Contracts
3. Bus Testing
4. Buy America
5. Suspension/Debarment
6. Lobby 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 C 4220.1F applies. FTA funds, even operating assistance, can be segregated from local funds. FTA C 4220.1F does not apply to wholly locally funded capital procurements.

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

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

Instrumentalities of the state are considered state agencies. Regional transit authorities are not state agencies. If a triennial review is conducted of a state agency, the requirements in questions 3,4,5,6,7,8,9, 10, 12 (b. and c.), 13, 17, 18, 19, 20, apply.

Guidance on procurements of works of art and artist services is included in FTA C 4220.1F, Ch. IV, Section 2.g., and in FTA C 9400.1A, “Federal Transit Administration Design and Art in Transit Projects.” In addition, FTA’s “Best Practices Procurement Manual” includes extensive non-binding suggestions and advice on implementing FTA C 9400.1A and related provisions.

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

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

COMPLIANCE

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

REFERENCES

Procurement

[49 USC Chapter 53](#), Federal Transit Laws

[Transportation Equity Act for the 21st Century](#), Public Law No. 105-178

[49 CFR Part 18.36](#), “Procurement”

[FTA Circular 4220.1F](#), “Third-Party Contracting Guidance”

[FT Circular 5010.1D](#), “Grant Management Requirements”

[FTA Circular 9030.1D](#), “Urbanized Area Formula Program: Program Guidance and Application Instructions”

[FTA Master Agreement](#)

[FTA Circular 9400.1A](#), “Federal Transit Administration Design and Art in Transit Projects”

Buy America

[49 CFR Part 661](#), “Buy America Requirements”

[49 CFR Part 663](#), “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases”

[FTA “Dear Colleague” Letter, March 18, 1997](#)

[Federal Register Vol. 71, No. 54, pp. 14112-14118](#), Buy America Requirements; Amendments to Definitions

[Federal Register Vol. 72, No. 182, pp. 53688-53698](#), Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule

[Federal Register Vol. 72, No. 188, pp. 55103-55104](#), Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule correction

Suspension/Debarment

[2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"](#)

[2 CFR Part 180, "Nonprocurement Suspension and Debarment"](#)

[FTA Master Agreement](#)

[System Award Management Search](#)

Lobbying

[49 CFR Part 20, "New Restrictions on Lobbying"](#)

USEFUL WEBLINKS

[FTA's Best Practice Procurement Manual](#)

[FTA Procurement Frequently Asked Questions](#)

[FTA Procurement Helpline](#)

[National RTAP Procurement PRO](#)

[Bus Testing Website](#)

[49 CFR Part 571, "Federal Motor Vehicle Safety Standards"](#)

[U.S. DOT and FTA Buy America Home Pages](#)

[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

[Standard Form LLL](#)

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the contractor will determine if the grantee's written procurement procedures comply with FTA requirements. Procurement files will be examined on site to verify compliance with procurement, Buy America, suspension/debarment, and lobbying requirements.

- 1. How does the grantee ensure that applicable clauses and certifications are included in FTA funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000? In intergovernmental agreements and subrecipient agreements, if applicable?***

EXPLANATION

Grantees are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. The Master Agreement identifies certain clauses that apply to third-party contracts.

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

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

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

A checklist of required clauses is provided in Exhibit 6-1, Part A. The checklist provides a citation from the Master Agreement for each required clause. Exhibit 6-1 lists certifications, reports, and forms that are required for DBE, Buy America, debarment, and suspension, and lobbying. Part C lists other required items to assist in determining whether the grantee's policies and procedures are actually being followed.

The applicability of FTA clauses to different types of procurements is shown in Exhibit 6-2. Note that the construction of ferry vessels using federal funds is considered a public works project and therefore, the clauses related to construction contracts are applicable.

REFERENCES

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

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

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

[FTA Master Agreement](#), Ch. IV, Section 2

[FTA Circular 4220.1F](#), Appendix D

[Best Practices Procurement Manual](#)

[FTA Third Party Contracting FAQs](#)

SOURCES OF INFORMATION

Written procurement procedures

Procurement files

- 2. How does the grantee ensure compliance with Buy America provisions in all procurements of steel, iron, and manufactured products, except for products with a waiver or purchases under the simplified acquisition threshold (currently \$100,000)?***

EXPLANATION

Buy America regulations require that all procurements of steel, iron, and manufactured products, except for those subject to a waiver, contain Buy America provisions. Waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software and purchases under the simplified acquisition threshold (currently \$100,000). The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four minivans that totals \$120,000, even though each minivan costs \$30,000, must comply with the Buy America requirements. Grantees 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 grantee must include a clause citing the Buy America requirement and a Buy America certification in its invitations for bids (IFB) and requests for proposals (RFP). There are different certifications for procurements of rolling stock than for procurements of other steel, iron, or manufactured products. The specific text for steel, iron, or manufactured products can be found at 49 CFR 661.6. The specific text for rolling stock can be found at 49 CFR 661.12. Each is contained in the FTA Best Practices Procurement Manual. The requirements of 49 CFR 663 describe the audit reporting for a procurement of rolling stock.

The grantee, and those procuring on its behalf, must obtain a signed certification from each successful bidder providing steel, iron, or manufactured products when the total purchase price exceeds 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 grantee 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 grantee 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.

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

It should be noted that the Buy America waiver for minivans was rescinded on December 3, 2012

REFERENCES

49 CFR 661.6
 49 CFR 661.7
 49 CFR 661.12
 49 CFR 661.13
 Federal Register Vol. 71, No. 54, pp. 14112-14118
 Best Practices Procurement Manual. FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Procurement procedures
 Buy America certifications
 Procurements files

3. What is the grantee's process for following federal requirements when procuring Architectural and Engineering (A&E) services?

EXPLANATION

Architectural and Engineering (A&E) services must be procured using a qualifications-based process in accordance with the Brooks Act. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that 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 grantee may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the grantee determines is fair and reasonable.

Unless FTA determines otherwise in writing, a grantee may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. For design/build procurements, FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though the other necessary services would not typically be procured by that method.

REFERENCES

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

SOURCES OF INFORMATION

Procurement files of A/E services.

- 4. How does the grantee track 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 and seven years for rail procurements*

EXPLANATION

Grantees 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 grantee must obtain delivery, acceptance, or even fabrication in five or seven years. However, the maximum quantity specified in such multi-year contracts must represent the grantee's reasonably foreseeable need. Typically, grantees use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

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

REFERENCES

49 USC 5325(e)(1)
FTA Circular 4220.1F, Ch. IV, Section 2.e. (10)

SOURCES OF INFORMATION

Procurement files

- 5. Identify any time and materials type contracts the grantee has entered into using FTA funds. How did the grantee determine that this type of contract was the only method suitable for the procurement? Did the grantee specify a ceiling price?*

EXPLANATION

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

REFERENCES

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

SOURCES OF INFORMATION

Time and materials contracts

- 6. As part of its evaluation of bids and proposals prior to award, how does the grantee document that it:**
- a. *Performs a cost or price analysis?*
 - b. *Ensures award to responsive and responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract?*
 - c. *Searched the System for Award Management (SAM) to identify debarred bidders.*

EXPLANATION

Question 6.a: Grantees must perform cost or price analyses in connection with every procurement. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. A cost analysis must be performed for (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole source procurements, unless price reasonableness can be established based on market prices. Price analysis (i.e., catalog or market prices) may be performed for all other procurements.

Question 6.b: SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA-assisted contract awards be made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the grantee after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the grantee that it qualifies as “responsible” and that its proposed subcontractors also qualify as “responsible.”

Factors to consider when making responsibility determinations include:

- **Integrity and Ethics.** Has a satisfactory record of integrity and business ethics, in compliance with 49
- **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 Rules’ affirmative action and DOT’s Disadvantaged Business Enterprise requirements.
- **Public Policy.** Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B).

- Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations.
- Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- Performance Record. Is able to provide a satisfactory current and past performance record.

Question 6.c: Each grantee is required to ensure to the best of its knowledge and belief that none of its principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. FTA requires grantees to review the SAM before entering into any third party contract expected to equal or exceed \$25,000. A good practice is for the grantee to print the screen with the results of the search to include in the grant or procurement file. [Prior to the implementation of SAM, grantees were required to check the excluded parties listing system (EPLS)]

2 CFR Part 180 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction. The grantee should have a similar review process for its principals as it does for its contractors and subrecipients regarding suspension and debarment.

REFERENCES

49 CFR 18.36(f)(1)
 49 CFR 18.36(b)(8)
 49 USC Section 5325
 FTA Circular 4220.1F, Ch. VI, Section 6
 FTA Circular 4220.1F, Ch. VI, Section 8.b
 2 CFR Part 180
 FTA Master Agreement, Section 3.b

SOURCES OF INFORMATION

Procedures for performing cost and price analysis for every procurement action including contract modifications.

Procedures for responsibility determination and SAMS search

7. Identify any companies working for the grantee that are listed in SAM as excluded parties. When did the grantee inform FTA in writing of this information?

EXPLANATION

In the event that a grantee becomes aware, after the award of a contract, that an excluded party is participating in a covered transaction, it must promptly inform FTA in writing of this information. The grantee may continue any covered transaction in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. The grantee is not required to

continue the transaction and may consider termination. However, the grantee may not renew or extend the covered transaction (other than through a no-cost time extension) with the excluded party.

REFERENCE

[2 CFR Part 180](#)

SOURCES OF INFORMATION

Written notification to FTA

- 8. *Has the grantee used liquidated damage clauses in any of its procurements? If yes,***
- a. How was the damage rate specified in the solicitation and contract?*
 - b. If the grantee assessed and recovered liquidated damages, were those funds credited back to the project?*

EXPLANATION

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

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

REFERENCES

[49 USC 5307\(d\)\(1\)\(E\)](#)
[FTA Circular 4220.1F](#), Ch. IV, Section 2.b(6)(b)1

SOURCES OF INFORMATION

Contract files

- 9. *After the grantee awards a contract, is there evidence that the grantee:***
- a. Uses documented procedures and systems for administering the contract?*
 - b. Manages contract amendments and change orders, ensuring they are:*
 - i. Approved by the appropriate, authorized official(s)?*
 - ii. Determined to be fair and reasonable via use of independent cost estimate(s) and cost or price analyses?*
 - iii. Consistent with the contract's base scope?*
 - iv. Compliant with all applicable federal requirements?*
 - c. Only uses advance payments after receiving written approval from FTA headquarters?*

- d. Obtained title to the property or took alternative measures to protect FTA's interests if progress payments have been made.*

Question 9.a.: Grantees are required to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders.

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

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

Question 9.b.: A change order is an order authorized by the grantee directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Authorized grantee officials must approve change orders. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

Grantees must develop an independent government cost estimate and perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

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

Question 9.c.: FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A grantee may use its local share funds for advance payments. However, advance payments made with local funds before a grant has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement

Question 9.d.: FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. The grantee may use FTA assistance to support progress payments provided the grantee obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the grantee's financial interest in the progress payment.

REFERENCES

[49 CFR 18.36\(b\)\(2\)](#)
[FTA Circular 4220.1F](#), Ch. III, Section 3
[FT Circular 5010.1D](#), Ch. III, 3.c
[FTA Circular 4220.1F](#), Ch. VII, Section 2
[FTA Third Party Contracting FAQs](#)
[FTA Circular 4220.1F](#), Ch. IV, Sections 2.b.(5)(b) and (c)
49 CFR 26.29
49 CFR 26.37

SOURCES OF INFORMATION

Contract files

10. What FTA-funded contracts contain option clauses? What process did the grantee use to evaluate the options at the time of the initial bid? What is the process used to exercise an option?

EXPLANATION

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

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

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

REFERENCES

49 USC 5307 (d)(1)(E)

FTA Circular 4220.1F, Ch. VI, Section 7.b and Ch. V, Section 7.a.(1)

SOURCES OF INFORMATION

Contracts and other procurement documents.

11. Does the grantee contract for services funded with federal monies and/or has the grantee passed through FTA funds to a subrecipient? If yes,

- a. *Document that the grantee included competitive procurement requirements in its contract*
- b. *How does the grantee monitor the procurement process of the contractor and/or subrecipient to ensure all federal requirements are met?*

EXPLANATION

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

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

REFERENCES

FTA Master Agreement , Sections 2.d and 2.e

SOURCES OF INFORMATION

Contracts and subrecipient agreements

**12. Over the past three years, has the grantee purchased or leased rolling stock using FTA funds?
If yes,**

- a. *When did the grantee obtain the bus testing report (Altoona testing) showing that the bus model purchased meet FTA's bus testing requirements*
- b. *How did the grantee conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?*
- c. *How did the grantee verify domestic content, final assembly activities, and location of final assembly at the pre-award and post-delivery stages?*
- d. *Document that the grantee obtained DBE certifications from the transit vehicle manufacturer(s) with the bids/proposals submitted.*

EXPLANATION

A grantee purchasing buses with FTA funds must follow the requirements outlined in FTA Circular 9030.1D, Chapter VI.4.d.

Question 12.a.: The grantee must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle. Testing applies to buses and modified vans used in transit service, including but not limited to new bus and van models using alternative fuels such as methanol, ethanol, compressed natural gas (CNG), hydrogen, and electricity (if stored and/or generated on-board the vehicle).

FTA does not require a vehicle manufacturer to test its model before bidding. However, recipients of FTA funds acquiring any bus model must certify that an example of that model will have been tested and the recipient will have received a copy of the resulting Bus Testing Report prepared on the bus model before the final acceptance of the first vehicle.

Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA grantees in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

Questions 12.b and 12.c.: A grantee purchasing revenue service rolling stock with federal funds must conduct or order to be conducted pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's requirements, and Federal Motor Vehicle Safety Standards (FMVSS). The grantee is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The audits require the grantee to complete two certifications (Buy America and Purchaser's Requirements) at the pre-award stage and three certifications (Buy America, Purchaser's Requirements, and FMVSS) at the post-delivery stage.

These requirements apply to purchases of new and used revenue service rolling stock. However, FTA recognizes that it may be impractical for used vehicles to demonstrate compliance with some of the Buy America requirements, such as the pre-award and post-delivery audit, and having a resident inspector present during the vehicle's construction

FTA issued a waiver from Buy America requirements for purchases under the simplified acquisition threshold (currently \$100,000). Thus, a procurement of small buses and vans which totals less than \$100,000 is not subject to the general Buy America requirements of 49 CFR Part 661. This waiver does not exempt rolling stock from the pre-award and post-delivery purchaser's requirements and FMVSS audits required by 49 CFR Part 663.

PRE-AWARD AUDITS AND CERTIFICATIONS

Grantees may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, have a pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

Compliance with purchaser's specifications: The grantee must complete a pre-award purchaser's requirements certification verifying that the manufacturer's bid specifications comply with the grantee's solicitation requirements and that the proposed manufacturer is responsible and capable of building the bus to the solicitation specifications. The pre-award certification may be based on the grantee's determination that the vendor is responsive and responsible. The 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 grantee enters into a formal contract with a supplier.

Compliance with Buy America: If the procurement exceeds the simplified acquisition threshold (e.g. less than \$100,000), at the pre-award stage, the grantee must complete:

- A compliance certification verifying that the rolling stock will contain a minimum of 60 percent domestic components, by cost, and that final assembly will take place in the United States; or
- An exemption certification indicating that the grantee has a letter from FTA granting a waiver from the Buy America requirement.

The grantee 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.

Compliance with FMVSS: The grantee 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 grantee 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 grantee or before a bus is placed into revenue service, whichever is first. The post-delivery certification is based on the grantee's visual inspections and road tests and, if required, the resident inspector's monitoring of the final assembly process and final report of manufacturing activities. Grantees are required to have an inspector throughout the manufacturing 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.

Grantees that purchase buses for subrecipients are only required to use an in-plant inspector if more than 10 of the vehicles are purchased for a subrecipient in an urbanized area with a population of more

than 200,000, or more than 20 of the vehicles are purchased for a subrecipient in an area with a population of 200,000 or less. The grantee or the subrecipient may provide the inspector.

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 grantee or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

FMVSS: The grantee must complete, at the post-delivery stage, a certification that the grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stages a certification that the vehicles comply with the Federal Motor Vehicle Safety Standards (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.

Question 12.d.: All grantees must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. The grantee 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). Typically, dealers and manufacturers of unmodified, mass-produced vehicles such as vans and sedans are not currently classified as TVMs for the DBE regulation. Contracting opportunities for modification of mass-produced vehicles after purchase should be included in a grantee'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.

Please note that FTA is working with USDOT to formalize the definition of TVM. In particular, grantees using FTA funds for the purchase of ferries should include the contracting opportunities associated with these procurements in their overall three-year agency goal-setting methodology.

REFERENCES

49 CFR 26.49
49 CFR Part 571
49 CFR Part 661
49 CFR Part 663
49 CFR Part 665

FTA Circular 9030.1D, Chapter VI.4.d.
www.fta.dot.gov/bustesting
http://www.fta.dot.gov/laws/leg_reg_5423.html

FTA's DBE Website

Dear Colleague letter of March 30, 2001

Dear Colleague Letter, March 18, 1997

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

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements

Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements

Buying Used Buses

SOURCES OF INFORMATION

Vehicle procurement files

Procurement procedures

13. Identify any FTA-funded equipment obtained during the past three years through the piggyback procurement method. The files will be reviewed to ensure that the grantee obtained all required documentation.

EXPLANATION

A grantee may find that it has inadvertently acquired contract rights in excess of its needs. The grantee may assign those contract rights to other grantees if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Some refer to this process as "piggybacking." Although FTA does not encourage the practice, a grantee may find it useful to acquire contract rights through assignment by another grantee. FTA C 4220.1F has a detailed explanation of how grantees may use the existing contract rights of other grantees.

Purchases off of state GSA-type contracts are considered as piggyback procurements. FTA has determined that grantees may not purchase items from certain buying cooperatives such as the National Joint Powers Alliance (NJPA) and the Houston-Galveston Area Council (HGAC). FTA should be consulted before entering into any agreements with such organizations.

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

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

Any changes in the vehicle when assigned must be within the original scope (i.e., no major changes in configuration or design). Although FTA has provided additional guidance in the BPPM, FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award

took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar changes to be permissible changes.

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

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

Generally speaking, FTA encourages recipients to use joint procurements, particularly among smaller transit agencies. Recipients often can obtain better pricing by combining their requirements into larger joint purchases. However, they must limit their joint procurement to the amount of property and services required to meet each of their reasonably expected needs, and are prohibited from improperly expanding the procurement to include excess capacity simply for the purpose of assigning contract rights to others at a later date. Accordingly, FTA permits the assignment of unneeded contract rights to another transit agency—piggybacking—only when a recipient has unintentionally acquired more goods or options than it needs to support its transit system.

REFERENCES

[FTA Circular 4220.1F](#), Ch. V, Section 7.a(2)
[Piggybacking Worksheet](#) from FTA Best Practices Procurement Manual

SOURCES OF INFORMATION

Piggyback procurement file.

PART 3 - EXHIBITS

Exhibit 6-1.A
REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
All FTA-Assisted Third-Party Contracts and Subcontracts		
No federal government obligations to third-parties by use of a disclaimer		§2.f
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§10.a
Federal changes		§2.c(3)(d)
Civil Rights (EEO, Title VI & ADA)		§13
Incorporation of FTA Terms	Per FTA C 4220.1F	§17.a
Energy Conservation		§30
Awards Exceeding \$10,000		
Termination provisions	49 CFR Part 18 Not required of states	§12
Awards Exceeding \$25,000		
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000)		
Buy America	When tangible property or construction will be acquired	§16.a
Provisions for resolution of disputes, breaches, or other litigation		§96
Awards Exceeding \$100,000 by Statute		
Lobbying		§3.d
Clean Air		§17.m
Clean Water		§17.m
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§16.c

Exhibit 6-1.A
REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Construction Activities		
Davis Bacon Act	Except for contracts <\$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market	§28.a
Copeland Anti-Kickback Act Section 1 Section 2	All Contracts >\$2,000	§28.a
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.p(1)
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§26.e
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > \$100,000	§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 grantee 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.l
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§13.g

Exhibit 6-1.A
REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Assignability Clause	Piggyback procurements	§17.a
State Requirements		
Special Notification Requirements for States		§42

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Exhibit 6-1.B
REQUIRED CERTIFICATIONS, REPORTS, AND FORMS
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§17.o(4)
TVM Certifications	Procurements of buses and modified mass produced vans	§13.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products > \$100,000	§16.a
Pre-Award Audit	Rolling stock procurements	§17.o(3)
Pre-Award Buy America Certification	Rolling stock procurements > \$100,000	§17.o(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§17.o(3)
Post-Delivery Audit	Rolling stock procurements	§17.o(3)
Post-Delivery Buy America Certification	Rolling stock procurements > \$100,000	§17.o(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§17.o(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.o(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§17.o(3)
Excluded Parties Listing System search	Procurements > \$25,000	§3.b
Lobbying Certification	Procurements > \$100,000	§3.d(1)
Standard Form LLL and Quarterly Updates (when required)	Procurements > \$100,000 where contractor engages in lobbying activities	§3.d(1)

**Exhibit 6-1.C
OTHER REQUIRED ITEMS**

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3.d(1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8.b
Justification for Noncompetitive Awards	If applicable	Ch. VI, §3.i(1)(b)
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2.a(4)
No geographic preferences	Except for A&E services	Ch. VI, §2.a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7.b
Exercise of Options		Ch. V, §7.a

Exhibit 6-2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(Excluding micro-purchases, except for construction contracts over \$2,000)

Clause	Type of Procurement				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
No federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputes, breaches, or other litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)	

Exhibit 6-2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(Excluding micro-purchases, except for construction contracts over \$2,000)

Clause	Type of Procurement				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Bonding (not required of states)				>\$100,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All 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
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

PILOT

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

PART 1 – BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. DBE Program
2. DBE Goals and Reports
3. Procurement
4. Certification
5. DBE Complaints and Protests

REFERENCES

[49 CFR Part 26](#), “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”

USEFUL WEBLINKS

[FTA DBE Website](#)

[Official Questions and Answers for DBE Program Regulation \(49 CFR 26\)](#)

PART 2 – QUESTIONS FOR THE REVIEW

Question 1 is asked if a grantee does not have a DBE program on file with FTA

1. *Has the grantee met the threshold for a DBE program during the past three years? If yes, when was the threshold met?*

EXPLANATION

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

A grantee that is required to have a written program that is part of a local government may be allowed to submit a single plan to FHWA if it receives more funding from FHWA than from FTA. The grantee still must submit transit-specific overall three-year agency goals to FTA, if applicable.

REFERENCE

49 CFR 26.21

SOURCES OF INFORMATION

Procurement files

- 2. Is the grantee's DBE liaison officer (DBELO) the person listed in the DBE program? To whom does the DBELO report? How many staff are assigned to administer the DBE program?*

EXPLANATION

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

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. This 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. Therefore, if, for example, the procurement director is made the DBELO on a collateral duty basis, there may be a potential conflict of interest. If such an arrangement exists, the grantee should be requested to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

49 CFR 26.25 requires that the recipient have adequate staff to administer the DBE program. USDOT noted in the Federal Register in May 2010, "In times of budget stringency, it may be tempting to cut back on staff and other resources needed for certification, program oversight, and other key DBE program functions. This sentence emphasizes that it is a requirement of federal law that the DBE program be adequately staffed to ensure compliance with Part 26."

REFERENCE

49 CFR 26.25

SOURCES OF INFORMATION

DBE program submissions. Grantee's organization chart.

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

EXPLANATION

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

REFERENCE

49 CFR 26.21

SOURCES OF INFORMATION

Organization Chart

4. How did the grantee consult with women and minority organizations before the DBE goal was published?

EXPLANATION

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

- Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
- A published notice announcing the proposed overall 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.

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

REFERENCE

49 CFR 26.45

SOURCES OF INFORMATION

Documentation of consultation process

5. Identify any contracts the grantee awarded to firms that did not meet the specified DBE contract goal? How did the grantee determine if "good faith efforts" were sufficient?

EXPLANATION

Not every FTA funded contract is required to have a DBE goal. However, prior to awarding a contract to a firm that did not meet a specific DBE contract goal; the grantee must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goal. Examples of efforts the grantee may consider include: whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR Part 26.

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

REFERENCES

[49 CFR 26.53](#) and Appendix A

SOURCES OF INFORMATION

Documentation of the grantee's review of good faith efforts by contractors

- 6. Files will be reviewed on site to ensure that the grantee included required prompt payment and return of retainage clauses in its procurement documents. How does the grantee monitor and enforce the clause?**

EXPLANATION

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

- Decline withholding of retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors
- Decline withholding of retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed
- Withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after grantee'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 grantee. When a grantee 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 grantee's DBE program must provide appropriate means to enforce prompt payment. The grantee should be able to document implemented processes for monitoring and enforcement to ensure contractor compliance with prompt payment and prompt return of retainage requirements.

REFERENCE

[49 CFR 26.29](#)

SOURCES OF INFORMATION

Procurement files. Documentation of monitoring activities

- 7. How does the grantee monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? What enforcement mechanisms does the grantee use for DBE requirements? How many times has the grantee provided written consent to contractors allowing terminating or substituting a DBE firm after contract award?**

EXPLANATION

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

Prior to awarding a project with a DBE goal to a contractor, the grantee is required to collect from the awardee, the names, dollar amounts, and types of work for each DBE. This information forms the DBE commitment (not goal) of the awarded contract. The grantee should document efforts to monitor that primes are maintaining their 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 grantees 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 grantee. Details on what constitutes good cause is contained in 49 CFR Part 26.53(f). Grantee written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the grantee) in writing of its intent to request substitution or termination and allows the DBE five days to respond. Grantees must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

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

REFERENCES

[49 CFR 26.37](#)

[49 CFR 26.53](#)

[49 CFR 18.37 and 18.40](#)

SOURCES OF INFORMATION

Procurement files. Documentation of monitoring activities

- 8. How does the grantee monitor projects to ensure that DBEs are actually performing work committed to at the time of contract award? How often does the grantee review contracting records for compliance with DBE requirements? How does the grantee monitor worksites for compliance with DBE requirements? What documentation does the grantee have of monitoring activities?*

EXPLANATION

Grantees 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 law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

In February 2011, the regulation added the requirement that the grantee 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).

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 grantee’s responsibility for monitoring DBE participation does not end with the certification process.

REFERENCE

[49 CFR 26.37](#)

SOURCES OF INFORMATION

Documentation of monitoring activities. Written certification.

- 9. Since the last review, how many complaints or procurement protests did the grantee receive alleging that it did not comply with the DBE regulations? What is the grantee's process for handling and resolving such complaints? Do the complaints indicate any problems with the DBE program?*

EXPLANATION

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

REFERENCE

[49 CFR 26.103](#)

SOURCES OF INFORMATION

Obtain information regarding complaints from headquarters, the RCRO, and the grantee. At the site visit, ask the grantee to make available a listing of all DBE-related complaints or protests during the past three years and the disposition of such complaints. Review individual complaint files. Discussions with responsible officials and employees may be necessary.

8. PLANNING/PROGRAM OF PROJECTS

PART 1 – BASIC REQUIREMENT (PLANNING)

The grantee must participate in the transportation planning process in accordance with FTA requirements, SAFETEA-LU, and the metropolitan and statewide planning regulations.

BASIC REQUIREMENT (HUMAN SERVICES TRANSPORTATION)

Grantees must participate in a coordinated public transit-human services transportation planning process that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services for funding and implementation.

BASIC REQUIREMENT (PROGRAM OF PROJECTS (POP))

Each recipient of a Section 5307 grant shall develop, publish, afford an opportunity for a public hearing on, and submit for approval a POP.

AREAS TO BE EXAMINED

1. Metropolitan Planning Process
2. Coordinated Planning Process for Human Services Transportation
3. POP Public Participation Requirements

REFERENCES

[49 USC Chapter 53](#), Federal Transit Laws

[23 USC Section 134](#), Federal Aid Highways, “Metropolitan Planning”

[23 CFR Part 450](#), “Planning Assistance and Standards”

[FTA Circular 9030.1D](#), “Urbanized Area Formula Program: Program Guidance and Application Instructions”

[FTA Circular 9010.1](#), “The Job Access and Reverse Commute (JARC) Program”

[FTA Circular 9045.1](#), “New Freedom Program Guidance and Application Instructions”
[49 U.S.C. Section 5303 / MAP-21 Section 20005 – Metropolitan Transportation Planning](#)”

USEFUL WEBLINKS

[Metropolitan and Statewide Planning](#)

[Major Policy and Planning Issues](#)

[Planning Index: A to Z](#)

[Planning Certification Reviews](#)

[Transportation Planning Newsletter](#)

[Transportation Planning Capacity Building](#)

[NTI Courses](#)

[Questions and Answers on the Section 5310, JARC and New Freedom Programs](#)

PART 2 – QUESTIONS FOR THE REVIEW

PART A: METROPOLITAN PLANNING PROCESS

1. *If the grantee is located in a designated Transportation Management Area (TMA) (population 200,000 or more), when was the last Planning Certification Review (PCR) completed by the Federal Transit Administration (FTA) and the Federal Highway Administration (FTA/FHWA)? Did the grantee participate in the review? Identify any outstanding corrective actions from the PCR that pertain to the grantee. .*

If the grantee is not in a TMA (population under 200,000), what are the outstanding corrective actions (if any) from the metropolitan planning or statewide planning findings that pertain to the grantee?

EXPLANATION

FTA and FHWA conduct PCRs of MPOs in TMAs at least every four years. The PCR process includes input from participants in the planning process, including the grantee. The triennial review verifies the status of corrective actions from the PCR that pertain to the grantee.

In non-TMA areas (population of less than 200,000), FTA and FHWA assess the metropolitan planning processes and make a metropolitan planning finding. All states, at the time of an update to or amendment of the statewide transportation improvement program (STIP), must self-certify that the transportation planning process is being carried out in accordance with all applicable statutes and regulations. Subsequently, FTA and FHWA jointly make a statewide planning finding as the basis for approving the STIP update or amendment. The finding lists all concerns with the performance of planning processes in all urbanized (and non-urbanized) areas throughout the state.

REFERENCE

None

SOURCES OF INFORMATION

Records to document participation in the PCR and any relevant findings

2. *How does the grantee participate in the MPO planning process? Is the grantee a voting member of the MPO policy board*
3. *How does the grantee participate with the MPO in developing the listing of projects for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year?*

EXPLANATION

An MPO is designated for each urbanized area with a population of 50,000 or more individuals (as determined by the Bureau of the Census) to carry out the metropolitan transportation planning process.

The MPO is composed of local elected officials, appropriate state officials, and officials of public agencies that operate major modes of transportation in the region. Typically, the MPO comprises a policy committee of local elected officials and a technical advisory committee of the senior transportation planning staff of the participating agencies.

MAP-21, which became effective October 1, 2012, stipulates that MPOs in TMAs include transit officials on their policy board. There is a two-year window for making this change, where necessary.

- a. The MPO, in cooperation with the state(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall include: Capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53, including transportation enhancements, Federal Lands Highway Program projects, safety projects included in the State's Strategic Highway Safety Plan, trails projects, pedestrian walkways, and bicycle facilities.
- b. Any financial or travel demand forecasts related to transit services that appear in the TIP and the metropolitan transportation plan need to be developed cooperatively by the MPO and the transit operator.
- c. Annually no later than 90 calendar days following the end of the program year, the state, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

REFERENCES

23 USC Section 134
 49 USC 4303
 49 USC 5304
 23 CFR 450.314, 322, and 324

SOURCES OF INFORMATION

Listing of MPO policy board members

4. *Identify any complaints or lawsuits directed at the grantee with respect to transit operator involvement in the metropolitan planning process. What was the nature of each complaint/lawsuit? How were these complaints/lawsuits resolved? Are any pending?*

EXPLANATION

The existence of complaints and lawsuits can indicate shortcomings in the metropolitan transportation planning process.

REFERENCE

None

SOURCES OF INFORMATION

Complaints or lawsuits related to transit operator involvement in the metropolitan planning process

PART B: COORDINATED PLANNING PROCESS FOR HUMAN SERVICES TRANSPORTATION

5. *If the grantee is a designated recipient of Section 5316 and/or Section 5317 funds, provide evidence that the grantee:*
 - a. *Documents procedures for administering these programs in a Program Management Plan?*
 - b. *Derived projects from a coordinated public transit-human services transportation plan developed through a process that consisted of participation from public, private, and non-profit transportation providers, human services providers, and members of the public?*
 - c. *Notified eligible local entities of funding availability and project selection criteria?*
 - d. *Conducted a competitive selection process?*

- e. *Allocated funds to subrecipients on a fair and equitable basis?*
- f. *Awarded funds only to eligible applicants?*
- g. *Published a list of selected projects?*

EXPLANATION

Section 5316 funds are available for transportation projects that support the development and maintenance of transportation services designed to transport low income individuals to and from jobs and activities related to their employment and to support reverse commute projects. FTA C 9050.1 Chapter III Section 11 lists potential eligible projects.

Section 5317 funds are available for transportation projects that support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation service, including transportation to and from jobs and employment support services. FTA C 9045.1 Chapter III Section 11 lists potential eligible projects.

- a. The grantee must document its procedures for administering the program(s), including eligibility requirements and the competitive selection process, in a Program Management Plan.
- b. Federal Transit Law, as amended by SAFETEA-LU, requires that projects funded with Section 5310, 5316, or 5317 funds be derived from a locally developed, coordinated public transit-human service transportation plan (coordinated plan).
 - (1) A coordinated plan should maximize the programs' collective coverage by minimizing duplication of services.
 - (2) Further, a coordinated plan should be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers, and participation by the public.
 - (3) In particular, it is important for the designated recipient of these funds to provide evidence of outreach to local entities for participation in the planning process.
- c. The grantee shall publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential subrecipients. Potential mechanisms include websites and newspaper notices.
- d. The grantee shall conduct a competitive selection process that is separate from, but coordinated with, the planning process. The competition allocates funding to subrecipients to implement projects. Grantees may not allocate/suballocate funds without conducting a competitive selection process covering the large urbanized areas. The process should be transparent. The process may be conducted annually or at intervals not to exceed three years. Even if the process is conducted annually, the grantee may select projects that will be implemented over multiple years.
- e. The grantee must demonstrate that the competition was open and transparent and that funds were distributed fairly and equitably.
 - (1) Fair and equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive process.
 - (2) The result may not be an "equal" allocation of resources among projects or communities.
- f. There are three categories of eligible subrecipients of Section 5316 and 5317 funds: private non-profit organizations, state or local governmental authorities, and operators of public transportation services, including private operators of public transportation services.
- g. The grantee shall publish a list of selected projects following the competitive selection process in formats and forums appropriate to potential subrecipients. Many grantees publish the list of selected projects on their websites.

REFERENCES

Federal Transit Laws, Title 49, United States Code, Chapter 53
Federal Register notice published March 29, 2007 (72 FR 14851)
FTA Circular 9045.1 Chapter II, Section 4 a-i
FTA Circular 9050.1 Section 4 a-i

SOURCES OF INFORMATION

Grantees that are designated recipients of Section 5316 and/or 5317 funds should have on file the Program Management Plan, the public notification of availability of funding, and the published list of selected projects.

- 6. *If the grantee is not the designated recipient, direct recipient, or subrecipient of Section 5316 or 5317 funds, how is the grantee participating in the coordinated public transit-human service transportation planning process?***

EXPLANATION

FTA's Section 5316 and 5317 circulars note that recipients of Section 5307 and Section 5311 assistance are the "public transit" in the public transit-human services transportation plan and their participation is assumed and expected. Further, Section 5307(c)(5) requires that, "Each recipient of a grant shall ensure that the proposed program of projects (POP) provides for the coordination of public transportation services ... with transportation services assisted from other United States Government sources."

REFERENCES

FTA Circular 9045.1, Chapter V, Section 4.d
FTA Circular 9050.1, Chapter V, Section 4.d

SOURCES OF INFORMATION

Documentation to demonstrate how grantee participates in the coordinated planning process.

PART C: PUBLIC PARTICIPATION REQUIREMENTS

- 7. *Does the grantee rely on the MPO's public participation process to satisfy its public participation requirements for the Program of Projects (POP)?***

If yes:

- a. Does the MPO have an adopted public participation plan? What is the date of the document?***
- b. Does the plan clearly state that the MPO's public participation process satisfies the grantee's public participation requirements for the POP?***
- c. Does the public notice for the TIP state that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy POP requirements?***

If no:

- d. How does the grantee develop proposed POPs in consultation with interested parties, including private transportation providers?***
- e. How does the grantee ensure that proposed POPs provide for coordination of mass transportation services assisted by other federal sources?***
- f. Does the grantee make available to the public information on amounts available to the recipient under Section 5307 and the POPs it proposes to undertake?***

- g. Are proposed POPs published in a manner that affords citizens, private transportation providers, and local elected officials an opportunity to examine their content and to submit comments on the proposed program and the performance of the recipient?*
- h. How is an opportunity for a public hearing provided?*
- i. Identify any comments or complaints filed as a result of the publication of the POPs. How were such comments considered in preparing the final POPs?*
- j. How are final POPs made available to the public?*

EXPLANATION

Both the planning regulations and Section 5307 require public participation. The planning regulations require that the metropolitan transportation planning process include a proactive participation plan that: provides complete information, timely public notice, and reasonable public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs. (The grantee's projects must be programmed in the TIP to be eligible for funding.) Section 5307 grantees also have specific requirements for public participation related to the POP. POP public participation requirements do not apply to funds flexed into a Section 5307 grant.

FTA allows a grantee to rely on the locally adopted public participation requirements for the TIP in lieu of the process required in the development of the POP if the grantee has coordinated with the MPO and ensured that the public is aware that the TIP development process is being used to satisfy the POP public participation requirements. To comply with the latter requirement, the MPO's public participation plan should state that the MPO's public participation process satisfies the grantee's public participation process for the POP and the public notice for the TIP must have an explicit statement that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy the POP requirements.

If the grantee relies on its own process to satisfy POP public participation requirements, it must:

- a. Develop a proposed POP in consultation with interested parties, including private transportation providers. The grantee may rely on the MPO to assist in this process. A transportation advisory committee of the MPO may be informed or used as a reviewer of the POP. Private providers should be involved throughout this process.
- b. Ensure that the proposed POP provides for the coordination of Section 5307 public transportation projects with transportation projects assisted with other federal sources. Coordination may occur at many levels, from simple information sharing to total consolidation of services. Participation in the public transportation-human services planning process satisfies this requirement.
- c. Make available to the public information concerning the amount of funds available under the Section 5307 program and the POP that the recipient proposes to undertake with such funds.
- d. Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on it and on the performance of the grantee. The public notice is published in the general circulation newspaper in the service area of the grantee and should indicate where citizens can examine the proposed program and budget in detail and submit comments on the proposed program and the performance of the grantee. If the service area includes a significant number of persons with limited English proficiency, the grantee should distribute the notice to these populations. (See the Title VI section of this guide.)
- e. Provide an opportunity for a public hearing to obtain the views of citizens on the proposed POP. Most grantees include in the public notice an announcement that the proposed POP is available for review and that, if requested, a public hearing will be held. Some local laws or grantee policies make the public hearing mandatory.

- f. Consider comments and views received, including those of private transportation providers, in preparing the final POP.
- g. Make the final POP available to the public. If the proposed POP is not amended, including a statement that the proposed program will be the final program, unless amended, satisfies the requirements regarding the final POP.

REFERENCES

[23 CFR 450.314, 316, 322 and 324](#)

[FTA Circular 9030.1D](#), Ch. IV, Section 6

SOURCES OF INFORMATION

MPO's public participation plan and the TIP public notices or grantee notice of the POP the past three years.

PILOT

9. TITLE VI

PART 1 – BASIC REQUIREMENT

The grantee must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program, or activity receiving Federal financial assistance. The grantee must ensure that Federally supported transit services and related benefits are distributed in an equitable manner.

Note: The 2013 triennial review covers a three-year period in which the FTA requirements for Title VI changed. As of October 1, 2012, grantees must comply with the requirements of FTA C 4201.1B

AREAS TO BE EXAMINED

1. Title VI Program
2. System-wide service standards and policies
3. Limited English Proficiency (LEP)
4. Public Participation Plan
5. Subrecipient Monitoring
6. Program Specific Requirements for grantees that operate fixed route service in a UZA with a population of 200,000 or more and operate 50 or more vehicles in peak service.

REFERENCES

[FTA C 4702.1B](#) “Title VI Requirements and Guidelines for Federal Transit Administration Recipients”
[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”
[Executive Order 13166](#): “Improving Access to Services for Persons with Limited English Proficiency”
[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 WEBLINKS

[FTA Title VI page](#)
[DOT Limited English Proficiency \(LEP\) Guidance](#)
[Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs](#)
[Title VI Frequently Asked Questions](#)

PART 2 – QUESTIONS FOR THE REVIEW

1. *How does the grantee 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. Grantees 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. Recipients should also post Title VI notices at stations or stops, and/or on transit vehicles.

The notice shall include:

- A statement that the agency operates programs without regard to race, color, or national origin.
- A description of the procedures that members of the public should follow in order to request additional information on the recipient'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 recipient.
- Notices detailing a recipient's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed and consistent with the DOT LEP Guidance and the recipient's language assistance plan.

REFERENCES

49 CFR 21.9(d)
FTA C 4702.1B Ch. III, Section 5

SOURCES OF INFORMATION

Grantee's website. Posted notices.

2. *What steps has the grantee 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). The DOT LEP Guidance advises grantees to determine what steps are 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

The revised circular provides information on how a transit system can analyze information to address the above factors.

The DOT LEP Guidance also recommends that grantees develop an implementation plan to address the identified needs of the population it serves. The plan should:

- 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 the recipient provides language assistance services by language
- Describe how LEP persons are notified about the availability of language assistance
- Describe how the recipient monitors, evaluates and updates the language access plan, and
- Describe how the recipient trains employees to provide timely and reasonable language assistance.

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

REFERENCES

[Executive Order 13166](#)
[DOT LEP Guidance](#)
[LEP Handbook for Public Transportation Providers](#)
[FTA C 4702.1B](#), Ch. III, Section 9

SOURCES OF INFORMATION

Title VI program. Language Assistance Plan. Four-Factor Analysis

- 3. How did the grantee ensure inclusive public participation of minority and LEP populations into its public participation procedures such as soliciting comments on fare increases and service reductions and on its Program of Projects?***

EXPLANATION

The content and considerations of Title VI, the Executive Order on LEP, and the DOT LEP Guidance shall be integrated into each recipient'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. Grantees have wide latitude to determine how, when, and how often specific public participation activities should take place, and which specific measures are most appropriate. Grantees 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 recipient'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.

REFERENCES

Executive Order 13166
 DOT LEP Guidance
 LEP Handbook for Public Transportation Providers
 FTA C 4702.1B, Ch. III, Section 8

SOURCES OF INFORMATION

Procedures for outreach in Title VI program. Public participation policies including the required policy for fare increases and service reductions public comment on the program of projects.

4. How does the grantee monitor to ensure that subrecipients comply with Title VI requirements?

EXPLANATION

- a) The grantee is responsible for ensuring that subrecipients comply with Title VI requirements. If the subrecipients are not in compliance with Title VI requirements, then the grantee is not in compliance. 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
 - 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.
- b) 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.

REFERENCE

49 CFR 18.37 and 18.40
 49 CFR 21.9(b) (d)
 FTA C 4702.1B, Ch. III, Section 12
 Executive Order 13166
 DOT LEP Guidance

5. Since October 1, 2012, grantees that made decisions concerning the location of transit facilities (including but not limited to, storage facilities, maintenance facilities, operations centers, etc.) had to conduct an equity analysis. If the grantee has not made a decision, proceed to the next question. If the grantee has made a location decision how did the grantee 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 grantee 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.

When evaluating locations of facilities, recipients should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result. Analysis should be done at the census tract or block group where appropriate to ensure that proper perspective is given to localized impacts. If the recipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the recipient 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 recipient must show how both tests are met; it is important to understand that in order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

REFERENCES

49 CFR 21.9
FTA C 4702.1B, Ch. III, Section 12

SOURCES OF INFORMATION

Facility Equity Analysis

- 6. Identify the grantee’s system-wide service standards for each fixed route mode of service. Do the standards include measures for: vehicle load, vehicle headway, on-time performance, and service availability? What is the grantee’s policy for each mode operated for the distribution of transit amenities in the community and vehicle assignments? Has the policy on siting transit amenities been submitted to FTA?***

EXPLANATION

Grantees that operate fixed route services must set system-wide service standards and policies necessary to guard against discriminatory service design or operational decisions. Policies must be set for each mode. These standards and policies must be approved by the grantee’s governing body.

REFERENCES

49 CFR 21.9(b); Appendix C
FTA C 4702.1A, Ch. V, Sections 2 and 3
FTA C 4702.1B, Ch. IV, Section 4

SOURCES OF INFORMATION

Service standards in the Title VI. Minutes of governing board.

Below are questions that address program specific requirements for grantees that during the past three years provided service to geographic areas with a population of 200,000 or more and received 49USC 5307 funding or that served UZAs with a population of 200,000 persons or more and provided fixed-route service with 50 or more peak vehicles

- 7. If the grantee meets the threshold of operating fixed route service in an area of 200,000 or more population and using 50 or more vehicles in peak service what steps were taken to***

establish a major service change policy, disparate impact policy, disproportionate burden policy, and a monitoring plan? When were these policies approved by the Board or governing entity?

EXPLANATION

Grantees that provide service to geographic areas with a population of 200,000 or more or are located in a UZA with this population shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders. After October 1, 2012, this requirement no longer applies to grantees with fewer than 50 peak period vehicles, although all grantees are still required to comply with Title VI regulations that prohibit disparate impact discrimination and should review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color or national origin.

FTA requires grantees subject to this requirement to develop a definition of major service change* and to conduct a service equity analysis for all major service changes. Fare equity analyses are required for all fare changes. FTA previously recommended specific procedures for conducting an analysis of service changes and fare changes. The updated FTA C 4207.1B requires written procedures for the conduct of service and fare equity analyses be part of the Title VI program and requires grantees to use tables similar to those found Appendix K of the Circular. The circular also provides extensive guidance on how to conduct fare and service equity analyses.

Any fare or equity analysis conducted needs to be included in the next submission of the Title VI program. Transit providers may use decennial census data to develop maps and charts until the next decennial census or they may use American Community Survey (ACS) data between decennial censuses. These maps and charts will help the transit provider determine whether and to what extent transit service is available to minority populations within the transit provider's service area. These maps may be prepared using Geographic Information System (GIS) technology, although transit providers without access to GIS technology may prepare the maps in alternative formats.

** This requirement is different from the Section 5307 requirement for public comment for fare increases and major service reductions. (See Triennial Review Section 10 Public Comment on Fare and Service Changes.) Section 5307 requires a public comment process before raising a fare or carrying out a major reduction of transportation service. For purposes of Title VI, grantees to which this requirement applies must perform an equity evaluation for "major service changes" (both increases and reductions), as locally defined, and fare changes (both increases and reductions).*

REFERENCES

49 CFR 21.5(b)(2); (b)(7); and Appendix C
U.S. DOT Order 5610.2
FTA C 4702.1A, Ch. V, Section 4
FTA C 4702.1B, Ch. IV, Section 7
Fare and Service Equity Guidance

SOURCES OF INFORMATION

Title VI Program. Fare and Service Equity Analyses

8. How did the grantee collect and analyze demographic data showing the extent to which members of minority groups were beneficiaries of programs receiving FTA financial assistance?

- *If it prepared demographic and service profile maps and charts, how often were they updated?*
- *If it collected demographic information as part of agency ridership surveys, how and how often was it collected?*

- *If it had developed its own procedures to collect and analyze demographic data on its beneficiaries, how was this implemented?*

9. When did the grantee submit an updated Title VI program with the required data? Did the grantee update the required maps for every service change?

10. When was the last survey completed?

EXPLANATION

Demographic and Service Profile Maps and Charts. Transit providers shall prepare demographic and service profile maps and charts after each decennial census and prior to proposed service reductions or eliminations. Transit providers may use decennial census data to develop maps and charts until the next decennial census or they may use American Community Survey (ACS) data between decennial censuses. These maps and charts will help the transit provider determine whether and to what extent transit service is available to minority populations within the transit provider's service area. These maps may be prepared using Geographic Information System (GIS) technology, although transit providers without access to GIS technology may prepare the maps in alternative formats. FTA requires transit providers to prepare the following maps and charts:

- A base map of the transit provider's service area that overlays Census tract, Census block or block group, traffic analysis zone (TAZ), or other locally available geographic data with transit facilities—including transit routes, fixed guideway alignments, transit stops and stations, depots, maintenance and garage facilities, and administrative buildings—as well as major activity centers or transit trip generators, and major streets and highways.
- A demographic map that plots the information listed above and also shades those Census tracts, blocks, block groups, TAZs, or other geographic zones where the percentage of the total minority population residing in these areas exceeds the average percentage of minority populations for the service area as a whole. Demographic maps shall also depict those Census tracts, blocks, block groups, TAZs, or other geographic zones where the percentage of the total low-income population residing in these areas exceeds the average percentage of low-income populations for the service area as a whole.

Demographic Ridership and Travel Patterns. Grantees shall collect information on the race, color, national origin, English proficiency, language spoken at home, household income and travel patterns of their riders using customer surveys. Transit providers shall use this information to develop a demographic profile comparing minority riders and non-minority riders, and trips taken by minority riders and non-minority riders. Demographic information shall also be collected on fare usage by fare type amongst minority users and low-income users, in order to assist with fare equity analyses. The demographic information shall be displayed in tabular format.

FTA C4702.1B provides further information and guidance on how to prepare these maps, collect data, and incorporate information from customer surveys.

REFERENCES

[49 CFR 21.9\(b\)](#)

[FTA C 4702.1A](#), Ch. V, Section 1

[FTA C 4702.1B](#), Ch. IV, Section 5

SOURCES OF INFORMATION

Title VI program. Results of customer survey. Information on procedures to collect and analyze demographic data.

11. How and how often does the grantee monitor the service it provides to identify any disparities in the level and quality of service provided to different demographic groups? If it was determined that disparities existed what corrective actions did the grantee take?

EXPLANATION

Prior to October 1, 2012 grantees that provided service to geographic areas with a population of 200,000 or more and received 49 USC 5307 funding were required to monitor the transit service provided throughout the grantee's service area. Periodic service monitoring activities were required to compare the level and quality of service provided to predominantly minority areas with service provided in other areas to ensure that the end result of policies and decision-making was equitable service. Grantees needed to implement one of four alternative monitoring procedures.

With FTA C 4702.1B the requirements were updated to require grantees operating 50 or more peak buses and operating in a UZA of over 200,000 to monitor services in a specific way. Transit providers shall:

- Select a sample of minority and non-minority routes from all modes of service provided. The sample shall include routes that provide service to predominantly minority areas and non-minority areas
- Assess the performance of each minority and non-minority route in the sample for each of the transit provider's service standards and service policies
- Compare the transit service observed in the assessment to the transit provider's established service policies and standards.
- Analyze any route that exceeds or fails to meet the standard or policy, depending on the metric measured to determine why the discrepancies exist, and take steps to reduce the potential effects.
- Evaluate their transit amenities policy to ensure amenities are being distributed throughout the transit system in an equitable manner
- Develop a policy or procedure to determine whether disparate impacts exist on the basis of race, color, or national origin, and apply that policy or procedure to the results of the monitoring activities
- Brief and obtain approval from the transit providers' policy-making officials regarding the results of the monitoring program
- Submit the results of the monitoring program as well as documentation to verify the policy board's or governing entity's consideration, awareness, and approval of the monitoring results to FTA every three years as part of the Title VI Program.

Monitoring shall be conducted at a minimum once every three years.

REFERENCES

49 CFR 21.9(b) and Appendix C
FTA C 4702.1A, Ch. V, Section 5
FTA C 4702.1B, Ch. IV, Section 6

SOURCES OF INFORMATION

Monitoring procedures in the Title VI program submission. Documentation that service monitoring procedures has been conducted within the past three years.

12. If the grantee initiated or plans to initiate new fixed guideway service or service under the New Starts program when was the service and fare equity analysis completed?

EXPLANATION

Transit providers that have implemented or will implement a New Start, Small Start, or other new fixed guideway capital project shall conduct a service and fare equity analysis. The service and fare equity analysis will be conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of “major service change” as defined by the transit provider. All proposed changes to parallel or connecting service will be examined. If the entity that builds the project is different from the transit provider that will operate the project, the transit provider operating the project shall conduct the analysis. The service equity analysis shall include a comparative analysis of service levels pre-and post- the New Starts/Small Starts/new fixed guideway capital project. The analysis shall be depicted in tabular format and shall determine whether the service changes proposed (including both reductions and increases) due to the capital project will result in a disparate impact on minority populations. The transit provider shall also conduct a fare equity analysis for any and all fares that will change as a result of the capital project.

REFERENCES

[FTA C 4702.1B](#), Ch. IV, Section 7(c)

SOURCES OF INFORMATION

For grantees that have New Starts service or new fixed guideway service discuss with the RCRO if any fare or service equity analysis has been submitted or request the information from the grantee.

PILOT

10. PUBLIC COMMENT ON FARE AND SERVICE CHANGES

PART 1 – BASIC REQUIREMENT

Section 5307 grantees are expected to have a written locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

AREAS TO BE EXAMINED

1. Existence and Application of a Locally Developed Process
2. Oversight

REFERENCES

49 USC Chapter 53, Federal Transit Laws

49 CFR Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

FTA C 9030.1D, “Urbanized Area Formula Program: Program Guidance and Application Instructions”

PART 2 – QUESTIONS FOR THE REVIEW

1. ***What is the grantee’s process for soliciting and considering public comments prior to a fare increase or a major service reduction? Please answer the following questions:***
 - a. *What is considered to be a “major” service reduction?*
 - b. *How are public comments solicited?*
 - c. *How are comments considered in the decision-making process?*
 - d. *How are these procedures documented?*
2. ***Since the last review, has the grantee raised a fare or reduced service? Was the reduction considered major? Was the locally developed process followed? If not, what was done differently?***

EXPLANATION

Annually, Section 5307 grantees certify that they have a locally developed process to solicit and consider public comment prior to raising a fare or implementing major reduction in public transportation service. Grantees are expected to have a written policy that describes the public comment process. The grantee is responsible for defining a major service reduction. This can be defined as a standard, such as elimination of a route or reduction of “X” percent of service hours or miles.

The policy should provide an opportunity for a public hearing or meeting for any fare increase or major service reduction. It should describe how such meetings will be conducted and how the results will be considered. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. Some grantees offer an opportunity for public comment for all fare and service changes. This meets the requirement.

REFERENCES

49 CFR Chapter 53, Section 5307 (d)(1)(I) FTA C 9030.1D, Ch. IV, Section 8.k

SOURCES OF INFORMATION

Fare and Service Change policy(ies). Information provided to public on fare increases and service reductions. Transcripts from public hearings. Minutes of board meetings. Staff summaries or other internal memoranda that document the public participation process.

- 3. Do Section 5307 subrecipients have a process for soliciting and considering public comments prior to a fare increase or a major service reduction? How are these procedures documented? How does the grantee ensure that the subrecipients comply with public comment process requirements?**

EXPLANATION

The grantee must ensure that Section 5307 subrecipients have a process for obtaining public comment for fare increases and major service reductions. Either the grantee or its subrecipients are expected to have a written policy that describes the public comment process. The grantee must also ensure that subrecipients follow the process and consider public comment when they raise fares or implement major service reductions.

REFERENCES

49 CFR Chapter 53, Section 5307 (d)(1)(I)
49 CFR Part 18.37
FTA C 9030.1D Ch. IV, Section 8.k

SOURCES OF INFORMATION

Oversight policies and procedures. Subrecipient fare increases and/or major service reduction information.

11. HALF FARE

PART 1 – BASIC REQUIREMENT

For fixed route service supported with Section 5307 assistance, fares charged elderly persons, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than half the peak hour fare.

AREAS TO BE EXAMINED

1. Half Fares
2. Proof of Eligibility
3. Internal and Public Information
4. Oversight

REFERENCES

49 USC Chapter 53, Federal Transit Laws (SAFETEA-LU)

49 CFR Part 18 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

49 CFR Part 609 “Transportation for Elderly and Handicapped Persons”

FTA Circular 9030.1D, “Urbanized Area Formula Program: Program Guidance and Application Instructions”

USEFUL WEBLINKS

Medicare Eligibility

PART 2 – QUESTIONS FOR THE REVIEW

1. *What is the full fare? What is the half fare? During what hours are half fares available (all hours or off peak hours only)? Are there any fixed route services not included in the half fare program?*

EXPLANATION

Fares charged elderly persons, persons with disabilities, and Medicare cardholders during off peak hours for Section 5307 funded fixed route transportation must not be more than half the peak hours fare. If there are services such as neighborhood circulator and shuttle services with fares that are different from the grantee’s fare for its regular local service, separate half fares are needed for each type of service.

a. The requirement is applicable to:

- (1) All fixed route services, including service to sporting events, that operate in both peak and off peak hours and use or involve facilities and equipment financed with Section 5307 funds, whether the services are provided by the grantee directly, by a contractor, by a subrecipient, or by another entity that leases facilities and/or equipment from the grantee
- (2) Any express and commuter service that operates beyond peak hours
- (3) Fixed route services for which the grantee has not defined peak hours
- (4) Fixed routes that operate with reduced fares in both the peak and off-peak.

- b. This requirement is not applicable to:
 - (1) Demand responsive services, including route deviation services
 - (2) Services that operate only during peak hours, such as express and commuter routes
 - (3) Services that operate only in the off peak hours (e.g., lunchtime circulators and weekend routes to sporting events)
 - (4) Services funded with other FTA assistance that do not use Section 5307 funded equipment or are not operated out of Section 5307 funded facilities.
- c. "Elderly" by FTA regulations is to "at a minimum, include all persons 65 years of age or over." Grantees are permitted to use a definition that extends this fare to younger (e.g., 62 and over) persons. Persons with disabilities are defined by FTA as persons "who by reason of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including any individual who is a wheelchair user or has semi-ambulatory capabilities), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility."
- d. Medicare is available for people age 65 or older, younger people with disabilities, and people with end stage renal disease (permanent kidney failure required dialysis or transplant).
- e. The grantee determines its peak hours. Peak hours can be seasonal. If the grantee determines it is not large enough, or demand is not strong enough, to identify or justify peak hour service, then its entire service should be defined as "off peak." In this instance, the grantee has two options:
 - (1) Review ridership data and determine the peak ridership hours and develop a policy for half fare, or
 - (2) Choose not to determine a peak period and offer half fares during all hours.

REFERENCES

49 USC Chapter 53, Section 5307 (d)(1)(D)
 49 CFR 609.23
 FTA C 9030.1D, Ch. IV, Section 8d

SOURCES OF INFORMATION

Fare structure information.

Fare policies/tariffs and internal policy memoranda.

- 2. For the half fare, what proof of eligibility is required at time of boarding for elderly persons? For persons with disabilities? For Medicare cardholders? If a special identification card is accepted as the sole basis for determining some or all eligibility, what are the procedures for obtaining the card? Does the grantee require any additional information from a Medicare cardholder? If yes, what?**

EXPLANATION

The half fare program, as applied, may require passengers to show proof of eligibility when they pay their fare in order to receive the half fare. Examples of proof of eligibility include a driver's license, Medicare card, special identification card, and ADA eligibility card. The grantee may require more than one piece of identification for determining age or disability-related qualifications.

- a. A grantee may require passengers to obtain a special identification card as the sole basis for paying the half fare. A valid Medicare card must be considered sufficient proof of eligibility for

obtaining the identification card. Obtaining a special identification card must be relatively easy. For example, though not strictly prohibited, requiring individuals to travel to a single office, which may be inconveniently located, is not consistent with the intent of this requirement.

- b. In order to ensure that the person presenting a Medicare card is the authorized individual, the grantee may request proof of identity (another card with a photograph). There is no specific prohibition against this, provided the grantee is not asking for further proof of eligibility from the Medicare cardholder but is only checking the validity of the Medicare card.

REFERENCES

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1D, Ch. IV, Section 8d

SOURCES OF INFORMATION

Public informational materials on fare program

3. How does the grantee inform its employees and the public that half fares are available?

EXPLANATION

A policy is not effective unless it is communicated to those who will carry it out and to those who can take advantage of it. Training documents and communication with operators and others responsible for implementing the fare program should demonstrate that the grantee has notified staff of the program and included the correct information.

- a. Public information should include half fare information, including Medicare eligibility, if it contains fare information. For example, if a brochure says the fare to ride the bus is \$1.00, it also should say that the fare for elderly persons, persons with disabilities, and Medicare cardholders is \$0.50 during off peak hours.
- b. Though it is not necessary to have a separate fare category for Medicare cardholders, the grantee's readily available public information must be clear that Medicare cards are accepted as proof of eligibility for the half fare program, including for persons who are not elderly.

REFERENCES

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1D, Ch. IV, Section 8d

SOURCES OF INFORMATION

Public Information, training manuals and documents, system maps, route timetables, web site

4. How does the grantee ensure that subrecipients, contractors, and lessees operating fixed route service supported with Section 5307 funds allow elderly persons, persons with disabilities, and persons with a Medicare card to pay, during off peak hours, one half the fare generally paid during peak hours?

EXPLANATION

The grantee is responsible for ensuring that subrecipients, contractors, and lessees that operate services to which the half fare requirement applies comply. The oversight program should ensure:

- a. that a half fare is offered for applicable services during off peak hours,

- b. that the definition of off peak hours is reasonable,
- c. Identification requirements allow eligible persons to obtain the half fare, and internal and public fare information show the half fare and eligibility, including Medicare cardholder eligibility.

REFERENCES

[49 USC Chapter 53, Section 5307 \(d\)\(1\)\(D\)](#)
[49 CFR 609.23](#)
[FTA C 9030.1D, Ch. IV, Section 8d](#)

SOURCES OF INFORMATION

Policies and procedures for oversight.

Monitoring data.

PROTOT

12. AMERICANS WITH DISABILITIES ACT (ADA)

PART 1 – BASIC REQUIREMENT

Titles II and III of the Americans with Disabilities Act of 1990 (ADA) provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

AREAS TO BE EXAMINED

1. Vehicle Accessibility
2. Facility Accessibility
3. Service Provision
4. Training
5. Maintenance of Accessibility Features
6. Fixed Route Service
7. Route Deviation Service
8. ADA Complementary Paratransit
9. Rail Service
10. Ferry Service
11. Complaints/Lawsuits

REFERENCES

[49 CFR Part 27](#), “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance”

[49 CFR Part 37](#), “Transportation Services for Individuals with Disabilities”

[49 CFR Part 38](#), “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles”

[49 CFR Part 39](#), “Transportation for individuals with Disabilities: Passenger Vessels”

[FTA C 9040.1F](#), “Nonurbanized Area Formula Program Guidance and Grant Application Instructions”

USEFUL WEBLINKS

[FTA ADA Website](#)

[DOT Disability Law Guidance](#)

[DOT Origin-to-Destination Service](#)

[ADA Standards for Transportation Facilities](#)

[Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities](#)

[Project ACTION](#)

[Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation](#)

[U.S. Department of Justice ADA Homepage](#)

PART 2 – QUESTIONS FOR THE REVIEW

PART A: BUS AND RAIL VEHICLES

1. *Since the last review, has the grantee or a subrecipient purchased or leased any new or used bus or rail vehicles for use in fixed route service? If yes, were the vehicles accessible? For used vehicles acquired or leased which do not meet accessibility standards under 49 CFR Part*

38, please provide documentation of good-faith efforts meeting the requirements of 49 CFR 37.73(c), 37.81(c) or 37.87(c)?

- 2. Since the last review, has the grantee 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, please provide the results of the engineering analysis demonstrating a significant adverse impact on the integrity of the vehicle as required under 49 CFR 37.75(c), 37.83 (c), or 37.89(c)?**
- 3. If the grantee or a subrecipient contracts for fixed route service, including commuter bus service, how does the grantee know that the buses used for the service are accessible?**
- 4. Since the last review, has the grantee or a subrecipient purchased or leased any new vehicles that are not accessible for demand-responsive service, including route deviation service? If yes, please provide an analysis of equivalent service and when was the certification of equivalent service filed? How does the grantee monitor its own and its subrecipients' compliance with equivalent service provisions?**
- 5. Has the grantee purchased or operated vehicles that exceed ADA requirements?**
- 6. How does the grantee 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 contractors and subrecipients.

Private nonprofit entities are eligible subrecipients under Sections 5310, 5311, 5316 and 5317. Private for profit entities are eligible subrecipients under Sections 5316 and 5317. All Section 5311 subrecipients, including private nonprofit entities, follow the rules for public entities. For Section 5310, 5316, and/or 5317 subrecipients that are private entities that operate service for the general public, consult TCR's ADA Team Leader in FTA's Headquarters Office for guidance.

Public Entities

All new bus and rail vehicles purchased or leased by public entities operating fixed route service must be accessible (must comply with 49 CFR Part 38 standards).

All used bus and rail vehicles must be accessible. Used bus and rail vehicles that are not accessible 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 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 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.

Public entities operating demand-responsive service for the general public must purchase or lease accessible vehicles unless it can be demonstrated that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. (Demand-responsive service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements.) The service for the general public must be provided in the most integrated setting feasible and is 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, constraints on capacity or service availability

Before procuring any non-accessible vehicle for demand-responsive service, the entity must file an equivalent service certification with FTA. A state must obtain certifications from Section 5307 and 5311 subrecipients. Appendix C to 49 CFR Part 37 of the DOT ADA regulations includes a copy of the certification of equivalent service. Entities should signify that they have filed certifications of equivalent service by checking certification number 11 of the annual certifications and assurances. The grantee should monitor its service to ensure that equivalent service, that is, equal opportunity for each individual with a disability to use the transportation service, exists. The grantee should document its analysis.

Vanpool systems operated by public entities or in which public entities own, purchase or lease the vehicles are subject to equivalent service requirements. A vehicle that an individual with disabilities can use must be made available to and used by a vanpool in which such an individual chooses to participate.

Accessible Vehicles Exceeding ADA Requirements

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 the vehicle fleet can actually accommodate (e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The Final Rule deletes the sentence containing "common wheelchair" from Part 37 recognizing that some vehicles used in public transit could accommodate wheelchairs that did not meet the definition of "common wheelchair." Wheelchairs that exceeded the weight or dimensional requirements of a "common wheelchair" can be used on such vehicles. In such cases, the grantee must change its operating policies so as not to limit accessibility by the term "common wheelchair." (See Question 11 b.)

Subrecipient Oversight

Grantees must ensure that subrecipients comply with the ADA requirements when acquiring new, used or remanufactured vehicles or when remanufacturing vehicles. The grantee must ensure that subrecipients provide equivalent service when acquiring non-accessible vehicles for general public demand-responsive service.

REFERENCES

[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, Appendix C](#)
[49 CFR Part 38](#)
[49 CFR Part 38](#)
[49 CFR 18.37 and 18.40](#)

SOURCES OF INFORMATION.

Procurement records for vehicles. Justification for each non-accessible vehicle acquired. Records of how the grantee monitors equivalent service. This information needs to be available for both grantees and subrecipients.

PART B: FACILITIES

7. *Since the last review, has the grantee or a subrecipient constructed any new transit facilities? If yes, how did the grantee ensure that the facility would meet the appropriate accessibility requirements under DOT ADA regulations?*
8. *Since the last review, has the grantee or a subrecipient altered any transit facilities in any way? If yes, how did the grantee ensure the modifications were in accordance with 49 CFR 37.9 and Subpart C to 49 CFR Part 37? If no, please provide the documentation to support the determination that the facility was made accessible to the maximum extent feasible or that the cost of alterations required to the path of travel were disproportionate to the overall alterations in terms of cost and scope.*
9. *When subrecipients construct or modify facilities, how does the grantee ensure that they comply with ADA requirements as incorporated into 49 CFR Part 37?*

EXPLANATION

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9 and Subpart C to 49 CFR Part 37.

If the entity alters an existing facility used to provide public transportation, the altered portions of the facility must be accessible. When the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards, the alterations must be made accessible to the maximum extent feasible. 49 CFR 37.43(b) defines “to the maximum extent feasible” as “the occasional case where the nature of an existing facility makes it impossible to fully comply with applicable standards through a planned alteration.”

If the area being altered contains a primary function, such as a station platform, the path of travel to the altered area and the bathrooms, telephones and drinking fountains is required to be made accessible, unless the costs are disproportionate to the alteration, in which case whatever is not disproportionate must be made accessible. The regulations define “disproportionate” as exceeding 20 percent of the cost of the alteration to the area containing the primary function. The regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility features.

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.

REFERENCES

49 CFR 37.9

49 CFR Part 37 Subpart C (37.41-37.45)

[DOT Final Rule Adopting New Accessibility Standards – Effective November 29, 2006](#)

[DOT's ADA Standards for Transportation Facilities](#)

SOURCES OF INFORMATION

Procurement documents for architectural/engineering services with references to the ADA requirements. For grantees that have undertaken alterations to an area that serves a primary function but has not made the path of travel accessible due to disproportionate cost that is that it exceeds 20 percent of the total alteration cost, supporting documentation, including the cost calculation. Records of subrecipient oversight.

PART C: SERVICE PROVISION FIXED ROUTE

- 10. What are the grantee's and subrecipients' procedures and policies, including those prescribed in bus operator training manuals, for (1) making stop announcements on fixed route vehicles and (2) providing a means of route identification at stops served by multiple vehicles and multiple routes? How does the grantee ensure that operators are following the policy and, where appropriate, that the annunciator system is maintained in working condition?**
- 11. What are the grantee's and subrecipients' procedures and policies, including those prescribed in bus operator training manuals, governing the following ADA requirements:**
 - a. *Requesting that persons sitting in priority seats and any fold-down seats over the securement area vacate those seats when a person with a disability needs to use the*
 - b. *Transport of all wheelchairs regardless of size or weight, as long as the lift and vehicle can physically accommodate them.*
 - c. *Lift/ramp deployment at any stop*
 - d. *Service to persons using respirators, concentrators or portable oxygen*
 - e. *Time allowed for persons with disabilities to board/disembark a vehicle.*
- 12. How does the grantee provide public information/communications in accessible formats? In what formats is information regarding transportation services available?**
- 13. How are ADA service requirements, including those listed above, communicated to employees, contractors, subrecipients and lessees?**
- 14. How does the grantee monitor adherence to these requirements or otherwise enforce their implementation, including personnel disciplinary actions?**

EXPLANATION

The Department of Transportation (DOT) ADA regulations (49 CFR 37.161-167) detail specific requirements for bus and rail service. (For ferry service requirements, please see question 33.) The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should demonstrate that these requirements are the common and effective practice. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and how the entity enforces their implementation.

- a. 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.

- b. When more than one route serves a stop, the entity shall provide a means by which an individual with a visual or other disability waiting at a stop can identify the route on which he or she wants to travel.
- c. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary); and (ii) individuals sitting in a fold-down or other movable seat in a wheelchair securement location. The entity is not required to enforce the request. However, the entity can adopt a policy requiring individuals to move.
- d. DOT's amendment to Part 37, which went into effect October 19, 2011, removed the term "common wheelchair," a dimensional and weight-based definition intended to provide a set of parameters around which vehicles and equipment could be designed. Transit providers must carry any wheelchair and occupant, regardless of size or weight, if the lift and vehicle can physically accommodate them, unless doing so is inconsistent with legitimate safety requirements. "Legitimate safety requirements" includes such circumstances as a wheelchair of such size that it would block an aisle, would be too large to fully enter a railcar, would block the vestibule, or would interfere with the safe evacuation of passengers in an emergency. The grantee should not be limiting service to "common wheelchairs" or including the term in public information.
- e. Public information and communications must be made available in accessible formats. Entities must make available to individuals with disabilities adequate information concerning transportation services.
- f. 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).
- g. Entities may not deny service to individuals using respirators, concentrators or portable oxygen.
- h. Entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

The key to ensuring compliance with these policies is ensuring that all employees, contractors, subrecipients and lessees are aware of them. For employees, this might be done through initial and refresher training. It might even be beneficial for these policies to be communicated to riders, giving them an even knowledge base with the employees serving them.

Having policies is not sufficient; the grantee must monitor compliance with the policies. In addition to monitoring its own employees, the grantee is responsible for informing contractors, subrecipients and lessees of the ADA requirements and for monitoring compliance with the applicable required service provisions.

REFERENCES

49 CFR 37.161-167
 49 CFR 38.27, 38.55 and 38.105
[49 CFR 18.37 and 18.40](#)

SOURCES OF INFORMATION

Driver handbooks, operating and training manuals, and internal bulletins that contain information or procedures pertinent to the regulations. Records that show monitoring of compliance with requirements related to ADA provisions. Public information materials in alternative formats. Management plans for policies regarding service provision. Personnel disciplinary actions related to ADA issues. Records of oversight activities, including surveys, checklists, interview forms, and follow up correspondence.

15. How does the grantee effectively monitor service provided under contract or other arrangement to ensure all of the applicable ADA requirements are being met?

EXPLANATION

When a public entity enters into a contractual or other arrangement with a private entity to operate fixed route, demand-responsive service, including ADA complementary paratransit, rail or other services; the public entity is responsible for ensuring that the contractor meets all of the requirements of the DOT ADA regulations that would apply to the public entity if the public entity provided the service itself.

REFERENCE

49 CFR 37.23

SOURCES OF INFORMATION

Grantee's written policies and procedures for monitoring service provided under contract, along with any contract language and monitoring results.

PART D: TRAINING

16. How does the grantee ensure that personnel, contractors, subrecipients and lessees 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, courtesy and sensitivity?

EXPLANATION

The ADA requires that each fixed route or demand-responsive service operator ensure that personnel are trained to proficiency, as appropriate, for their duties. This training is required so that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities.

The DOT ADA regulations do not specify an acceptable course or frequency of training. The 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. The reviewers should assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, subcontractors, subrecipients and lessees are "proficient," and what, if any, consequences result if these standards are not met.

REFERENCES

49 CFR 37.173

[49 CFR 18.37](#) and [18.40](#)

SOURCES OF INFORMATION

Training materials and handbooks along with bulletins and other material provided to personnel. Complaint records.

PART E: MAINTENANCE

- 17. How does the entity ensure that accessible elements of transit buildings and facilities, such as elevators, ramps and accessible routes, are maintained in operative condition? When an elevator is out of service, how does the entity accommodate individuals who rely on the elevator?***
- 18. How does the entity ensure that vehicles with inoperative lifts or ramps are not placed into service?***
- 19. What is the policy with regard to lift and ramp failures on in-service vehicles? Are operators required to report failures promptly? Is alternative service provided to persons stranded for more than 30 minutes due to failures? Are lifts and ramps repaired within the timeframes required by the DOT ADA regulation prior to returning the vehicle to service? Are sufficient accessible spares available to enable the grantee, contractors and subrecipients to meet the timeframes?***

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.

In addition, public entities are required to have a system of regular and frequent maintenance checks for wheelchair lifts and ramps on non-rail vehicles that is sufficient to ensure that the lifts are operative. There is no specific requirement for daily cycling of lifts and ramps, though many entities have adopted this practice to meet this requirement. The adequacy of the procedures may be reflected in the frequency of in-service failures.

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. If a lift or ramp failure occurs on a route where the headway is greater than 30 minutes and the passenger cannot be served, the entity is required to provide alternative service within 30 minutes. The vehicle must be removed from service before the beginning of the next service day if the lift or ramp is not repaired. The lift or ramp should be repaired before the vehicle is returned to service. In the event that there is no spare vehicle available and the 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 more than 50,000 persons in population) or five days (if the entity serves an area of 50,000 persons or fewer in population). If the grantee has Section 5309, 5316 or 5317 subrecipients that are not public entities, consult TCR's ADA Team Leader in FTA's Headquarters Office.

The grantee must monitor its compliance with the ADA maintenance requirements. In addition to monitoring its own operations, the grantee is responsible for ensuring that subrecipients, contractors and lessees meet the requirements.

REFERENCES

49 CFR 37.161-163
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Maintenance and operations policies. Maintenance records. Policies and procedures for providing alternative transportation when a vehicle lift is out of service. Policies and procedures for effectively accommodating individuals when an elevator in a facility is inoperable.

PART F: ROUTE DEVIATION SERVICE

20. Does the grantee or a subrecipient provide route deviation service as its method for demand-responsive service? If yes:

- a. Does the service deviate for people with and without disabilities?
- b. Is the service publicly advertised as route deviation service?

21. How does the grantee ensure that route deviation service provided by subrecipients has the characteristics of demand-responsive 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 should provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for the general public as specified in 49 CFR 37.77.

The grantee must ensure that route deviation service provided by subrecipients has the characteristics of demand-responsive service.

REFERENCES

49 CFR Part 37.77

49 CFR Part 37 Appendix D to §37.3

[Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005](#)

FTA C 9040.1F, Ch. X, Section 11.f

49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Schedules, timetables, system maps, the website and other public information.

PART G: ADA COMPLEMENTARY PARATRANSIT

22. If the grantee operates a fixed-route transit system (bus or rail, except commuter rail or commuter bus), what hours and days does the complementary paratransit operate?

EXPLANATION

Each public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that are comparable to the level of service provided to individuals without disabilities who use the fixed route system. This includes subrecipients of FTA funding, including those that are private nonprofit entities, who must comply with the rules for public entities.

The requirement to provide complementary paratransit service does not apply to intercity bus, commuter bus and rail, or university service.

- Commuter bus service is fixed route bus service characterized by service predominately in one direction during peak periods, and with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, such as no attempt to comprehensively cover a service area, limited purposes of travel, and a coordinated relationship to another mode of transportation. An entity operating commuter bus service must be able to demonstrate that the service can be characterized as such.
- 49 CFR 37.25 specifies that “university transportation systems” are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating “university service.” In order for routes operated by a transit provider to be covered by this provision, an institution of higher education would have to have a formal arrangement with the transit operator. In some cases, the grantee may provide funding directly to an institution of higher education for purposes of providing university transportation service.
- The grantee must ensure that services described as commuter or university service provided by subrecipients have the characteristics specified in the DOT ADA regulations.

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 corridors within $\frac{3}{4}$ mile 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 is not required to provide paratransit service in areas it does not have the legal authority to operate, but 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 entity may provide additional service.

The DOT ADA regulations prohibit transit entities from limiting paratransit service to eligible individuals by means of a “pattern or practice” of untimely pickups, trip denials, missed trips, excessive trip lengths, and other operational practices. For evaluating excessively long trips, comparability is based on the length of time required to make a similar trip between the same two points at the same time of day using the fixed route system, including time spent traveling to and from a boarding point and waiting for the fixed route vehicle to arrive. FTA recommends basing paratransit travel time on the comparable fixed route travel time, plus 20-30 minutes to allow for a reasonable estimate of time spent walking to and from a bus stop, waiting for the bus to arrive, and making any necessary transfers from one vehicle to another.

Having policies is not sufficient; the grantee must monitor compliance with the policies and DOT ADA requirements. In order to determine whether capacity constraints exist, grantees should have a definition of what constitutes a missed trip, what on-time performance means, when a trip has been denied, and when travel time is too long.

Grantees should have a mechanism in place for monitoring on-time performance and tracking these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or

monitoring in any particular way, unless the entity has no trip denials and few complaints about other performance indicators it must be able to demonstrate that the denials it does have, as well as the missed trips, late pickups, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA eligible trips separately from any non-ADA services it may provide. If commingling ADA paratransit eligible riders with other riders (e.g., seniors), the grantee must be able to distinguish ADA eligible riders and ensure they are receiving service that meets all the criteria in 37.131 in terms of days and hours of service; service area; trip negotiation; lack of capacity constraints; and all other criteria.

REFERENCES

49 CFR 37.121-131

49 CFR Part 37.25

49 CFR Part 37 Appendix D to §37.3

[Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005](#)

[FTA C 9040.1F, Ch. X, Section 11.f](#)

[49 CFR 18.37 and 18.40](#)

SOURCES OF INFORMATION

Schedules, timetables, system maps, and other material on the grantee's website.

23. How does the ADA complementary paratransit eligibility process of the grantee and subrecipients ensure the requirements of Section 37.123(e) including those below are met?:

- a. *Eligibility decisions are made within 21 days of receipt of a complete application.? How does the grantee know?*
- b. *Persons who are denied eligibility or given conditional or temporary eligibility are given a written notice with specific reasons for the decision and notice of their right to appeal?*
- c. *The appeals process adheres to the DOT ADA regulations (opportunity to be heard, separation of functions, decision within 30 days, and written notification of decision with reason for it)?*
- d. *A decision is not made within 30 days of completing the appeals process, is transportation provided until and unless a decision to deny the appeal is issued?*

EXPLANATION

Each 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:

- Any person with a disability who is unable to board, ride or disembark from an accessible vehicle without the assistance of another person (except for the operator of a lift or other boarding device)
- Any person with a disability who could ride an accessible vehicle but the route is not accessible or the lift does not meet ADA standards
- Any person with a disability who has a specific impairment related condition that prevents the person from traveling to or from a boarding/disembarking location

Individuals may be ADA paratransit eligible on the basis of a temporary or permanent disability. There are many ways that the entity can determine eligibility. The process may include functional evaluation or testing of applicants. Evaluation by a physician or health professional may be part of the process, but 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.

- a. The entity must process a completed application within 21 days of submittal. If after 21 days, the entity has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the entity later denies the application. The entity may require passengers to be recertified at reasonable intervals.

Conditional eligibility must account for all factors that may prevent a given individual from using the regular 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 a lack of pedestrian infrastructure 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.

- b. The applicant must be given a written reason for the determination and notice of the right to an appeal. The written determination cannot just state that it has been determined that the applicant can use fixed route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed route transit is not sufficient. The reasons for denial must specifically relate the evidence in the matter to the eligibility criteria.
- c. 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.
- d. 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.

REFERENCES

49 CFR 37.121-125
49 CFR Part 37 Appendix D to 37.121-125
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Information provided to the public that describes the ADA complementary paratransit and the eligibility process

Eligibility records and appeal decision letters

Documented monitoring procedures and activities

24. How does the ADA complementary paratransit service provided by the grantee and subrecipients meet the following regulatory requirements:

- a. *The base mode of service is door-to-door or curb-to-curb. If curb-to-curb, how does the grantee ensure door-to-door-service is provided when necessary to achieve origin-to-destination service?*
- b. *Is service provided to at least one other individual accompanying an eligible passenger? If the eligible passenger travels with a personal care attendant (PCA), is service provided to at least one other individual in addition to the PCA?*
- c. *What are the grantee's procedures for providing paratransit service to out of town visitors and what documentation is required?*
- d. *What hours and days are requests for reservations accepted? How are reservations accepted when the administrative office is closed?*
- e. *How does the fare for complementary paratransit service compare to the regular fixed route fare?*

EXPLANATION

The DOT ADA regulations include detailed requirements for provision of ADA complementary paratransit. These requirements include:

- a. The regulations specify "origin-to-destination" service. The basic mode of service can be designated as door-to-door or curb-to-curb. If the entity's basic mode of service is curb to curb, the entity must have policies and procedures in place to provide assistance from the vehicle to the first doorway for customers who need additional assistance to complete the trip. The entity cannot charge individuals needing door to door service an extra fee as this violates the nondiscrimination provisions of 49 CFR 37.5.
- b. ADA complementary paratransit must be provided to at least one other individual accompanying an eligible individual. If the eligible individual is accompanied by a personal care attendant (PCA), service must be provided to the PCA and at least one additional individual accompanying the ADA eligible individual, if requested. Additional companions should be provided service if space is available.
- c. Service must be provided to visitors. Any visitor who presents ADA eligibility documentation from another jurisdiction must be provided service. If a visitor does not have ADA eligibility documentation, the entity may request proof of residency, and if the disability is not apparent, proof of disability. The entity must accept a certification by the visitor that he or she is unable to use fixed route transit. The entity is not required to provide more than 21 days of service within a 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.
- d. 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.

REFERENCES

49 CFR 37.123-133

[DOT Disability Law Guidance on Origin-to-Destination Service](#)

49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Internal operating policies that describe how trips are reserved and scheduled

25. What is the on-time performance rate?

26. *What is the denial rate (overall and for next day trips)? Are trips that cannot be provided at all tracked as denials? Are trips that cannot be scheduled within one hour before or after the eligible individual's requested travel time tracked as denials? When one leg of a round trip cannot be reserved, how many denials are tracked when the rider declines the round trip?*
27. *What is the telephone hold time standard? How is telephone access measured (averages, percentiles, etc.)?*
28. *At peak times, can a caller reach the reservation office? Do callers ever receive busy signals? How does the grantee or subrecipient know?*
29. *Are restrictions placed on the number of trips an eligible passenger may reserve? Are waiting lists used for non-subscription trips?*
30. *How does the grantee monitor its own and its subrecipients' ADA complementary paratransit service to ensure that there is no lack of access to phone reservations? Pattern or practice of trip denials? Untimely pick-ups? Missed trips? Excessively long trips? How are operational data confirmed for accuracy? Do the data indicate a potential "pattern or practice" of capacity constraints?*

EXPLANATION

The DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by restrictions on number of trips an individual will be provided, wait lists for access to non-subscription service and use of capacity constraints. Any operational pattern or practice that has the effect of limiting availability is also prohibited (e.g., limited phone reservation capacity, substantial numbers of late pick-ups, trip denials, missed trips, or excessively long trips).

If on a regular basis, the phone lines are busy, average or long phone hold times are excessive, call abandonment rates are high, or callers after a certain time (e.g., mid-morning) are told that they cannot reserve trips for the next day, the grantee is limiting the availability of service. 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 time .

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 the trip, it must be tracked as two denials. If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

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

"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 and the late arrivals in question must be significant in length to trigger this provision.

In order to determine whether capacity constraints exist, grantees should have a definition of what constitutes a missed trip, what on-time performance means, when a trip has been denied, and when travel time is too long. For example, at what point in time does a trip go from being late to being missed? Grantees are required to plan and budget for 100 percent of demand for next day service. Intentionally planning to deny a percentage of trips is not in compliance with ADA requirements.

Grantees should have a mechanism in place for monitoring its own and its subrecipients' on-time performance and tracking these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, unless the entity has no trip denials and few complaints about other performance indicators, the entity must be able to demonstrate that the denials it does have, as well as the missed trips, late pickups, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA eligible trips separately from non-eligible trips.

REFERENCE

49 CFR 37.131(f)

SOURCES OF INFORMATION

Service standards. Performance and monitoring data. Data on telephone activity (if available)

31. Does the grantee or a subrecipient use a no-show policy? If yes:

- a. *What is the suspension policy for no-shows?*
- b. *How does the grantee or subrecipient determine whether or not no-shows are under the rider's control?*
- c. *What are the thresholds for a cancellation before it is considered a no-show?*
- d. *What penalties are assessed for no-shows?*
- e. *What is the appeals process for suspensions?*
- f. *How does the grantee determine if the length of the suspension is reasonable?*

EXPLANATION

Many transit providers have a suspension policy for a pattern or practice of no-shows, as allowed by 49 CFR 37.125(h). However, such a policy must be narrowly tailored to 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 daily rider. Ideally, such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Only no-shows that are under the rider's control may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g., scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. In most cases a provider should be able to absorb the capacity of a trip cancelled two hours or less before the scheduled pickup.

Systems may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In some cases,

however, transit operators and riders facing suspension have mutually agreed to accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

REFERENCES

49 CFR 37.125(h)
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

No-show policy and records on actions taken

PART H: RAIL SERVICE

32. If the grantee operates or oversees the operation of rail service:

- a. *Please identify any open findings from station reviews conducted by the FTA Office of Civil Rights?*
- b. *How does the system ensure at least one accessible car per train?*
- c. *If accessible boarding is provided at a single point (i.e., as with a mini- high platform or wayside lift), what procedures are used to ensure that all passengers wanting to board or alight at that single boarding point are able to do so? What procedures are followed to ensure dwell times are sufficient to permit boarding and disembarking by persons with disabilities?*
- d. *What procedures does the service have to meet 49 CFR 32.42 performance standards?*

EXPLANATION

All rail operators in existence prior to September 6, 1991, are required to ensure that key stations (e.g., transfer points, major interchanges with other transportation modes, and stations serving major activity centers) are made accessible by July 26, 1993. Provisions were made for FTA to grant extensions until July 26, 2020, for individual light and rapid rail stations where extraordinarily expensive structural changes or complete replacement would be required, provided that two-thirds of key stations would be made accessible by July 26, 2010. For commuter rail, extensions could be made until July 26, 2010. The majority of these time extensions have since expired. Some key stations have not been completed, and others have been completed but outstanding issues remain. In such cases, the grantee is required to submit quarterly reports to FTA detailing its activities undertaken to complete the necessary work. Where FTA has granted an extension that has not yet expired, the grantee should be able to demonstrate how it will meet that extended deadline. Where FTA has not granted an extension or the extension has expired, and stations are not complete, the grantee should be able to provide documentation that it has made achieving compliance a priority.

All rail operators are required to ensure that new stations comply with ADA requirements for new construction. This includes a requirement that the rail to platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. DOT ADA regulations provide for exceptions to this requirement for commuter and light rail if it is not structurally or operationally feasible to provide level boarding, and the grantee lists alternate methods of boarding that may be used. There is no exception for rapid rail. If commuter or light rail stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented for each, the grantee may be in violation of the DOT ADA regulations. If a rail operator undertakes alterations to a station (other than key station requirements), those alterations must also be accessible per ADAAG.

Under the DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the grantee provides light or rapid rail) includes at least one car that is readily

accessible to and usable by persons with disabilities, including persons who use wheelchairs. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train should realign so as to permit boarding other accessible cars.

Effective February 1, 2012, new and altered commuter and intercity rail stations that were not under construction or in Final Design as of that date are required to comply with a new performance standard that requires either level boarding or an effective means of providing accessible boarding to each accessible car in each train.

The performance standard of section 37.42 requires that passengers with disabilities have access to all accessible cars available to passengers without disabilities in each train using a station. If all wheelchair locations are occupied by other wheelchair users in cars where the doors normally open at a station, FTA expects the rail operator to double-stop or move a lift, where necessary, in order to provide transportation to a wheelchair user in an unoccupied wheelchair location.

Entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

REFERENCES

49 CFR 27.7(b)(6)

49 CFR 37.9

49 CFR 37.42

49 CFR 37.47-37.61

49 CFR Part 37.93

49 CFR 37 Appendix D to §37.93

49 CFR Part 37.167

[ADA Standards for Transportation Facilities](#)

[DOT Final Rule Adopting new Accessibility Standards—Effective November 29, 2006](#)

[DOT Disability Law Guidance on Level Boarding](#)

[49 CFR 18.37 and 18.40](#)

SOURCES OF INFORMATION

System and/or station plan and associated documentation for altered or constructed new station

Fleet records of accessible vehicles and train compositions

PART I: FERRY SERVICE

1. If the grantee operates or oversees the operation of ferry service:

a. Indicate if any of the following apply:

1) Limitations on the number of persons with disabilities aboard

2) Medical documentation or advance notice, or other special requirements t

3) Higher fares, surcharges, or other fees for persons with disabilities.

b. What is the policy for determining how reasonable modifications will be made to accommodate individuals with disabilities, and the basis for determining whether specific modifications would fundamentally alter the nature of the service?

c. If transportation service is provided to and from a ferry, is the transfer service accessible?

d. Does the entity provide assistance as requested to passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas?

- e. *How does the entity ensure that assistance is promptly provided to passengers with disabilities who are not able to board or disembark without assistance?*
- f. *How does the grantee 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 grantee had to restrict persons with wheelchairs (power and manual) and mobility aids such as walkers, crutches, canes, braces or similar devices from using any areas that are open to pedestrians?*
- h. *How does the entity make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal? Does the CRO have the power to overrule the decisions of any other personnel, excluding the master of the vessel with respect to safety matters?*

EXPLANATION

Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," effective November 10, 2010. This Rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the DOT ADA regulations. Accessibility of landside facilities are addressed by Subpart D, and requirements for assistance and services to passengers with disabilities are contained in Subpart F.

- a. Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.
- b. 49 CFR 39.21(b)(2) requires public operators of passenger vessels to make reasonable modifications in policies, practices or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that making such modifications would fundamentally alter the nature of the service.
- c. If a passenger vessel operator provides, contracts for or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.
- d. The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.
- e. Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance, and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.
- f. Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers.

- g. 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.
- h. 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.
- i. 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 provide a requested accommodation, the entity's personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the available CRO.

REFERENCES

49 CFR Part 39 Subpart F
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Policies regarding serving passengers with disabilities. Contracts with ferry services. Organization chart showing the designation of a CRO. Job description of the CRO. Safety briefings available in alternative formats.

PART J: COMPLAINTS/LAWSUITS

- 33. *What are the procedures for tracking and resolving complaints? Who handles the complaints?***
- 34. *What are the document retention policies for complaints?***
- 35. *Are there any lawsuits alleging discrimination on the basis of disability? If so, identify parties to suits and issues.***

EXPLANATION

Grantees are required to have an internal complaint review system, and to retain copies of complaints for at least one year and a summary of all complains for at least five years. Complaints or legal actions may indicate a problem with implementation of the ADA requirements. Requiring subrecipients to notify the grantee of any complaints may be part of the grantee's oversight program. TCR should be advised of any pending lawsuits.

REFERENCES

49 CFR 27.13
FTA Master Agreement, Section 56

SOURCES OF INFORMATION

Information on complaints and lawsuits

PILOT

13. 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. Charter Service
2. Reporting
3. Use of Locally Owned Vehicles
4. Training
5. Oversight
6. Advisory Opinions
7. Cease and Desist Orders
8. Complaints

REFERENCE

49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

USEFUL WEBLINKS

ombudsman.charterservice@dot.gov

[Charter Home Page \(includes dockets, reporting forms and instructions, and other resources\)](#)

[Charter Registration Website](#)

[Questions and Answers](#)

QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer will examine TEAM-Web charter reports for documentation that the grantee operates charter service, the exception under which the service is operated, and evidence that the reports are submitted as required. The reviewer will also determine if the grantee has requested an advisory opinion from the Office of Chief Counsel or if any registered charter provider requested a cease and desist order or filed a complaint against the grantee.

1. ***What charter service is provided by the grantee and under what exemption is it provided? How does the grantee obtain information to report all charter services provided under the exceptions by it, subrecipients, contractors, and lessees?***

EXPLANATION

- a. Grantees providing charter service under four of the exceptions 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:
 - (1) October 1 to December 31: January 30
 - (2) January 1 to March 31: April 30
 - (3) April 1 to June 30: July 30

- (4) July 1 to September 30: October 30.
- b. The reporting requirement applies to the following four exceptions:
- (1) Government officials (604.6)
 - (2) Qualified human service organizations (604.7)
 - (3) Leasing (604.8)
 - (4) No response from a registered charter provider (604.9).
- c. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading from the FTA website.
- d. The grantee reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA grantees for Section 5307 formula funds.
- e. When charter service is provided under one or more of the exceptions under this regulation, the grantee, subrecipient, contractor, or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The grantee may maintain the required records in other formats in addition to the electronic format.
- f. The records shall include a clear statement identifying which exception the grantee relied upon when it provided the charter service.
- g. A single document or charter log may include all charter service trips provided during the quarter.
- h. 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.

REFERENCES

[49 CFR Part 604.12](#)
[FTA Charter Reports](#)

SOURCES OF INFORMATION

Charter logs and quarterly reports submitted to FTA in TEAM-Web

Procedure for obtaining the information from subrecipients, contractors, and lessees for reporting to FTA.

2. Does the grantee, a subrecipient, a contractor, or a lessee provide charter service with locally owned vehicles? If yes, are the vehicles stored and maintained in a locally funded facility?

EXPLANATION

The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained with only local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

REFERENCES

[49 CFR Part 604](#) Appendix C (a)(8)

SOURCES OF INFORMATION

Grantee records should document if facilities and equipment are locally funded.

- 3. How does the grantee ensure that its employees, subrecipients, contractors, and lessees have the necessary competency to effectively use the FTA charter registration website?*
- 4. How does the grantee ensure that subrecipients, contractors, and lessees comply with the charter regulations?*

EXPLANATION

As part of its oversight responsibilities, the grantee shall ensure that its affected employees, subrecipients, contractors, and lessees have the necessary competency to effectively use the FTA charter registration website. The grantee shall ensure that any subrecipient, contractor or lessee providing charter service operates the service in accordance with the regulation.

REFERENCES

[49 CFR Part 604.16](#)

[FTA Charter Service Quarterly Exceptions Reporting Form and Instructions](#)

SOURCES OF INFORMATION

Grantees should have documentation of how employees, subrecipients, contractors, and lessees were trained.

Oversight materials, such as reports, questionnaires, site visit checklists, should indicate that charter requirements are addressed.

Subrecipient grant agreements, operating contracts, and leases must contain the required charter bus clause.

PILOT

14. SCHOOL BUS

PART 1 - BASIC REQUIREMENT

Grantees are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally funded equipment or facilities cannot be used to provide exclusive school bus service. School tripper service that operates and looks like all other regular service is allowed.

AREAS TO BE EXAMINED

1. School Bus Service
2. Tripper Service
3. Oversight

REFERENCES

49 CFR Part 605 "School Bus Operations"
"Final Policy Statement on FTA's School Bus Operations Regulations" 73 FR 53384 September 16, 2008

USEFUL WEBLINKS

[FTA School Bus Operations Home Page](#)

PART 2 - QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer, will determine if the grantee operates exclusive school bus service under a statutory exemption and with the Administrator's approval.

1. ***Does the grantee or a subrecipient provide school "tripper service"? If yes, how is the service promoted to the general public?***

EXPLANATION

Grantees are permitted to provide school tripper service to accommodate the needs of school students and personnel. The school bus regulation defines school tripper service as regularly scheduled mass transportation service that is open to the public and is designed or modified to accommodate the needs of school students and personnel.

- a. Tripper Service allows a grantee to
 - (1) Utilize various fare collections or subsidy systems
 - (2) Modify the frequency of service, and
 - (3) 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.
- b. Buses used in tripper service must:
 - (1) Be open to the public
 - (2) Not carry designations such as "school bus" or "school special"
 - (3) Stop only at regular bus stops.

- c. All routes traveled by tripper buses must be within the regular route service as indicated in the published route schedules.
- d. Schedules listing tripper routes should be on the grantee's regular published schedules or on separately published schedules that are available to the public with all other schedules, including on the website.
- e. School tripper service should operate and look like all other regular service.

REFERENCES

[49 CFR Part 605](#)

["Final Policy Statement on FTA's School Bus Operations Regulations" 73 FR 53384 September 16, 2008](#)

SOURCES OF INFORMATION

School tripper service on published schedules.

- 2. *How does the grantee ensure that subrecipients comply with school bus regulations?***
- 3. *Do any contractors or lessees provide exclusive school bus service? If yes, how does the grantee ensure that it is provided only with non-FTA funded equipment and facilities?***

EXPLANATION

The grantee must ensure that exclusive school bus service operated by subrecipients is done under one of the statutory exemptions and does not involve FTA funded equipment or facilities. The grantee must ensure that school tripper service operated by subrecipients operates and looks like all other regular service.

The grantee must also ensure that any contractor or lessee that provides exclusive school bus service does so with locally owned vehicles that are not housed or maintained in an FTA funded facility.

REFERENCE

[49 CFR Part 605](#)

SOURCES OF INFORMATION

Subrecipient agreements, contracts and lease agreements must include the required school bus clause.

Oversight materials, such as reports, questionnaires, and site visit checklists should document that school bus regulations are addressed.

15. NATIONAL TRANSIT DATABASE

PART 1 – BASIC REQUIREMENT

Grantees that receive Section 5307 and 5311 grant funds must collect, record and report financial and non-financial data in accordance with the Uniform System of Accounts (USOA) and the National Transit Database (NTD) Reporting Manual as required by 49 USC 5335(a).

AREAS TO BE EXAMINED

1. Collection, Recording and Reporting of Data
2. Unlinked Passenger Trip and Passenger Mile Data Collection
3. Safety and Security Data Reporting

REFERENCES

[49 USC Chapter 53](#), Federal Transit Laws

[49 CFR Part 630](#), “Uniform System of Accounts and Records Reporting System”

[National Transit Database Reporting Manual](#) (www.ntdprogram.gov)

[Federal Register: October 5, 2010 \(Volume 75, No. 192, pp. 61553-61556\)](#) “FTA National Transit Database: Amendments to the Urbanized Area Annual Reporting Manual and to the Safety and Security Reporting Manual”

[FTA Circular 2710.1A](#), “Sampling Procedures for Obtaining Fixed-Route Bus Operating Data Required Under the Section 15 Reporting System”

[FTA Circular 2710.2A](#) “[Sampling](#) Procedures for Obtaining Demand-Responsive Bus System Operating Data Required Under the Section 15 Reporting System”

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer will determine if the grantee submitted its NTD reports as required or obtained a waiver.

1. *When did the grantee last provide a complete report to NTD of all transit operations?*

EXPLANATION

Grantees must report on all of their own directly operated service, contracted transit operations, and transit capital investments, even those not supported with FTA funds, except for ineligible activities such as charter, school bus, sightseeing and intercity transportation.

- a. A basic principle of NTD reports is that the reported financial information should reflect the full cost of providing the reported service information. Thus, a grantee should include service provided by contractors on its own NTD report, as purchased transportation service will have the fully allocated cost of the service paid by the grantee.
- b. Subrecipients should report separately to the NTD and should not be included in the grantee’s NTD report as they will have other sources of funds for the transit service, in addition to the 5307 funds or 5307-funded assets received from the grantee. Section 5307 grantees are required to list subrecipients in the B-70 Subrecipient Identification Form. (See related question 3.)

- c. If a grantee contracts with another public entity, the service should be reported by the party that physically operates the service or is the responsible contracting party for the operations contract.
- d. Recipients of Section 5307 that also receive 5311 funds from a state should report all activities, including rural operations, in the direct report to NTD and should not be included in the Rural NTD Report made by its state, unless a reporting waiver from the Urban NTD was received.
- e. States report data for Section 5311 subrecipients in the rural module.
- f. If a subrecipient receives both 5311 and 5307 funds and does not report directly to NTD because it has received a full reporting waiver, the state reports the subrecipient's whole operations in its rural report on an RU-20 Form.
- g. If a subrecipient receives both 5311 and 5307 funds and reports directly to the Urban NTD (either as full reporter or under a Small Systems Waiver), the state does not include the subrecipient in its report but instead lists the subrecipient in the RU-23 Urban Recipient report.
- h. If an Indian tribe receives Section 5311 funds from the state and FTA and does not report directly to NTD, the state includes the data for the tribe in its report. If an Indian tribe receives Section 5311 funds from the state and FTA and reports directly to NTD, the state does not include the tribe in its report but lists the tribe in the RU-22 Rural Recipient report.

REFERENCES

[49 USC 5335](#)
[49 CFR Part 630](#)
[NTD Reporting Manual](#)

SOURCES OF INFORMATION

Financial statements and NTD reports.

2. How does the grantee ensure correct reporting of operating expenses for ADA complementary paratransit?

EXPLANATION

Grantees must report operating expenses for demand response transportation and the total operating expenses for ADA complementary paratransit.

- a. The expenses associated with ADA complementary paratransit service should not include:
 - (1) Expenses for service to persons not eligible for ADA complementary paratransit service (e.g., demand response service for elderly persons); or
 - (2) For service provided to ADA eligible individuals beyond that required by the ADA (e.g., service beyond the required service area, same-day service).
- b. The total expenses for ADA complementary paratransit may be estimated.

REFERENCE

[NTD Reporting Manual](#)

SOURCES OF INFORMATION

NTD reports

- 3. Does the grantee have any Section 5307 subrecipients? If yes, the name and NTD ID of the subrecipients should be reported on the B-70 Subrecipient Identification Form. Do the subrecipients report required data using their own NTD ID?**

EXPLANATION

49 U.S.C. 5335 requires recipients or beneficiaries of Section 5307 funds to report to NTD. Section 5307 grantees are responsible for ensuring that any subrecipients (beneficiaries) of their Section 5307 grants report to NTD.

- a. Subrecipients include contractors and lessees who are not reimbursed for the full cost of the service by the grantee.
- b. A Section 5307 grantee does not need to ensure that subrecipients of other programs, such as Section 5316 or 5317, report to NTD but may have these subrecipients report voluntarily.
- c. The grantee may ensure that each subrecipient has its own NTD ID, or it may request a consolidated NTD ID for multiple subrecipients.

REFERENCE

[NTD Reporting Manual](#)

SOURCES OF INFORMATION

Grantees must be able to list Section 5307 subrecipients, contractors, and lessees that report directly to the NTD.

- 4. What is the system for collecting unlinked passenger trip and passenger mile information? If the grantee uses automatic passenger counters (APCs), please provide the agreement with NTD? How does the grantee validate the counts throughout the year?**

EXPLANATION

Unless the grantee has a waiver, it must report unlinked passenger trip and passenger mile data to NTD. Unlinked passenger trip data is usually reported as a 100 percent count. If the grantee uses registering fareboxes, tickets (as in commuter rail), or scheduling software (as in demand response), then it is required to use this information to report a 100 percent count.

- a. A grantee has three options for reporting passenger mile data:
 - (1) A 100 percent count of passenger mile data. This method should be used whenever it is available.
 - (2) A sample of average passenger trip lengths multiplied by the 100 percent count of unlinked passenger trips.
 - (3) A sample of passenger miles.
- b. A sample, if used, may be conducted according to:
 - (1) The NTD Sampling Manual;
 - (2) FTA circulars 2710.1a or 2710.2a; and
 - (3) An alternative sampling plan designed by a qualified statistician.
- c. If a 100 percent count of passenger miles is used, the grantee should have documented procedures for any incidental adjustments made to the data for occasional “missed trips” or other minor errors in the records.

- d. If the grantee uses sampling, the grantee should have documented procedures for ensuring that the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated.
- e. An APC is usually a pressure-sensor or a laser-beam in the doorway of a transit vehicle that counts transit passengers. If the grantee uses APCs for any of the three methods:
 - (1) It must have an agreement with NTD and should have a documented system to validate the data throughout the year in accordance with the procedures in the agreement.
 - (2) If APCs are used for sampling data, the grantee should have written procedures for ensuring that APCs are used on all routes and service runs, from all days of the year, to ensure a random sample.

REFERENCES

[49 USC 5335](#)
[49 CFR Part 630](#)
[NTD Reporting Manual](#)

SOURCES OF INFORMATION

Records used to report passenger mile information

5. Has the grantee submitted transit safety and security data in NTD for the past year timely?

EXPLANATION

All Section 5307 grantees, unless granted a small systems waiver, are required to provide information by mode and type of service in the Safety and Security Module of NTD. Commuter rail operators only report security incidents, as they report safety incidents to the Federal Railroad Administration (FRA).

NTD requires reporting of each major safety and security incident using the Reportable Incident Report form (S&S-40) within thirty days of the incident.

- a. A major incident is defined as an event involving a transit vehicle or transit-controlled property, involving one or more of the following:
 - (1) A fatality
 - (2) Injuries requiring immediate medical attention away from the scene (A rape is always considered to be such an injury, even if treatment is refused.)
 - (3) Property damage equal to or exceeding \$25,000
 - (4) An evacuation due to life safety reasons, and
 - (5) A main-line derailment.
- b. NTD requires monthly summary reports of non-major incident safety data using the Safety and Security Monthly Summary Report form (S&S-50). As of October 5, 2010, NTD suspended the reporting of personal security data on the S&S-50. Non-major safety incidents include any incident not reported as a major incident and meeting one or more of the following criteria:
 - (1) Injuries requiring immediate medical attention away from the scene resulting from incidents involving only one person (e.g., a slip, fall or electric shock)
 - (2) A fire requiring suppression, but not meeting the major incident threshold.

REFERENCES

[49 CFR Part 630](#)

[Federal Register: October 5, 2010 \(Volume 75, No. 192, pp. 61553-61556\)](#) “FTA National Transit Database: Amendments to the Urbanized Area Annual Reporting Manual and to the Safety and Security Reporting Manual”

[TSA/FTA Action Item No. 11](#)

SOURCES OF INFORMATION

Records of any major incidents

PILOT

PILOT

16. SAFETY AND SECURITY

PART 1 - BASIC REQUIREMENT

Under the safety authority provisions of the federal transit laws, the Secretary has the authority to investigate the operations of the grantee for any conditions that appear to create a serious hazard of death or injury, especially to patrons of the transit service.

As recipients of Section 5307 funds, grantees must annually certify that they are spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

FTA and the Department of Homeland Security's (DHS) Transportation Security Administration (TSA) have developed a list of **17 Security and Emergency Management Action** Items for Transit Agencies. The action items aim to elevate security readiness throughout the public transportation industry by establishing baseline measures that transit agencies should employ.

The goal of FTA's Safety and Security Program is to achieve the highest practical level of safety and security in all modes of transit. To this end, FTA continuously promotes the awareness of safety and security throughout the transit community by establishing programs to collect and disseminate information on safety/security concepts and practices. In addition, FTA develops guidelines that transit systems can apply in the design of their procedures and by which to compare local actions. Many of the questions in this review area are designed to determine what efforts grantees have made to develop and implement safety, security, and emergency management plans. While there may not be specific requirements associated with all of the questions, grantees are encouraged to implement the plans, procedures, and programs referenced in these questions. For this reason, findings in this area will most often result in advisory comments rather than deficiencies.

AREAS TO BE EXAMINED

1. Safety
2. Security and Emergency Management

REFERENCES

[49 USC Chapter 53](#), Federal Transit Act, Section 5307(d)(1), Security Expenditures
[49 CFR Part 630](#), "Uniform System of Accounts and Records and Reporting"
[49 CFR Part 659](#), "Rail Fixed Guideway Systems, State Safety Oversight"

USEFUL WEBLINKS

[FTA Bus Safety Website](#)
[FTA Rail Safety Website](#)
[Manual for the Development of Bus Transit System Safety Program Plans](#)
[FTA Dear Colleague Letter June 26, 2009](#)
[FTA Dear Colleague Letter September 22, 2009](#)
[FTA Dear Colleague Letter July 13, 2009](#)
[FTA Transit Security Website](#)
[TSA/FTA Action Item](#)
[Transit Watch](#)
[The Public Transportation System Security and Emergency Preparedness Planning Guide](#)
[National Incident Management System](#)
[National Response Framework](#)

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer will assess the grantee's safety policies and planning documentation, hazard reporting procedures, and training programs.

PART A: SAFETY

1. *How does the grantee document its system safety program plan (SSPP)? How is the safety function managed?*

EXPLANATION

FTA is concerned about the safety of both transit passengers and workers. FTA can conduct safety investigations when conditions of any facility, equipment, or manner of operation appear to create a serious hazard of death or injury. These questions are intended to provide an overall understanding of how safety is incorporated into the organization, what kind of emphasis is placed on safety, how the safety program is managed, and how various responsibilities are communicated to personnel at all levels.

- a. Recognizing that safety is an integral part of transit operations, grantees are encouraged to have a written safety policy and safety plan.
- b. The safety plan should assign responsibilities for safety management from the most senior executive to the first-line supervisory level. Endorsement by the CEO conveys this importance.
- c. At a minimum, a grantee's safety plan should address compliance with applicable legal requirements. Striving for continual improvement to achieve a high level of safety performance should be a program goal.

Guidance on the development of a written bus transit system safety program plan is available in an APTA publication entitled, **Manual for the Development of Bus Transit System Safety Program Plans** (1998). Note that the grantee may have a safety plan developed from another source, which responds to specific state or local requirements.

REFERENCE

[Manual for the Development of Bus Transit System Safety Program Plans](#)

SOURCES OF INFORMATION

Written safety policy or system safety program plan

PART B: SECURITY AND EMERGENCY MANAGEMENT

2. *Does the grantee utilize one percent of its Section 5307 expenditures for transit security? If yes, how were the funds utilized over the last three years? If no, how do existing security measures meet agency needs?*

EXPLANATION

The grantee is required to certify that it is spending at least one percent of the Section 5307 funds it receives annually for transit security projects or that such expenditures are not necessary. This certification is part of the annual certifications and assurances. Grantees should provide details on security expenditures over the past three years in the attached table.

- a. For grantees that spend the one percent, examples of appropriate security expenditures include:
 - (1) Facility perimeter security and access control systems (e.g., fencing, lighting, gates, card reader systems, etc.)

- (2) Closed circuit television camera systems (at stations, platforms, bus stops, and on-board vehicles)
 - (3) Security and emergency management planning
 - (4) Training and drills (SAFETEA-LU expanded the definition of security related capital projects to include planning, training, and drills, such that these expenditures are now eligible expenses for grantees in UZAs over 200,000 population to apply towards the one percent for security requirement), and
 - (5) Any other project intended to increase the security and emergency management of an existing or planned transit system.
- b. There are three reasons that grantees may have for considering the one percent security expenditure to be unnecessary:
- (1) A recent threat and vulnerability assessment identified no deficiencies
 - (2) TSA/FTA Security and Emergency Management Action Items met or exceeded, or
 - (3) Other. For the “other” category, the typical reason is that a grantee spends sufficient local, other FTA, or DHS funds on security projects and, therefore, does not need to spend formula grant funds on security projects.

Regardless of the reasons for deciding not to spend Section 5307 funds on transit-related security, grantees should provide information and documentation that supports their decision.

REFERENCES

49 USC 5302(a)(1) and 5307(d)(1)(J)

SOURCES OF INFORMATION

Security expenditure information in TEAM-Web.

Documentation of security expenditures.

Explanation and detail documentation to support the grantee decision not to expend one percent of its Section 5307 funds on security projects.

- 3. *Has the grantee received a TSA Baseline Assessment and Security Enhancement (BASE) review within the last 12 months and scored at least 80 percent? If yes, skip remaining questions.***

EXPLANATION

TSA conducts BASE reviews of the top 100 transit agencies. The BASE review was developed from the FTA/TSA Security and Emergency Management Recommended Action Items for Transit Agencies. As such, TSA BASE review results can be utilized for the purposes of the security portion of the FTA Triennial Review, thus obviating the need to repeat the same set of questions.

REFERENCE

None

SOURCES OF INFORMATION

BASE results

- 4. *Does the grantee have written security and emergency management plans for all modes of operation? If no, what steps has the grantee taken for safety and emergency management?***

If yes:

5. *Do the security and emergency management plans define roles and responsibilities for transit personnel?*
6. *How do the security and emergency management plans ensure that operations and maintenance supervisors, forepersons, and managers are held accountable for security issues under their control?*

EXPLANATION

FTA has specific requirements for a written system security plan for rail fixed guideway systems (RFGS). FTA encourages all transit systems, particularly those in areas with populations of 200,000 or more, to develop and implement a transit system security program plan and emergency management plan that covers passengers, employees, vehicles, and facilities, including the planning, design, and construction of new facilities. Guidance on the development and implementation of system security program plans is available in a report entitled, *The Public Transportation System Security and Emergency Preparedness Planning Guide* (DOT-VNTSC-FTA-03-01), dated January 2003.

- a. Grantees should ensure that security and emergency management plans are endorsed by senior level management in order that they are communicated throughout the agency from the highest level.
- b. Plans should be reviewed annually and updated as circumstances warrant.
- c. Plans should integrate visibility, randomness, and unpredictability into security deployment activities in order to avoid exploitable patterns and to enhance deterrent effects.
- d. Plans should also address continuity of operations and business recovery in the event that normal operations need to be suspended or altered as the result of a catastrophic incident.
- e. In addition, plans and protocols should address specific threats from improvised explosive devices, weapons of mass destruction, and other high consequence risks identified in transit risk assessments.
- f. Grantees should also establish and maintain standard security and emergency operations procedures (SOPs/EOPs) for each mode operated, including procedures for operations control centers.
- g. In situations where grantees are planning the construction or modification of systems and facilities, security design and crime prevention criteria through environmental design (CPTED) should be applied to ensure a secure environment for the riding public and employees.
- h. The security and emergency management programs should be assigned to senior level managers. The names and titles of the primary and alternate security coordinator (including security directors and transit police chiefs) should be recorded and maintained on file. The telephone numbers, e-mail addresses, and other contact information for these individuals should be accurately maintained so that they are accessible at all times. Security coordinators also should report to senior level management. Security duties should be defined and properly delegated to front line employees.
- i. The grantee should distribute the security and emergency management plans to appropriate personnel. Regular security coordination meetings involving all personnel assigned security responsibilities should be held.
- j. Informational briefings with appropriate personnel also should be held whenever security protocols are substantially updated.
- k. In order to ensure continuity of the plans, the grantee should establish lines of delegated authority and/or succession of security responsibilities and inform the affected personnel.

- l. The grantee should hold regular supervisor and foreperson security review and coordination briefings for operations and maintenance personnel.
- m. An internal security incident reporting system should be developed and maintained and a security review committee should be established in order to regularly review security incident reports, trends, and program audit findings, and recommend changes to plans and processes to senior level management.

REFERENCES

[49 CFR 659.31](#)

[TSA/FTA Action Item No. 1](#)

[TSA/FTA Action Item No. 2](#)

[TSA/FTA Action Item No. 3](#)

[The Public Transportation System Security and Emergency Preparedness Planning Guide](#)

SOURCES OF INFORMATION

Written security and emergency management plans

Comprehensive safety/security plan, such as a system safety program plan for a rail fixed guideway system.

7. How are the security and emergency management plans coordinated with local agencies?

EXPLANATION

A grantee's security and emergency management plans should be an integrated system and be coordinated with local first responders.

- a. Coordination should include mutual aid agreements with these agencies and should address communications interoperability with first responders (e.g., police and fire departments) in the grantee's service area.
- b. Grantees also should coordinate with Federal and state entities associated with public transportation security such as the TSA's Surface Transportation Security Inspection Program (STSIP) area office, the FBI's Joint Terrorism Task Force, the State Homeland Security Office, and FTA regional office.
- c. Coordinated plans should be consistent with the *National Incident Management System* (NIMS) and the *National Response Framework* (NRF).
 - (1) NIMS provides a unified approach to incident management, including standard command and management structures and an emphasis on preparedness, mutual aid, and resource management.
 - (2) The NRF forms the basis of how the Federal government coordinates with state, local, and tribal governments and the private sector during incidents.

REFERENCE

[TSA/FTA Action Item No. 4](#)

[National Incident Management System](#)

[National Response Framework](#)

SOURCES OF INFORMATION

Security plans and procedures, inter-agency agreements that outline a coordinated emergency response.

8. Has the grantee established a security and emergency training program?

EXPLANATION

The grantee should provide ongoing basic training to all employees in security orientation and awareness and emergency response.

- a. Ongoing training should be provided to employees that have direct security responsibilities such as:
 - (1) Operating
 - (2) Maintenance, and
 - (3) Law enforcement and fare inspection.
- b. Ongoing training should include advanced security and emergency response by job function and actions required at incremental Homeland Security Advisory System (HSAS) threat advisory levels.
- c. Security training programs should emphasize:
 - (1) Integration of visible deterrence
 - (2) Randomness, and
 - (3) Unpredictability into security deployment activities to avoid exploitable patterns and heighten deterrent effect.
- d. Advanced security training programs also should be established for transit managers, including but not limited to:
 - (1) CEOs
 - (2) General managers
 - (3) Operations managers, and
 - (4) Security coordinators (includes security directors and transit police chiefs).
- e. The materials should be updated regularly to address high consequence risks that have been identified by the grantee's risk assessments. Training should reinforce roles and responsibilities and should ensure that employees are proficient in their duties at all times.

The grantee should establish a system that records personnel training in security and emergency response that, at a minimum, documents employees' initial training, and any recurrent training (e.g., periodic and/or refresher). Grantees should also establish and maintain a security notification process to inform personnel of significant updates to security and emergency management plans and procedures, as necessary.

REFERENCE

[TSA/FTA Action Item No. 5](#)

SOURCES OF INFORMATION

Procedure manuals, employee handbooks, and training materials. Documentation of security training seminars or workshops and training records.

- 9. *What steps has the grantee taken to implement a risk management process to assess and manage threats, vulnerabilities, and consequences? If the process identified mitigation measures, what actions have been taken by the grantee?***

EXPLANATION

Grantees are encouraged to establish a risk management process that is based on a system-wide assessment of risks and obtain management approval of this process. As part of the process, grantees should ensure proper training of management and staff responsible for managing the risk assessments.

- a. Whenever a new asset/facility is added or modified, and when conditions warrant (e.g., changes in threats or intelligence), the risk assessment process should be updated.
- b. The risk assessment process should be used to prioritize security investments.
- c. As with the overall security and emergency management plans, the risk assessment process should be coordinated with regional security partners, including Federal, state, and local governments as well as agencies with shared infrastructure (e.g., other transit agencies or rail systems).
- d. Coordination will assist grantees to leverage resources and experience for conducting risk assessments.

REFERENCE

[TSA/FTA Action Item No. 9](#)

SOURCES OF INFORMATION

Grantee's risk assessment process

10. How often are tabletop and functional drills conducted? How often are full-scale exercises coordinated with regional emergency response providers?

EXPLANATION

It is good practice for grantees to conduct tabletop exercises on a semi-annual basis and full-scale exercises on an annual basis.

- a. Such drills and exercises should be coordinated with regional security partners, including Federal, state, and local governmental representatives and other affected entities (e.g., other transit agencies or rail systems) to integrate their representatives into exercise programs.
- b. Recommended exercise plans and procedures include threat scenarios involving improvised explosive devices, weapons of mass destruction, and other high consequence risks identified through the grantee's risk assessments.
- c. Following each exercise and drill, the grantee should conduct and/or participate in de-briefings to examine the results of the exercise and/or drill and develop after-action reports to address any updates to plans and procedures that might be warranted.

REFERENCE

[TSA/FTA Action Item No. 8](#)

SOURCES OF INFORMATION

List of the drills and exercises showing the dates that they were conducted and the other agencies that participated

After-action reports

11. When was the last audit of security policies and procedures?

EXPLANATION

It is important for grantees to audit security and emergency response procedures and to take all necessary steps to identify potential security and emergency events. In determining the likelihood of security and emergency scenarios, a grantee can take actions to reduce the chances of an event occurring or, at a minimum, lessen its effects. For example, identifying fire hazards and implementing measures to address them can reduce or even eliminate the risk of fires from potential sources. Some events, such as natural disasters, are not preventable. However, with proper planning, the effects of these events can be mitigated.

REFERENCE

[TSA/FTA Action Item No. 17](#)

SOURCES OF INFORMATION

- a. Ask the grantee what audits have been conducted.
- b. Reports or memoranda that contain security audit information.
- c. Security committee meeting minutes.
- d. Any procedures and plans that have been updated to reflect findings from security audits.

Exhibit 16-1
TRANSIT SECURITY EXPENDITURES
(Please indicate the years that are being reported)

Security Funding	FTA Section 5307 Funds		
	FY 201_	FY 201_	FY 201-
Total amount of 5307 funds expended			
Amount of 5307 funds expended on security			
Percent of 5307 funds expended on security			
Infrastructure/Capital Improvement Security Projects:			
Lighting, fencing & perimeter control			
CCTV and surveillance technology			
Communications systems			
Security planning			
Drills & tabletop exercises			
Employee security training			
Other security-related infrastructure and capital improvements (please list)			
Operating/Personnel Expenditures (for agencies in areas with populations under 200,000):			
Contracted security force			
In-house security force			
Other security-related operating expenditures (please list)			

PILOT

17. DRUG FREE WORKPLACE DRUG AND ALCOHOL PROGRAM

PART 1 – BASIC REQUIREMENTS

All Grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program. Grantees receiving Section 5307, 5309 or 5311 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

AREAS TO BE EXAMINED

1. Drug-free Workplace Act Policy and Program
2. Drug and Alcohol Testing of Safety-Sensitive Employees
3. Policy Statement on Prohibited Drug Use and Alcohol Misuse in the Workplace
4. Types of Tests and Substances
5. Rate of Random Testing
6. Post-Accident Determinations
7. New Hire Data
8. Records Control
9. MIS Reporting
10. Monitoring Program Vendors (e.g., Collection Sites, MROs, and SAP)

REFERENCES

[49 CFR Part 655 “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations”](#)
[49 CFR Part 40 “Procedures for Transportation Workplace Drug Testing Programs](#)
[49 CFR Part 32 “Governmentwide Requirements for a Drug-Free Workplace \(Financial Assistance\)](#)
[41 USC Sections 701 “Drug Free Workplace Act \(DFWA\) of 1988](#)
[Office of the Secretary Prior Employer Records Release Form](#)

USEFUL WEBLINKS

[FTA Drug and Alcohol Testing Homepage](#)
[Office of the Secretary Prior Employer Records Release Form](#)
[List of Department of Health and Human Services Certified Laboratories](#)

APPLICABILITY

FTA drug and alcohol testing requirements apply to grantees with safety sensitive employees that receive FTA funds under Sections 5307, 5309, or 5311, except where funds are exclusively for facilities or planning and the grantee does not fund operations. The Drug Free Workplace Act applies only to grantees and not contractors.

PART 2 – QUESTIONS FOR THE REVIEW

Prior to the site visit, the reviewer will examine the grantee's Drug-Free Workplace Act policy and the Drug and Alcohol Testing policy of the grantee and selected subrecipients, contractors, etc. to ensure that all required elements are included, all required tests are conducted, and all required substances are tested for.

1. ***How does the grantee comply with its obligations to have a written policy as prescribed in the Drug-Free Workplace that is distributed to all transit-related employees?***

EXPLANATION

A grantee is required to have and distribute to transit related employees a written policy that states that the workplace is drug-free and that it prohibits the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace.

- a. The grantee must notify employees that they must abide by the terms of the policy statement as a condition of employment.
- b. The grantee is required to inform all employees that, if convicted of a drug statute violation that occurred in the workplace, they are to report it to the employer in writing no later than five calendar days after such a conviction. The DFWA policy can be in the FTA Drug and Alcohol Testing Policy as long as it is clearly differentiated and its applicability is extended to all employees, not just safety-sensitive employees.
- c. 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.
- d. 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.
- e. The requirements do not apply to volunteers, consultants, or independent contractors not on the grantee's payroll, or employees of subrecipients or contractors in covered workplaces.
- f. These requirements should not be confused with the FTA Drug and Alcohol Testing Program, which applies only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

REFERENCES

[49 CFR Part 32.200, 32.205, and 32.210](#)

SOURCES OF INFORMATION

Copy of the drug-free workplace policy

2. ***What is the grantee's ongoing drug-free awareness program? How does the grantee 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 grantee must establish an ongoing drug-free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, grantees may rely on

an employee assistance program to provide drug-free awareness information. This procedure is acceptable, provided the material includes a drug-free workplace message.

REFERENCES

[49 CFR Part 32.200, 32.215, and 32.220](#)

SOURCES OF INFORMATION

Written policy, employee handbooks, brochures, posters and other information on bulletin boards, employee assistance program information, and other material distributed to employees

- 3. *Has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely? Did the grantee provide FTA timely notice of the conviction? What action was taken against personnel that reported such a conviction?***

EXPLANATION

When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report the conviction to the FTA regional counsel.

- a. Grantees must provide the individual's position title and the grants in which the individual was involved.
- b. Further, the grantee must take one of the following actions within 30 days of receiving notice of such a conviction:
 - (1) Take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or
 - (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

REFERENCE

[49 CFR Part 32.225](#)

SOURCES OF INFORMATION

Grantee records

- 4. *How does the grantee document that it has a drug and alcohol testing program for safety-sensitive employees as defined by FTA? How does it ensure that subrecipients, contractors, subcontractors and lessees with safety-sensitive employees have drug and alcohol testing programs?***

EXPLANATION

Grantees and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Volunteer drivers are not subject to testing unless the volunteers are required to hold a commercial driver's license (CDL) or receive remuneration in excess of expenses incurred while engaged in a safety-sensitive function.

- a. Safety-sensitive employees are employees that perform the following functions:
 - (1) Operating a revenue vehicle including when not in revenue service

- (2) Operating a non-revenue vehicle when required to be operated by a holder of a commercial driver's license (CDL)
 - (3) Controlling dispatch or movement of a revenue service vehicle
 - (4) Maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the exception of:
 - (a) All maintenance contractors of grantees in UZAs under 200,000; and
 - (b) Subcontractors of maintenance contractors. Note that contractors that provide maintenance services to an operations contractor are subject to FTA's drug and alcohol testing regulations.
 - (5) Carrying a firearm for security purposes
- b. Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations and follow FTA regulations for its non-railroad operations. Unless supervised by the local police department, employees carrying a firearm for security purposes are covered under FTA regulations, as they are not listed as covered employees by FRA 49 USC Sec 21101.
 - c. Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S Coast Guard's (USCG's) chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered safety-sensitive by the USCG (crew members with a merchant mariners document or under a certificate of inspection), since the USCG does not have a similar requirement.
 - d. Grantees that have employees, subrecipients, contractors, subcontractors, or lessees that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.
 - e. Contractors performing safety-sensitive work, such as tire maintenance and overhaul or rebuild of vehicles, engines and parts or bodywork are subject to FTA regulations, unless the work is done on an ad-hoc (non-routine) basis. Warranty work performed by employees of the bus manufacturer is not subject to the regulations. Also, vendors from whom grantees purchase or exchange rebuilt engines or other components are not subject to the regulations unless that work is regular and on going.
 - f. If a grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab companies and schedules and dispatches the trips, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.
 - g. Off-duty police officers under contract to the grantee or a contractor to a grantee are subject to FTA drug and alcohol testing. Police officers who, as part of their normal duties, patrol public transit facilities are not subject to FTA testing. When a grantee contracts the local police department but does not supervise the officers and the officers also respond to nontransit-related police calls, the officers are not subject to FTA's drug and alcohol rules.

- h. The grantee can require subrecipients, contractors, subcontractors, and lessees to have their own program or can include them in its program.

REFERENCES

[49 CFR Part 655.3 and 655.4](#)

SOURCES OF INFORMATION

Evidence that all safety-sensitive employees (including subrecipients, contractors, subcontractors, and lessee employees) are covered by a drug and alcohol testing program

5. *What types of drug and alcohol testing does the grantee conduct?*

6. *What substances does the grantee test for when conducting a drug test?*

EXPLANATION

- a. Six types of testing are required by the drug and alcohol testing regulations:
 - (1) Pre-employment (mandatory for drugs and optional but consistent for alcohol)
 - (2) Random
 - (3) Post-accident
 - (4) Reasonable suspicion
 - (5) Return to duty (only for employers with a second chance policy)
 - (6) Follow-up (only for employers with a second chance policy)
- b. If the grantee conducts pre-employment alcohol tests, the testing is conducted under FTA authority and the grantee must follow Part 40 testing procedures. Employees who have returned to duty from an absence of 90 days or more and have been removed from the random testing pool during that time must pass a pre-employment test(s), not a return to duty, test, before being placed back into safety-sensitive duty.
- c. If the grantee has a second chance policy for employees who admit to drug or alcohol use outside the testing process, any return to duty and follow up testing is done under the employer's, not FTA's, authority as 49 CFR Part 655 does not address employees who admit to drug or alcohol use.
- d. The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, and amphetamines (includes ecstasy (MDMA, MDEA, MDA) – employer may or may not add this separately in the policy), as well as alcohol. If the employer lists sub-categories under the amphetamines and opiates, they must list them all and be consistent with Part 40: Opiates (Morphine, Codeine, and Heroin/6-Acetylmorphine), Amphetamines (Amphetamine, Methamphetamine, MDMA, MDEA, and MDA). Employers should not list cut-off concentrations for drugs unless they agree exactly with Part 40.87.

REFERENCES

[49 CFR Part 655.31, 655.33, 655.41, 655.42, 655.43, 655.44, 655.46, and 655.47](#)
[49 CFR Parts 40.87](#)

SOURCES OF INFORMATION

- a. Review the grantee's drug and alcohol policy and the policies of up to three subrecipients, contractors, subcontractors, or lessees to ensure that they indicate clearly when and under what circumstances employees will be tested for drugs and alcohol.

- b. Do not examine specific employee records.

7. How are the minimum random testing rates of 25 percent for drugs and 10 percent for alcohol achieved?

EXPLANATION

Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current minimum annual random testing rate for drugs is 25 percent of the number of safety sensitive employees. The minimum annual random testing rate for alcohol is 10 percent.

- a. Grantees that have a separate random pool for FTA safety sensitive employees must be able to document that they are meeting the required random testing rates.
- b. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing rates meet the FTA required rates.

REFERENCES

[49 CFR Part 655.45](#)

SOURCES OF INFORMATION

Drug testing data

8. Under what circumstances do the grantee, subrecipients, contractors, subcontractors, and lessees conduct post-accident testing?

EXPLANATION

- a. FTA sets forth in Part 655 that a DOT post-accident test must be administered under two circumstances: 1) in the event of a fatal accident and 2) in the event of a non-fatal accident.
- b. A fatal accident is defined as an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle (non-revenue requiring a CDL or transit police), which results in the loss of a life.
- c. A non-fatal accident is an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle, defined by the following:
 - (1) One or more individuals is immediately transported for medical treatment away from the accident;
 - (2) Any rubber-tired vehicle incurs disabling damage requiring a tow truck; and
 - (3) A rail transit vehicle is taken out of service as a result of the accident.
- d. Following a fatal accident involving a transit vehicle, grantees, subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees are required to test all surviving covered employees operating the vehicle at the time of the accident and, using the best available information at the time of the decision, any other covered employee whose performance may have contributed to the accident.
- e. Following a nonfatal accident involving a transit vehicle, grantees, subrecipients contractors, subcontractors, and lessees with safety-sensitive employees are required to test all covered employees operating the vehicle and any other covered employee whose performance may have contributed to the accident unless the employer determines that an employee's performance can be completely discounted as a contributing factor to the accident. A decision not to test is made using the best information available at the time of the decision and must be documented in detail, including the decision-making process used to make the determination.

- f. Post-accident testing for “accidents” that do not meet the definition of an accident under Part 655 must be done under the grantee’s own authority. Non-DOT custody and control forms (CCF) and alcohol testing forms must be used.

REFERENCE

49 CFR Part 655.44

SOURCES OF INFORMATION

Copy of a post-accident testing decision form
Completed accident reports

9. What are the procedures for the grantee to check on the drug and alcohol testing records of new hires and transfers that will work in safety-sensitive positions?

EXPLANATION

Grantees, subrecipients, contractors, subcontractors, and lessees, after obtaining an employee’s written consent, must request information on the DOT drug and alcohol testing history of any employee who is seeking to begin performance of safety-sensitive duties for the grantee for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position).

- a. Grantees must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee’s application or transfer:
 - (1) Alcohol tests with a result of 0.04 or higher alcohol concentration
 - (2) Verified positive drug tests
 - (3) Refusals to be tested (including verified adulterated or substituted drug test results)
 - (4) Other violations of DOT agency drug and alcohol testing regulations
 - (5) The employee’s successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable
- b. If the previous employer does not have information about the return-to-duty process (e.g., for an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must obtain this information from the employee.
- c. The grantee must obtain and review this information before the employee first performs safety-sensitive functions, if feasible.
 - (1) If this is not feasible, the grantee must obtain and review the information as soon as possible.
 - (2) After 30 days, the grantee must not permit the employee to perform safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information.
- d. If the employee refuses to provide written consent, the grantee must not permit the employee to perform safety-sensitive functions.
- e. If the grantee obtains information that the employee has violated a DOT agency drug and alcohol regulation, it must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with return-to-duty requirements.
- f. Grantees must also ask the employee whether he or she has tested positive or refused to test on any pre-employment drug or alcohol test administered by an employer to which the employee

applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

- g. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process. The employee records must be maintained for three years.

REFERENCES

49 CFR Parts 40.25

Office of the Secretary Prior Employer Records Release Form

SOURCES OF INFORMATION

Applicant consent form and the letter requesting drug and alcohol testing information from prior DOT employers from prior three years.

10. How does the grantee ensure that drug and alcohol testing program records are maintained in a secure location with controlled access,

EXPLANATION

The grantee, subrecipients, contractors, subcontractors, and lessees must maintain records on program administration and the test results of individuals for whom it has testing responsibility.

- a. The records must be maintained by the grantee in a secure location with controlled access.
- b. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records.
 - (1) It is necessary, under this circumstance, for the employer to maintain a duplicate set of records. As an example, program records should be maintained in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization.
 - (2) In addition, only the program manager and his/her designee(s) should have access to the keys.

REFERENCES

49 CFR Part 655.71

SOURCES OF INFORMATION

Records storage area

11. During the review period, when did the grantee submit annual calendar year Management Information System (MIS) reports for itself, subrecipients, contractors, subcontractors, and lessees summarizing drug and alcohol test results as requested by FTA? Copies will be reviewed on site.

EXPLANATION

The grantee must prepare, maintain, and submit to FTA annual MIS reports for itself and collect, maintain, and submit annual MIS reports for Section 5307, 5309, and 5311 subrecipients, contractors, subcontractors, and lessees with safety sensitive employees summarizing drug and alcohol program testing results.

- a. The reports cover the prior calendar year.

- b. For FTA funded ferry operations, grantees must submit the reports for random alcohol tests only.
- c. Grantees must retain copies of the reports for five years.
- d. The standard MIS report forms, which are on the web, must be used “as-is;” they may not be combined or modified by a grantee and must be filled out completely.
- e. The MIS reports must be submitted to the FTA Office of Safety and Security or its designated agent by March 15 following the calendar year for which the reports were prepared. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet at <http://damis.dot.gov>.

REFERENCES

[49 CFR Part 655.72](#)
MIS report forms

SOURCES OF INFORMATION

MIS reports submitted since the last review.

- 12. How does the grantee 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?***
- 13. If the grantee contracts with private carriers, how does it ensure that they comply with FTA drug and alcohol requirements?***

EXPLANATION

Grantees are responsible for passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, and overseeing the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. The oversight program must ensure that all aspects of the drug and alcohol programs, including use of vendors and vendor activities, are in compliance with 49 CFR Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended, and 49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

- a. FTA does not dictate how grantees must oversee the programs. However, elements of an effective oversight program will ensure:
 - (1) Drug and alcohol policies include required elements and are approved by the governing body
 - (2) Employees performing safety-sensitive functions are covered
 - (3) Marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol are tested for
 - (4) Pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing is conducted properly
 - (5) 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
 - (6) Employees and supervisors have received the required training
 - (7) 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)
 - (8) MROs, SAPs, and collection site personnel have the required credentials and training
 - (9) Collections are performed properly and the employer ensures that CCFs are reviewed and that collection site procedures provide for adequate security
- b. If a grantee 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.

- c. 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.
- d. The assignment of regulatory authority for reasonable suspicion and post-accident testing depends on the function an employee is performing at the time of the incident/accident. Return-to-duty and follow-up tests are assigned to the modal administration that generated the initial positive test result. If subject to Part 655, the grantee must collect, retain, and submit MIS reports annually for the private carrier.
- e. Private carrier employees that perform FTA safety-sensitive function 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 Part 655.81](#)

[49 CFR Parts 40.15](#)

[Implementation Guidelines for Drug and Alcohol Regulations I
Drug and Alcohol Audit Questions](#)

SOURCES OF INFORMATION

Subrecipient agreements, contracts, leases, and monitoring documents (reports, questionnaires, site visit checklists)

14. How does the grantee monitor vendors (e.g., consortia, third party administrators, collection sites, MROs) that support its program and the programs of subrecipients, contractors, subcontractors, and lessees to ensure compliance with program requirements?

EXPLANATION

The grantee is responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, the grantee should have a written contract that references 49 CFR Part 40 with each vendor and should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. Grantees need only ensure that testing laboratories are HHS certified. The following link is the current listing of HHS-certified laboratories: http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html

- a. The grantee should not assume that its vendors are following the correct procedures or that they are knowledgeable about FTA regulations. Note that the FTA does not prescribe how a grantee must monitor its vendors.
- b. The grantee simply must show evidence that monitoring is being performed at some level. Examples of monitoring activities include maintaining on file copies of vendor qualifications, conducting periodic mock collections, investigating reports of employees or subrecipients of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training.
- c. As it is the responsibility of the grantee to ensure that program records are accurate and current and that they comply fully with FTA regulations, the grantee should review its copies of CCFs and ATFs to ensure they are completed accurately and legibly and should follow up with collections when forms are not completed correctly or indicate proper procedures have not been followed.
- d. Note that 49 CFR Part 40.121, as amended, requires MROs to be re-qualified and tested every five years after the completion of a continuing education requirement.

REFERENCES

49 CFR Parts 40.15

List of Department of Health and Human Services Certified Laboratories

SOURCES OF INFORMATION

Copies of contracts with vendors, consortium agreement and monitoring reports.

PILOT

PILOT

18. EQUAL EMPLOYMENT OPPORTUNITIES

PART 1 – BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving federal financial assistance under the federal transit laws. (Note: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. EEO Program
2. Oversight of Subrecipients and Contractors
3. EEO Complaints/Lawsuits

REFERENCES

FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"
Federal Register: December 14, 2005 (Volume 70, Number 239, pp.74087- 74100)

USEFUL WEBLINKS

[FTA EEO Home Page](#)
[EEO Compliance Reviews](#)
[Instructions for uploading EEO programs to TEAM](#)

PART 2 – QUESTIONS FOR THE REVIEW

Question 1 is asked if a grantee does not have an EEO program on file with FTA

1. *During the past three years has the grantee or any subrecipients or contractors met the threshold for submission of a formal EEO program? If no, no further questions need to be answered in this section. If yes,*
 - a. *When was the grantee's EEO program approved by FTA?*
 - b. *Where is the Policy Statement posted?*

EXPLANATION

A formal EEO program is required of any grantee that both employs 50 or more transit-related employees (including temporary, full-time, or part-time employees) and 1) requests or receives in excess of \$1 million in capital and/or operating assistance or 2) requests or receives in excess of \$250,000 in planning assistance in the previous federal fiscal year. The program requirements detail what must be included, such as designation of personnel responsibilities, a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices, proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years. Formal communication mechanisms should be established to publicize and disseminate appropriate elements of the program, such as the EEO policy statement. The policy statement should be posted, for example, on bulletin boards, near time clocks or employee's cafeteria.

FTA has established a policy that all civil rights programs must be uploaded to FTA's Transportation Electronic Award Management (TEAM-Web) system. Instructions on uploading these programs were provided to grantees in FY2011 and are on FTA's Civil Rights website.

REFERENCES

FTA C 4704.1, Ch. II, Section 2 and 5; III-2(b); Ch. III Instructions for uploading programs to TEAM- Web

SOURCES OF INFORMATION

EEO Program

Questions 2 through 5 are asked of grantees with an EEO program on file.

- 2. Is the current EEO officer correctly identified in the most recent EEO program submission? To whom does this individual report for EEO matters? If this a collateral duty assignment (meaning the person has other responsibilities than being the EEO officer), do potential conflicts exist and how are they resolved?*

EXPLANATION

The individual named to manage the program and the authority he or she possesses indicates the importance of an EEO program. The EEO officer should be identified in the grantee's Policy Statement and should be an executive. The EEO officer must report directly to the CEO. The EEO officer should be identified by name in all internal and external communications regarding the grantee's EEO program. Care should be taken to avoid conflicts of interest when assigning responsibility for administering the EEO program as a collateral duty assignment. Collateral duty means the person has other responsibilities rather than being a full time EEO officer. The EEO officer should serve as a check and balance on employment practices. Since one of the EEO officer's minimum responsibilities includes reporting periodically to the CEO on the progress of each unit in relation to the agency's EEO goals, conflicts of interest could arise if the EEO officer is located in the human resources or administrative office. For example, many of the employment practices assessed for goal attainment (see explanation section of Question 5) may be, in large part, the responsibility of the human resource department. Additionally, the EEO officer is responsible for processing employment discrimination complaints.

REFERENCE

FTA C 4704.1, Ch. II, Section1; Ch. III, Section 2.c

SOURCES OF INFORMATION

EEO policy statement and program

Organization chart

Job description for the EEO officer

- 3. What are the grantee's current areas of underutilization identified in the utilization analysis? Were short-term and long-range goals set to address this underutilization? Were EEO goals that the grantee set met during the past three years? Was an explanation given for goals that were not met?*

EXPLANATION

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 assure 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 justify this failure.

REFERENCES

FTA C 4704.1, Ch. III, Sections 2.d; and e

SOURCES OF INFORMATION

EEO program, most recent workforce utilization analysis and other employment materials that show progress toward meeting EEO short-term and long-range goals.

4. What is the grantee's monitoring and reporting system?

EXPLANATION

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.

REFERENCES

FTA C 4704.1, Ch. III, Sections 2.d, e and g

SOURCES OF INFORMATION

EEO program and information provided to management that documents the EEO program progress

5. Are there any EEO related complaints filed with the grantee or external agencies? If yes, what is the status of the complaints?

EXPLANATION

The number and nature of EEO complaints may indicate that the grantee is not administering programs to comply with EEO. If complainants are not using the internal EEO process but are filing directly with outside agencies, employees may not have confidence in the EEO program.

REFERENCE

FTA C 4704.1, Ch. VI

SOURCES OF INFORMATION

Complaint process, procedures and tracking mechanisms.

6. Do any subrecipients or transit management/operations contractors meet the threshold for submission of a formal EEO program? If yes:

- a. Do the subrecipients or contractors have on file with the grantee an approved EEO plan?
- b. Does the grantee obtain program updates every three years? If no, provide an explanation.

EXPLANATION

Subrecipients and contractors that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit-related employees must submit to the grantee an EEO plan. Program updates are due every three years. The grantee is required to review and approve the plan. This approval needs to be done by someone with knowledge of EEO requirements.

Note: In some circumstances, the RCRO may require grantees to submit the EEO program of a subrecipient or a contractor to FTA for review. If the grantee has a subrecipient or contractor that meets the employee threshold, seek additional guidance from the RCRO on the submittal of its program.

REFERENCES

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

SOURCES OF INFORMATION

Subrecipient or transit management/operations contractor EEO programs.

APPENDIX: DOCUMENTS TO BE REVIEWED

The table below details the documents needed for a review. Documents to be examined fall into three categories: pre-review, pre-site visit, and on-site. The pre-review process will examine documents in FTA files and available in the public domain. Most documents will be requested from the grantee and must be provided to the reviewer in advance of the site visit. On-site documents are those that are best viewed during the site visit. Grantees are expected to submit the pre-site visit information electronically (e.g., on CD or flash drive). If requested documents are available on the grantee or MPO website, it is acceptable to provide a link. If requested civil rights documents have been posted on TEAM, notify the reviewer.

The electronic files are to be named according to the list below so they are organized appropriately. The following example shows the naming convention that should be used when organizing electronic responses:

Example: Folder/File Naming Convention

Review Area/ Document	Folder/File Name
2. Financial	 2_Financial
a. Capital and Operating Budget for the Current Fiscal Year	 2a_FY09 Budget.doc
b. Financial Statements for the Past Three Years	 2b1_FY08 FinStmts.doc
	 2b2_FY07 FinStmts.doc
	 2b3_FY06 FinStmts.doc
c. Three to Five Year Capital and Operating Financial Plan	 2c_Financial Plan.doc

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
0. Background			
a. Agency organization chart		X	
b. Sample marketing materials		X	
c. Sample route schedules/pocket timetables		X	
d. System map		X	
e. Other			
1. Legal			
a. Authorizing resolution 1. Designated recipient 2. Grantee		X	
b. Delegation of Authority/ Designation of Signature Authority for TEAM Process Form 1. Designated Recipient 2. Grantee	X		
c. Annual List of Certifications and Assurances	X		
d. Hard copy of attorney's affirmation (if not pinned in TEAM)			X
e. Authorizing legislation (new grantees only)		X	
f. Standard Form LLL as applicable	X		
g. Process for receiving and forwarding the disclosure statement		X	
h. Quarterly update (s)	X		
i. Other			
2. Financial			
a. Financial Management Oversight Review/Financial Capacity Analysis report and response		X	
b. Capital and operating budget for the past three fiscal years		X	
c. Audited financial statements for the past three years		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
d. Three to five year capital and operating financial plan		X	
e. Local or state funding legislation		X	
f. Cost Allocation Plan and cognizant agency approval		X	
g. Comprehensive Annual Financial Report (CAFR)		X	
h. Transportation Improvement Program (TIP) for levels of transit funding		X	
i. Delegation of Authority to authorized ECHO draws		X	
j. Written financial policies and procedures.		X	
k. ECHO Request and Payment Documentation			X
l. A-133 Single Audit Reports, SF-SACs and Management Letter Comments for the past three years	X	X	
m. OIG or GAO audit reports with findings relating to FTA		X	
n. Internal, state, or local government audit reports		X	
o. Financial monitoring procedures of subrecipients		X	
p. Other			
3. Technical			
a. Grant administration procedures, if written		X	
b. Milestone Progress Reports	X		
c. ARRA Section 1512 (c) Reports	X		
d. Transit Enhancement Reports (UZAs > 200,000)	X		
e. Annual Program Status Reports (Sections 5310, 5316 and 5317)	X		
f. Section 5316 and 5317 Annual Performance Reports	X		
g. FSRS Subaward Report(s)	X		
h. Federal Financial Reports	X		

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
i. Grant close-out schedule		X	
j. Force accounts plans/justification		X	
k. Lease cost effectiveness evaluations (if not submitted to FTA)		X	
l. Project Management Plan(s)/ Quality Control Procedures		X	
m. Sample subrecipient agreement, service contract and lease		X	
n. Contractor/subrecipient/ lessee oversight procedures 1. Sample monthly, quarterly or annual reports 2. Sample subrecipient/ contractor/lessee site visit checklist 3. Sample follow up documentation		X	
o. Other			
4. Satisfactory Continuing Control			
a. Sample real property lease		X	
b. Incidental Use Approval from FTA		X	
c. Correspondence regarding notification to FTA and FTA concurrence on property removal		X	
d. Listing of real property and/or equipment removed from transit service		X	
e. Excess real property inventory/utilization plan		X	
f. Real property oversight procedures		X	
g. Equipment management procedures, if written (states only)		X	
h. Property records of federally funded equipment		X	X
i. Proof of physical inventory of equipment			X
j. Evidence of inventory reconciliation		X	X
k. Sample equipment lease		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
l. Listing of bus, rail, and paratransit vehicles		X	
m. Spare ratio calculation 1. Total number of revenue vehicles (NTD motorbus category) 2. Number required for maximum service 3. Spare vehicles (i minus ii) 4. Spare ratio (iii divided by ii)		X	
n. Fleet Status Report in TEAM-Web	X		
o. Documentation of peak vehicle requirements		X	X
p. Bus Fleet Contingency Plan		X	
q. Rail Fleet Management Plan		X	
r. Other			
5. Maintenance			
a. NTD maintenance data for past two years	X		
b. Preventive maintenance management reports for all FTA-funded assets		X	
c. Annual maintenance budgets for vehicles and facilities for past three years		X	
d. Maintenance plan(s) or checklists 1. Vehicles 2. Facilities 3. Equipment		X X X	
e. Manufacturer's recommended preventive maintenance schedule		X	
f. PM inspection records – grantee and contractors 1. Directly operated vehicles 2. Contractor-operated 3. Facilities 4. Equipment 5. ADA accessibility features			X
g. List of vehicles and equipment under warranty		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
h. Warranty recovery program and summary of warranty claims		X	
i. Contractor/subrecipient/lessee oversight procedures		X	
j. Maintenance requirements/plans for subrecipients, third party contractors, and lessees		X	
k. Other			
6. Procurement			
a. Procurement System Review	X	X	
b. Written procurement policies and procedures, city ordinance, municipal/county code		X	
c. Standards of Conduct		X	
d. Process to analyze potential organizational conflicts		X	
e. Listing of procurement protests		X	
f. List of FTA funded capital and operating procurements since the last review <ul style="list-style-type: none"> 1. by size: small purchases (>\$3,000 and <\$100,000), and purchases >\$100,000 2. by type: professional service/architectural & engineering, operations/management services, rolling stock, construction, and materials & supplies 3. -by method: invitation for bids, requests for proposals, pre-qualified bidders, sole source, single bid, brand name, or award-to-other-than-low-bidder, piggyback 		X	
g. Procurement files for selected sample agreements/contracts			X
h. Intergovernmental agreements		X	
i. Time and material contracts		X	
j. Five or seven year term contract waiver		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
k. Change order procedures		X	
l. Policy board minutes for procurement-related approvals		X	
m. Buy America waivers		X	
n. Rolling Stock Pre Award Audits			X
o. Rolling Stock Post-Delivery Audits			X
p. Pre-Award and Post-Delivery Audit Certifications for compliance with Buy America, Purchaser's Requirements and Federal Motor Vehicle Safety Standards			X
q. Evidence of SAM/EPLS search for procurements and employees			X
r. Notification of Excluded Party			X
s. Oversight procedures of procurements by contractors and subrecipients			
t. Other			
7. Disadvantaged Business Enterprise			
a. DBE Compliance Review report and response	X		
b. DBE Program and submissions	X		
c. DBELO job description		X	
d. Organizational Chart Showing Reporting Relationship of DBELO		X	
e. DBE Goals (methodology) for current fiscal year	X		
e. FTA goal approval letter	X		
f. Uniform Report of DBE Awards and Commitments or Payments	X		
g. Goal non-attainment analysis		X	
h. Good faith efforts		X	
i. Compliance monitoring reports		X	
j. TVM certification		X	
k. UCP agreement		X	
l. DBE certification files			X
m. Annual affidavits			X

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
n. UCP directory			X
o. DBE complaints/protests (send summary and have files available)		X	X
p. Other			
8. Planning/Program of Projects			
a. Planning Certification Review Report and Response	X		
b. MPO Agreement		X	
c. TIP		X	
d. Planning process complaints/lawsuits		X	
e. Program Management Plan (JARC/New Freedom)		X	
f. Coordinated Plan (JARC/New Freedom)		X	
g. Notices of Availability of Funding (JARC/New Freedom)		X	
h. Published lists of projects (JARC/New Freedom)		X	
i. Evidence of participation in coordinated planning process (JARC/New Freedom)		X	
j. MPO Public Participation Plan, if grantee relies on the TIP process for POP Public Participation		X	
k. TIP/POP Public Notices for past three years		X	
l. Minutes/Transcripts of public hearings		X	
m. Other			
9. Title VI			
a. Title VI Compliance Review Report and Response	X		
b. Title VI Program	X		
c. Notices to Beneficiaries		X	
d. Title VI Complaint Process		X	
e. Title VI complaints (send summary and have files available)		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
f. Documentation of LEP Analysis/Implementation Plan		X	
g. Demographic Data/Analyses (service area population of 200,000 or more)		X	
h. Service Standards/Policies (service area populations of 200,000 or more)		X	
i. Documentation of service Monitoring to Identify Disparities (service area populations of 200,000 or more)		X	
j. Documentation of internal equity evaluation of fare and service changes (service area populations of 200,000 or more)		X	
k. Other		X	
10. Public Comment on Fare and Service Changes			
a. Description of procedures for public comment on fare increases and major service reductions for grantees and subrecipients		X	
b. Documentation from recent fare increases and major service reductions		X	
c. Other		X	
11. Half Fare			
a. Fare structure description		X	
b. Fare policies/tariffs		X	
c. Half-fare program description		X	
d. Half –fare public information		X	
e. Half-fare ID application		X	
f. Other		X	
12. ADA			
a. ADA Compliance Review Report(s) and Response(s)	X		
b. Vehicle procurement specifications			X
c. Documentation of good faith efforts to obtain used accessible vehicles		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
d. Documentation of equivalent service		X	
e. Facility renovation specifications			X
f. Facility accessibility cost calculation			X
g. Subrecipient oversight		X	
h. Procedures describing accessibility policies including stop announcements, lift use, etc. (driver's handbook, service bulletins, etc.)		X	
i. Training manuals and materials		X	X
j. Maintenance/operations policies		X	
k. Monitoring of contracted service		X	
l. Documentation of services exempt from ADA complementary paratransit		X	
m. Public information materials describing complementary paratransit service, eligibility, and appeals		X	
n. ADA complementary paratransit application files		X	
o. Sample eligibility & appeal decision letters		X	
p. Documentation of service monitoring		X	
q. Operating policies regarding ADA paratransit trip reservations and scheduling		X	
r. ADA paratransit performance and monitoring data		X	
s. Telephone data (e.g., average call wait time, missed calls, etc.)		X	X
t. No-show policy, if applicable, and records of actions taken		X	
u. Rail station review findings		X	
v. Documentation of one accessible car per train		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
w. Voluntary compliance agreement/time extensions (rail)		X	
x. Documentation of level boarding infeasibility (rail)		X	
y. Documentation of ferry service compliance, if applicable			
z. Complaint records/lawsuits		X	X
aa. Other			
13. Charter Bus			
a. Charter Policy/Procedures		X	
b. Brochures, maps and other public information		X	
c. Charter records/logs			X
d. Quarterly reports to FTA	X		
e. Training materials		X	
f. Documentation of compliance with charter requirements		X	
g. Documentation that Advisory Opinions were followed		X	X
h. Documentation that Cease and Desist Orders were followed		X	X
i. Charter complaints		X	
j. Other			
14. School Bus			
a. Administrator's Approval	X		
b. Documentation of compliance with Administrator's Approval		X	
c. Bus schedules showing tripper routes		X	
d. Other:			
15. National Transit Database			
a. NTD Report for the most recently completed fiscal year		X	
b. Close-out and waiver letters from FTA for the past three years		X	
c. List of Section 5307 subrecipients, contractors and lessees			

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
d. Passenger mile sampling procedures		X	
e. Automatic Passenger Counter (APC) Agreement with NTD		X	
f. APC validation procedures		X	
g. Other			
16. Safety and Security			
a. System Safety Program Plan			X
b. Safety postings, minutes of safety committee meetings, etc.			X
c. Safety training materials			X
d. Safety statistics			X
e. Safety plans			X
f. Security data	X	X	
g. BASE review results			X
h. System Security Plan(s)/Procedures (all modes)			X
i. Security training materials			X
j. Risk Assessment and Mitigation Procedure			X
k. Threat and Vulnerability Assessments			X
l. Security and emergency management information disseminated to passengers			X
m. Drills and exercises			X
n. Security audits			X
o. Other			
17. Drug-Free Workplace Drug and Alcohol Program			
a. Drug-Free Workplace Policy		X	
b. Correspondence/notification to employees		X	X
c. Employee handbooks, brochures, posters		X	X

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
d. Drug and Alcohol Policy and Program 1. Grantee 2. Polices of up to three Contractors, Subrecipients and Lessees with Safety-Sensitive Employees (<i>Your reviewer will work with you to select the three policies.</i>)		X X	
e. Post Accident Decision Form		X	
f. Accident files and reports			X
g. Form requesting drug and alcohol testing history of applicants		X	
h. Application Consent Form to contact prior DOT-regulated employers		X	
i. MIS reports for past three years		X	
j. Monitoring reports of subrecipients, contractors and lessees with safety-sensitive employees, laboratories, MRO, SAP, BAT, STT, collection services or other vendors in the program		X	X
k. Other			
18. Equal Employment Opportunity			
a. EEO Compliance Review and Response	X	X	
b. EEO Program	X	X	
c. Organization chart showing reporting relationship of EEO Officer		X	
d. Job description for EEO Officer		X	
e. Employment materials		X	
f. Workforce Utilization Analysis		X	
g. EEO management reports			
h. Subrecipient/Contractor EEO Program		X	
i. ADA Reasonable Accommodation Policy, if written		X	

DOCUMENTS TO BE REVIEWED			
Review Area/Documents	Pre-Review	Pre-Site Visit	Site Visit
j. EEO complaints (send summary and have files available)		X	
k. Other			

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