Requirements for Federal Transit Grantees and Subrecipients

Metropolitan
Transportation Services
Dec 2009

Metropolitan Council

Requirements for Federal Transit Grantees and Subrecipients

The Council, as the grantee, can be involved in a variety of relationships with other parties where FTA funds, equipment, or facilities are used in providing public transit. In any circumstances where other entities play a role, the grantee is responsible for ensuring compliance with FTA requirements. These entities can include other governmental agencies, consultants, contractors, subcontractors, and lessees working under approved third-party contracts or interagency agreements. The grantee must have the capacity to fulfill its oversight responsibilities. There must be staff with knowledge of FTA requirements and mechanisms in place for monitoring. The mechanism can be as simple as a letter of agreement, contract, or lease supplemented by periodic meetings, inspections, or required reports. The mechanism may also be as complex as an audit of third-party contracts conducted by the grantee or an independent party. For example, a grantee may conduct an audit of overhead rates for engineering and consulting firms, or conduct audits of payments made to third-party contractors to ensure that these are in compliance with FTA regulations, as well as the terms of the agreement. All requirements of this document transfer to subrecipients of the Metropolitan Council.

Contents

1. Satisfactory Continuing Control

Grantee's Responsibility: The grantee must maintain control over real property, facilities and equipment and ensure they are used in transit service.

FTA Requirement	*Subrecipient Responsibility*
Incidental Use of Real Property	Incidental use is defined as the authorized use of real property and equipment acquired with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project assets. FTA encourages grantees to make incidental use of real property when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. FTA approval is required for incidental use of real property. The property must continue to be needed and used for an FTA project or program, and the incidental use cannot compromise safety or continuing control over the property.
Excess Real Property	If FTA funded real property is no longer needed for any transit purpose, grantees are required to prepare or update an excess real property utilization plan. The grantee's plan should identify and explain the reason for excess property.
Equipment Records	FTA defines equipment as all tangible, nonexpendable, personal property that has a service life of more than one year and an acquisition and installation cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition includes at least all equipment defined above. A grantee must keep records of FTA funded equipment. FTA C 5010.1D describes that the inventory list should include such things as: property location; summary of any conditions on the title, original acquisition cost and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed. Property no longer needed should be used for other purposes or removed from service. Grantees are required to notify FTA when property is removed from the service that was originally intended in the grant award and put to additional or substitute use. Grantees must maintain equipment records with all the above information included. 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. Any FTA-funded property put into service on or after November 1, 2008 (the effective date of FTA C 5010.1D) must have a useful life defined.
Physical Inventory	The Common Rule (49 CFR Part 18) and FTA C 5010.1D require grantees to conduct a physical inventory of equipment and to reconcile the results with the equipment records at least once every two years.
Inventory Reconciliation	The grantee must have a control system to prevent loss, damage, or theft of property. Typically, grantees tag all FTA funded equipment with a property control number, but other systems can be used such as serial numbers or vehicle identification numbers. Tags are not required. The grantee is responsible for developing an adequate system. Any loss, damage, or theft must be investigated and documented by the grantee. To confirm that the system works, the reviewer may select several items from the equipment records and physically check to see if the control number corresponds to the records.

FTA Requirement	Subrecipient Responsibility
Property Control System	If FTA funded real property is no longer needed for any transit purpose, grantees are required to prepare or update an excess real property utilization plan. The grantee's plan should identify and explain the reason for excess property. FTA C 5010.1D describes that the inventory list should include such things as: property location; summary of any conditions on the title, original acquisition cost and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed. Property no longer needed should be used for other purposes or removed from service. Grantees are required to notify FTA when property is removed from the service that was originally intended in the grant award and put to additional or substitute use. 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. Any FTA-funded property put into service on or after November 1, 2008 (the effective date of FTA C 5010.1D) must have a useful life defined.
Contractor Operated Equipment	The grantee must ensure that any federally funded, contractor-operated equipment is controlled. The requirements for a biennial physical inventory and other control measures also apply to equipment that is leased or provided to a service contractor.
Disposals	For equipment that is no longer needed for FTA supported projects or programs, the grantee may retain it or dispose of it. Removal of 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 proceeds of the sale. Equipment with a unit market value of $5,000 or less after its service life requires no FTA reimbursement. Removal of equipment before the end of its service life, however, requires a proportionate reimbursement to FTA of the greater of the straight line depreciated value (based on years or miles for rolling stock), or the sale price.
Premature disposals	FTA must be notified of any equipment removed prematurely from service. FTA is entitled to its share of the remaining federal interest. 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. There is no need to notify FTA of property removed from service that has exceeded its service life, although, as noted above, reimbursement may be due to FTA, if the value exceeds $5,000.
FTA Concurrence on method of disposition	Federal Transit law (49 USC Chapter 53) at Section 5334(g) (4) provides an additional option for handling proceeds from the sale of federally funded assets. This provision allows a grantee, with FTA approval, to sell, transfer, or lease real property, equipment, or supplies acquired with FTA assistance and no longer needed for transit purposes. The net proceeds of the transaction may then be used to reduce the gross project cost of other federally assisted capital transit projects. The Common Rule (49 CFR Part 18), FTA C 5010.1D and the Master Agreement have requirements for removing assets from transit service. Grantees should request FTA instructions on proper procedures for disposition of real property.

FTA Requirement	Subrecipient Responsibility
FTA Permission for lie-kind exchange, trade-in or retained proceeds	A grantee may acquire clear title to real property by compensating FTA for its share, may market and competitively sell the real property (reimbursing FTA for its share), or may transfer the property to another FTA grantee or public agency. For active projects (i.e., projects for which the grant is still open), the proceeds from the sale of real property can be applied to the real property line item of the original total cost of real property purchased for that project. In all cases of real property disposal, the grantee should use competitive sales procedures to ensure the highest possible return on the property or at least fair market value.
Fixed-route bus spare ratio	Use the following formula to calculate the fixed-route bus (NTD Motorbus category) spare bus ratio: a. Total number of revenue vehicles b. Number of vehicles required for maximum serve c. Actual number of spare vehicles (a minus b) d. Actual spare ratio (c divided by b) For grantees with 50 or more fixed route buses, a reasonable spare ratio should not exceed 20 percent of the vehicles operated in maximum fixed route service, according to FTA C 9030.1C. The FTA recognizes two types of vehicles–active and contingency. During a period of vehicle replacement, some buses could be inactive, awaiting disposition. This is a temporary condition and can be considered a third category. However, to be not deficient, the grantee should have specific plans and dates for disposition. Vehicles that are historic and used for parades or public relations or that have been converted to mobile offices or in other ways removed from revenue service should not be considered part of the active revenue fleet or counted in the calculation of the spare ratio. For fleets with fewer than 50 fixed-route vehicles, applied to determine the reasonable number of spare vehicles. If the spare ratio is excessive, the grantee must identify its approach for coming into compliance.
Bus contingency fleet	Buses may be stockpiled in an inactive contingency fleet in preparation for emergencies. No bus may be stockpiled before it has reached the end of its service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan. The plan should be updated as necessary, to support the continuation of a contingency fleet. These vehicles do not count in the calculation of spare ratio.

2. Maintenance

Grantee's Responsibility: The grantee must keep federally funded equipment and facilities in good operating order.

FTA Requirement	*Subrecipient Responsibility*
Vehicle maintenance plan	An effective vehicle maintenance program incorporates actions to maintain each vehicle type and model on a specific cycle. These actions should be designed to ensure the proper care and maximum vehicle longevity. The maintenance plan needs to be updated as often as the mix of rolling stock, equipment/machinery, and facilities change to account for new technology and/or new manufacturer's recommended maintenance intervals and programs.
Goals and Objectives	The vehicle maintenance plan should include the goals and objectives of the maintenance program, such as extending vehicle life, reducing the frequency of road calls, and tracking maintenance costs compared to total operating costs. The maintenance program should define how such goals and objectives are achieved.
Consistent with current fleet	The grantees written maintenance plan and preventive maintenance checklists should be consistent with the grantees current operating fleet.
Manufacturer's minimum maintenance requirements	For vehicles under warranty, the grantee typically must perform a series of preventive maintenance actions if the warranty is to remain valid. The reviewer should compare the interval for the change of engine oil and filters in the grantee's maintenance plan and checklists with the maximum interval specified in the engine manufacturer's maintenance manual. The maintenance plan should define the interval (miles or operated hours) between preventive maintenance inspections.
Vehicle preventive maintenance inspections	The actual maintenance practices should be consistent with the written plan. If the grantee performs preventive maintenance (PM) inspections as planned, the grantee's entire maintenance program probably is effective. A sound preventive maintenance program will reduce the incidence of unscheduled repairs and extend the vehicles' useful life. If preventive maintenance inspections are not being scheduled according to the plan, or not being performed as scheduled, it is probable that other aspects of the maintenance program are lacking as well. If the grantee is not performing preventive maintenance inspections as scheduled, the grantee is jeopardizing the validity of its vehicle warranties and putting FTA's investment at risk.
PM on-time	If 80 percent or more of the inspections for any mode sampled were performed on time (no more than 20 percent late), the grantee is not deficient. Most grantees schedule PM inspections based on relative miles (e.g., 6,000 miles since the last inspection). Others may chose absolute scheduling, based on the total lifetime miles. Grantees may choose whichever method they prefer.

FTA Requirement	Subrecipient Responsibility
Maintenance of accessibility equipment	The DOT ADA regulations require all vehicle and facility accessibility features, such as the wheelchair lift, ramps, securement devices, signs, and communication equipment for persons with disabilities, as well as escalators and elevators in the grantee's facilities, be maintained and operational. The accessibility features must be repaired within the time frames specified in the regulations if they are damaged or out of order. When the equipment is not working, the grantee must take reasonable steps to accommodate persons with disabilities who would otherwise be using it.
Accessibility equipment maintenance records	Accessibility equipment should be part of the regular preventive maintenance program that includes regular and periodic maintenance check of lifts and other accessibility equipment. At a minimum, the grantee must show that accessibility features are checked regularly for proper operation and receive periodic maintenance.
Consistent with ADA regulations	The ADA maintenance elements may be incorporated into the regular maintenance plan or addressed separately with specific checklists.
Facilities maintenance plan	Public transit requires a considerable investment in buildings, equipment, and machinery. As with the vehicle maintenance, the proper maintenance of facilities, machinery, and equipment is the key to protecting the federal investment and prolonging the useful life of the asset. The grantee must have an effective maintenance plan that ensures that FTA's investment in facilities and equipment is protected adequately. The maintenance plan should be written and include an organization and assignment of responsibility for facility and equipment maintenance, a series of inspections and routine maintenance actions designed to ensure the proper care and maximum useful service life of facilities and equipment, and a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment. The facility/equipment maintenance plan should identify specific items, i.e., buildings, elevators, escalators, parking lots, electric distribution and control equipment, plumbing systems, overhead doors, vehicle maintenance lifts, vehicle washers and wash water recycling systems, heating and/or air conditioning units, power substations, etc.
Facility preventive maintenance inspections	The facility/equipment maintenance plan should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Maintenance intervals might be measured in terms of time (daily, monthly, annually), or in terms of usage (hours of use).
Facility preventive maintenance records	The plan should prescribe a record-keeping system that maintains a permanent history of maintenance and inspection activity for each building, equipment and/or system. If these elements are not included in the grantee's plan, the grantee is deficient. If the plan is out-of-date, the grantee is deficient.
Facility PM schedule	The grantee needs to address the occurrence of late PMs and develop a remediation plan that will satisfy itself and FTA that the capital investment is not being jeopardized.
Facility PM records	
Facility PM completed on-time	If 80 percent or more of the inspections sampled were performed on time (no more than 20 percent late), the grantee is not deficient.

FTA Requirement	Subrecipient Responsibility
Condition of vehicles, equipment and facilities	Well-maintained and orderly facilities are good signs of a well-managed and efficient maintenance program. If parts are strewn around, floors are covered with grease and oil, lights are out, facilities and vehicles are dirty, and the entire area in a general state of disrepair, the reviewer has good reason to surmise that the maintenance program is not receiving sufficient attention.
Warranty claims	If the grantee has equipment under warranty, FTA requires that the grantee have a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the grantee and FTA.
Contractor maintenance	The grantee must have an effective mechanism to monitor the contractor's maintenance activities. An acceptable program would consist of periodic written reports on maintenance activities submitted by the contractor to the grantee, supplemented by periodic inspections of the contractor's facility and FTA funded vehicles by the grantee's representative.

3. Procurement

Grantee's Responsibility: FTA grantees will use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and that 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."

FTA Requirement	*Subrecipient Responsibility*
Procurement Policies	Grantees and subgrantees are required to use their own procurement policies and procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law. These policies and procedures must be followed when procuring materials and/or services using FTA funds.
Contract Administration System	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.
Written standards of conduct	Grantees are required to maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by federal funds. The code of standards must preclude any employee, officer, or agent of the grantee from participating in the selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved (e.g., accepting or soliciting gratuities, favors, or anything of monetary value from contractors, vendors, etc.). To the extent permitted by state or local law or regulations, such standards must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.
Review of procurements/ duplicative or unnecessary purchases	Grantees and Subgrantees' procedures must provide for a review of procurements to avoid purchasing unnecessary or duplicative items. During such a review, consideration should be given to consolidating or breaking out procurements or any other appropriate means to obtain a more economical purchase.
Written record of procurement history	Grantees and Subgrantees must maintain records sufficient to detail the significant history of procurement. At a minimum, such records must include rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
Written protest procedures	Grantees and Subgrantees must have written protest procedures to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding any protest to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies before pursuing a protest with FTA.
Written selection procedures	Grantees and subgrantees must have written selection procedures for procurement transactions. These procedures must ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Descriptions must not contain features that unduly restrict competition. Detailed product specifications should be avoided. "Brand name or equal" descriptions should be avoided unless it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

FTA Requirement	Subrecipient Responsibility
Prequalification on criteria	If a grantee requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure maximum full and open competition. Grantees shall not preclude potential bidders from qualifying during the solicitation period.
Potential conflicts of interest	Conflicts of interest fall into two categories – personal and organizational. Personal conflicts of interest arise when an employee, officer, or agent of the grantee or any member of his/her immediate family, his/her partner, or any organization that employs or is about to employ any of the above has a financial interest in the firm selected for a contract award. Organizational conflicts of interest occur when a firm has a bias or an unfair competitive advantage. Bias arises when a contractor is placed in a situation in which it is potentially unable to render impartial decisions or advice to the grantee (e.g., a firm is hired to evaluate a bid, proposal, or work of a parent or subsidiary company). An unfair competitive advantage results when a contractor that participated in developing specifications or statements of work is permitted to bid on the same work. Another unfair competitive advantage may result if an incumbent firm has access to information that has not been made public and such information would enhance the incumbent firm's competitive position. Grantees should ensure that any such information be made publicly available for a reasonable time period before the receipt of bids or proposals.
Full and open competition	Grantees must conduct procurement transactions in a manner providing full and open competition. Grantees are prohibited from restricting competition in federally supported procurement transactions. Some situations that restrict competition include, but are not limited to: unreasonable qualification requirements, unnecessary experience requirements, excessive bonding, noncompetitive pricing practices between firms, noncompetitive awards to firms on retainer, organizational conflicts of interest, "brand name" only specifications, or any arbitrary action in the procurement process. Micro-purchases may be made without obtaining competitive quotations if the grantee determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be split to avoid the requirements for competition above the micro-purchase threshold. Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written. For items exceeding the federal simplified acquisition threshold, currently fixed at $100,000, sealed bids or competitive proposals generally are required. Sealed Bids/IFB – Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder. Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the firm whose offer is most advantageous to the grantee. Grantees must identify their evaluation factors and indicate the relative importance that each has towards the award. *(con't)*

FTA Requirement	Subrecipient Responsibility
Full and open competition *(con't)*	Architectural and Engineering services (including Design-Build procurements) must be procured using a qualifications-based process. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. 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 can not 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. Revenue contracts involving FTA funded facilities or assets (e.g., advertising on buses, at bus shelters, or at transit centers) must be awarded on a competitive basis. Income derived from such contracts must be used to offset program costs.
Geographic preferences	Grantees are prohibited from the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals. The only exceptions are where applicable federal statutes expressly mandate or encourage geographic preference or in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms to compete for the contract.
Third –Party Contracts	Grantees are required to include specific FTA-required clauses in FTA funded procurements, including intergovernmental agreements (e.g., those involving States and other public entities). The Master Agreement identifies certain clauses that apply to third-party contracts. Clauses addressing lobbying, suspension/debarment, Title VI, and Buy America provisions are addressed in other sections of the triennial review.
Third Party contract clauses	See exhibit 6.1 or link: http://www.fta.dot.gov/documents/06_PROCUREMENT_TriennialReview_FY2009.pdf
Applicability of third-party contract clauses	See exhibit 6.2 or link: http://www.fta.dot.gov/documents/06_PROCUREMENT_TriennialReview_FY2009.pdf
Contractor procurement process	When a grantee has contracted out a portion of its federally funded operation or has passed through funding to a subrecipient, competitive procurement requirements may apply to the contractor and/or subrecipient operations. In such circumstances, the procurement process of the contractor/subrecipient should meet federal requirements contained in the Master Agreement, including Buy America, suspension/debarment, and lobbying requirements, which are in other areas of the review. Furthermore, a grantee needs to have a mechanism to ensure contractor/ subrecipient compliance. Requiring written procurement procedures, overseeing selected procurement processes, and auditing the contractor/ subrecipient annually are measures that a grantee could use.
Five year requirements/ rolling stock and replacement parts	Grantees must not enter into contracts for rolling stock and replacement parts with a period of performance exceeding five years inclusive of options, extensions, or renewals. A maximum of five years' requirements may be acquired under a single contract without prior FTA approval, even though delivery may occur beyond a five-year term. However, the maximum quantity specified in such multi-year contracts must represent the grantee's reasonably foreseeable need. Typically, grantees use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above. Grantees may seek a waiver from the five-year requirement from FTA Headquarters. A copy of the written approval for this waiver must be in the applicable contract file.

FTA Requirement	Subrecipient Responsibility
Cost/Price analysis	Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. The methods of analysis include cost analysis and price analysis. Cost analysis must be performed for procurements requiring the offeror to submit estimates for labor hours, overhead, and materials; procurements where adequate price competition is lacking; and sole source procurements unless price reasonableness can be established based on market prices. Price analysis (i.e., catalog or market prices) may be performed for all other procurements.
Change orders	Change orders must be approved by authorized grantee officials and supported by cost justification. 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.
Time and materials contracts	Time and materials (T&M) type contracts are those in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a T&M contract is an indeterminate amount. As such, grantees are not permitted to use FTA funds for time and materials type contracts unless it determines that no other type of contract is suitable for the procurement. If time and materials type contracts are used, grantees must specify a ceiling price that the contractor shall not exceed except at its own risk.
Non-competitive awards	FTA requires full and open competition in procurements for goods and services and encourages grantees to award contracts to the lowest responsive and responsible bidder. However, sole-source, single-bid, and brand-name or equal awards can be used. In such situations, the grantee should have appropriate documentation for the award. In the case of a sole-source award, the documentation should be a sole-source justification, which includes a cost analysis. With a single-bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. For brand-name or equal awards, the procurement specification should list the product's salient characteristics and allow an equal product to be offered. A recurring problem has been the procurement of professional services. Often these services are procured with little or no competition. While such services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for all professional services and the grantee needs to follow the requirements of FTA C 4220.1F when federal funds are used to pay for these services. Note that grantees cannot consider such expenses ineligible and, therefore, not subject to FTA requirements.
Piggyback procurements	It has become increasingly popular for grantees to acquire vehicles through the assignment of options on another grantee's procurement. This is commonly referred to as "piggybacking." Piggybacking is defined as the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies or equipment through the original document/process. Piggybacking is permissible when the solicitation document and the resultant contract contain an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated, and awarded. This includes the base and option quantities. Vehicles added to the base or option amounts that were originally specified are called "tag-ons." Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

FTA Requirement	Subrecipient Responsibility
Option clauses	Grantees may include options in contracts. If a grantee chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price or as a percentage increase of the base price. If the options have not been evaluated as part of the award, the exercise of the options is considered a sole- source procurement. A grantee also must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award, and the grantee must determine that the option price is better than prices available in the market or the option is the more advantageous offer at the time it is exercised. Note: If the option quantities on a rolling stock or replacement parts purchase appear to exceed the grantee's reasonably foreseeable needs, the grantee may be in violation of the five-year limitation.
Advance Payments	FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval of the FTA regional office administering the project. There is no prohibition on a grantee's using local 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.
Progress payments	FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. When progress payments are used, the grantee must obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect the grantee's interests in the progress payments may be used in lieu of obtaining title.
Liquidated damage clauses	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. The assessment for damages should be at a specific rate per day for each day of overrun in the contract time, and the rate must be specified in the contract. 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. 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.
Altoona testing	A grantee purchasing buses with funds obligated after September 30, 1989 must certify to FTA that any new bus model has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania. A new bus model is a bus design or variation of a bus design (usually designated by a manufacturer by a specific name and/or model number) that has not been in use in U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date but is being procured with a major change in configuration or components. Bus testing requirements apply to different mass transit vehicles including vans, other small vehicles, medium, and light-duty mid-size buses, and heavy-duty small and large buses. Bus testing does not apply to unmodified mass produced vans, bus prototypes, electric buses, or trolley buses (meaning genuine trolleys, not replica trolleys popularly in use today).

4. Buy America

Grantee's Responsibility: Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless FTA has granted a waiver, or the product is subject to a general waiver. Rolling stock must have sixty percent domestic content and final assembly must take place in the United States.

FTA Requirement	*Subrecipient Responsibility*
Multiple delivery dates	Grantees may be purchasing 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, must have a valid pre-award and post-delivery audit before it is placed into service. One pre-award audit may suffice provided that there is no change in vehicle configuration between successive deliveries of vehicles.
Verify domestic content	The purpose of the pre-award audit process is to substantiate that the manufacturer intends to construct a vehicle that meets the domestic content limitations of the Buy America requirement. The manufacturer is required to provide the grantee with a listing of the components and subcomponents in the vehicle. The list must contain either the cost of each component or the percentage that each contributes to the total cost of the materials required to build the vehicle, as well as the country of origin of each component. The percentages of those components identified as manufactured in the United States must total a minimum of 60 percent. The grantee is required to review this information and verify that it is accurate. Per the Dear Colleague letter of March 30, 2001, the domestic content requirements should comply with 49 CFR 661.11, Appendices B and C, by designating those items listed as components. FTA allows grantees flexibility in meeting these requirements, reflecting the size of and resources available to the grantee and the number of vehicles in the procurement. A grantee with a large order of many vehicles costing several million dollars would be expected to perform an actual audit of the vehicle manufacturer. Component costs would be determined from the manufacturer's bill of materials and domestic component percentages would be independently verified. Buy America auditors usually require a separate Buy America certification from each component manufacturer identified as domestic. Often an accountant or consultant is retained to complete this audit, although it is equally acceptable for the grantee to use its own personnel if they are qualified. Conversely, a smaller grantee purchasing one or two vehicles can satisfy these requirements by reviewing the material supplied by the manufacturer, attesting that the percentages seem reasonable, and noting that that the component manufacturers identified as domestic are recognized as American manufacturers.
In-plant inspectors	Grantees are required to have an in-plant inspector throughout the manufacturing process if it meets the following criteria: • Grantees purchasing any number of rail vehicles; • Grantees in urbanized areas with populations of more than 200,000 that purchase more than 10 buses; and • Grantees in urbanized areas with populations of 200,000 or less that purchase more than 20 buses. Bus purchases that do not meet the aforementioned criteria, or purchases of any number of standard production and unmodified vans, require only a visual inspection and road test upon delivery. The grantee still must complete the proper post-delivery purchaser's requirements certifications showing that the vehicles met contract specifications.

FTA Requirement	Subrecipient Responsibility
Final assembly	The final assembly of rolling stock must take place in the United States. The Buy America Requirements, 49 CFR Part 661.11(r), define final assembly as "the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes." In the case of a new, remanufacture, or overhauled bus, final assembly would typically include, at a minimum, the installation and interconnection of the typical Bus Components listed in 49 CFR 661.11, Appendix B, including but not limited to the following items: car body shells, engines, transmissions, front axle assemblies, rear axle assemblies, drive shaft assemblies, front suspension assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air brake assemblies, air conditioning compressor assemblies, air conditioning evaporator/condenser assemblies, heating systems, passenger seats, driver's seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.) aluminum extrusions, aluminum, steel or fiberglass exterior panels, and interior trim, flooring, and floor coverings. Final assembly activities also include final inspection, repairs and preparation of the vehicles for delivery. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery. In the case of the manufacture of a new, remanufactured, or overhauled rail car, final assembly would typically include, as a minimum, installation and interconnection of the typical Rail Car Components listed in 49 CFR 661.11, Appendix C, including but not limited to the following items: car shells, engines, main transformer, pantographs, traction motors, propulsion gear boxes, interior linings, acceleration and braking resistors, propulsion controls, low voltage auxiliary power supplies, air conditioning equipment, air brake compressors, brake controls, foundation brake equipment, articulation assemblies, train control systems, window assemblies, communication equipment, lighting, seating, doors, door actuators and controls, wheelchair lifts and ramps to make the vehicle accessible to persons with disabilities, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment. Final Assembly activities shall also include the inspection and verification of all installation and interconnection work; and the in-plant testing of the rail car to verify all functions. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery. Buy America information can be found at www.fta.dot.gov/laws/leg_reg_557.html.
Buy America provisions in contracts	Buy America regulations require that all procurements for steel, iron, and manufactured products contain the Buy America provisions. The only exception is for items subject to a waiver. General waivers are listed in Appendix A to 49 CFR 661.7. The general waiver for final assembly in the United States of 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation was repealed as a result of SAFETEA-LU. Small purchases were added to the general waiver effective July 24, 1995, and include all purchases with capital, planning, or operating assistance costing $100,000 or less. The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four vans that totals $120,000, even though each van costs $30,000, must follow the Buy America procedures. *(con't)*

FTA Requirement	Subrecipient Responsibility
Buy America provisions in contracts (con't)	Buy America provisions apply to all purchases of steel, iron, and manufactured goods exceeding $100,000, regardless of whether they involve capital, operating, or planning funds. The requirements apply to subcontractors, regardless of the size of their contract, if the prime contract is more than $100,000. The requirements apply when a grantee uses an intergovernmental agreement or otherwise jointly purchases manufactured products. Grantees are required to pass the requirements down to management or service contractors when the contractor is making FTA funded procurements on the grantee's behalf. The grantee needs to include a clause citing the Buy America requirement in its Invitations for Bids (IFB) and Requests for Proposals (RFP). A Buy America certification also should be included. There are different certifications required for procurements of rolling stock than for procurements of other steel, iron, or manufactured products. The specific text for steel, or manufactured products can be found at 49 CFR 661.6. The specific test for rolling stock can be found at 49 CFR 661.12. Each is contained in the FTA *Best Practices Procurement Manual*.
Buy America certifications from vendors	The grantee must obtain a signed certification from each successful bidder providing steel, iron, or manufactured products when the total purchase price exceeds $100,000. The contractor is required to certify that the materials provided either comply or do not comply with Buy America requirements. The grantee is required to retain these certifications in the contract file and make them available for inspection upon request. If the contractor certifies that it does not comply with the Buy America requirements, then the grantee must request, receive, and retain a waiver from FTA.
Pre-award and post-delivery audits/ certifications	Any grantee that purchases revenue service rolling stock with a procurement contract that exceeds $100,000, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits verifying compliance with Buy America provisions. Besides the certification that must be filed with FTA as part of the Annual List of Certifications and Assurances, the grantee is required to keep records including pre-award and post-delivery audit certifications that show that the regulations have been followed. If a grantee is using another grantee's procurement contract to 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. The grantee's contract files should contain the following documents and supporting papers for each procurement of rolling stock: Pre-Award Buy America Certification of Compliance – The grantee has reviewed (either by itself or with an audit prepared by someone other than the manufacturer) that the manufacturer intends to build vehicles that meet the Buy America content and final assembly requirements. Pre-Award Purchaser's Requirements Certification – The vehicles are consistent with the grantee's specifications and the proposed manufacturer is responsible and capable of producing the vehicles. The grantee purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit is completed before entering into a formal contract with the manufacturer. The grantee uses the pre-award audit as a basis for the Pre-Award Buy America Certification. The Pre-Award Buy America Certification and the Pre-Award Purchaser's Requirements Certification must be prepared and retained by the grantee. Post-Delivery Buy America Certification of Compliance – The vehicle either meets Buy America domestic content and final assembly requirements or FTA has granted a Buy America waiver for the vehicle. *(con't)*

FTA Requirement	Subrecipient Responsibility
Pre-award and post-delivery audits/ certifications (con't)	Post-Delivery Purchaser's Requirements Certification – For vehicle orders of more than ten buses or rail vehicles for urbanized areas over 200,000 in population and more than 20 buses for urbanized areas 200,000 or less in population, the grantee must certify that an on-site inspector was present throughout the manufacturing period and the grantee has received an inspector's report that accurately records the construction process and explains how construction and operation of the vehicle meets specifications. For all other vehicle orders, the grantee must certify that it has visually inspected and road tested the delivered vehicles and determined that the vehicles meet contract specifications. Following construction of the vehicles, the grantee must complete a post-delivery audit before title to the rolling stock can be transferred to ensure that the manufacturer has complied with the Buy America requirements. The grantee shall use the post-delivery audit as a basis for completing the Post-Delivery Certification. The Post-Delivery Certification and the Post-Delivery Purchaser's Requirements Certifications must be completed and retained on file by the grantee. Certification of Compliance with the Federal Motor Vehicle Safety Standards – The grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stage 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). If the vehicle purchased is subject to FMVSS, the grantee shall obtain a copy of the manufacturer's self-certification at the pre-award and post-delivery stage. Both the pre-award and post-delivery audits must include the grantee's review of the manufacturer's FMVSS self-certification information. The grantee should keep on file the certification that it received at both the pre-award and post-delivery stages, and a copy of the manufacturer's self-certification information that the vehicle complies with relevant FMVSS. While it is suggested that the grantee complete separate certifications of FMVSS compliance at both the pre-award and post-delivery stages, it is acceptable for the grantee to use one certification of FMVSS compliance as long as the certification covers both audits. All of these certifications are to be completed by the grantee. FTA has published two guidance manuals to assist grantees conducting pre-award and post-delivery audits. Conducting Pre-Award and Post-Delivery Audits for Bus Procurements, FTA T-90-7713-93-1, Rev. B. Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements, FTA DC-90-7713-94-1, Rev. B.

5. Suspension/Debarment

Grantee's Responsibility: To protect the public interest and prevent fraud, waste, and abuse in federal transactions, persons or entities, which by defined events or behavior, potentially threaten the integrity of federally administered programs, are excluded from participating in FTA assisted programs. Federal agencies use the government-wide nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible. Grantees are required to ensure to the best of their knowledge and belief that none of the grantee's "principals" (as defined in the governing regulation 2 CFR Part 180), subrecipients, and third-party contractors and sub-contractors is debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. Grantees are strongly encouraged to review the Excluded Parties Listing System (http://www.epls.gov/) before entering into any third party contracts.

FTA Requirement	*Subrecipient Responsibility*
Excluded parties participating in covered transactions	Each grantee is required to ensure to the best of their knowledge and belief that none of the grantee's principals, affiliates, third-party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements.
Term or conditions in contracts $25,000 or more	Any subgrantee, third-party contractor, and sub-contractor whose contract is $25,000 or more must agree to comply with the Debarment and Suspension requirements. The prime contractor makes this agreement by submitting a bid or offer that includes the clause/certification found in the Appendix of the *Best Practices Procurement Manual: Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Lower Tier Covered Transaction*. The grantee also must require that proposed subcontractors with subcontracts expected to be $25,000 or more similarly agree. It is not necessary to include a separate certification for this requirement.
New information following an award	In the event that a grantee becomes aware, after the award of a contract, that an excluded party is participating in a covered transaction, the grantee must promptly inform FTA in writing of this information.

6. Lobbying

Grantee's Responsibility: Recipients of federal grants and contracts exceeding $100,000 must certify compliance with Restrictions on Lobbying before they can receive funds. In addition, grantees are required to impose the lobbying restriction provisions on their contractors.

FTA Requirement	*Subrecipient Responsibility*
Lobbying clause	Grantees are required to include the lobbying clause in agreements, contracts, and subcontracts exceeding $100,000. Signed Certifications Regarding Lobbying must be obtained by the grantee from subgrantees and contractors. The contractor retains its subcontractors' certifications.
Lobbying activities	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 grantees 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 of any 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: • a cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a "covered federal action"; • a change in the person(s) attempting to influence such action; or • a change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action. •
Process for receiving and filing certifications and disclosures	Any subgrantee, contractor, and subcontractor in receipt of a grant/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 report to FTA.

7. Title VI

Grantee's Responsibility: The grantee must ensure that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participating in, or 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.

FTA Requirement	*Subrecipient Responsibility*
Customer Notification of Title VI Rights	The U.S. DOT Title VI Regulations at 49 CFR §21.9(d) state that, "each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such a manner as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part." Consistent with this provision, FTA has advised its grantees to notify beneficiaries of protection under Title VI. Chapter IV section 5 of FTA C 4702.1A states that, "recipients 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. Recipients and subrecipients that provide transit service shall disseminate this information to the public through measures that can include, but shall not be limited to a posting on the agency's Web site." FTA C 4702.1A, Chapter IV section 5a states that the contents of the notice shall include: "(1) a statement that the agency operates programs without regard to race, color, and national origin; (2) a description of the procedures that members of the public should follow in order to request additional information on the recipient's or subrecipient's nondiscrimination obligations; and (3) a description of the procedures that members of the public should follow in order to file a discrimination complaint against the recipient or subrecipient." FTA C 4702.1A, Chapter IV section 5b provides guidance on how to disseminate this notification. Grantees need not necessarily refer to "Title VI of the Civil Rights Act of 1964" in their notification to the public, since most of the public is not aware of this provision. Rather, grantees can fulfill this requirement by notifying the public that they are committed to providing non-discriminatory service and informing customers how to request more information and how to file a discrimination complaint.
Title VI Complaint Procedures	FTA requires that its grantees maintain, as part of their records, a description of the process that they use to investigate Title VI complaints filed against the agency. FTA C 4702.1A states that, "recipients and subrecipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to the public upon request." Grantees do not need to develop separate procedures for investigating and resolving Title VI complaints beyond what procedures have already been established to respond to complaints of discrimination filed on bases not covered under Title VI, or procedures to respond to non-civil rights related complaints. Most grantees have a well-established process and schedule for receiving and acknowledging complaints, determining whether it is appropriate to investigate the complaint, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints. *(con't)*

FTA Requirement	Subrecipient Responsibility
Title VI Complaint Procedures (con't)	The grantee should have a system in place whereby it can identify which, if any, of its complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the recipient. Although the complainant may not refer to Title VI in the complaint to the grantee, the grantee should be able to identify and classify this type of complaint as a Title VI complaint.
Record of Complaints/ Investigations	Chapter IV section 3 of FTA C 4702.1A requires that grantees "prepare and maintain a list of any active investigations conducted by entities other than FTA, lawsuits, or complaints naming the recipient and/or subrecipient that allege discrimination on the basis of race, color, or national origin. This list shall include the date that the investigation, complaint, or lawsuit was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient or subrecipient in response to the investigation, lawsuit, or complaint."
LEP Persons Access to Service	Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The Executive Order states that recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The U.S. DOT published revised guidance for its recipients on December 14, 2005 (Federal Register, vol. 70, no. 239, pp. 74087–74100, December 14, 2005). This document states that Title VI and its implementing regulations require that DOT recipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP) and that recipients should use the DOT LEP Guidance to determine how best to comply. The DOT LEP Guidance advises grantees to determine what steps are necessary to provide "meaningful access" on the basis of four factors: (1) the number and proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program, activity, or service; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and costs. The DOT LEP Guidance also recommends that grantees develop an implementation plan to address the identified needs of the population it serves. Such a plan should have five components: (1) identifying LEP individuals who need language assistance; (2) developing language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the plan. Chapter IV section 4 of FTA C 4702.1A repeats the language in the DOT LEP Guidelines that Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (LEP). *(con't)*

FTA Requirement	Subrecipient Responsibility
LEP Persons Access to Service (con't)	Chapter IV section 4a states that "recipients and subrecipients can ensure that LEP persons have meaningful access to their programs and activities by developing and carrying out a language implementation plan pursuant to the recommendations in Section VII of the DOT LEP Guidance. Certain recipients or subrecipients, such as those serving very few LEP persons or those with very limited resources may choose not to develop a written LEP plan. However the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Recipients or subrecipients electing not to prepare a written language implementation plan should consider other ways to reasonably provide meaningful access."
LEP Population Input	LEP Population Input The grantee is not deficient if it has conducted the four-factor analysis and has developed an implementation plan to address the identified needs of the population it serves. The grantee is also not deficient if it has analyzed how the four factors in the DOT LEP Guidance apply to its programs and services and has elected not to develop a language implementation plan, but can nonetheless demonstrate that it has taken responsible steps to provide meaningful access to LEP persons on the basis of its four-factor analysis. Such steps can include the following actions: • training bilingual staff to act as interpreters and translators • using telephonic and video conferencing interpretation services • formalizing use of qualified community volunteers • using centralized interpreter and translator services • hiring staff interpreters • using symbolic signs (pictographs) • translating into languages other than English vital written materials, such as applications or instructions on how to participate in a recipient's program, signs in bus and train stations, notice of public hearings and other community outreach, and notices advising LEP persons of free language assistance If a grantee can demonstrate it has taken responsible steps to provide access but has elected not to develop a written implementation plan, reviewers should recommend (although it is not a finding) that they consider developing such a plan in the future, as it is likely to help the recipient improve the quality and reliability of its existing language assistance measures. The grantee is deficient if the reviewer determines that it has not conducted an analysis of how the four factors in the DOT LEP Guidance apply to the grantee's programs and activities. Even if the grantee has taken specific actions, such as those listed above, to provide language assistance, FTA and the grantee cannot determine whether or not such actions constitute "meaningful access" without information on the number and proportion of LEP persons in the recipient's service area, which programs and activities are most frequently used by LEP persons, and which programs and activities are most important to LEP persons.

FTA Requirement	Subrecipient Responsibility

Environmental Justice Analysis

The U.S. DOT Title VI Regulations at 49 CFR §21.5(b)(3) state that, "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…."

The authority of Federal Title VI regulations was reaffirmed in Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which addresses fair treatment of all people regardless of race, color, ethnicity, or income with respect to the benefits and burdens of environmentally related programs, policies, and activities. The Executive Order states that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.

The U.S. Order on Environmental Justice (Order 5610.2) sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into their operations. This Order states that, "It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement." (Order 5610.2 section 4a).

Order 5610.2 also states, "planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations." (Order 5610.2 section 5(b)(1)).

Consistent with Order 5610.2, FTA's C 4702.1A advises grantees to integrate an environmental justice analysis into NEPA documentation of construction projects (see Chapter IV section 8 of FTA C 4702.1A). This provision states that Environmental Justice information should be included in applications for a documented categorical exclusion (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS).

Chapter IV section 8a recommends that recipients preparing an EA or EIS include:

- a description of the low-income and minority population within the study affected by the project, and a discussion of the method used to identify this population;
- a discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population;
- a discussion of all positive effects that would affect the identified minority and low-income population; a description of all mitigation and environmental enhancement actions incorporated into the project to address the adverse effects;
- a discussion of the remaining effects, if any, and why further mitigation is not proposed; and
- a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority and non-low income areas.

FTA Requirement	Subrecipient Responsibility
Collection of Demographic Data	The U.S. DOT Regulations at 49 CFR §21.9(b) state that, "…In general, recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance." Consistent with this provision, Chapter V section 1 of FTA C 4702.1A requires recipients to which this Chapter applies to collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance. This provision of the circular recommends that recipients fulfill this requirement either by preparing demographic and service profile maps and charts (described in Chapter V section 1a), by collecting demographic information as part of agency ridership surveys (described in Chapter V section 1b), or by developing their own procedures to collect and analyze demographic data on their beneficiaries (described in Chapter V section 1c).
Service Standards and Policies	The U.S. DOT Title VI Regulations at 49 CFR §21.5(b)(7) state that, "…even in the absence of prior discriminatory practice or usage, a recipient, in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin." The appendix to 49 CFR 21 provides examples, without being exhaustive, that illustrate the application of the nondiscrimination provisions of this part under the programs of certain U.S. DOT operating administration. Part (a)(3)(iii) of the appendix states that, "no person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin." Consistent with these provisions, FTA requires grantees serving geographic areas with populations of 200,000 or more to set system-wide standards and policies necessary to guard against discriminatory service design or operations decisions (see Chapter V section 2 and section 3 of FTA C 4702.1A). Chapter V section 2a of FTA C 4702.1A lists some examples of service standards a grantee can adopt. These standards are: (1) vehicle load; (2) vehicle headway; (3) on-time performance; (4) distribution of transit amenities; and (5) service availability. Recipients are free to adopt additional service standards or other standards in lieu of the ones cited in this provision. Chapter V section 3a of FTA C 4702.1A lists examples of system-wide service policies a grantee can adopt. (Service policies differ from service standards in that they are not necessarily based on a quantitative threshold). These policies are: (1) vehicle assignment; and (2) transit security. Recipients are free to adopt additional service policies or other policies in lieu of those cited in this provision.
Service Monitoring	The U.S. DOT Title VI Regulations at 49 CFR §21.5(b)(7) state that, "…even in the absence of prior discriminatory practice or usage, a recipient, in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin." *(con't)*

FTA Requirement	Subrecipient Responsibility
Service Monitoring (con't)	The appendix to 49 CFR 21 provides examples, without being exhaustive, that illustrate the application of the nondiscrimination provisions of this part under the programs of certain U.S. DOT operating administration. Part (a)(3)(iii) of the appendix states that, "no person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin." Consistent with these provisions, Chapter V section 5 of FTA C 4702.1A states that, "recipients to which this Chapter applies shall monitor the transit service provided throughout the recipient's service area. Periodic service monitoring activities shall be undertaken to compare the level and quality of service provided to predominantly minority areas with service provided in other areas to ensure that the end result of policies and decision making is equitable service. Monitoring shall be conducted at minimum once every three years. If a recipient's monitoring determines that prior decisions have resulted in disparate impacts, agencies shall take corrective action to remedy the disparities." Grantees must implement one of four service monitoring procedures identified in Chapter V sections 5a, 5b, 5c, and 5d of FTA C 4702.1A, as follows: • Option A: Level of Service Methodology, based on a sample of bus routes and (if applicable) fixed guideway routes that provide service to a demographic cross-section of grantee's population. • Option B: Quality of Service Methodology, based on an appropriate number of Census tracts or traffic analysis zones that represent a cross-section of grantees population. • Option C: Title VI Analysis of Customer Surveys, based on most recent passenger survey, grantees should compare the responses from individuals who identified themselves as members of minority groups and/or in low-income brackets, and the responses of those who identified themselves white and/or in middle and upper-income brackets. • Option D: Locally Developed Alternative, grantees have the option of modifying the above options or developing their own procedures to monitor their transit service to ensure compliance with Title VI.

FTA Requirement	Subrecipient Responsibility
Evaluation of Service Changes	The U.S. DOT Order on Environmental Justice states that, "Planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations." (DOT Order 5610.2 section 5b(1)). This order also states that, "[Title VI] requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination so that positive corrective action can be taken." (DOT Order 5610.2 section 7b). The U.S. DOT Order on environmental justice defines "adverse effects" to include social and economic effects, such as, "isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities." (DOT Order 5610.2, Appendix 1f). Under this definition, service and fare changes could have adverse effects if the service reductions result in isolating minority or low-income community. Likewise, if a fare increase means that low-income persons would be unable to afford to continue to take all or a portion of their trips on public transit, they may experience isolation from the broader community, within their own community. Consistent with these provisions, Chapter V section 4 of FTA C 4702.1A states that, "recipients to which this chapter applies 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. For service changes, this requirement applies to "major service changes" only. The recipient should have established guidelines or thresholds for what it considers a "major service change" to be. Often, this is defined as a numerical standard, such as a change that affects 25 percent of service hours of a route." Chapter V section 4a recommends specific procedures for conducting an analysis of service changes and fare changes. Chapter V section 4b states that grantees can conduct an analysis of service and fare changes using a locally modified version of the procedures at Chapter V section 4a or a locally-developed set of procedures.

8. ADA

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

FTA Requirement	*Subrecipient Responsibility*
ADA Service Provisions	The DOT ADA regulations (49 CFR 37.161-167) detail specific service requirements. For bus stop announcements, if the grantee indicates that a union agreement prevents the grantee from calling stops, reviewers should note the ADA is a federal law that supersedes any union agreement. The DOT ADA regulations define service animal as any animal individually trained to work or perform tasks for an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. It is discriminatory to require a person with a disability to certify or register a service animal.
Service Provision Communication	The key to ensuring compliance with these policies is ensuring that all employees and contractors are aware of them. 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.
Service Provision Monitoring	Having policies is not sufficient. The grantee should monitor compliance with the policies. Many grantees find it necessary to monitor compliance with these service provisions, especially the stop announcement requirement (i.e., secret riders, progressive discipline, etc.). Documentation of this monitoring should be provided by the grantee.
ADA Service Training	The ADA requires that each fixed-route or demand responsive service operator ensure that personnel are trained to proficiency, as appropriate for their duties. This training is required so that personnel operate vehicles and equipment safely, properly assist passengers, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities. The DOT ADA regulations do not specify an acceptable course or frequency of training. The grantee must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is proficient at all times. The training must be appropriate to the duties of each employee, and must address both technical requirements and human relations. The reviewers should assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, and subcontractors are "proficient," and what, if any, consequences result if these standards are not met.
New Fixed-Route Vehicle Compliance	The DOT ADA regulations include specific vehicle acquisition requirements for entities operating fixed-route bus, rail, and demand responsive systems. In general, all new vehicles purchased or leased after August 25, 1990, by public entities operating fixed-route service must be accessible (must comply with Part 38 standards). A public fixed-route operator may purchase or lease new non-accessible vehicles only after obtaining a waiver from the FTA Administrator.

FTA Requirement	Subrecipient Responsibility
Used Fixed-Route Vehicle Compliance	Used vehicles that are not accessible may be purchased or leased only after a good faith effort has been demonstrated to obtain accessible vehicles. Good faith efforts include specific steps described in the DOT ADA regulations (49 CFR 37.73 (c), 37.81 (c), and 37.87 (c)). The grantee must keep records documenting the good faith effort for three years.
Demand Response Vehicle Accessibility	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 that is equivalent to the level of service it provides to persons without disabilities. The regulations provide guidance for evaluating equivalent service (§37.77(a) & (b)). Before procuring any non-accessible vehicle for demand responsive service, the entity must file an equivalent service certification with FTA or with the state if the grantee receives its Urbanized Area Formula Grant Program funds from a state administering agency. Appendix C to Part 37 of the DOT ADA regulations includes a copy of the Certification of Equivalent Service.
Remanufactured Vehicle Compliance	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 vehicle are established by 49 CFR Part 38.
New Transit Facility Accessibility	Any new facility to be used in providing public transportation services that is constructed must be accessible according to the standards in 49 CFR Part 37, Appendix A.
Modified Facility Accessibility	If the grantee alters an existing facility used to provide public transportation, the altered portions of the facility must be accessible. An exception may be made if the cost of making the facility accessible is disproportionate. The regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessible features. Departures from the standards in Appendix A are permitted if the alternative designs and technologies used provide equivalent or greater access and usability of the facility. Grantees must obtain approval from FTA for equivalent facilitation.
ADA Maintenance Inspections	The grantee must have a system of regular and frequent maintenance checks for wheelchair lifts, ramps, and other required equipment on non-rail vehicles that is sufficient to ensure that the lifts are operative. There is no specific requirement for daily cycling of lifts or ramps, though many grantees have adopted this practice to meet this requirement. The adequacy of the grantee's system may be reflected in the frequency of in-service failures.
ADA Equipment Failures	Operators must report immediately any failure of a lift or ramp to operate in service. When wheelchair lift or ramp failure is experienced on an in-service vehicle, the grantee must meet several requirements. If lift or ramp failure occurs on a route where the headway is greater than 30 minutes, the grantee is required to provide alternative service promptly. The vehicle must be removed from service before the beginning of the next service day if the lift or ramp is not repaired. The lift or ramp should be repaired before the vehicle is returned to service. In the event that there is no spare vehicle available and the grantee would be required to reduce service to repair the lift or ramp, the grantee can keep the vehicle with the inoperable lift or ramp in service for no more than five days (if the grantee serves an area of 50,000 persons or fewer in population) or three days (if the grantee serves an area of more than 50,000 persons in population).
ADA Complaints/ Lawsuits	Complaints or legal actions may indicate a problem with implementation of the ADA requirements. The FTA Office of Civil Rights should be advised of any pending lawsuits.

9. Charter Bus

Grantee's Responsibility: FTA grantees are prohibited from using federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. The grantees are allowed to operate community based charter services exempted under the regulations; some irregular or limited duration services; and those that are covered by the exceptions.

FTA Requirement	*Subrecipient Responsibility*
Operation of Charter Service	1. Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristics of charter service: • A third party pays a negotiated price for the group; • Any fares charged to individual member of the group are collected by a third party; • The service is not part of the regularly scheduled service, or is offered for a limited period of time; or • A third party determines the origin and destination of the trip as well as scheduling.
Irregular Charter Service	The regulations define charter service as follows: 2. Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration and: • A premium fare is charged that is greater than the usual or customary fixed route fare; or • The service is paid for in whole or in part by a third party.
Charter Service Exemptions	The charter service regulations provided for the following six exemptions: 1. Transportation of Employees, Contractors and Government Officials: Grantees are allowed to transport its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review, 2. Private Charter Operators: Private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of TEA 21, as amended, or to non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the programs: Sections 5307, 5309, 5310, 5311, 5316, or 5317. 3. Emergency Preparedness Planning and Operation: Grantees are allowed to transport its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations. 4. Recipients of Funds Under Sections 5310, 5311, 5316 and 5317: Grantees that use Federal financial assistance from FTA, for program purposes only, under Section 5310, 5311, 5316, or 5317. 5. Emergency Response: Grantees are allowed to provide service, up to 45 days, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. 6. Recipients in Non-Urbanized Areas: Grantees in non-urbanized areas for transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area. *(con't)*

Charter Service Exemptions (con't)

The charter service regulations apply to all grantees that receive Federal funds from FTA, whether or not it operates fixed-route service (many rural providers do not and the charter regulations still apply to them).

Exemption	Notification to Registered Charter Providers?	Record Keeping?	Quarterly Reporting?	Other Requirements?
1. Transportation of Employees	No	No	No	None
2. Private Charter Operators	No	No	No	None
3. Emergency Preparedness Planning and Operation	No	No	No	None
4. Recipients of Funds Under Sections 5310, 5311, 5316 and 5317	No	No	No	None
5. Emergency Response	No	No	No	None
6. Recipients in Non-Urbanized Areas	No	No	No	None

The examples of irregular or limited duration services grantees are allowed to operate under the regulation are as follows:

- Service that is irregular or on a limited basis for an exclusive group of individuals and provides the service free of charge when a third party requests service. When the transit agency initiates service it is allowed so long as the grantee does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public; the itinerary is determined by the grantee; the grantee charges its customary fixed route fare; and there is no third party involvement.
- When a university pays the grantee a fixed charge to allow all faculty, staff, and students to ride the transit system for free. So long as the grantee provides the service on a regular basis, along a fixed route, and the service is open to the public.
- When the grantee sees a need and wants to provide service for a limited duration at the customary fixed route fare.

Charter Service Exceptions

The grantees are allowed to operate community-based charter services under the following **exceptions**.

1. Government Officials: A grantee is allowed to provide charter service (up to 80 service hours annually) to government officials (Federal, state and local) for official government business, which can include non-transit related purposes, if the grantee:

- Provides the service in its geographic service area;
- Does not generate revenue from the charter service, except as required by law;
- Records the following information after providing such service:
  - The government organization's name, address, phone number and e-mail address;
  - The date and time of service;
  - The number of government officials and other passengers;
  - The fee collected, if any; and
  - The vehicle number for the vehicle used to provide the service.

(con't)

Charter Service Exceptions (con't)

Charter service hours include both time spent transporting passengers and time spent waiting for passengers. Charter service hours also include "deadhead" hours which is time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage.

2. Qualified Human Service Organization (QHSO): A grantee is allowed to provide charter service to a QHSO for the purpose of serving persons:

- With mobility limitations related to advanced age;
- With disabilities; or
- With low income.

If the QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the regulation, the QHSO is not required to register on the FTA's charter registration Web site. Otherwise, the QHSO is required to register. The grantee may provide service only if the QHSO is registered at least 60 days before the date of the first request for charter service.

The grantee is required to record the following information after providing such service:

- The QHSO's name, address, phone number and e-mail address;
- The date and time of service;
- The number of passengers;
- The origin, destination, and trip length (miles and hours);
- The fee collected, if any; and
- The vehicle number for the vehicle used to provide the service.

3. Leasing of Equipment and Driver: A grantee is allowed to lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:

- The private charter operator is registered on the FTA charter registration Web site;
- The registered charter provider owns and operates buses or vans in a charter service business;
- The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated or the number of accessible vehicles operated by the registered charter provider; and
- The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area.
- The grantee is required to record the following information after leasing equipment and drivers:
- The registered charter provider's name, address, telephone number, and e-mail address;
- The number of vehicles leased, type of vehicles leased, and vehicle identification numbers; and
- The documentation provided be the registered charter provider in support of the four conditions discussed above.

4. No response by Registered Charter Provider: A grantee is allowed to provide charter service, on its own initiative or at the request of a third party, if no registered charter provider responds to the notice issued:

- Within 72 hours for charter service requested to be provided in less than 30 days; or
- Within 14 calendar days for charter service requested to be provided in 30 days or more.

The grantee is not allowed to provide charter service under this exception if a registered charter provider indicates an interest in providing the charter service described in the notice and the registered charter provider has informed the grantee of its interest in providing the service. This is true even if the registered charter provider

FTA Requirement	Subrecipient Responsibility
Service Under "No Response by Registered Provider"	Upon receiving a request for charter service, the grantee may: 1. Decline to provide the service with or without referring the requestor to FTA's charter registration Web site: (http://www.fta.dot.gov/laws/leg_reg_179.html); 2. Provide the service under an exception discussed above; or 3. Provide notice to registered charter providers as discussed below. If the grantee is interested in providing charter service under the exception "No Response by Registered Charter Provider" discussed above, then upon receipt of a request for charter service, the grantee shall provide e-mail notice to registered charter providers in the grantee's geographic service area in the following manner: 4. By the close of business on the day the grantee received the request unless the request was received after 2:00 pm; in which case the notice the notice shall be sent by the close of business the next business day; 5. E-mail notice sent to the list of registered charter providers shall include: – Customer name, address, phone number, and e-mail address (if available); – Requested date of service; – Approximate number of passengers – Type of equipment requested, bus(es) or Van(s); – Trip itinerary and approximate duration; and – The intended fare to be charged for the service. The grantee shall retain an electronic copy of the e-mail notice and the list of registered charter providers that were sent e-mail notice of the requested charter service for a period of at least three years from the date the e-mail notice was sent. If the grantee receives an "undeliverable" notice in response to its e-mail notice, the grantee shall send the notice via facsimile. The grantee shall maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for three years.
Service Provision Notification	A grantee that provides charter service under one or more of the exceptions under this regulation is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The grantee may maintain the required records in other formats in addition to the electronic format. The records maintained by the grantee shall include a clear statement identifying which exception the grantee relied upon when it provided the charter service.
Charter Service Reporting	Beginning on July 30, 2008, grantees providing charter service under the exceptions shall post the required records on the FTA charter Web site, through the TEAM system, 30 days after the end of each calendar quarter, as follows: • October 1 to December 31: on January 30th; • January 1 to March 31: on April 30th; • April 1 to June 30th: on July 30; and • July 1 to September 30th: October 30. A single document or charter log may include all charter service trips provided during the quarter. The grantee may exclude specific origin to destination information for safety and security reasons. If such information is excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

FTA Requirement	Subrecipient Responsibility
FTA Charter Registration Web Site	The grantee shall ensure that its affected employees and contractors have the necessary competency to effectively use the FTA charter registration Web site.
Cease and Desist Order	Any interested party (a grantee or registered charter service provider) may request a cease and desist order as part of its request for an advisory opinion. Issuance of a cease and desist order against a grantee shall be considered as an aggravating factor in determining the remedy to impose against the grantee in future findings of noncompliance, if the grantee provides the service described in the cease and desist order issued by the Chief Counsel.
Charter Complaints	A registered charter provider, or its duly authorized representative may file a complaint with the Office of the Chief Counsel, entitled "Notice of Charter Service Complaint".
Response to Charter Complaints	Unless the complaint is dismissed, FTA shall notify the grantee within 30 days after receiving the complaint that the complaint has been docketed. The grantee shall have 30 days from the date of service of the FTA notification to file an answer. The complainant may file a reply within 20 days. The grantee may file a reply within 20 days of the date of service of the respondent's answer.
Charter with Locally Owned Vehicles	The charter regulations do not apply to equipment that is fully funded with local funds and 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.

10. Safety and Security

Grantee's Responsibility: Any recipient of Urbanized Area Formula Grant Program funds must annually certify that it is spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

Under the safety authority provisions of the Federal transit laws, the Secretary has the authority to investigate the operations of the grantee for any conditions that appear to create a serious hazard of death or injury, especially to patrons of the transit service. States are required to oversee the safety of rail fixed guideway systems through a designated oversight agency, per 49 CFR Part 659, Rail Fixed Guideway Systems, State Safety Oversight.

Under security, a list of 17 Security and Emergency Management Action Items has been developed by FTA and the Department of Homeland Security's Transportation Security Administration (TSA). This list of 17 items, an update to the original FTA Top 20 security action items list, was developed in consultation with the public transportation industry through the Mass Transit Sector Coordinating Council, for which the American Public Transportation Association (APTA) serves as Executive Chair. Security and Emergency Management Action Items for Transit Agencies aim to elevate security readiness throughout the public transportation industry by establishing baseline measures that transit agencies should employ.

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. As such, 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.

FTA Requirement	*Subrecipient Responsibility*
System Safety Program Plan	FTA is concerned about the safety of both transit passengers and transit workers. FTA can conduct safety investigations when conditions of any facility, equipment, or manner of operation appear to create a serious hazard of death or injury. Recognizing that safety is an integral part of transit operations, grantees are encouraged to have a written safety policy and safety plan. The safety plan should assign responsibilities for safety management from the most senior executive to the first-line supervisory level. Endorsement by the CEO conveys this importance. At a minimum, a grantee's safety plan should address compliance with applicable legal requirements. Striving for continual improvement to achieve a high level of safety performance should be a program goal. Guidance on the development of a written bus transit system safety program plan is available in an APTA publication entitled, *Manual for the Development of Bus Transit System Safety Program Plans* (1998). Note that the grantee may have a safety plan developed from another source, which responds to specific state or local requirements.

FTA Requirement	Subrecipient Responsibility
Safety Function Management	Safety issues include more than vehicle and passenger accidents and workplace injuries. As such, the grantee's safety-related responsibilities may be numerous. They may include, for example: • investigating major incidents • identifying workplace hazards • proper handling of hazardous materials • emergency preparedness. The grantee should have established procedures to investigate, identify, and address safety issues. The process should be both reactive in terms of investigating incidents and proactive in terms of identifying and responding to key safety issues and potential hazardous conditions.
Major Incident Investigations	A Major Incident is defined as an event involving a transit vehicle or transit-controlled property, involving one or more of the following: • A fatality • Injuries requiring immediate medical attention away from the scene for two or more persons • Property damage equal to or exceeding $25,000 • An evacuation due to life safety reasons • A collision at a grade crossing • A main-line derailment • A collision with person(s) on a rail right of way resulting in injuries that require immediate medical attention away from the scene for one or more persons • A collision between a rail transit vehicle and another rail transit vehicle or a transit non-revenue vehicle resulting in injuries that require immediate medical attention away from the scene for one or more persons. • Forcible rape • Confirmed terrorist/security events – Bombings – Chemical/biological/radiological/other release – Cyber incident – Hijacking • Sabotage Non-Major Incident Safety data include any incident not reported as a Major Incident and meeting one or more of the following criteria: • Injuries requiring immediate medical attention away from the scene for one person • Property damage equal to or exceeding $7,500, but less than $25,000 • All non-arson fires not qualifying as a Major Incident.
Safety Training for Employees	Grantees are encouraged to clearly define the safety responsibilities for all employees and establish a comprehensive safety training program. By providing training to the appropriate personnel, grantees can enhance safety performance in all areas (e.g., accidents, workplace hazards, and emergency preparedness). Training may consist of initial training to new hires as well as recurrent training to all employees. Additional training may be provided on a case-by-case basis, if employees have a high number of incidents in a particular area of concern.

FTA Requirement	Subrecipient Responsibility
NTD Safety Data Reporting	All transit agencies, regardless of the number of vehicles operated, are required to provide information by mode and type of service in the Safety & Security Module of NTD on a monthly basis. If a grantee operates nine or fewer vehicles and has been granted a waiver, it is exempt from the safety and security reporting requirements. The NTD Safety & Security Module has three components: Major Incident Reporting, Non-Major Incident Safety, and Non-Major Incident Security reporting. Grantees are required to submit information for each component and for all modes except commuter rail. Agencies that operate commuter rail service do not have to report Major Safety Incident and Non-Major Incident Safety data to FTA since these data are available from FRA. However, agencies operating commuter rail service must complete the NTD Major Security Incident and Non-Major Incident Security reports. Major Incident forms are due thirty days after the major incident occurred.
Written Security and Emergency Management Plans	FTA has specific requirements for a written system security plan for rail fixed guideway systems (RFGS). FTA encourages all transit systems, particularly those in areas with populations of 200,000 or more, to develop and implement a transit system security program plan and emergency management plans that cover passengers, employees, vehicles, and facilities, including the planning, design, and construction of new facilities. Guidance on the development and implementation of system security program plans is available in a report entitled, *The Public Transportation System Security and Emergency Preparedness Planning Guide* (DOT-VNTSC-FTA-03-01), dated January 2003. Grantees should ensure that security and emergency management plans are endorsed by senior level management in order that they are communicated throughout the agency from the highest level. Plans should be reviewed annually and updated as circumstances warrant. Plans should integrate visibility, randomness, and unpredictability into security deployment activities in order to avoid exploitable patterns and to enhance deterrent effects. Plans should also address Continuity of Operations and Business Recovery in the event that normal operations need to be suspended or altered as the result of a catastrophic incident. In addition, plans and protocols should address specific threats from Improvised Explosive Devices (IED), Weapons of Mass Destruction (WMD), and other high consequence risks identified in transit risk assessments. Grantees should also establish and maintain standard security and emergency operations procedures (SOPs/EOPs) for each mode operated, including procedures for operations control centers. In situations where grantees are planning the construction or modification of systems and facilities, security design and crime prevention criteria through environmental design (CPTED) should be applied to ensure a secure environment for the riding public and employees.
Personnel Roles/ Responsibilities	The security and emergency management programs should be assigned to the senior level managers in the grantee's organization. The names and titles of the Primary and Alternate Security Coordinator (including Security Directors and Transit Police Chiefs) should be recorded and maintained on file. The telephone numbers, e-mail addresses and other contact information for these individuals should be accurately maintained so that they are accessible at all times. The Security Coordinators also should report to the senior level management of the organization. Security duties should be defined and properly delegated to front line employees. The grantee should distribute the security and emergency management plans to appropriate personnel. Regular security coordination meetings involving all personnel assigned security responsibilities should be held. Informational briefings with appropriate personnel also should be held whenever security protocols are substantially updated. In order to ensure continuity of the plans, the grantee should establish lines of delegated authority and/or succession of security responsibilities and inform the affected personnel.

FTA Requirement	Subrecipient Responsibility
Supervisor Accountability	The grantee should hold regular supervisor and foreperson security review and coordination briefings for operations and maintenance personnel. An internal security incident reporting system should be developed and maintained and a Security Review Committee should be established in order to regularly review security incident reports, trends, and program audit findings, and make recommendations to senior level management for changes to plans and processes.
Coordination with Local Agencies	A grantee's security and emergency management plans should be an integrated system program and be coordinated with local first responders. Coordination should include mutual aid agreements with these agencies and should address communications interoperability with first responders (e.g., police and fire departments) in the grantee's service area. Grantees also should coordinate with federal and state entities associated with public transportation security such as the TSA's Surface Transportation Security Inspection Program (STSIP) area office, the FBI's Joint Terrorism Task Force (JTTF), the State Homeland Security Office, and FTA Regional Office. Coordinated plans should be consistent with the National Incident Management System, (NIMS) and the National Response Framework (NRF). NIMS provides a unified approach to incident management including standard command and management structures and an emphasis on preparedness, mutual aid and resource management. The NRP forms the basis of how the federal government coordinates with state, local, and tribal governments and the private sector during incidents.
Security/Emergency Training Program	The grantee should provide ongoing basic training to all employees in security orientation and awareness and emergency response. Ongoing training should be provided to employees that have direct security responsibilities such as operating, maintenance, law enforcement and fare inspection. Ongoing training should include advanced security and emergency response training by job function and actions required at incremental Homeland Security Advisory System (HSAS) threat advisory levels. Security training programs should emphasize integration of visible deterrence, randomness, and unpredictability into security deployment activities to avoid exploitable patterns and heighten deterrent effect. Advanced security training programs also should be established for transit managers, including but not limited to CEOs, General Managers, Operations Managers, and Security Coordinators (includes Security Directors and Transit Police Chiefs). The materials should be updated regularly to address high consequence risks that have been identified by the grantee's risk assessments. Training should reinforce roles and responsibilities and should ensure that employees are proficient in their duties at all times. The grantee should establish a system that records personnel training in security and emergency response that, at a minimum, documents employee's initial training, and any recurrent training (e.g., periodic and/or refresher). Grantees should also establish and maintain a security notification process to inform personnel of significant updates to security and emergency management plans and procedures, as necessary.
Homeland Security Advisory Protocols	FTA recommends that all grantees have an updated security plan that addresses terrorism as well as procedures to respond incrementally to the HSAS threat levels issued by the Department of Homeland Security.
Public Awareness Materials	The grantee should disseminate information to the riding public on identifying and reporting suspicious or illegal activity. Public service announcements, billboards, and brochures are effective mechanisms to provide security information to passengers. Grantees also should consider implementing FTA's Transit Watch program at their agency.

FTA Requirement	Subrecipient Responsibility
Tabletop Drills/ Emergency Exercises	It is good practice for grantees to conduct tabletop exercises on a semi-annual basis and full scale exercises on an annual basis. Such drills and exercises should be coordinated with regional security partners, including federal, state, and local governmental representatives and other affected entities (e.g., other transit agencies or rail systems) to integrate their representatives into exercise programs. Recommended exercise plans and procedures include threat scenarios involving improvised explosive devices (IEDs), weapons of mass destruction (WMD), and other high consequence risks identified through the grantee's risk assessments. Following each exercise and drill, the grantee should conduct and/or participate in de-briefings to examine the results of the exercise and/or drill and develop after-action reports to address any updates to plans and procedures that might be warranted.
Risk Management Process	Grantees are encouraged to establish a risk management process that is based on a system-wide assessment of risks and obtain management approval of this process. As part of the process, grantees should ensure proper training of management and staff responsible for managing the risk assessments. Whenever a new asset/facility is added or modified, and when conditions warrant (e.g. changes in threats or intelligence), the risk assessment process should be updated. The risk assessment process should be used to prioritize security investments. As with the overall security and emergency management plans, the risk assessment process should be coordinated with regional security partners, including federal, state, and local governments as well as agencies with shared infrastructure (e.g., other transit agencies or rail systems). Coordination will assist grantees to leverage resources and experience for conducting risk assessments.
Information Sharing Networks	Grantees are encouraged to participate in intelligence sharing networks such as the FBI's JTTF (if they have their own law enforcement personnel) or PT-ISAC in order to facilitate coordination on regional security matters throughout the area and share intelligence with law enforcement and other agencies. The PT-ISAC is a clearinghouse of security threats, vulnerabilities and solutions for the public transit industry. Members report and receive information through the PT-ISAC to assist them and other members in preparing for and responding to threats. APTA is the coordinator for the PT-ISAC. Other intelligence sharing networks include the DHS Homeland Security Information Network (HSIN) and the TSA's Surface Transportation Security Inspectors (STSI).
NTD Security Reporting	All grantees, regardless of the size of their urbanized areas, are required to report security data as part of their National Transit Database (NTD) report. Transit agencies are required to provide information by mode and type of service in the Safety & Security Module of NTD on a monthly basis. If a grantee operates nine or fewer vehicles and has been granted a waiver, it is exempt from the safety and security reporting requirements. The NTD Safety & Security Module has three components: Major Incident Reporting, Non-Major Incident Safety, and Non-Major Incident Security reporting. Grantees are required to submit information for each component and for all modes except commuter rail. Agencies that operate commuter rail service do not have to report Major Safety Incident and Summary Safety data to FTA since these data are available from FRA. However, agencies operating commuter rail service must complete the NTD Major Security Incident and Non-Major Incident Security reports. Major Incident forms are due thirty days after the major incident occurred. *(con't)*

FTA Requirement	Subrecipient Responsibility
NTD Security Reporting (con't)	Non-Major Incident Security data include any incident not reported as a Major Incident and meeting one or more of the following criteria: Occurrence of Part I Offenses (except homicide): • Robbery • Aggravated assault – Burglary – Larceny/theft – Motor vehicle theft – Arson Arrest/Citation for Part II Offenses: • Other assaults • Vandalism – Trespassing – Fare evasion Occurrence of Other Security Issues: • Bomb threat • Non-violent civil disturbance Occurrence of Suicides and Attempts
ID Badges for Visitors/Employees	Grantees should identify security critical facilities and assets and ensure that access to these facilities is controlled. Grantees should develop written procedures to control access to security critical facilities and areas. The use of ID badges, while not required, is encouraged, for employees, visitors, and contractors that need entry to controlled areas. As with all policies and procedures, access control procedures should be updated as conditions warrant (e.g., new threats are identified).
Secure Access Inspection	Grantees should conduct, monitor and document facility security inspections (e.g., perimeter/access control) on a regular basis. The frequency of such inspections should increase in response to elevation of the HSAS threat advisory level. In addition, grantees should develop and use protocols for vehicle (e.g. buses and rail cars) inspections as well as protocols for inspections of rights-of-way corresponding to HSAS threat advisory levels. In order to integrate unpredictability in the process, grantees should vary the manner in which inspections of facilities, vehicles, and rights-of-way are conducted to avoid setting discernible and exploitable patterns.
Background Investigations	Operating personnel have a responsibility for the safety of the public that they serve. As such, it is imperative that grantees take all available precautions in the hiring process to ensure the public's safety and security. Criminal background checks can be used to identify individuals that may pose a potential threat to the public safety and security. Although the focus of background checks is on new hires, grantees are encouraged to conduct checks for all operating employees, particularly those with access to safety and/or security critical systems (e.g., revenue vehicle operations and maintenance, signal rooms, and control centers). Grantees should establish specific criteria for background checks by employee type (e.g., operator, maintenance employees, safety/security sensitive, and contractors). These criteria should be documented.

FTA Requirement	Subrecipient Responsibility
Document Control	Controlling access to documents of security critical systems safeguards the public, transit employees and transit assets from potential sabotage and security risks. Grantees should ensure that an appropriate level of security is provided around the plans and designs of its operating and maintenance facilities and its infrastructure (e.g., tunnels, bridges, electrical substations, etc.).
Security Sensitive Information Access	Measures to protect documentation for security detection systems also should be tightly controlled. The grantee should develop document control procedures to ensure that such documents are identified and that a person or department is made responsible for administering the document control program.
Security Audit	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.

11. Drug Free Workplace

Grantee's Responsibility: FTA grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program.

Note: The provisions of the Drug-Free Workplace Act (DFWA) are separate from and in addition to the FTA Drug and Alcohol Testing Program. Specific requirements of the Drug and Alcohol Testing Program are discussed in Section 21 of this handbook.

FTA Requirement	*Subrecipient Responsibility*
Drug Free Workplace Established	In addition to establishing and maintaining a drug-free workplace environment, a 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.
Written Policy and Elements	The grantee is required to provide a written policy that the workplace is drug-free and that the unlawful, manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. The grantee must notify employees that they must abide by the terms of the policy statement as a condition of employment. The grantee is required to inform all employees that, if convicted of a drug statute violation occurring 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. Note that DFWA requirement applies to employees of a recipient directly engaged in the performance of work under the grant, including both direct and indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to that employee. The requirements do not apply to volunteers, consultants or independent contractors not on the grantee's payroll, or employees of subrecipients or contractors in covered workplaces. These requirements should not be confused with the FTA Drug and Alcohol Testing Program, which applies only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.
On-going Drug Free Awareness Program Inform Employees of Available Counseling/ Rehabilitation	In addition to establishing and maintaining a drug-free workplace environment, a 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.
Employee Reporting of Criminal Conviction **FTA Notification of Criminal Conviction**	When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, the grantee has ten calendar days within which to report the conviction to the FTA Regional Counsel. Grantees must provide the individual's position title and the grants in which the individual was involved. Further, the grantee must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

12. Drug and Alcohol Program

Grantee's Responsibility: Grantees receiving FTA funds under Capital Grant (Section 5309), Urbanized Area Formula Grant (Section 5307), or Non-Urbanized Area Formula Grant (Section 5311) Programs must have a drug and alcohol testing program in place for all safety-sensitive employees.

The FTA-mandated drug and alcohol testing program is separate from and in addition to the provisions of the Drug-Free Workplace Act (DFWA).

FTA Requirement	*Subrecipient Responsibility*
Drug and Alcohol Testing Program	Grantees and their contractors and subcontractors that have safety-sensitive employees are required to have a drug and alcohol testing program for these employees. For grantees that use volunteer drivers, the volunteers are not subject to testing unless the volunteer is required to hold a commercial driver's license (CDL) or receives remuneration in excess of expenses incurred while engaged in a safety-sensitive function. Safety-sensitive employees are employees that perform the following functions: • operating a revenue vehicle including when not in revenue service • operating a non-revenue vehicle when required to be operated by a holder of a Commercial Driver's License (CDL) • controlling dispatch or movement of a revenue service vehicle • maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the exception of: – all maintenance contractors of grantees in UZAs under 200,000; and – subcontractors of maintenance contractors. Note: contractors or subcontractors that provide maintenance services to an operations contractor are subject to FTA's drug and alcohol testing regulations. • carrying a firearm for security purposes. Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations, and follow FTA regulations for its non-railroad operations,. Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard's (USCG's) chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered safety-sensitive by the USCG, since the USCG does not have a similar requirement. Grantees that have employees, contractors, or subcontractors that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations. Contractors that overhaul or rebuild vehicles, engines and parts, or that perform body work are subject to FTA regulations, unless this work is done on an ad hoc or one-time basis. Also, vendors from whom grantees purchase or exchange rebuilt engines or other components are not subject to the regulations. *(con't)*

FTA Requirement	Subrecipient Responsibility
Drug and Alcohol Testing Program (con't)	If a grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of the drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab company, 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.
Drug and Alcohol Policy/Elements	Grantees and their contractors and subcontractors covered by 49 CFR Part 655 must have a drug and alcohol policy detailing the provisions of their drug and alcohol program. The policy should cover all the provisions noted above and should reflect all updates and regulation amendments. The following checklist identifies the minimum requirements of a policy as defined by 49 CFR 655.15: • Proof of policy adoption by the appropriate governing body with effective date indicated. • Identity of the person designated by the employer to answer questions about the anti-drug and alcohol misuse program. • Categories of employees who are subject to testing. • Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs. • Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing. • Drug and alcohol testing procedures consistent with 49 CFR Part 40, as amended. (Note: a grantee does not have to reiterate Part 40 in the policy provided that Part 40 is referenced in the policy and is readily available to any employee who requests a copy). • The requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations. • Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the DOT program: 1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. 2. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test). 3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. 4. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen. 5. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure. 6. Fail or decline to take an additional drug test the employer or collector has directed you to take. *(con't)*

FTA Requirement	Subrecipient Responsibility
Drug and Alcohol Policy/Elements (con't)	7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or employer. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test. 8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector). 9. For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process. 10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process. 11. Admit to the collector or MRO that you adulterated or substituted the specimen. • Description of the consequences for a covered employee who has a verified positive test result. If the system has a second chance policy, a description of the evaluation and treatment processes must be included. • Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04. In addition to the requirements listed above, the grantee's policy should include the following requirement identified in 49 CFR 40.197: • If the MRO informs the agency that a negative drug test was dilute, the agency may (but is not required to) direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, you must not retest some employees and not others. Some grantees may have modeled their testing programs after Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Part 382). FMCSA regulations do not meet FTA requirements. For example, the definition of covered employee is different. If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.
Types of Testing/ Substances Tested	Six types of testing are required by the drug and alcohol testing regulations. Pre-Employment (mandatory for drugs and optional for alcohol), Random, Post-Accident, and Reasonable Suspicion under certain conditions must be conducted by all grantees. If the grantee offers rehabilitation and the opportunity for an employee who tested positive to return to work, the grantee must conduct Return to Duty and Follow-up testing also. The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol. Note: if the grantee optionally conducts pre-employment alcohol tests of covered employees, the grantee must follow Part 40 testing procedures.

FTA Requirement	Subrecipient Responsibility
Random Testing Rate	Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current rate for random drug testing is set at 25 percent of the number of safety-sensitive employees annually. This is a reduction in the drug testing rate for 2005 and 2006, which was 50 percent. The random testing rate for alcohol is 10 percent of the number of safety-sensitive employees annually. Grantees that have their own random pool of safety-sensitive employees must be able to document that they are meeting the required rates for random drug and alcohol tests. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing meets the FTA required rates.
Post-Accident Determinations	Following a fatal accident involving a transit vehicle, grantees and/or their contractors and subcontractors with safety-sensitive employees are required to test all surviving covered employees on duty in the vehicle at the time of the accident as well as any other covered employee whose performance may have contributed to the accident. The determination of who should be tested must be made by the employer using the best available information at the time the decision is made. Following a nonfatal accident all covered employees operating the vehicle or deemed to have otherwise contributed to the accident must be tested unless the employer determines that an employee's performance did not contribute to the accident. The determination of who should be tested must be made by the employer using the best available information at the time the decision is made. The decision of who should and should not be tested following an accident must be documented in detail, including the decision-making process used to make the determination. A non-fatal accident is defined by the following: • One or more individuals is immediately transported for medical treatment away from the accident • Any vehicle incurs disabling damage requiring a tow truck. • A rail transit vehicle is taken out of service as a result of the accident
Testing Record of New Employees	Grantees must, after obtaining an employee's written consent, request the information about any employee who is seeking to begin performing safety-sensitive duties for the grantee for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position). Grantees must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer: 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; and 5. The employee's successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable. If the previous employer does not have information about the return-do-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must seek to obtain this information from the employee. *(con't)*

FTA Requirement	Subrecipient Responsibility
Testing Record of New Employees (con't)	Grantee must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the grantee must obtain and review the information as soon as possible. However, the grantee must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the grantee has obtained or made and documented a good faith effort to obtain this information. If the employee refuses to provide this written consent, the grantee must not permit the employee to perform safety-sensitive functions. If the grantee obtains information that the employee has violated a DOT agency drug and alcohol regulation, the grantee must not use the employee to perform safety-sensitive functions unless the grantee also obtains information that the employee has subsequently complied with the return-to-duty requirements. Grantees must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions, until and unless the employee documents successful completion of the return-to-duty process.
Secure Program Records Maintenance	The grantee must maintain records on program administration and the test results of individuals for whom the grantee has testing responsibility. The records must be maintained by the grantee in a secure location with controlled access. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records. It is necessary, under this circumstance, for the grantee to maintain a duplicate set of records. It is the responsibility of the grantee to exercise and document oversight/compliance activities to ensure that records are accurate and current and that they comply fully with FTA regulations. As an example, the grantee should maintain program records in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys.
MIS Reporting	All grantees must prepare, maintain and submit annual reports to FTA summarizing their drug and alcohol testing program results from the previous calendar year. The standard MIS report forms that must be used are on the web at: http://www.dot.gov/ost/dapc/. The MIS forms must be used "as-is"; they may not be combined or modified by a grantee and must be filled out completely. Grantees are responsible for ensuring the annual MIS reports of their contractors with covered employees are prepared, maintained, and submitted to FTA. The annual reports covering the prior calendar year must be submitted by March 15th to the FTA Office of Safety and Security or its designated agent. The MIS reports can also be submitted on-line at: http://damis.dot.gov/. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet.

FTA Requirement	Subrecipient Responsibility
Contractor Program Monitoring	If the grantee contracts with another agency or firm (contractors, subrecipients, or lessees) to provide safety-sensitive functions, it must monitor each contractor's drug and alcohol program proactively over the course of the contract. For example, it is suggested that each contractor provide the grantee a copy of its policy; employee and supervisor training documentation; name and location of the collection site; and name of the DHHS certified testing laboratory. Also, the grantee should consider verifying the credentials and/or certifications of the MRO, Breath Alcohol Technician (BAT), urine collectors and Substance Abuse Professional (SAP). Other documentation may include a description of the contractor's random selection process, quarterly management reports summarizing test results, and annual MIS reports. Many grantees contract with service providers that already are required to comply with Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations. If this situation exists, special procedures apply and the reviewer should consult FTA Drug and Alcohol Regulation Updates, Spring 1996, Issue 2, for more information.
Vendor Compliance Monitoring	If the grantee contracts out any aspects of its Drug and Alcohol Program implementation to a vendor(s), the grantee remains responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, grantees should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. The grantee should not assume that its vendors are following the correct procedures or that they are knowledgeable about FTA regulations.

13. Equal Employment Opportunity

Grantee's Responsibility: The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or physical or mental disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving federal financial assistance from the federal transit laws. (Note: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

FTA Requirement	*Subrecipient Responsibility*
EEO Program Oversight	The grantee's Chief Executive Officer (CEO) should designate an EEO Officer and adequate staff to administer the EEO program. The EEO Officer should be an executive and must report directly to the CEO. Care should be taken to avoid conflicts when assigning responsibility for administering the EEO program as a collateral duty assignment, e.g., a personnel officer may have a conflict of interest.
EEO Program Approval	A formal EEO program is required of any grantee that both employed 50 or more transit-related employees (including temporary, full-time or part-time employees) and received in excess of $1 million in capital or operating assistance or in excess of $250,000 in planning assistance in the previous federal fiscal year. The program requirements detail what must be included, such as a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices and proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years. Note: Employees are not counted in the aggregate. The requirement applies to any single employer of 50 or more transit-related employees. For example, if a city (receiving over $1 million in FTA funds) with 10 transit-related employees contracts with a private provider who employs 40 transit-related employees, then neither the city nor the contractor is required to have a formal EEO Program. However, if the city (the grantee) exceeds both thresholds, then the grantee would be required to submit a formal EEO Program to FTA. If the contractor employs 50 or more transit-related employees, the grantee should ensure that the contractor submits a formal EEO Program to them for review and approval. In some circumstances, the CRO may require that the grantees submit the EEO program of a contractor that meets this threshold for review. If the grantee has a contractor that meets the employee threshold, seek additional guidance from the CRO on the submittal of their program.
EEO Program Conditions on Approval	In reviewing the grantee's EEO program, the CRO may have issued a conditional approval and identified corrective actions that need to be taken. Corrective actions may be required in cases where FTA has determined that a grantee is deficient or is in probable deficiency with the requirements of FTA C 4704.1.
EEO Complaints	Under Title VII of the Civil Rights Act of 1964, employees and applicants have the right to file complaints alleging discrimination on the basis of race, color, religion, national origin, sex, age, or physical or mental disability, or reprisal. Sexual orientation is a form of discrimination and such complaint should be processed through the agency's administrative grievance process. The grantee should have sufficient staff and procedures to handle such complaints appropriately and to respond in a timely manner.

FTA Requirement	Subrecipient Responsibility
EEO Goals/ Underutilization	Goals and timetables are management tools to assist in the optimum utilization of human resources. For grantees that meet the formal program threshold, specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis. Grantees must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Barriers can include not having employment material available for persons with limited English proficiency. Grantees should have outreach efforts to populations that are underrepresented.
Non-discrimination under ADA	Grantees are required to not discriminate against persons with disabilities. Discriminatory acts include, but are not limited to, denying a person the opportunity for participation in or the benefit of a program and limiting, for a qualified person with physical or mental disability, the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. Grantees are required to not discriminate in employment and to make reasonable accommodations for qualified candidates with disabilities hired by the grantee. Such accommodations could include modifications to telephone systems, computers, office furniture, etc.