

**Tennessee Department of Transportation  
Division of Multimodal Transportation Resources**

**Compliance Monitoring Program (CMP) Field Guide**



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*In association with*

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# Introduction

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## TDOT Compliance Monitoring Program

### Goal

The goal of the Tennessee Department of Transportation Compliance Monitoring Program (CMP) is to provide a consistent and thorough review of the compliance practices of TDOT subrecipients that receive Federal funding under 49 U.S.C. § 5310, 5311, 5316, and 5317.

### General Approach

TDOT will adopt a risk-based approach in conducting on-site periodic compliance reviews of its Federally funded subrecipients. In this approach, TDOT will conduct compliance reviews of **all** subrecipients in the Section 5311, Section 5316, and Section 5317 programs once every three years (100 percent sample coverage). TDOT will employ the services of its technical assistance consultant to conduct the reviews. This will ensure impartiality in the conduct of the reviews and ensure that the reviewers possess the technical competence to conduct the reviews. TDOT will accompany the consultants on each review.

The review process will emulate FTA's Triennial Review and State Review Process. The process will consist of both a desk review and an on-site visit by the review team and TDOT. Following each site visit, the consultant review team will issue a report outlining the areas reviewed, compliance deficiencies, actions necessary by the subrecipient to remedy the deficiency, and the timeframe for corrective action.

A principle tenant of the TDOT approach to the Compliance Monitoring Program is the provision of technical assistance. The consultant team will be required to assist each subrecipient under review to understand the requirements of any particular circular, rule, regulation or law, to provide copies of relevant regulatory citations and technical assistance materials, and to render additional assistance in subrecipient remedy of findings, as necessary.

### Program Structure

There are seven key elements in TDOT's design, management, and execution of the Compliance Monitoring Program.

1. Scope, cycle, and topical coverage of the reviews.
2. Division of work in desk review/site review
3. Technical assistance
4. Review structure/protocols
5. Standardized review guide
6. Tracking and closure of findings
7. Statewide trends monitoring

## Scope, Cycle, and Topical Coverage of the Reviews

All Section 5311, Section 5316, and Section 5317 subrecipients will be reviewed on a three-year cycle. Due to some recipients receiving multiple awards, the review process will encompass one, two, or three separate programs during a single review. TDOT will work with the review consultant to identify subrecipients who receive multiple program awards

The scope of the reviews will encompass all applicable Federal requirements as defined in the respective program circular. Additionally, a subrecipient's compliance with Tennessee's Policy 22 requirements will be incorporated into the review scope.

Coverage will address the subrecipients' responsibilities under the topical areas in the current version of the State Management Review (SMR) Workbook and any updates thereto. The scope of TDOT reviews will change depending upon any changes in the Federal SMR workbook or Federal requirements..

## Division of Work in Desk/Site Reviews

For the desk review, all materials that are readily available at TDOT (*i.e.*, grant applications, certifications and assurances) will be electronically collected by the review consultants from TDOT. The review consultants will require only materials not anticipated to be on file at TDOT from the individual subrecipients under review.

TDOT materials for the desk review will include, but not necessarily be limited to:

- ◆ Grant Application
  - Invoices (Period?)
  - Data Reports (Period?)
- ◆ Current Certifications
- ◆ ADA Plans (if applicable)
- ◆ DBE Programs & Reports (if applicable)
- ◆ D & A policies & Reports
- ◆ NTD Data, Last Two Years
- ◆ Audits

Subrecipient materials for the desk review will include, but not necessarily be limited to:

- ◆ All written service and operating policies
- ◆ Audits (if not submitted to TDOT)
- ◆ EEO/Civil Rights/LEP
- ◆ Written Vehicle Maintenance Plan
- ◆ Written Facility Maintenance Plan (if applicable)
- ◆ Indirect cost allocation plans
- ◆ Asset inventories
- ◆ Grants management policies
- ◆ Other

Both TDOT and the subrecipients will be provided 30 days to compile and upload desk review items. The review consultants will have a minimum of 14 days desk review time prior to conducting the site visit.

## Technical Assistance

The focus of the Compliance Monitoring Program will be both compliance *and* technical assistance. Technical assistance will be provided:

- ◆ As necessary during the data compilation period (assistance with data uploads);
- ◆ On-site while explaining preliminary compliance findings during an exit conference;
- ◆ After release of the draft report, assisting the subrecipient understand the nature of the deficiency;
- ◆ In the development of subrecipient remedial action to the deficiency; and
- ◆ To TDOT as systemic compliance problems arise in the course of the reviews.

## Review Structure/Protocol

The review process will consist of ten structured steps, from formal communication by TDOT announcing a scheduled Compliance Monitoring review to the issuance of the final report and action plan by the review consultant. Steps in the process will include:

- 1) Review Initiation
  - a) TDOT Identification of systems under review
  - b) Consultant establishment of subrecipient directories on FTP site, assign user names and pass words
  - c) TDOT transmission of notification letter establishing/negotiating on-site review dates (Attachment B) with reference to link where system can download Compliance Field Guide (Attachment C)
  - d) Consultant follow-up communication with system and TDOT, transmitting document request forms (Attachment D – TDOT and Attachment E – Subrecipient), and document upload instructions (Attachment F)
- 2) Upload of Desk Review Documents
  - a) Upload of desk review documents
    - i) TDOT upload of requested documents
    - ii) Subrecipient upload of requested documents
  - b) Submission of document control form
    - i) TDOT upload of document control form
    - ii) Subrecipient upload of document control form
- 3) Review consultant catalogs desk review documents
- 4) Desk review
- 5) Site Visit to Subrecipient Location
  - a) Review team travels to subrecipient location

- b) Review team conducts entrance interview, describing the CMP program
- c) Review team conducts site review
- d) Review team identifies compliance deficiencies (draft)
- 6) Review team conducts exit conference, highlight draft deficiencies and remedial actions
- 7) Preparation of draft compliance report
- 8) Preparation of remedial action plan
- 9) Review of draft report
  - a) TDOT transmittal of any review comments to consultant
  - b) Revisions, as necessary to compliance report
  - c) Consultant submittal of revised draft report to TDOT
  - d) Submittal of report to subrecipient
- 10) Subrecipient Review of Report
  - a) Report review
  - b) Rebuttal, if any, to report
- 11) Subrecipient action to remedy deficiencies
- 12) Review and Close of Findings
  - a) Review of correction action
  - b) Closure of finding

### **Standardized Review Guide**

To ensure equitable treatment and consistency among the various review teams that will be used by the compliance consultant, TDOT's consultant will prepare a standard Compliance Monitoring Program guide that will explain the review process and provide the subrecipient with all questions and subject areas that will be part of the compliance review.

### **Tracking and Closure of Findings**

The review consultants will catalog all findings from each review and develop a database to track and monitor the status of subrecipient remedy of all compliance findings.

### **Statewide Trends Monitoring**

As TDOT moves through a structured schedule of compliance reviews, the review consultant shall be responsible for identifying common compliance issues. The consultant will recommend changes, modifications, and/or enhancement to TDOT training and guidance materials based on these common findings.

The review team will conduct both entrance and exit interviews during the site visit. The entrance interview will entail:

- ◆ TDOT introductions/review of the overall purpose/goals of the Compliance Monitoring Program;
- ◆ Consultant review of anticipated schedule/on-site adjustments to meet local needs;
- ◆ Consultant review of how the Compliance Monitoring Program will be conducted; and
- ◆ Opportunity for subrecipient questions.

The exit interview will cover:

- ◆ Expression of thanks for subrecipient cooperation;
- ◆ A preliminary review of compliance findings;
- ◆ Recommended approach to remedy of compliance findings;
- ◆ Recommended resources that can be used to gain additional knowledge of any subject areas where compliance findings were rendered, and
- ◆ Opportunity for subrecipient questions.

### **Draft Report**

The draft Compliance Monitoring Program report will be organized by subject matter, consistent with the organization of the State Management Review workbook. Some subject areas may be consolidated for efficiency in the on-site review process.

Within 30 days after the site review, the review consultant will issue the draft compliance report. The report will provide narrative on the following subject areas:

- ◆ Overview of the process
- ◆ Participants in the process
- ◆ An overview of the general compliance elements of each subject
- ◆ The results of the review in each subject area
- ◆ Identification of deficiencies in the subject area
- ◆ Recommended remedial actions
- ◆ Timeframe for subrecipient remedy.

At the end of each report, all compliance findings will be summarized in tabular form.

The draft report will be submitted to TDOT for review prior to issuance to the subrecipient.

### **Subrecipient Review and Response**

The subrecipient will have 30 days to review the draft final report.

During this review period, the subrecipient may present additional information regarding compliance actions in the event the subrecipient disagrees with a review finding. Any such rebuttals will be mutually reviewed by TDOT and the review consultants so that a final determination may be made.

During the review period, the subrecipient will have opportunity to begin remedy of the finding. To the extent possible, TDOT will encourage subrecipient to utilize the review period to prepare remedies for identified compliance deficiencies.

The subrecipient's response, along with all proposed remedial actions that may have been accomplished during the review period, will be submitted to the review consultant for determination of potential closure of the finding.

## **Final Report**

Following receipt of the subrecipient's response, the review consultant will issue the Final Report.

The final report will document which findings have been satisfactorily addressed and closed during the review period. For all remaining open findings, the subrecipient will have agreed to the proposed timeframe for remedy and will initiate work on remedial actions pursuant to that schedule.

The review consultant will be responsible for monitoring subsequent remedial actions and findings closure after issuance of the final report. The review consultant will report to TDOT any subrecipient who fails to remediate any finding within the specified timeline for further action.

## **Statewide Monitoring**

As noted above, all compliance findings will be cataloged by subject and topic. A database for all compliance findings will be used to generate reports that will summarize the nature of each finding, by topic and subtopic area. Repeated occurrences of compliance deficiencies will be identified and the review consultant will be tasked with recommending to TDOT potential actions that can be employed to enhance TDOT training activities, grant procedures, etc., in order to eliminate or reduce future occurrences.

# Section 1. Program Management

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## Legal Authority

Subrecipients must have the legal capacity to receive Federal and state grants. Subrecipients must be eligible under the specific requirements of the FTA programs. The authority to take necessary actions and responsibility on behalf of the subrecipients must be properly delegated and executed. This means that:

- Subrecipients must have designated a body legally responsible for the overall organization, management, and operation of the transportation system.
- The officials acting on behalf of subrecipients must have the appropriate authority. This is usually documented in an authorizing resolution passed by the governing body.

1. What is the name of the designated body legally responsible for the overall organization, management, and operation of the transit system?

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2. What is the name or title of the person or persons with the authority to act on behalf of the transit system?

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3. What is the source of that authority? Does the system have a Governing Board approved authorizing resolution?

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## Certifications and Assurances

To receive a grant under Section 5311, TDOT must annually assure FTA that the State and subrecipients meet certain requirements. TDOT should maintain adequate files documenting the basis for all assurances which it makes to FTA. Each fiscal year, FTA publishes the required certifications and

assurances in the *Federal Register* and updates the certifications and assurances in the TEAM system. This notice indicates which certifications and assurances apply to all grantees or to certain kinds of awards, and which are required for grants under specific sections.

TDOT must electronically submit the appropriate certifications and assurances each fiscal year for all active grants and new grants that it expects FTA to make during that fiscal year. Subrecipients should use the most recent version of the current year notice for a list of required certifications and assurances FTA has issued. Recipients can find the current list in TEAM.

- 4. Has the transit system submitted the properly completed the Annual Certifications and Assurances? Is the document up-to-date?

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- 5. Were they signed by an authorized official with the proper authority?

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- 6. Was the submission verified by an Opinion of Counsel?

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## Governance

There is no specific FTA requirement on governing boards; however, some FTA requirements include approval actions by the governing board. These policies include DBE, Title VI, and Drug and Alcohol regulations.

- 7. What is the governing body of the organization?

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8. How often does this body meet?

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9. Is there documented evidence that this body deliberates on key management issues facing the transit system?

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## Control Environment

An agency's overall control environment sets the tone of the organization and influences the control consciousness of its employees. To successfully address risks and achieve its objectives, agency management must institute various control activities, such as segregation of duties, physical controls, and a system of approvals.

10. How does management promulgate internal controls and enforce those controls throughout the agency (e.g., checks and balances, authorizations and approvals, segregation of duties), and a positive conveyance of the agency mission statement, goals, and objectives to its employees?

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11. Are agency employees skilled and trained to perform the duties associated with their particular job functions (e.g., daily management of staff, accounting functions, delivery of services)?

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12. How does management remain abreast of the requirements of laws and regulations pertinent to the transit grant programs?

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13. Is there a formal (written) conflict of interest policy or code of conduct in effect? How does the agency management convey the message that integrity cannot be compromised? How is this communicated to employees? Does the policy cover Board members?

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14. Are employees who handle cash, securities, and other valuable assets bonded or otherwise covered under an insurance policy?

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15. Does the subrecipient have a written complaint procedure?

Yes     No

If "Yes," does the procedure include the five elements recommended by TDOT?

| Yes                      | No                       | Element   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | A detailed description of the procedures for filing a complaint                     |
| <input type="checkbox"/> | <input type="checkbox"/> | Prompt and equitable resolution   |
| <input type="checkbox"/> | <input type="checkbox"/> | An opportunity for the complainant to provide additional information                |
| <input type="checkbox"/> | <input type="checkbox"/> | Notification to complainant of who to contact regarding the status of the complaint |
| <input type="checkbox"/> | <input type="checkbox"/> | An appeal procedure   |

16. Does the subrecipient have a system to track complaints and notifications?

Yes     No

If "Yes," does the subrecipient issue decisions in writing on a timely basis?

Yes     No

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## Section 2. Selection and Eligibility/Eligible Services

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### Overview

States and subrecipients must be eligible under the specific requirements of the FTA programs and have the legal, financial, and technical capacity to carry out the proposed program of projects.

This section of the TDOT Compliance Program Manual will address eligibility requirements by program.

1. What are the Federal funds received by this subrecipient during the last three years (check all that apply)?

Section 5311  
 Section 5317

Section 5311(f)  
 Section 5310

Section 5316  
 Section 5309

Section 5339  
 Section 5307

### Section 5311

States and subrecipients must be eligible under the specific requirements of the FTA programs and have the legal, financial, and technical capacity to carry out the proposed program of projects.

2. What is the organizational status of the subrecipient (*check one only*):

- Governmental agency  
 Private nonprofit corporation  
 Indian tribal organization  
 Private, for profit provider of transportation under contract to an FTA recipient or subrecipient

3. Has the subrecipient demonstrated the technical capacity to administer a Section 5311 grant?

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4. Are the transit services operated by the subrecipient open to the general public?

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5. Does the subrecipient provide other types of services using project equipment? Are these services incidental to the provision of transit services? Does the system have a cost allocation method in place to ensure that such services are paid for in full (and not billed to the Section 5311 program)?

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6. Does the subrecipient provide service in urbanized areas? If so, has the subrecipient developed a cost allocation methodology to ensure that Section 5311 funds are used to only benefit residents of nonurbanized areas?

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**Section 5316**

7. Is the subrecipient an eligible organization to receive Section 5316 funds?

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8. Was the subrecipient's project selected through a competitive, statewide application process?

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9. Has the subrecipient demonstrated the technical capacity to administer a Section 5316 grant?

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10. Has the subrecipient expended Section 5316 funds for eligible purposes?

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11. Is the service funded with Section 5316 consistent with a locally developed coordination plan?

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12. Has the subrecipient made acceptable arrangements for labor protection (Note: the Section 5333(b) Special Warranty for the Section 5311 Program does not apply to JARC grants)?

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## Section 5317

13. Is the subrecipient an eligible organization to receive Section 5317 funds?

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14. Was the subrecipient's project selected through a competitive, statewide application process?

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15. Has the subrecipient demonstrated the technical capacity to administer a Section 5317 grant?

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16. Has the subrecipient expended Section 5317 funds for eligible purposes?

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17. Do the New Freedom funded services meet the definition of “new”?

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18. Subrecipients must exhibit maintenance of effort in services as a condition of eligibility for Section 5317 funds. Subrecipients may not terminate ADA paratransit enhancements or other services funded as of August 10, 2005, in an effort to reintroduce the services as "new" and then receive New Freedom funds for those services.

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19. Is the service funded with Section 5317 consistent with a locally developed coordination plan?

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## Section 3. Financial Management

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### Overview

As a primary recipient of FTA funds and as the State agency designated to administer such funds for public transit activities, TDOT will manage the fiscal elements of these programs in accordance with its existing procedures, FTA guidelines, and other applicable state and Federal regulations.

All subrecipients are required to establish and maintain an accounting system to which all transportation-related costs, revenues and operating costs are recorded so that they may be clearly identified, easily traced and substantially documented. The fully allocated cost of the public transit program must be clearly identified regardless of the operational nature of the agency.

### Pre-Award Audit

All subrecipients are required to establish and maintain an accounting system to which all transportation-related costs, revenues and operating costs are recorded so that they may be clearly identified, easily traced, and substantially documented. The fully allocated cost of the public transit program must be clearly identified regardless of the operational nature of the agency.

Upon initial approval of an applicant for inclusion in the Program of Projects, the Division of Multimodal Transportation Resources shall review each project for the following:

- Determine that the subrecipient's accounting system is adequate and capable of segregating, accumulating, and maintaining allocable and allowable costs as they apply to the project and/or contract and to document necessary facts that might be needed for audits;
- Establish that proper record retention will be maintained for a period of three (3) full years from the date of the final payment and shall be subject to an audit upon request;
- Establish procedures to ensure proper project management and oversight;
- Establish that proposed costs are reasonable and in line with those that the subrecipient is currently incurring;
- Establish that the subrecipient has the financial capability to perform the services required;
- Determine that the applicant has an inventory procedure to assure that equipment purchased with Federal and/or state funds can be accounted for at any time (documentation of the inventories should be on file at all times); and
- Assure that the applicant can comply with the provisions of 2 CFR part 200.

1. **Accounting System.** Is the subrecipient's chart of accounts sufficiently detailed to accumulate project revenues and expenses in detail?

Yes     No

2. **Accounting System.** Is the chart of accounts sufficiently detailed to distinguish between project capital, operating, and administrative expenses?

Yes     No

3. **Accounting System.** Is the subrecipient's accounting system capable of generating reports to ensure the timely collection of revenues and grant receipts?

Yes     No

4. **Accounting System.** Are the personnel responsible for recording financial transactions, generating reports, and ensuring the accuracy of financial data suitably trained to perform these functions?

Yes     No

5. **Records Retention.** Does the subrecipient adhere to TDOT requirements that all financial records pertaining to a TDOT grant be retained for three (3) years following the final payment and/or audit (whichever comes later)?

Yes     No

6. **Written Procedures.** Does the subrecipient have written financial management procedures?

Yes     No

7. **Reasonableness of Costs.** 2 CFR part 200.403(a) requires that all costs incurred under a grant must be "reasonable and necessary." Does the subrecipient have a process in place to determine reasonable and necessary costs prior to making the expenditure?

Yes     No

If "Yes," what are these procedures?

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8. **Financial Capacity.** Financial capacity is measured by a subrecipient's ability to handle a number of functions, including the following management elements (check if the subrecipient demonstrates sufficient managerial ability to):

- Match and Manage FTA Grant Funds  
 Cover Cost Overruns

- Cover Operating Deficits through Long-Term, Stable Sources
- Maintain and Operate Federally Funded Equipment
- Conduct Annual A-133 Audits

## Indirect Costs

9. Does the subrecipient claim reimbursement of indirect costs in its claims for reimbursement under its Federal grant awards?

- Yes     No

If "Yes" to Question 8, has the subrecipient submitted the plan for approval to a cognizant Federal agency?

- Yes     No

If "Yes," which agency approved the Cost Allocation Plan (CAP)?

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10. Is the Cost Allocation Plan (CAP) updated annually?

- Yes     No

What is the date on the latest approved CAP? Date:

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11. Are claims for reimbursement of indirect costs made in accordance with the latest approved indirect cost rate?

- Yes     No

## Internal Controls

Subrecipients are responsible for establishing and maintaining adequate internal controls over all of their functions that affect implementation of a grant. For proper management of grants, these controls must be used by each grantee in all of its operating, accounting, financial, and administrative systems. To ensure proper accountability for grant funds, internal controls must be integrated with the management systems used by the grantee to regulate and guide its operations.

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12. Subrecipients must demonstrate that it has certain policies, procedures, and protocols in place to demonstrate that it has sufficient internal controls over financial management.

- Does the subrecipient have written grants administration policies that govern organizational control of its activities?
- Does the subrecipient's formal organizational structure clearly define, assign, and delegate appropriate authority for all duties?
- Given the size of the organization, is there sufficient segregation of duties in financial management functions to ensure that adequate internal checks and balances exist?
- Does the subrecipient have a system of organizational planning to determine financial, property, and personnel resource needs?
- Are there sufficient checks and balances in place to prevent illegal or unauthorized transactions or acts?
- Do the subrecipient's information systems reliably provide needed operating and financial data for decision-making and performance review?
- Does the subrecipient have any type of internal audit functions to ensure that grant funds are expended properly?
- Are the subrecipient's personnel properly qualified for their assigned responsibilities, duties, and functions? Are education, training, experience, competence, and integrity considered in assigning work?
- Are the subrecipient's expenditures controlled so that construction, equipment, goods, and services are acquired and received as contracted for (as to quality, quantity, price, and time of delivery)?
- Does the subrecipient exercise sufficient control over real property, equipment, expendables, and funds to prevent misuse, misappropriation, waste, or unwarranted deterioration or destruction?

13. How is the security of financial data maintained? Who has access to records? How often is the financial system backed-up?

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## Budget Controls

Subrecipients are responsible for monitoring expenditures or outlays and must compare these outlays to budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data ,including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If the unit cost data are required, estimates based on available documentation will be accepted whenever possible.

Applicable Office of Management and Budget (OMB) cost principles, as stated in 2 CFR part 200.400, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the allowability and allocability of costs.

Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contracts, and subgrant award documents.

14. How is the budget developed? Who is responsible for developing the budget?

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15. Who is responsible for approving the budget?

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16. Who is responsible for ensuring that costs are consistent with the project budget and the limitations set forth in the grant agreement?

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17. Who is responsible for determining cost allowability? Are budget officials knowledgeable about Federal cost principles governing cost allowability?

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18. How is the budget managed throughout the fiscal year? Does the accounting system generate periodic reports regarding revenues, expenses, budget variances, etc.? Who receives these reports? How are the reports used by transit management?

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19. What are the subrecipient's policies on seeking contract amendments?

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20. Has the subrecipient required a contract amendment during the last three fiscal years? A contract amendment will change the scope, the period of performance, or amount of the contract.

Yes     No

If Yes, was approval for the contract amendments obtained prior to making the change?

Yes     No

21. What are the subrecipient's policies on budget revisions?

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22. Has the system made any budget revisions in the past three (3) fiscal years?

Yes     No

23. What is the subrecipient's fiscal year?

Start date (current year) \_\_\_\_\_ End date (current year) \_\_\_\_\_

24. What is the subrecipient's basis of accounting?

Cash Basis  
 Accrual Basis  
 Other (Describe) \_\_\_\_\_

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25. **Accounts Receivable/Payable.** Is the subrecipient billing TDOT on a timely basis?

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26. **Accounts Receivable/Payable.** If the subrecipient provides service under contract to human service agencies, what is the frequency for issuing invoices to the contracting organizations? What is the typical aging cycle on such receivables?

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27. **Accounts Receivable/Payable.** What procedures does the subrecipient have in place to track and collect on aged receivables?

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28. **Credit Cards.** Does the subrecipient provide credit cards to its employees?

Yes     No

If "Yes," are their written policies in place governing the use of such cards?

Yes     No

Do these policies provide sufficient protection against fraud and abuse? Is there sufficient separation of function to detect fraud and misuse of agency credit cards?

Yes     No

## Documentation of Costs

Financial records, supporting documentation, and all other records pertinent to a grant must be retained by the subrecipient and must be made readily available to authorized representatives of the U.S.DOT and the Comptroller General of the United States for a period of three (3) years from the date the State electronically submits the final Financial Status Report (SF-269A) under the grant.

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If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained beyond three (3) years, until all litigation, claims, or audit findings involving the records have been resolved.

Normally, supporting documentation consists of receipts, invoices, vouchers, contracts, leases, etc. There are special requirements for the documentation of personnel expenses, particularly those employees whose time is split between (a) more than one Federal award; (b) a Federal award and a non-Federal award; (c) an indirect cost activity and a direct cost activity; (d) two or more indirect activities which are allocated using different allocation bases; or (e) an unallowable activity and a direct or indirect cost activity.

29. Does the subrecipient maintain proper supporting documentation for routine purchases?

Yes     No

30. How does the subrecipient support personnel charges made to Federal grants?

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## Cash Management

Cash management requirements for subrecipients are different than direct recipient that must abide by a series of rules regarding disbursement of funds drawn electronically via FTA's Electronic Clearinghouse Operation (ECHO). As a subrecipient, the agency must periodically reconcile grant accounts, reconcile bank records with financial system records, ensure the timely deposit of cash receipts to prevent fraud or loss, and ensure sufficient separation of function to provide adequate checks and balances in the cash handling process.

31. Describe the process in which the transit systems receives cash and checks from TDOT and or other entities that purchase service.

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32. How often are receipts deposited to the bank?

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33. Does a person other than the individual who conducts the accounting function verify the cash receipts listing against the deposit slips?

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34. Document the following elements associated with fare collection:

Are there written procedures governing fare collection?

Yes     No

How often are revenues pulled from system vehicles/fareboxes?

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Where are farebox revenue counts conducted?

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Is this location secure? Who has access?

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How are the counts posted to the agency's general ledger?

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Are farebox counts reconciled against driver logs?

Yes     No

35. What steps has the organization taken to protect itself from theft, fraud, or loss? Are employees who handle cash bonded? Is there insurance to cover loss or theft?

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36. Does the subrecipient sell passes, pass books, or paper tickets? What controls are in-place to prevent misuse or abuse of the passes?

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37. Is there a petty cash fund?

Yes     No

If yes, are there written policies and procedures in place for petty cash expenditures which include how it may be used and who is eligible to withdraw funds?

Yes     No

38. Who is response for check writing?

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Are two original signatures required on all checks?

Yes     No     Other

If "Other," please explain:

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39. Are check signers authorized by the governing board?

Yes     No

40. Are bank accounts reconciled on a regular basis?

Yes     No

41. Does the organization have written policies regarding the payment of travel expenses incurred by employees who travel away from their duty station on agency business?

Yes     No

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## Local Match

The Federal share of eligible capital and project administrative expenses may not exceed 80 percent of the net cost of the project. There are three exceptions to the 80 percent match for capital projects: (1) bicycle projects; (2) ADA projects; and (3) Clean Air Act projects. It is only the incremental cost of the equipment required by the ADA or CAA that may be funded at 90 percent, not the entire cost of the vehicle, even if the vehicle is purchased for use in service required by the ADA or CAA. Alternatively, for administrative simplicity FTA allows grantees to compute the Federal share at 83 percent for accessible vehicles. The Federal share of eligible operating expenses may not exceed 50 percent of the net operating cost of the project. Under Subsection 5311(g)(3)(A), funds received pursuant to a service agreement with a State or local social service agency or a private social service organization may be used as local match. Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5311 operating assistance. In either case, the cost of providing the contract service is included in the total project cost.

Under Subsection 5311(g)(3), the local match for the remainder of net project costs: (a) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; (b) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the U.S. Department of Transportation) that are eligible to be expended for transportation; or (c) notwithstanding item (b) above, may be derived from amounts made available to carry out the Federal Lands Highway Program established by Section 204 of Title 23.

Examples of non-Federal sources that may be used for any or all of the local share include: State or local appropriations; dedicated tax revenues; private donations; and net income generated from advertising and concessions. Recipients may count non-cash shares such as donations, volunteered services, or in-kind contributions toward the local match only if the recipient formally documents the value of each non-cash share, and if this value represents a cost that would otherwise be eligible under the project. The net project cost must include the value of any in-kind contributions included in net project cost to the extent it is used as local match. States should reference Federal Administrative Rules for Grants and Cooperative Agreements, 49 CFR parts 18 and 19 for more information. Recipients may use funds from other Federal agencies (non-DOT) for the entire local match if the other agency makes the funds available to the recipient for the purposes of the project. The only DOT funds that States can use as local match for Section 5311 projects are from the Federal Lands Highway Program cited in 49 U.S.C. 5311(g)(3).

42. What are the sources funds being used to generate the local match? Are these sources non-Federal as defined above?

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43. Is the subrecipient generating sufficient local match for all FTA grants?

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## In-Kind or Contributed Services

Non-cash shares such as donations, volunteered services, or in-kind contributions are eligible to be counted toward the local match only if the value of each is formally documented and supported. Additionally, any donation or volunteer service must represent a cost which would otherwise be eligible under the project.

OMB guidance in 2 CFR part 200.434 states that contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable. Donations, volunteered services, and other in-kind contributions provided by other non-governmental organizations may be eligible with approval of TDOT.

Fair market value of contributed or volunteer labor must be computed based on the regular rates paid for similar work in other activities of the organization or, in cases where the kinds of skills involved are not found in other activities of the organization, the rates used must be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

Under any circumstance, the value of these services is not reimbursable either as a direct or indirect cost under Federal grant awards; rather this value may only be used as local match.

44. Does the subrecipient utilize contributions or donations to meet part of the match share of FTA grants?

Yes     No

45. How did the subrecipient assign fair market value to the donated or contributed service?

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46. Are the services or items donated necessary and reasonable for proper and efficient accomplishment of project or program objectives?

Yes     No

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47. If the subrecipient is a public entity, did the donation or contributed service come from the public entity itself?

Yes     No

48. Did the subrecipient use the value of the donation only as local match?

Yes     No

## Program Income

Program Income is gross income received by a subrecipient that is directly generated by a grant supported activity, or earned only as a result of the Grant Agreement during the grant period (the time between the effective date of the grant and the ending date of the grant reflected in the final financial report).

Program income includes income: (a) from fees for services performed; (b) from the use or rental of real or personal property acquired with grant funds; (c) from the sale of commodities or items fabricated under a Grant Agreement; and (d) from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc., and interest earned on any of them.

TDOT restricts use of program income, as follows:

- Program income must be retained and used for allowable capital or operating expenses;
- Program income must be used as it is earned to defray eligible program costs; it may not be used to reduce the subrecipients' local share;
- Program income must be used to reduce total allowable cost to net costs on which the Federal share is determined. Subrecipients must disburse program income funds before requesting reimbursement;
- Program income may be used to meet cost sharing or matching requirements for non-FTA transit programs, when authorized by TDOT. The amount of the Federal award remains the same.
- If authorized by TDOT, costs associated with the generation of program income may be deducted from gross income provided these costs have not been charged to the award;
- Subrecipients must account for program income earned in their accounting system and the accounting system must be able to identify the purpose for which program income was used.

49. Does the subrecipient generate program income?

Yes     No

50. Has the subrecipient used program income to reduce total project expenses prior to apply for reimbursement from TDOT?

Yes  No

## Single Audit

In compliance with 2 CFR part 200.500, agencies expending \$750,000 or more in Federal assistance in the subrecipient's fiscal year (for years beginning on or after December 26, 2014) must submit a single audit to Division of Multimodal Transportation Resources. Subrecipients not meeting the scope of a single audit must submit a financial statement in compliance with contractual requirements.

Two copies of the report, a copy of the data collection form, and other required documents are to be submitted to the Director of Operations, within the earlier of 30 days after receipt of the audit report or nine months after the subrecipient's fiscal year end. The Division of Multimodal Transportation Resources will maintain a log to ensure receipt of required reports and documents, review and resolution.

If a subrecipient (1) fails to submit the required report and documentation before the due date (2) fails to obtain an extension from TDOT as is appropriate (3) fails to submit an official extension to Division of Multimodal Transportation Resources and/ or (4) fails to respond to the TDOT review, appropriate action will be taken. In cases of continued inability or unwillingness to have an audit conducted in accordance with audit requirements,

51. Did the subrecipient receive more than \$500,000 in Federal funds annually (from all sources) during any of the last three fiscal years?

Yes  No

52. Will the subrecipient receive more than \$750,000 in Federal funds annually (from all sources) in future years?

Yes  No

53. Does the most recent audit report contain any findings relative to the subrecipient's use of FTA funds?

Yes  No

If "Yes," did the subrecipient send a copy of the audit findings to TDOT?

Yes  No

Did the subrecipient send the audit within 9 months after the close of the fiscal year or within 30 days after release of the audit (whichever is earlier)?

Yes     No

54. Did the subrecipient resolve all transit-related findings?

Yes     No

Did TDOT close the audit findings?

Yes     No

55. ***Subrecipients Not Required to Prepare an Single Audit.*** Did the subrecipient submit independently prepared financial statements?

Yes     No

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## Section 4. Procurement

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### Overview

Procurement procedures used by the Division of Multimodal Transportation Resources and their subrecipients must comply with applicable State law and Federal requirements contained in FTA Circular 4220.1. Section 5310, 5311, 5316, and 5317 subrecipients' capital purchases will be monitored through routine site visits and periodic compliance reviews.

Each State and its governmental subrecipients may use State procurement procedures for their third party contracts. The provisions of FTA Circular 4220.1F and Department of Transportation (DOT) and 2 CFR part 200.300 shall apply.

FTA Circular 4220.1F applies to third party contracts and subcontracts of all other FTA recipients and their subrecipients, including regional public transportation authorities that are not a State. Even though a recipient or subrecipient is not a State, it may use its own procurement procedures, if those procedures conform to applicable Federal law and regulations, including the applicable Common Grant Rule.

### Standards of Conduct

The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

1. Does the subrecipient maintain written standards of conduct governing the performance of its employees that are engaged in the award and administration of contracts?

Yes     No

2. Does the written policy cover employees, officers, agents, or board members, or their immediate family members, partners, or organizations that employ or is about to employ any of the foregoing individuals? Does the standard of conduct preclude such persons from participating in the selection, award, or administration of a contract supported with FTA financial assistance if there is a conflict of interest, real or apparent?

Yes     No

3. Does the written policy deal with the acceptance of gifts?

Yes     No

4. Does the written policy address penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors or subrecipients or their agents?

Yes     No

## Third Party Contracting Capacity

As part of the subrecipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the subrecipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state, and local requirements. If the subrecipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, TDOT expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

5. Does the subrecipient have written procurement policies?

Yes     No

6. Do these policies address the following elements:

- Use of clear, performance based specifications that use non-restrictive terms and requirements and incorporate "brand name or equal" terms when specific references cannot be avoided?
- Internal procedures that result in an assessment of the subrecipient's need for the property or services?
- Evaluation of lease vs. purchase options?
- The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement?
- Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient?

7. Does the subrecipient incorporate required Federal terms and conditions in procurement specifications and contracts?

Yes     No

8. Does the subrecipient maintain a written history of every procurement?

Yes  No

Does this history include the following elements:

- Documentation for basis of the procurement method used.
- Documentation for the contract type used.
- Documentation of the basis for vendor selection.
- Justification for the contract cost or price.
- Other documents as necessary, commensurate with the size and complexity of the procurement itself, so that compliance with applicable standards can be documents.

9. Does the subrecipient's procurement policy permit access to records by the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53?

Yes  No

10. Does the policy require subrecipients to include provisions in all of its requests for proposals, solicitations, Federal assistance applications, forms, notifications, press releases, or other publications involving FTA assistance, stating that FTA is or will be providing Federal assistance for the project, the amount of Federal assistance FTA has provided or expects to provide, and the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance?

Yes  No

11. Does the subrecipient have in place a methodology to ensure it acquires only quantities it needs for transit services?

Yes  No

12. Has the subrecipient undertaken any procurements in the last three years where it split the quantities to take advantage of small purchase procedures?

Yes  No

If "Yes," was the purpose of breaking the purchase into smaller quantities to permit DBEs greater opportunity to participate?

Yes  No

13. What steps does the subrecipient use to ensure that awards are only made to “responsible” contractors?

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Does the subrecipient consider the following elements in this determination?

- Contractor integrity
- Compliance with public policy
- Record of past performance
- Financial and technical resources

14. Does the subrecipient apply DOT’s debarment and suspension requirements to itself and each third party contractor at every tier if the estimated cost of the contract is \$25,000 or greater?

Yes     No

15. If the third party contract will exceed \$100,000, does the subrecipient obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor?

Yes     No

16. Does the recipient use sound business judgment in establishing and extending a contract’s period of performance?

Yes     No

Does the subrecipient adhere to FTA limitations in the five year limitation in the period of performance on rolling stock and replacement part contracts?

Yes     No

## Purchase Options

Subrecipients have the option of purchasing vehicles and other capital equipment from a state contract through the Tennessee Department of General Services, Division of Purchasing. For vehicle purchases, the Division of Multimodal Transportation Resources is responsible for ensuring that each vendors bid document include executed FTA’s Equipment Purchase Contract Clauses.

When purchasing equipment or services available on a state contract using Federal funds, regardless of amount of Federal funds expended, the subrecipient must ensure that appropriate Federal clauses are incorporated in the procurement contracts with the selected vendor. This can be accomplished by

ensuring that the selected vendor is provided a copy of applicable Federal clauses and returns a signed document agreeing to specified clauses to the purchasing subrecipient for inclusion in the subrecipients procurement file. As a general rule, any Federal clauses and documents that are signed by the subrecipient in order to implement an FTA grant agreement and award of Federal funds from TDOT are the same clauses that must be reviewed and signed by the vendor selected from an existing state contract.

When purchasing goods and services using local procedures, all elements of FTA Circular 4220.1F and the Common Rule will apply.

17. Has the subrecipient purchased vehicles through a state contract administered by the Department of General Services, Division of Purchasing?

Yes     No

If “Yes,” are the goods, services, or equipment purchased an item or items where the Multimodal Transportation Resources has ensured that all Federal provisions have been met?

Yes     No

If “No,” has the subrecipient insured that the vendor has agreed, in writing, to all applicable Federal terms and conditions?

Yes     No

18. Has the subrecipient purchased vehicles, goods, services, or other equipment using local procurement methods?

Yes     No

## Methods of Procurement

Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration’s (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA.

The recipient should use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Tennessee Department of Transportation, the Common Grant Rule for governmental recipients, and supplemented by FTA policies that address the needs of FTA recipients.

**Micro Purchases**

19. Do the subrecipient’s written purchase policies recognize micro-purchases?

Yes     No

If the subrecipient undertakes micro purchases, does the agency:

- | Yes                      | No                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Distribute micro-purchases equitably among qualified suppliers?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Break the purchase into smaller quantities or reduce the size of its procurement merely to come within the micro-purchase limit? |
| <input type="checkbox"/> | <input type="checkbox"/> | Break the purchase into smaller quantities or reduce the size of its procurement merely to come within the micro-purchase limit? |
| <input type="checkbox"/> | <input type="checkbox"/> | Maintain documentation on the procurement to TDOT standards?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Make a determination that the price is fair and reasonable and a description of how the recipient made its determination?        |

**Small Purchases**

Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11) (currently \$150,000). These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of less than \$150,000 must be treated as a small purchase. The recipient may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.

20. Do the subrecipient’s written purchase policies recognize small purchases?

Yes     No

If the subrecipient undertakes small purchases, does the agency:

- | Yes                      | No                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Solicit quotes from a minimum of three suppliers?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Document the quotes in writing and attach the written quote to the purchase requisition/order?                                   |
| <input type="checkbox"/> | <input type="checkbox"/> | Maintain documentation on the procurement to TDOT standards?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Break the purchase into smaller quantities or reduce the size of its procurement merely to come within the micro-purchase limit? |
| <input type="checkbox"/> | <input type="checkbox"/> | Make awards to the low responsive and responsible vendor?  |

**Formal Purchase**

All solicitations estimated in excess of \$100,000 shall be reviewed by Division of Multimodal Transportation Resources.

The subrecipient shall submit the proposed contract terms and conditions, technical specifications/scope of service, and Invitation for Bid (IFB) advertisement or Request for Proposals (RFP) to Division of Multimodal Transportation Resources for review and written approval.

21. Do the subrecipient's written purchase policies recognize formal purchases over \$150,000 category?

Yes     No

If "Yes," does the agency ensure:

- The solicitation is consistent with an approved item in the TDOT grant agreement?
- The purchase description has a clear and concise description of the good or service to be acquired?
- The solicitation document clearly states the terms and conditions that the offeror must fulfill to be deemed a responsible offeror?
- The agency receives written quotes in response to its solicitation documents?
- The procurement documents contain no provisions that would restrict full and open competition?
- The project has made positive efforts to utilize disadvantaged business enterprises?

22. Do the subrecipient's written purchase policies recognize formal purchases over \$50,000 that require formal IFBs or RFPs?

Yes     No

If "Yes," how does the agency determine whether to use sealed bids (IFB) versus competitive negotiation (RFP)?

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23. Has the subrecipient conducted any formal purchases by sealed bids during the last three (3) years?

Yes     No

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If "Yes," did the solicitation meet the following conditions for the use of this procurement method?

- | Yes                      | No                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | A complete, adequate, precise, and realistic specification or purchase description was developed?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Two or more responsible bidders are willing and able to compete effectively for the business?  |
| <input type="checkbox"/> | <input type="checkbox"/> | The procurement could be concluded with a firm, fixed price contract?  |
| <input type="checkbox"/> | <input type="checkbox"/> | The successful bidder was selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken? |
| <input type="checkbox"/> | <input type="checkbox"/> | No discussions with bidders were held after bids were received as award was based on price and price-related factors alone?  |

24. Did the bid documents meet the following requirements (*check all that apply*)?

- Did the solicitation contain all applicable contractual terms and conditions?
- Were bids solicited from an adequate number of qualified suppliers?
- Was the advertising period at least 21 days?
- Were all bids kept sealed and secured until the published time and date of opening?
- Were bids opened public with one or more witnesses at the designated place and time?
- Were the names of each bidder and the amount of each bid read aloud then tabulated on bid summary forms?
- Was the tabulation available to public inspection?
- Were bids accepted unconditionally without alteration or correction?
- In evaluating bids, did the selection committee consider any factors not identified in the IFB?
- If all bids were rejected, was there a sound, documented business reason noted in the procurement history file?

25. Did the subrecipient provide notice of an award or an intended award of the contract to the lowest responsive and responsible bidder whose bid met the requirements set forth in the IFB?

- Yes     No

Did the subrecipient post the award notice at a location specified in the invitation for bids?

- Yes     No

Did the subrecipient provide notice to all other bidders on the same day as notice was provided to the successful bidder?

- Yes     No

Did the subrecipient receive written approval from the Division of Multimodal Transportation Resources for bid award prior to the execution of an agreement or contract between the subrecipient and the selected bidder?

Yes     No

Did the subrecipient submit the required elements to TDOT when soliciting concurrence in the bid award?

Yes     No

26. Has the subrecipient conducted any formal purchases by competitive negotiation during the last three (3) years?

Yes     No

If "Yes," did the solicitation meet the following conditions for the use of this procurement method?

| Yes                      | No                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | There was a need for discussion with prospective offerors in order to determine the final scope of work? |
| <input type="checkbox"/> | <input type="checkbox"/> | There was uncertainty over the number of potential qualified suppliers?                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Price alone was not the determinative factor in vendor selection?  |

27. Did the competitive negotiation meet the following requirements (*check all that apply*)?

- Was the RFP publicly advertised?
- Were all evaluation factors and their relative importance specified in the RFP?
- Were proposals solicited from an adequate number of qualified sources?
- Did the subrecipient use a specific evaluation methodology to conduct the technical review of proposals received?
- Was award made to the responsible offeror whose proposal was deemed most advantageous to the subrecipients program with price and other factors considered?
- Were any negotiations conducted as part of the evaluation process?
- If negotiations were conducted, did the subrecipient keep price information of competitors confidential?

28. Did the subrecipient receive written approval from the Division of Multimodal Transportation Resources for award prior to the execution of an agreement or contract between the subrecipient and the selected offeror?

Yes     No

Did the subrecipient submit the required elements to TDOT when soliciting concurrence in the bid award?

Yes     No

## **Special Requirements for Formal Purchases**

FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire architectural and engineering (A/E) services. These same requirements also apply to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below.

The recipient must use qualifications-based procurement procedures not only when contracting for A/E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

29. Has the subrecipient conducted any formal purchases to acquire architectural/engineering services or related services during the last three (3) years?

Yes     No

If "Yes," did the solicitation follow the requirements of the Brooks Act (*check all that apply*)?

- Was the evaluation of offerors based on qualifications?
- Was price excluded as a factor in the evaluation and ranking of offerors?
- Were initial negotiations conducted only with the most qualified offeror?
- If price negotiation with the most qualified vendor did not produce a fair and reasonable price, did the subrecipient conduct negotiations with successive offerors in descending order until a contract award was made to the offeror whose price the recipient believed was fair and reasonable?

## **Other Than Full and Open Competition**

Normally, the recipient must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients, however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

30. Has the subrecipient undertaken any "sole source" procurements during the last three (3) years?

Yes     No

If yes, did the subrecipient evaluate the procurement prior to making a sole source purchase to determine unique capability or availability?

Yes     No

If “Yes,” were the following factors present (*check all that apply*)?

- The offeror demonstrated a unique or innovative concept or capability not available from another source?
- There were patent or data rights restrictions that precluded competition?
- Was this a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition?
- Was this a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would have resulted in unacceptable delays in fulfilling the recipient’s needs?

31. Has the subrecipient undertaken any procurement (bid or proposal) where there was only a single offer?

- Yes     No

If “Yes,” did the subrecipient undertake a post procurement investigation that revealed:

- The single bid was caused by conditions beyond the subrecipient’s control.
- The single bid was caused by conditions within the subrecipient’s control.

## Cost and Price Analysis

The Common Grant Rules require the subrecipient to perform a cost or price analysis in connection with **every procurement** action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the subrecipient must make independent estimates before receiving bids or proposals.

The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost.

32. Is there evidence in the procurement files of purchases that the subrecipient developed a preliminary cost estimate for every procurement?

- Yes     No

33. In procurement of goods and services where competition was deemed adequate, has the subrecipient conducted a price analysis wherein the entity checks catalog or market prices for the good or service?

Yes     No

If “Yes,” is the level of effort and documentation commensurate with the scale of the procurement (*e.g.*, micro purchases and small purchases require only simple or abbreviated analysis)?

Yes     No

34. In the procurement of professional services, A/E firms, etc., where the offeror submits cost elements that included labor hours, overhead, materials, and related costs, the subrecipient is expected to conduct a cost analysis. Has the subrecipient conducted any type of procurement where a cost analysis would be required?

Yes     No

If “Yes,” has the subrecipient analyzed the following elements in its cost analysis (*check all that apply*):

- Federal cost principles that define the allowability or allocability of costs
- The wage rates and fringe benefits paid to the respective job classifications offered in the bid or proposal
- The proposed indirect cost rate to be charged by the firm
- The proposed profit rate

35. Does the subrecipient conduct a cost analysis in the following additional situations where a cost analysis is required (*check all that apply*)?

- Competition was inadequate during a procurement (*e.g.*, single bid)
- All sole source procurements
- For all major change orders on existing contract

## Protests and Disputes

Federal rules (2 CFR part 200.318(k)) charge the recipient with the sole responsibility to resolve protests of third party contract awards.

Apart from other methods, when the recipient may have to resolve third party contract issues, such as mediation or arbitration, the Common Grant Rule for governmental recipients requires the recipient to have protest procedures. While the Common Grant Rule for non-governmental recipients does not impose a similar requirement on a non-governmental recipient, FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

These same rules charge the recipient with responsibility for evaluating and resolving third party contract disputes.

36. Does the subrecipient have written protest procedures?

Yes     No

37. Has the subrecipient had any protests during the last three (3) years?

Yes     No

If "Yes," did the subrecipient notify TDOT immediately upon notification of a vendor protest?

Yes     No

In notifying TDOT, did the subrecipient provide the following information?

- A brief description of the protest
- The basis of disagreement between the vendor and the subrecipient
- If the protest is open, what is the current status
- If the protest is closed, what was the agreement or decision that was reached
- Whether or not the protestant has indicated if appeal to TDOT will be made

38. Does the subrecipient have procedures to resolve dispute that arise in the administration of third party contracts?

Yes     No

39. Has the subrecipient been engaged in any formal contract disputes with third party contractors during the last three (3) years?

Yes     No

If "Yes," did the subrecipient notify TDOT about the nature and status of the dispute?

Yes     No

In notifying TDOT, did the subrecipient provide the following information?

- A brief description of the nature of the dispute
- The basis of disagreement between the third party contractor and the subrecipient
- The current status of the dispute if not resolved
- If the dispute has been resolved, what was the decision reached
- Whether or not the contractor has indicated that it will seek litigation as a means of relief

## Pre-Award and Post Delivery Audits

Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post-delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications.

FTA requires grant recipients purchasing a certain number of revenue passenger rolling stock to undertake reviews of the rolling stock both before the award of the contract and following delivery of the vehicles. The requirement to undertake the pre-award and post-delivery reviews arises from 49 U.S.C. 5323(m) and is specified in FTA regulations at 49 CFR part 663. Compliance must be certified on the Annual List of Certifications and Assurances.

SAFETEA-LU amended this requirement so that procurements of 20 vehicles or fewer, purchased for serving rural areas and cities of less than 200,000 population, are not subject to either review procedure. The procurement of unmodified vans, in any quantity, is not subject to the review requirement.

When a State undertakes a consolidated State procurement on behalf of several subrecipients of FTA funds, the requirement for a resident inspector at the manufacturing site depends upon the number of buses in a subrecipient's order. That is, for example, although a State may order 30 vehicles, if no subrecipient expects to receive 20 or more of the vehicles (10 or more for a large urbanized area subrecipient), the State is not required to place an inspector on site. If 20 or more vehicles are ordered for a single subrecipient, an on-site inspector is required, and may be provided by either the State or the subrecipient. In addition, if the on-site inspector is used on one subrecipient's order, then this meets the on-site inspection requirement for the State procurement even though there are other subrecipient orders of 20 or more vehicles.

40. Has the subrecipient, during the last three(3) years, engaged in any single procurement of 20 vehicles or more that was not conducted through the Tennessee Department of General Services, Division of Purchasing?

- Yes       No

If “Yes,” did the subrecipient complete the pre-award audit required under 49 CFR part 655?

- Buy America certification
- Pre-award purchaser’s certification
- FMVSS certification from the manufacturer (if applicable) or manufacturer’s verification that vehicle is not covered

If “Yes,” did the subrecipient complete the post-delivery audit required under 49 CFR part 655?

- Yes     No

41. For any size vehicle procurement of primary manufacturer standard production and/or unmodified vans not subject to pre- and post-audit, did the subrecipient conduct a visual inspection and road test of the vehicles to determine that the vehicles met the contract specifications?

42. Has the subrecipient certified that for any vehicle purchased using its own procurement procedures (other than unmodified vans) that it has obtained a copy of the copy of the official bus testing reports from the Altoona, PA bust testing facility?

- Yes     No

## New Model Bus Testing

All new modified bus models must be tested at the FTA sponsored test facility in Altoona, PA, before FTA funds can be expended for their purchase (49 CFR part 665). This requirement applies to all buses and modified vans procured with FTA funds. It does not apply to unmodified vans, including vans with raised roofs or lifts installed in strict conformance with the original equipment manufacturer modification guidelines. A “new bus model” is defined as a model that has not been used in public transportation service in the United States before October 1, 1988, or a model that has been used in such service but which, after September 30, 1988, is being produced with a major change in configuration or components.

43. Has the subrecipient certified that for any vehicle purchased using its own procurement procedures (other than unmodified vans) that it has obtained a copy of the copy of the official bus testing reports from the Altoona, PA bust testing facility?

- Yes     No

If “Yes,” did the subrecipient submit all documentation and certifications to the Office of Transportation Delivery?

- Yes     No

## Purchase of Service Contracts

Subrecipients may purchase service from private sector transportation providers as well as public providers. Under such arrangements, certain special conditions apply to the purchase of service agreement.

The purchase of service contracts must be either a cost reimbursement or fixed price contract.

- Fixed price contracts should have the cost calculated on a service or route specific basis, either vehicle or passenger miles, or a combination of both. It is not subject to any adjustment on the basis of a contractor's cost experience in performing the contract.
- Cost reimbursement contracts should allow for a periodic evaluation of the fixed rate in order to accommodate changes in transportation costs. These contracts establish an estimate of total cost for obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without approval.

Profit is an eligible cost in the contract. The amount of profit must be established as a fixed fee, not as a percentage figure.

Depreciation of vehicles is an eligible expense in private sector purchase of service agreements and must be based on acquisition, not replacement costs, and is not eligible if the vehicles were originally purchased with Federal funds.

Management or administrative costs incurred by the contract provider should be prorated for only that portion of the operator's service being purchased.

Division of Multimodal Transportation Resources shall approve the proposed purchase of service contracts prior to execution by the subrecipient.

44. Has the subrecipient entered into any purchase of service contracts?

Yes     No

If "Yes," what type of contract did the subrecipient use with the service provider?

Fixed price contract  
 Cost reimbursement contract

45. Has the subrecipient used "capital cost of contracting" in any service contract entered into with a private sector provider?

Yes     No

If “Yes,” has the subrecipient correctly classified the type of contract and corresponding capital participation rate in the contract?

Yes     No

If “No,” has the subrecipient adhered to TDOT guidelines in structuring the respective types of contracts?

Yes     No



## Section 5. Civil Rights

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### Overview

Federal civil rights requirements are encompassed in laws, regulations, and Executive Orders. The objective of FTA's oversight in this area is to:

- Ensure that the level and quality of transportation service is provided without regard to race, color, or national origin;
- Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations;
- Promote the full and fair participation of all affected populations in transportation decision making;
- Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations; and
- Ensure meaningful access to programs and activities by persons with limited English proficiency.

### Title VI Requirements Applicable to all Recipients/Subrecipient

Some Title VI elements are the responsibility of TDOT and are addressed in the project application and/or grant agreement process. Questions in this section are designed to ensure that subrecipients are compliant with new FTA regulations that went into effect October 1, 2012.

1. Has the subrecipient developed a Title VI Program?

Yes     No

If "Yes," has it been adopted by the subrecipient's governing board?

Yes     No

2. Has the program been submitted to TDOT?

Yes     No

If "Yes," does the list include the following items?

| Yes                      | No                       | Required List Elements  |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | A notice to the public that indicates the subrecipient complies with Title VI, and informs members of the public of the protections against discrimination afforded to them by Title VI.                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | A copy of the recipient's instructions to the public regarding how to file a Title VI discrimination complaint, including a copy of the complaint form.   |
| <input type="checkbox"/> | <input type="checkbox"/> | A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission to TDOT.  |
| <input type="checkbox"/> | <input type="checkbox"/> | A public participation plan that includes an outreach plan to engage minority and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI Program submission.       |
| <input type="checkbox"/> | <input type="checkbox"/> | A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance.  |
| <input type="checkbox"/> | <input type="checkbox"/> | A table depicting the racial breakdown of the membership of advisory boards or non-elected planning boards and a description of efforts made to encourage the participation of minorities on such committees or councils. |
| <input type="checkbox"/> | <input type="checkbox"/> | A narrative or description of efforts the primary recipient uses to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI program submissions.                                 |

3. Does the notice include the following items?

| Yes                      | No                       | Requirement  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | A statement that the agency operates programs without regard to race, color, and national origin.  |
| <input type="checkbox"/> | <input type="checkbox"/> | A description of the procedures that members of the public should follow in order to request additional information on the subrecipient's nondiscrimination obligations. |
| <input type="checkbox"/> | <input type="checkbox"/> | A description of the procedures that members of the public should follow in order to file a discrimination complaint against the subrecipient.                           |

4. How has the subrecipient disseminated this notice?

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5. Has the subrecipient translated this notice into languages other than English consistent with the subrecipient's LEP program?

Yes     No

6. Does the subrecipient have procedures for investigating and tracking Title VI complaints and for making such complaints available to the public?

Yes     No

If "Yes," does the subrecipient have a specific complaint form?

Yes     No

7. Has the subrecipient integrated into its established public participation and outreach processes procedures that ensure involvement and participation by minority and LEP populations?

Yes     No

If "Yes," describe these activities.

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8. Are these efforts effective?

Yes     No

Do these effective practices include elements that FTA considers "best practice:"

| <b>Yes</b>               | <b>No</b>                | <b>Best Practices</b>   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Scheduling meetings at times and locations that are convenient and accessible for minority and LEP communities.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Employing different meeting sizes and formats.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected minority and/or LEP communities. |
| <input type="checkbox"/> | <input type="checkbox"/> | Considering radio, television, or newspaper ads on stations and in publications that serve LEP populations. Outreach to LEP populations could also include audio programming available on podcasts.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.   |

### **Fixed Route Service Providers Only**

Most requirements for Title VI apply only to transit providers that operate more than 50 vehicles in fixed route peak service and are located in an urbanized area of 200,000 or more. However, the requirement to establish system-wide standards and policies apply to all providers of fixed route service.

All fixed route transit providers shall set service standards and policies for each specific fixed route mode of service they provide. Fixed route modes of service include but are not limited to, local bus, express bus, and commuter bus.

9. Do the system service standards include:

| <b>Yes</b>               | <b>No</b>                | <b>Best Practices Service Standards</b>                   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Vehicle load, by fixed mode, by peak and off-peak periods |
| <input type="checkbox"/> | <input type="checkbox"/> | Vehicle headway   |
| <input type="checkbox"/> | <input type="checkbox"/> | On-time performance                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | Service availability for each mode                        |

10. Do the system policies include:

| <b>Yes</b>               | <b>No</b>                | <b>Best Practices Policies</b>             |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Distribution of transit amenities, by mode |
| <input type="checkbox"/> | <input type="checkbox"/> | Vehicle assignment, by mode                |

## Limited English Proficiency (LEP)

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. DOT recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Subrecipients should apply four (4) factors to the various kinds of contacts they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons:

- The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee.
- The frequency with which LEP individuals come in contact with the program.
- The nature and importance of the program, activity, or service provided by the recipient to people's lives.
- The resources available to the recipient and costs.

After completing the above four-factor analysis, subrecipients can determine the appropriate "mix" of LEP services required. Subrecipients have two main ways to provide language services: oral interpretation, either in person or via telephone interpretation service, and written translation. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis.

11. Has the subrecipient assessed and addressed the ability of persons with limited English proficiency (LEP) to use transit services?

Yes     No

12. Describe the subrecipient's efforts to provide access to information and services by LEP persons.

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## Equal Employment Opportunity

A subrecipient must ensure that it does not discriminate in its hiring practices on the basis of race, color, sex (including pregnancy), national origin, creed, or religion. All subrecipients must take affirmative action to ensure that applicants are employed, and that employees, are treated during employment without regard to race, color, creed, national origin, sex, or age. Such action must include, but not be limited to: hiring, promotion or upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, disciplinary actions, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The subrecipient shall have a written affirmative action plan designed to achieve full utilization of minorities and women in all parts of the work force.

Subrecipients must post, in a conspicuous place, and make available to employees and applicants for employment, notices setting forth the subrecipient's EEO policy. These policies must include procedures for filing complaints of discrimination, both internally as well as externally with the Federal Economic Opportunity Commission (EEOC), a local or state human rights commission, and/or FTA.

If a subrecipient exceeds size threshold requirements set by FTA, it must prepare an EEO plan and submit this plan to TDOT every three (3) years.

13. Who is responsible for ensuring that EEO obligations are fulfilled on behalf of the subrecipient?

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14. Has the subrecipient posted an EEO statement in a conspicuous and accessible place in the workplace?

Yes     No

15. Is the subrecipient's EEO policy included in personnel policies and/or employee handbook?

Yes     No

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16. Are EEO statements included on the subrecipient's job applications and employment notices/job postings?

Yes     No

17. How does the subrecipient ensure non-discrimination for ADA-eligible persons in terms of employment?

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If requested, were reasonable accommodations made for hiring a person with disabilities in accordance with Title I of the ADA?

Yes     No

If "Yes," describe the accommodation.

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18. Were any EEO complaints or lawsuits received in the past three years?

Yes     No

If "Yes," describe the nature of the complaint or lawsuit.

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Did the subrecipient report the complaint or lawsuit to TDOT?

Yes     No

17. Does the subrecipient (*check all that apply*):

- Have 50 or more transit-related employees? AND
- Receive capital or operating assistance in excess of 1 million? OR
- Receive planning assistance in excess of \$250,000?

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## Disadvantaged Business Enterprises (DBE)

The recipient agrees and assures that it will comply with U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR part 26. Among other provisions, this regulation requires recipients of DOT Federal financial assistance, namely State and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

Subrecipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year must submit a DBE program. If the subrecipient does not meet this threshold, other requirements still apply.

18. Did the subrecipient have contracting opportunities totaling greater than \$250,000 (excluding vehicle purchases) in contracting opportunities during any of the past three years?

Yes     No

If "Yes," did the subrecipient prepare and submit a DBE program to TDOT?

Yes     No

19. Does the subrecipient include the requisite contract language in 49 CFR part 26.13(b) in all subcontracts?

Yes     No

20. Does the subrecipient have mechanisms in place to ensure that prime contractors pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made to the prime contractor?

Yes     No

21. Does the subrecipient properly count DBE expenditures towards its goals?

Yes     No

22. Has the subrecipient purchased any vehicles using local procurement procedures (e.g., not through TDOT)?

Yes     No

If "Yes," did the subrecipient verify that the vehicle manufacturer has made the requisite certification to FTA regarding DBE commitment?

Yes     No

23. Even if the subrecipient is not required to have a DBE program, how does the organization make good faith efforts to ensure that DBEs have full opportunity to compete for contracts?

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24. Does the subrecipient submit DBE reports to TDOT in a timely manner?

Yes     No

25. Has the subrecipient undertaken any construction projects during the last three (3) years?

Yes     No

If "Yes," did the A/E consultant include in the bid specifications the required DBE certification in the bid specifications?

Yes     No

Did TDOT require evidence of good faith efforts during the solicitation of bids?

Yes     No

Did TDOT require project specific race neutral goals for the project?

Yes     No

26. If the subrecipient is required to prepare a DBE program, does the program include the following elements (*check all that apply*)?

- A policy statement that expresses the organization's commitment to its DBE program, states its objectives, and outlines responsibilities for its implementation
- Did the subrecipient circulate the policy statement throughout the organization and to the DBE and non-DBE business communities that perform work on DOT-assisted contracts?
- Did the subrecipient designate a DBE liaison officer, who has direct, independent access to the Chief Executive Officer concerning DBE program matters?

- Is the liaison officer responsible for implementing all aspects of the DBE program? Does the subrecipient have adequate staff to administer the program in compliance with the regulations?
- Has the subrecipient investigated the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and made reasonable efforts to use these institutions?
- Does the subrecipient encourage prime contractors to use such institutions?
- Does the subrecipient rely on TDOT certified DBEs?
- Does the subrecipient certify firms?
- Has the subrecipient made any determination that DBE firms are over concentrated in a certain type of work? If yes, has the grantee devised appropriate strategies to address this over-concentration?
- Has the subrecipient developed a monitoring and enforcement mechanism?
- Does the subrecipient's program include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors?

27. Has the subrecipient developed a DBE goal based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts? The goal must reflect the subrecipient's determination of the level of DBE participation it would expect absent the effects of discrimination.

- Yes     No



## Section 6. Americans with Disabilities Act (ADA)

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### Overview

Under Department of Transportation (DOT) Americans with Disabilities Act of 1990 (ADA) regulations, public and private transportation providers are required to operate services in a way that does not discriminate against persons with disabilities. The regulations include general nondiscrimination provisions that apply to all types of agencies and services. There are also provisions that apply just to certain types of agencies and services. For example, public fixed route operators are required to make on-board stop announcements to keep riders oriented to their location. They are also required to have a system in place at stops served by multiple routes that allows riders to identify the bus they need to catch, or drivers to identify which riders are waiting to catch their bus. Public fixed route operators also must provide ADA complementary paratransit service to individuals who cannot use the fixed route due to their disability. Commuter bus service is exempted from this requirement. As defined in 49 CFR part 37.3, commuter bus service is “characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.” Similarly, intercity bus service may resemble commuter bus service in that there is no attempt to comprehensively cover a service area, it has a limited route structure, limited origins and destinations, and limited purposes of travel, and therefore, the obligation to provide ADA complementary paratransit may not apply. However, other relevant requirements of 49 CFR parts 27, 37, and 38 do apply to intercity bus service.

Section 5311 recipients that provide financial support for intercity bus in the form of vouchers or operating subsidies, are addressed by 49 CFR part 37.37(a), which states that a private entity does not become subject to requirements applicable to a public entity simply “because it receives an operating subsidy from, is regulated by, or is granted a franchise or permit to operate by a public entity.” However, when a public entity enters into a contract or other arrangement or relationship (including grants or subgrants) with a private entity to operate fixed route or demand-responsive service, the public entity shall ensure that the ADA obligations are met, including any ADA complementary paratransit requirements (49 CFR part 37.23). The nature of the arrangement between the public entity and the private intercity operator would determine whether 49 CFR part 37.37 or 49 CFR part 37.23 applies.

### Services Classification

Compliance responsibilities will vary depending upon the type of entity providing the service. The regulations recognize three types of entities as follows:

**Public entities** include city, town, county, or state governments, or special authorities created under public law such as transit authorities.

**Private, primarily engaged entities** include private companies whose primary business is transportation. This includes private taxi companies, van or bus companies, or private intercity bus companies. This category includes private, non-profit agencies whose main business is transportation.

**Private, not primarily engaged entities** are private companies or organizations, including non-profit organizations, whose primary business is something other than transportation, but who provide transportation as a secondary or support service. This includes human service agencies that operate transportation services as a secondary or support service.

Compliance responsibilities will also vary depending on the type of transportation service provided by the subrecipient. Several types of service that are particularly relevant to these reviews are:

**Fixed route system** means a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

**Commuter bus service** means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

**Demand responsive system** means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation service, which is not a fixed route system.

**Route Deviation, Point Deviation, or Flex-Bus systems**, which do not have prescribed routes, or which allow for on-request deviations off of prescribed routes, are considered types of demand responsive systems if the on-request, off-route deviations are available to all riders. If off-route deviations are made only for certain individuals, such as persons with disabilities, these types of services are considered fixed route.

ADA complementary paratransit is a specific type of demand responsive service that is required of public entities that provide non-commuter fixed route service.

## Entity Classification and Service Mode

To determine compliance responsibilities, the review must determine the type of entity and service modes delivered.

1. Based on the articles of incorporation or enabling legislation, identify the type of subrecipient under review:

- Public entity
- Private entity, primarily engaged in transportation
- Private entity, not primarily engage in transportation

2. Evaluate the scope of services and determine all modes of service operated by the subrecipient. For each subrecipient, check all the primary and sub-modes that apply:

- Fixed route
  - Non-commuter bus
  - Commuter bus
  - Inter-city bus
  - Route/point deviation with deviations limited to certain riders
- Demand Response
  - ADA complementary paratransit
  - Route/point deviation with deviations for the general public
  - Other demand responsive service

## Nondiscrimination - All Providers

No entity shall discriminate against an individual with a disability in connection with the provision of transportation service. Except for very specific circumstances, service policies cannot keep individuals with disabilities from benefiting equally from the transportation services provided. Possible exceptions are if providing the service would fundamentally change the nature of the service provided (e.g., exclusive ride versus shared-ride), or if providing the service would present a “direct threat” (i.e., a safety threat to *others*, not the person with the disability). Examine all public information related to the transportation services provided, including Rider Guides, operating policies and procedures, service bulletins, employee training materials, etc. for any policies or requirements that could discriminate against or limit service to persons with disabilities.

### Denying Service

In general, policies should not cause service to be denied to persons with disabilities. Policies can only call for a denial of service if the situation or behavior is illegal, violent, or seriously disruptive. To be illegal, there must be an established law prohibiting the behavior, not just a common standard of appropriate behavior. Seriously disruptive behaviors must be significant, not just annoying or unpleasant.

### Reasonable Modification

Effective July 13, 2015, all covered entities must adhere to the Department of Justice standards and make reasonable modifications to programs, policies, practices, and services provided it does not result in a fundamental alteration to the service.

3. Following are examples of common policies that discriminate against persons with disabilities. Determine if the subrecipient engages in any of these actions, or has any other policies that discriminate:

| Yes                      | No                       | Requirement   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient have policies that impose any special charges for individuals with disabilities, including wheelchair users?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient deny service to any individual because its insurance company conditions coverage or rates?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient require that wheelchairs have working brakes, be “in good working condition,” or place any other restrictions on mobility devices? (Exception: situation that poses a “direct threat to others.”)   |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient have policies that suggest a denial of service for rude behavior, swearing, or other behaviors that do not rise to illegal or seriously disruptive?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient <b>require</b> individuals with disabilities to use designated priority seats?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient require persons traveling in securement areas to wear seat belts or shoulder straps when all other passengers do not have the same requirement?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient require wheelchair users to wear a body belt when traveling up and down on the lift?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient policy prohibit respirators or portable oxygen supplies (Exception: items that are prohibited under applicable Department of Transportation rules on the transportation of hazardous materials—49 CFR subtitle B, chapter 1, subchapter C.) |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient have any other policy that could discriminate against persons with disabilities?  |

4. Does the subrecipient have a policy for dealing with individuals who engage in violent, seriously disruptive, illegal conduct, or actions that pose a direct safety threat to others?

Yes     No

If “Yes,” are supervisors, dispatchers, and vehicle operators trained on this policy?

Yes     No

Is there an appropriate appeal policy for any service refusals?

Yes     No

### Attendant Policies

Individuals with disabilities should be allowed to travel with attendants. Attendants cannot be required, though, except if service could otherwise be refused for illegal, violent or seriously disruptive behavior.

5. Does the subrecipient allow persons with disabilities to travel with attendants?

Yes  No

If "Yes," does definition of attendant extend beyond assistance during travel to also include assistance at destination?

Yes  No

6. Are any claimed attendants allowed (*i.e.*, no registration of only certain persons who can be attendants)?

Yes  No

7. Are persons with disabilities allowed to travel without attendants, even if they indicate they sometimes use attendants (Exception: Caregiver or guardian requests that attendant always be present, or documented past behavior allows refusal and person/caregiver agree to use attendant to mitigate issues)?

Yes  No

8. Has the transit provider designated an individual to handle reasonable modifications?

Yes  No

9. Is there some system in place to ensure there is prompt consideration of reasonable modification requests?

Yes  No

10. Document if the system has received any requests that have been denied. Have the denials been based on making the accommodation would fundamentally alter the nature of the public transportation service; making the accommodation would create a direct threat to the health or safety of others; or the disabled individual is able to fully use the transportation entity's service without the accommodation being made.

Yes  No

If "No," then elaborate on the basis for denial of the reasonable accommodation request.

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11. Does the transit system publicly advertise s the name and contact information of the designated employee?

Yes  No

## Questions for Demand Response Systems

If entities operating demand response services plan to purchase vehicles that are not accessible, they must first make a determination that the services they will be providing (after the purchase of the inaccessible vehicle or vehicles) are “equivalent.” Therefore, if entities have inaccessible vehicles as part of their fleet that were purchased since the issuance of the regulations, the services they provide must be “equivalent.” Equivalency is defined by specific criteria (noted below). If inaccessible vehicles are purchased, certification of equivalency must also be provided to TDOT.

### Service Equivalency

12. **Service Area:** Consider the service area and how accessible and inaccessible vehicles are distributed throughout the area. Are persons with disabilities who need an accessible vehicle able to travel throughout the area on an equivalent basis to all other riders?

Yes  No

13. **Response Time:** Consider the advance notice requirement to use the service. If accessible vehicles are operated separate from or different from inaccessible vehicles, consider the advance notice required for use of each type of vehicle. Is the same (or lesser) advance notice required of riders with disabilities who need and use accessible vehicles?

Yes  No

14. **Fares:** Consider the fares charged for the service. Note if there are different costs to riders who need and use accessible vehicles versus those who can use inaccessible vehicles. Is the fare the same (or lower) for riders with disabilities who need to use accessible vehicles?

Yes  No

15. **Days and Hours:** Consider the days and hours of operation of the service. Note if there are any differences in days and hours based on the accessibility of the vehicles. Are the days and hours the same (or greater) for persons with disabilities who need and use accessible vehicles?

Yes  No

16. **Trip Purpose:** Consider the types of trips that are provided by the subrecipient. Note if there are any differences in policy about trip purpose for service provided with accessible versus inaccessible vehicles. Are persons with disabilities able to travel for the same purposes (or more) than individuals who do not need accessible vehicles?

Yes     No

17. **Capacity Constraints (Part 1):** Consider if trip requests are sometimes denied for lack of capacity, or if waiting lists or trip caps are employed due to capacity limitations. Examine trip denials records, waiting lists, or other documentation to determine if persons with disabilities who need to use accessible vehicles are denied or wait-listed more frequently than other riders.

Are there any trip denials, or are wait lists or trip caps used?

Yes, Trip Denials  
 Yes, Wait Lists  
 Yes, Trip Caps  
 No

If there are denials, wait lists, or trip caps, are persons with disabilities who need to use accessible vehicles denied/wait-listed, capped at the same (or lower) rate than other riders?

Yes     No

Note what information or data the system develops and uses to compare the level of trip denials, wait lists, or trip caps for persons with disabilities and for other riders to allow for this type of comparison and analysis.

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18. **Capacity Constraints (Part 2):** Examine records of service quality (on-time performance, on-board ride times). Consider if there are differences in service quality for trips provided to riders who need to use accessible vehicles versus other riders. Consider if the number and percentage of accessible vehicles in the system suggests that there could likely be problems responding to late trips in an equivalent way throughout the service area. Do persons with disabilities, including persons who need to use accessible vehicles receive the same (or better) level of service?

Yes     No

Note what information or data the system develops and uses to compare the level of service (on-time performance, on-board ride times) for persons with disabilities and for other riders to allow for this type of comparison and analysis.

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19. **Information and Reservations Capacity:** Consider the service information that is provided and the trip reservations capacity (hours of call-taking, accessibility of information and phone services). If information and reservations are different for using accessible versus inaccessible vehicles, note the differences. Is information and communications provided in accessible formats, and are persons with disabilities who need an accessible vehicle able to get information and reservations assistance in an equivalent way?

Yes     No

20. Has the subrecipient acquired vehicles in the last three (3) years?

Yes     No

If "Yes," were the vehicles accessible pursuant to 49 CFR part 38 standards?

Yes     No

If "No," did the subrecipient, before any procurement of an inaccessible vehicle, file with TDOT the required certificate that it provides equivalent service meeting the equivalent service of 49 CFR part 37.77(c)?

Yes     No

## Questions for Route/Point Deviation Systems – Demand Response

21. Are off-route deviations provided for all riders?

Yes     No

If "Yes", answer Questions 18-22 below. If "No", the system does not qualify as demand responsive and must be evaluated as a fixed route system. The fixed route section of the checklist should be completed. ADA complementary paratransit service must also be provided and that section of the checklist must be completed.

22. Are off-route deviations provided throughout the defined service area all along the route?

Yes     No

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23. Do riders who request deviations pay the same fare as riders who walk to stops to use the service?

Yes  No

24. Do riders who request deviations experience the same “response time” as riders who walk to stops to use the service (i.e., advance reservation for deviations equal to the route headway)?

Yes  No

25. Are off-route deviations accepted during all days and hours that the service is operated?

Yes  No

26. Do riders who request deviations experience the same “capacity constraints” as riders who walk to stops to use the system (i.e., no trip denials, the same on-time performance and on-board ride time)?

Yes  No

## Questions for Fixed Route Systems – Fixed Route Service

27. Examine policies and training materials related to on-board stop announcements. Also examine lists that identify which stops are to be announced by route. Does the material indicate that stops are to be announced at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location?

Yes  No

If “Yes,” does the material indicate that stops are to be announced anytime at the request of a passenger with a disability?

Yes  No

28. Does the subrecipient provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route?

Yes  No

29. **On-Board Stop Announcement Observations:** Ride a random sample of fixed routes. For each route observed, identify the stops that are supposed to be announced and record how many are announced. Also record if the announcements are audible throughout the vehicle. Make the observations as discretely as possible (unannounced and before doing driver interviews). Record results below.

Number of routes observed \_\_\_\_\_  
Total number of stops required to be made \_\_\_\_\_  
Total number of stops actually made \_\_\_\_\_  
Total number audible \_\_\_\_\_

30. **Vehicle Identification System Information:** Examine policies and training materials related to vehicle identification (e.g., external vehicle/route announcements). Does the material require that drivers make external announcements at all stops served by more than one route?

Yes     No

Are these announcements to be made any time there are waiting passengers and not just when there is a passenger that the driver feels has a vision disability (e.g. white cane or service animal)?

Yes     No

31. **Vehicle Identification System Observations:** Identify a random sample of stops served by more than one route (transfer centers). Observe buses arriving at these locations and record how many vehicle identification announcements are made. Also record if the announcements are audible to passengers waiting throughout the stop area. Record results below.

Number of stops observed \_\_\_\_\_  
Total number of bus pull-ins observed \_\_\_\_\_  
Total number of drivers that identified vehicles \_\_\_\_\_  
Total number that were audible \_\_\_\_\_

## Questions for Fixed Route Systems – Complementary Paratransit

This portion of the checklist should be completed if the subrecipient operates any non-commuter fixed route services, or if route/point deviation services are operated where off-route deviations are made only for some riders (not all riders).

### Complementary Paratransit Plan

32. Did the subrecipient prepare a complementary paratransit plan prior to implementing fixed route service (or doing the initial period of complementary paratransit implementation: 1991 to 1997)?

Yes     No

33. Has the subrecipient made any policy and/or service changes to its complementary paratransit plan since adoption?

Yes     No

If "Yes," did the subrecipient utilize its outreach and consultation process prior to implementing these changes?

Yes     No

**Eligibility Determination**

34. Does the system have a process for certifying the eligibility of persons for complementary paratransit services?

Yes     No

Is this function performed in-house or contracted to a third party?

Yes     No

Describe the method used to determine eligibility.

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35. Is information concerning the application process available in alternative formats upon request?

Yes     No

36. Are ADA complementary paratransit eligibility decisions made within 21 days of receipt of a complete application? Examine the log of recent determinations (or a sample of files). What percent of determinations take longer than 21 days from receipt of a complete application?

\_\_\_\_\_ % ≤ 21 days  
\_\_\_\_\_ % > 21 days

Does public and/or application information indicate that if determinations are not made within 21 days that service will be provided until a determination is made?

Yes     No

If some determinations take longer than 21 days, is presumptive eligibility granted and service provided until a determination is made?

Yes     No

37. Are persons whose eligibility is limited (denied, conditioned, only temporary) given a written statement with specific reasons for the denial (not a standard statement or statement that person “can use fixed route”), and notice of their right of appeal?

Yes     No

38. Does the appeals process adhere to DOT ADA regulations (opportunity to be heard, separation of function, decision within 30 days, and written notification of decision, with a reason for it)? Note: Concerning “opportunity to be heard,” a request for appeal can be required to be in writing, but appellants cannot be required to submit in writing the reasons for their appeal or why they feel the decision was not correct. This type of information can be provided if appellant chooses, but can’t be required.

Yes     No

If appeals are not decided within 30 days of being heard, is presumptive eligibility granted and service provided until a decision is made?

Yes     No

Are appeals heard and decided by an individual or individuals who have not been involved in the initial decision, and who do not have a direct line of authority to those who made the initial decision (i.e., separation of authority)?

Yes     No

### **Personal Care Attendants, Companions, and Visitors**

39. Does the subrecipient provide free complementary paratransit service to Personal Care Attendants (PCAs)?

Yes     No

40. Does the subrecipient provide complementary paratransit service to companions (always one, and others on a space available basis)?

Yes     No

41. Does the subrecipient provide complementary paratransit to visitors for up to 21 days in a 365-day period?

Yes     No

If “Yes,” does this include individuals determined ADA eligible by other transit systems, as well as individuals who do not have ADA paratransit eligibility from other areas?

Yes     No

For individuals who do not have ADA paratransit eligibility from another transit system, is documentation of disability only required when the disability is not “apparent?”

Yes     No

### Suspensions

42. Does the subrecipient have a process in place to suspend eligibility for eligible users who establish a pattern or practice of missing scheduled trips?

Yes     No

When adopting this policy, did the subrecipient utilize its consultative and outreach process with the disability community before adopting the policy?

Yes     No

43. Does the policy consider both the absolute number of no-shows, as well as the frequency of no-shows when determining if there is a “pattern and practice” of abuse of the service?

Yes     No

44. If late cancellations are counted along with no-shows, are late cancellations the “operational equivalent” of no-shows (*e.g.*, cancels within 1-2 hours of scheduled pick-ups, but not further in advance)?

Yes     No

45. Does the public information describing the policy note that no-shows and late cancellations beyond the rider’s control will not be counted and explain how to provide this information if charged with a no-show or late cancellation?

Yes     No

If “Yes,” are riders first notified of the no-shows and late cancellations recorded against them, and given a chance to explain or dispute them before a decision is made to suspend?

Yes     No

46. If a suspension is issued, is the rider notified of their right to an appeal, and does this appeal process conform to the requirements that apply to eligibility appeals?

Yes     No

47. If riders are charged for no-shows and/or late cancellations, is this only in lieu of a suspension?

Note: Charges can only be proposed as an alternative to a suspension and only after there has been a “pattern and practice” of abuse and a suspension has been issued.

Yes     No

### Service Criteria

48. **Service Area:** Examine public information describing the ADA paratransit service. Compare any service area maps to maps of fixed routes. Is ADA paratransit service provided, at a minimum, to all areas within  $\frac{3}{4}$  of a mile of non-commuter fixed routes?

Yes     No

Are small areas surrounded by service corridors also served?

Yes     No

Does the ADA paratransit service area cross all boundaries unless there is a specific legal bar prohibiting agency vehicles from crossing a boundary?

Yes     No

49. **Response Time:** Examine public information describing the ADA paratransit service. Note the advance notice requirements and the days and hours of trip reservations. Can trip requests be made up on a “next day” basis on all days that precede a day of service (including Sundays and holidays)?

Yes     No

Are trip reservations taken during typical administrative business hours?

Yes     No

50. **Fares:** Examine public information describing the ADA paratransit service. Compare ADA paratransit fares to base, non-discounted, adult fares on the fixed route service. Are ADA paratransit fares no more than twice the base adult fixed route fares? Note: Consider all fixed routes, including any free shuttle or circulators that may exist.

Yes     No

51. **Days and Hours of Service:** Examine public information describing the ADA paratransit service. Compare the days and hours of operation to the earliest pickup times and latest drop-off times on all fixed route schedules. Is ADA paratransit service provided, at a minimum, during all the days and hours that fixed route service is provided?

Yes     No

52. **Trip Purposes:** Examine public information describing the ADA paratransit service. Does it indicate that all trip purposes are served?

Yes     No

Are all trip requests taken and scheduled the same, without trip purpose priorities?

Yes     No

53. **Capacity Constraints:** Examine recent service delivery data, particularly trip denials, missed trips, on-time pickup and drop-off performance, on-board ride times, and telephone hold times. Also examine how each of these measures of performance is defined and the goal or standard for each. Does the subrecipient have a goal to have zero trip denials?

Yes     No

Are trips with pickups more than one hour from the time requested counted as trip denials?

Yes     No

54. Does the service operate without a substantial number of trip denials?

Yes     No

Number of denials in last year: \_\_\_\_\_

55. Is the service operated without a waiting list and without trip caps?

Yes     No

What is the goal/standard for missed trips? \_\_\_\_\_

56. Are missed trips defined to not include trips not taken within the pickup window (which should be no-shows)?

Yes     No

Does the service operate without a substantial number of missed trips?

Yes  No

57. What is the percent of scheduled trips that were missed in the last year: \_\_\_\_\_

58. What is the on-time pickup window and the goal/standard for on-time pickups? \_\_\_\_\_

Does the service operate without a substantial number of significantly late pickups?

Yes  No

% of pickups that were late in last year: \_\_\_\_\_

59. What is the on-time drop-off window and the goal/standard for on-time pickups?  
\_\_\_\_\_

Does the service operate without a substantial number of significantly late drop-offs?

Yes  No

% of drop-offs that were late in the last year: \_\_\_\_\_

60. How are excessively long trips defined, and what is the goal/standard for on-board travel times?  
\_\_\_\_\_

Is this standard consistent with FTA guidance (*i.e.*, comparable to similar trips by fixed route)?

Yes  No

61. Does the service operate without a substantial number of excessively long rides?

Yes  No

% of trips with excessively long ride times: \_\_\_\_\_

62. What is the goal/standard for telephone hold times in reservations and dispatch (if separate)?  
\_\_\_\_\_  
\_\_\_\_\_

Is this standard reasonable (e.g., average hold times < 1 minute, or 95% of all calls answered within 3 minutes)?

Yes     No

Does the service operate without excessive telephone hold times?

Yes     No

### Passenger Assistance

63. Does the subrecipient provide origin-to-destination service in its complementary paratransit program? (Either door-to-door service, or door-to-door as needed. Only curb-to-curb service does not meet this requirement.)

Yes     No

If door-to-door as needed service is provided, is the need for assistance considered for each trip requested, not just in the eligibility process?

Yes     No

### Subscription Caps

64. If there are capacity constraints, does the subrecipient monitor, by time of day, subscription rates and are these rates no more than 50% of capacity at any hour?

Yes     No

## All Service Providers

65. How does the subrecipient keep lifts and other accessibility features on system vehicles in working order?

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When a vehicle is removed from revenue service, does the subrecipient take reasonable steps to accommodate individuals with disabilities who were scheduled on that vehicle?

Yes     No

66. Are vehicle operators trained to immediately report that a lift is not in working order?

Yes  No

67. Are vehicles removed from revenue service when it is reported that a lift is not in working order?

Yes  No

68. Are vehicles repaired promptly and within the five day period for nonurbanized areas?

Yes  No

69. Does the subrecipient transport all wheelchairs and occupants if the lift and vehicle can physically accommodate them, unless doing so is inconsistent with legitimate safety requirements?

Yes  No

70. Does the subrecipient “do the best it can” to secure mobility devices, but not deny riders because the mobility devices they are using cannot be secured to the satisfaction of the driver or agency?

Yes  No

71. Does the subrecipient permit standees to use the lift?

Yes  No

72. Does the subrecipient require scooter users or wheelchair passengers to transfer to another seat?

Yes  No

73. Do the subrecipient's operators assist individuals with disabilities with the use of securement systems, ramps, and lifts?

Yes  No

74. Does the subrecipient permit service animals on system vehicles?

Yes  No

Is the subrecipient's service animal policy consistent with regulatory requirements? (The policy should not require certification of training, should not inappropriately limit type of animal—except emotional support or comfort animal, or animal that cannot be trained to assist.)

Yes     No

75. Does the subrecipient make available to individuals with disabilities adequate information concerning transportation services?

Yes     No

76. Does the subrecipient permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers?

Yes     No

77. Does the subrecipient ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities?

Yes     No

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## Facilities

78. Has the subrecipient constructed any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs?

Yes     No

Has the subrecipient undertaken any alterations of an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations?

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Yes  No

## Section 7. Use and Maintenance of Project Equipment

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### Overview

Under the common grant rule, States may use, manage, and dispose of equipment acquired under a Section 5311 grant according to State law and procedures. States are free to adopt the procedures established in 49 CFR part 18 for other public body recipients or use them as a guide in developing State procedures for equipment use, management, and disposition, but they are not required to do so. States may use the same procedures for private and non-profit subrecipients as for public body subrecipients, so long as those procedures are consistent with 49 CFR part 19.

Common grant rule procedures and requirements for Recipients that are not States, and their public subrecipients are more explicit and can be found in 49 CFR part 18.32 and 49 CFR part 19.34.

Subrecipients of Federal dollars administered by TDOT are required to certify that any property purchased with those funds is used for public transportation services within the sub-recipient's service area or other area described in the grant application for the useful life of the equipment or facility.

All property acquired using Federal funds shall be utilized and disposed of in accordance with the applicable FTA program circular, FTA Circular 5010.1D (as amended) and 49 CFR part 18. Title to all property purchased with Federal funds shall be vested in the name of the subrecipient with no lien holder. TDOT holds titles to vehicles.

The subrecipient shall have the requisite fiscal capability to carry out the project and be responsible for maintaining required insurance coverage, property records, conducting physical inventories, implementing adequate property control systems and maintaining the equipment in proper working condition. Documentation must be available upon request.

Transit systems are required to maintain the property at a high level of cleanliness, safety, and mechanical soundness. Each transit system must establish a maintenance program that, at a minimum, meets the equipment manufacturer's recommendations. The Division of Multimodal Transportation Resources has the right, and obligation, to review the transit system's maintenance and safety programs and to conduct periodic inspections of equipment and facilities funded with state and Federal funds administered by the Division of Multimodal Transportation Resources.

If TDOT determines that a transit system is failing to use or maintain any equipment item properly, the transit system will receive written notification and further state and Federal assistance may be withheld until adequate measures have been taken to correct the inadequate use or maintenance of the equipment. In some instances, TDOT may require the equipment be offered for transfer to another transit system or that the state and/or Federal share of the item be returned to TDOT.

## Real Property

1. Does the subrecipient own any real property that has been acquired under the FTA grant program?

Yes     No

If "Yes," does the subrecipient have title to the real property?

Yes     No

2. Is the real property being used for transit purposes or purposes otherwise stated in the grant application?

Yes     No

If "No," what is the property being used for?

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3. Does the subrecipient use real property for any incidental uses?

Yes     No

If "Yes," describe these incidental uses and determine if these uses generate any program income?

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Does the incidental use compromise the use of the real property for transit purposes?

Yes     No

Did the subrecipient obtain permission from TDOT before using real property for incidental purposes?

Yes     No

4. Has the subrecipient disposed of real property in the last three years?

Yes     No

If "Yes," did the subrecipient notify TDOT for disposition instructions?

Yes     No

5. If the property was sold, did the subrecipient compensate TDOT in an amount equal to the percentage of FTA participation in the original purchase times the current fair market value proceeds of the sale – after deduction of any actual and reasonable selling and repair expenses?

Yes     No

What steps did the subrecipient use to ensure that it received fair market value for the real property?

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6. Has the subrecipient transferred title of real property during the last three (3) years?

Yes     No

If "Yes," did the subrecipient transfer real property to another entity eligible to receive assistance under 49 U.S.C. Chapter 53?

Yes     No

Did TDOT approve of the transfer?

Yes     No

## Equipment - General

Any property (equipment, furniture and fixtures, vehicles, buildings, and land) purchased with Federal or state funds administered by the Division of Multimodal Transportation Resources and valued at \$5,000 or more must be accounted for in the agency fixed asset listing. The asset listing is to contain the Federally required information outlined in the Common Rule and generally accepted accounting principles, as appropriate.

Each capital items shall be assigned a unique identification number throughout its life; the identification number should not be reused. Equipment purchased as an integral part of the vehicle does not need to be separately inventoried; for example, a lift or destination sign that is purchased as part of a vehicle does not need to be inventoried. Capital items are to be depreciated in accordance with generally accepted accounting principles. However, depreciation expense is not an allowable reimbursable cost to Federal programs if purchased, in part or in whole, with federal funds.

Additionally, capital items valued at \$5,000 or more are to be reported to the Division of Multimodal Transportation Resources, at least biannually, on the Division of Multimodal Transportation Resources Property Inventory Form provided to subrecipients. Information contained in the property inventory form should be verified to the subrecipient's asset listing. The form is to be updated and provided to the Division of Multimodal Transportation Resources with the subrecipient's annual grant application

7. Does the subrecipient use all equipment acquired with FTA funds in a manner consistent with the original project application or purpose?

Yes     No

8. What is the current configuration and fleet size of the public transit fleet?

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9. Describe the fleet size and vehicle requirements?

|  |   |
|--|---|
|  | Total fleet size                              |
|  | Number of vehicles in maximum revenue service |
|  | Number of spare vehicles                      |
|  | Spare vehicle ratio                           |

Is the spare vehicle ratio reasonable given peak period requirements and the fleet configuration?

Yes     No

10. Does the subrecipient have any project equipment that is no longer needed for transportation purposes?

Yes     No

If "Yes," has the subrecipient notified TDOT that the equipment is no longer needed for program purposes?

Yes     No

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11. Has the subrecipient disposed of any project equipment during the last three years?

Yes     No

If "Yes," had the equipment exceeded its useful life as determined by TDOT?

Yes     No

If "No," did the subrecipient notify TDOT for transfer to another transit program?

Yes     No

12. If the subrecipient disposed of any project equipment prior to the end of useful life via a transfer to another project, what methods were used to establish fair market value?

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13. Has the subrecipient transferred any project equipment with remaining useful life to another entity?

Yes     No

If "Yes," did the subrecipient transfer real property to another entity eligible to receive assistance under 49 U.S.C. Chapter 53?

Yes     No

If "Yes," Did TDOT approve of the transfer?

Yes     No

14. Does the subrecipient maintain property/asset records for all equipment acquired with FTA funds?

Yes     No

If "Yes," are all the required data elements contained in the inventory record?

Yes     No

15. Does the subrecipient lease any project equipment to lower tier contractors?

Yes     No

If "Yes," what measures does the subrecipient use to ensure that it exhibits satisfactory continuing control over project equipment?

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16. Has the subrecipient suffered any casualty loss of project equipment during the last three years?

Yes     No

If "Yes," did the subrecipient receive an insurance settlement?

Yes     No

Did the subrecipient request guidance from TDOT on the procedures for re-investing the settlement proceeds in a replacement vehicle?

Yes     No

If a replacement vehicle was not acquired, did the subrecipient return the Federal share of the insurance settlement?

Yes     No

## Equipment – Incidental Use

If a vehicle is out of service more than 30 days, transit providers must provide written notification to the appropriate TDOT Division of Multimodal Transportation Resources Program Manager. For the period of time the vehicle is out of service, the transit provider must ensure that the time does not count toward the minimum useful life; accounting must stop the depreciation calculation. Additionally, incidental service mileage does not count toward the minimum useful life mileage.

If emergency situations arise and a vehicle will be out of service for several months and the agency does not have a spare vehicle, a transit system may request authorization from Division of Multimodal Transportation Resources to lease a vehicle in order to maintain needed service levels within a service area. A vehicle may be leased short-term from another transit system to replace the "out-of-service" vehicle. Division of Multimodal Transportation Resources must provide written approval prior to executing a lease agreement. Copies of lease agreements entered into by subrecipients must be forwarded to the Division of Multimodal Transportation Resources Program Manager for inclusion in Division of Multimodal Transportation Resources grant agreement file. Payment of invoices resulting

from a lease agreement that has not received Division of Multimodal Transportation Resources prior approval will not be reimbursed.

17. Does the subrecipient have any vehicles that have been out of service longer than 30 days?

Yes  No

If "Yes," has the subrecipient notified TDOT?

Yes  No

18. Does the subrecipient utilize project equipment for use on other projects or programs supported directly or indirectly by the Federal government?

Yes  No

19. Does the subrecipient use FTA funded equipment to engage in homebound meal delivery?

Yes  No

If "Yes," does the subrecipient have a cost allocation/costing methodology in place to assess the meals program the fully allocated cost of service?

Yes  No

20. Does the subrecipient have a cost allocation/costing methodology in place to assess the TennCare program the fully allocated cost of service?

Yes  No

If "Yes," did the subrecipient execute a formal agreement to provide TennCare services?

Yes  No

If "Yes," did the subrecipient send a copy of the agreement to TDOT?

Yes  No

## Equipment – Insurance

Under the Common Rule, states set their own requirements for maintenance of all equipment acquired with Federal funds. Insurance coverage must be adequate to protect the Federal interest in the vehicle within the useful life determined by TDOT.

TDOT recommends the following minimum vehicle insurance coverage:

- Personal Injury Liability – minimum of \$300,000.00 per person and \$1,000,000.00 per incident.
- Property Damage Liability – minimum of \$300,000.00 per incident.
- Comprehensive – maximum deductible of \$500.00.
- Collision – maximum deductible of \$500.00
- Uninsured Motorist – minimum of \$50,000.00 per person and \$100,000.00 per incident.

21. How are FTA and State-funded facilities and equipment insured?

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22. Are all vehicles covered?

Yes     No

If “Yes,” are there any exceptions or riders attached to the policies that would impact use of project equipment in the manner described in the grant application?

Yes     No

23. Does the grantee maintain comprehensive and collision insurance on all vehicles with remaining useful life at sufficient levels to protect the remaining Federal interest in the equipment?

Yes     No

If no, does the subrecipient have a self insurance reserve fund sufficient to repay TDOT for the Federal interest of the vehicle that was subject to the casualty loss?

Yes     No

24. Does management periodically review insurance coverage?

Yes     No

## Maintenance of Equipment and Facilities

Subrecipients are required to certify that any property purchased under the project shall be used for the provision of public transportation services within the subrecipient service area or other areas as described in the grant application, and for the life of the equipment or facility in compliance with the property management standards of 49 CFR part 18.31 through 18.34.

TDOT shall require all subrecipients who utilize assets purchased with federal and/or state funds to submit a comprehensive maintenance plan that will include, at a minimum, procedure for maintaining vehicles, facilities and ADA accessibility features.

Subrecipients shall maintain an up-to-date vehicle file for each vehicle containing key identification information and all information about maintenance events.

The subrecipient shall insure that all vehicles under its control and all required accessories on the vehicles, are regularly checked and inspected, maintained, and lubricated to ensure that they are in safe operating condition. The subrecipient shall have a means of indicating the types on inspection, maintenance, and lubrication operation to be performed on each vehicle and the date or mileage that these operations are due.

25. How are vehicle maintenance services performed?

- In-house
- Contractors
- Combination of in-house and contractors

If a combination of methods is used, are there specific functions that are contracted out?

- Yes     No

If "Yes," describe:

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26. Does the subrecipient have a written preventive maintenance plan for vehicles?

- Yes     No

If "Yes," are the maintenance actions and intervals consistent with manufacturer's minimum maintenance requirements for vehicles under warranty?

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Yes     No

27. Does the subrecipient's preventive maintenance program also include specific action to ensure that a vehicle's accessibility features, i.e., lifts, ramps, public announcement systems, tie-downs, are maintained in good working order?

Yes     No

28. What procedures does the subrecipient use to track all maintenance activities?

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29. What is the subrecipient's schedule for vehicle preventive maintenance (PM) inspections?

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30. Are vehicle PM inspections completed on time? Does the review of the maintenance records indicate that at least 80 percent of the inspections are performed on time?

Yes     No

31. Does the subrecipient conduct daily pre-trip inspections prior to placing a vehicle in service?

Yes     No

If "Yes," how does the system utilize pre-trip deflection reports to make repairs to system vehicles.

32. If a lift is found to be inoperative during pre-trip inspections, is the vehicle taken out of service by the beginning of the next service day and repaired before returning it to service?

Yes     No

If "Yes," are appropriate accommodations made for displaced passengers with disabilities?

33. Does the subrecipient operate facilities that were financed by FTA?

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Yes     No

If "Yes," is there a written facility maintenance plan?

Yes     No

34. Does the subrecipient insure federally financed facilities?

Yes     No

If "Yes," are the coverage levels adequate to protect the Federal interest in the facility?

Yes     No



## Section 8. Charter and School Bus

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### Overview

The Federal Transit Administration was established by the Urban Mass Transportation Act of 1964 (UMT Act, the Act). The Act provided funds for “mass transportation” purposes, defined as: “transportation by bus or rail or other conveyance, either publicly or privately owned, serving the general public (but not including school buses or charter or sightseeing service) and moving over prescribed routes.” This provision illustrates the balance Congress sought to strike between the public and private sectors of the economy. Congress acted to provide Federal funding for the continued existence of urban fixed route providers by enacting a capital program to acquire private transit companies and establish new public transportation agencies. The charter services provided by private companies were still profitable; accordingly, Congress excluded charter service from the definition of “mass transportation.”

*"Charter service" means, but does not include demand response service to individuals:*

- (1) *Transportation provided by a recipient 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 characteristic of charter service:*
  - (a) *third party pays the transit provider a negotiated price for the group;*
  - (b) *Any fares charged to individual members of the group are collected by a third party;*
  - (c) *The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or*
  - (d) *A third party determines the origin and destination of the trip as well as scheduling; or*
  
- (2) *Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:*
  - (a) *A premium fare is charged that is greater than the usual or customary fixed route fare;*  
*or*
  - (b) *The service is paid for in whole or in part by a third party.*

New regulations provide for both exemptions and exceptions to the regulations. FTA excludes from charter regulation coverage recipients of four funding programs (Section 5310, Section 5311, Section 5316, and Section 5317) if the service is considered for “program purposes.” FTA defines this term as: *"...transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals)."*

No FTA grantee or operator of project equipment is permitted to engage in exclusive school bus operations using buses, facilities or equipment funded under the Act. Note: FTA considers Head Start to be human service agency transportation (not school bus transportation for purposes of 49 CFR part 605).

## Charter Service

1. Does the subrecipient provide charter service?

Yes  No

2. Can all of the subrecipient's services be called "program" transportation?

Yes  No

3. Does the subrecipient operate any services that are defined in the federal regulations as exempt service as defined in 49 CFR part 604.2?

Yes  No

If yes, describe the charter service provide.

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4. Does the subrecipient operate any services that are defined in the Federal regulations as exceptions as defined in 49 CFR part 604.5 - 604.11?

Yes  No

If yes, describe the charter service provided.

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If "Yes,": does the subrecipient prepare and submit the requisite charter reports to TDOT?

Yes  No

Does the subrecipient have a policy on the retention of charter records?

Yes  No

5. Has the subrecipient ever requested a charter exception from FTA?

Yes  No

If yes, did the subrecipient send the request to TDOT first?

Yes  No

6. How does the subrecipient price charter services? Does the agency have a cost allocation methodology to estimate the actual cost of charter service?

Yes  No

7. Does the subrecipient provide charter services using non-FTA funded vehicles?

Yes  No

## School Bus Service

8. Does the subrecipient provide transportation to/from school for school children?

Yes  No

Is the transport of school children to/from school done on an exclusive basis (e.g., in demand response mode is the run built entirely on school children) ?

Yes  No

9. Does the subrecipient provide any tripper services?

Yes  No

10. If the system provides exclusive school bus service does it meet any of exemptions specified in the regulations?

Yes  No



## Section 9. Miscellaneous Provisions

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### Overview

In addition to the program-specific requirements and guidance provided in this circular, FTA grantees are held to a number of FTA-specific and other Federal requirements.

### Public Hearing Requirements

The public hearing requirement in 49 U.S.C. 5323(b) for capital projects was changed by SAFETEA-LU. The new provision associates more clearly the public involvement and hearing requirements for capital projects with the environmental review required by the National Environmental Policy Act (NEPA) and its implementing regulations. It also broadens the requirement to apply to all capital projects (as defined in Section 5302). Now, the grant applicant must provide an adequate opportunity for public review and comment on a capital project, and, after providing notice, must hold a public hearing on the project if the project affects significant economic, social, or environmental interests. These requirements will be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a public hearing on every draft environmental impact statement (EIS). FTA will also require a public hearing on environmental assessments (EAs) that have a high probability of being elevated to EISs ensuring that the applicant has complied with the public hearing requirement to include in the environmental record for the project.

Under 49 U.S.C. 5323(b), any application for a project that will “substantially affect a community, or the public transportation service of a community,” shall include a certification to the effect that the applicant has:

- Provided an adequate opportunity for public review and comment on the project;
- After providing notice, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- Considered the economic, social, and environmental effects of the project; and
- Found that the project is consistent with official plans for developing the community.

1. Has the subrecipient applied for capital in the last three (3) years?

Yes     No

If “Yes,” did the subrecipient provide an adequate opportunity for public review and comment on the project?

Yes     No

2. Did the project affect significant economic, social, or environmental interests?

Yes     No

If yes, did the subrecipient go through the environmental (NEPA) process to determine impacts?

Yes     No

If yes, did the subrecipient hold the requisite public hearing?

Yes     No

Did the hearing include the following elements:

- Concise description of the proposed project
- Published in a newspaper of general circulation in the geographic area the project will serve
- Combination of in-house and contractors

Did the subrecipient submit the public comments obtained at the hearing to TDOT in order for the state to forward comments to FTA?

Yes     No

## Environmental Protection

FTA's environmental impact regulation (49 CFR part 622) requires different levels of analysis and documentation for the various types of projects funded through its programs. Most projects and activities funded through the Section 5311 program do not normally involve significant environmental impacts. Such projects are termed "categorical exclusions (CEs)" in FTA's procedures because they are types of projects which have been categorically excluded from the requirement to prepare an environmental document. In the annual certifications and assurances, TDOT must assure FTA that all the projects in the application are CEs under 23 CFR 771.117(c) unless otherwise noted. FTA's regulation classifies categorically excluded actions and projects into two groups.

The first group, described at 23 CFR 771.117(c), contains activities and projects which have very limited or no environmental effects at all, such as planning and technical studies, preliminary design work, program administration, operating assistance, and transit vehicle purchases. Because environmental impacts of these activities are either nonexistent or minimal, no environmental documentation is required.

The second group of projects, described at 23 CFR 771.117(d), which normally qualify for a CE, are projects involving more construction and greater potential for off-site impacts. As this process is carefully monitored by FTA and TDOT, compliance monitoring through the CMP process is minimal.

3. What was the scope of activities undertaken with FTA financial assistance during the last three years? (Check all that apply)

- Planning or technical studies
- Preliminary design work
- Program administration
- Operating assistance
- Transit vehicle purchases

4. Based on the activities undertaken by the project, do all project activities undertaken in the last three (3) years fall into the provisions of the “first” group of activities that require no environmental documentation?

- Yes     No

If “No,” describe the project activity.

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## Clean Air

The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93) and they apply in areas that currently violate one or more of the national ambient air quality standards (nonattainment areas) and also in areas that once violated the standards but have since been re-designated to attainment status by EPA (so-called maintenance areas).

5. Is the subrecipient’s project service area in a nonattainment area?

- Yes     No

If “Yes,” is TDOT aware of this status?

- Yes     No

6. Is the subrecipient’s project service area in a maintenance area?

- Yes     No

If "Yes," is TDOT aware of this status?

Yes     No

## Private Sector Participation

Federal law requires the public to be involved in the transportation planning process and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urban and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

Under the requirements of 49 U.S.C. 5323(a)(1) States or local governmental authorities may use FTA funds to operate public transportation service in competition with or in addition to transportation service provided by an existing public transportation company, only if the grantee "provides for the participation of private companies engaged in public transportation to the maximum extent feasible."

7. How does the subrecipient assure that private transportation companies are consulted in the development of transportation plans and programs?

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Are the actions of the subrecipient proactive?

Yes     No

8. How does the subrecipient assure that private transportation companies are engaged in public transportation service delivery to the maximum extent feasible?

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## Labor Protection

Title 49 U.S.C. 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. Title 49 U.S.C. 5311(b) requires that the Department of Labor (DOL) use "a special warranty

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that provides a fair and equitable arrangement to protect the interests of employees” in order for the Section 5311(i) requirements to apply to Section 5311.

9. Has the subrecipient executed the Special Warranty?

Yes  No

10. Is the execution current?

Yes  No

## Drug-Free Workplace Act

In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and 49 CFR part 32, each grantee is required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program.

The grant applicant must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. However, these provisions apply only to States or tribes as FTA’s direct grantees and do not extend to subrecipients.

If a subrecipient is also a direct recipient of FTA funds, then coverage of this topic would be included in the Triennial Review; TDOT will not duplicate FTA efforts in this regard.

11. Is the subrecipient a direct recipient of any FTA funds that would trigger applicability of the Drug-Free Workplace Act?

Yes  No

If “No,” proceed to the Drug and Alcohol Testing Section.

If “Yes,” document any potential unresolved findings from the latest Triennial Review.

## Drug and Alcohol Testing

In the interest of safety of transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Program, 5311 Nonurbanized Area Formula Program, and other programs as determined by the Secretary are required by 49 U.S.C. 5331 to establish drug and alcohol testing programs. The purpose of the testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Grant recipients identified above must also certify annually that they are in

compliance with the U.S. DOT and FTA regulations concerning drug and alcohol testing (49 CFR part 40 and 655.) Compliance with the regulations is a condition of FTA funding. Where applicable as discussed below, recipients of FTA funding are required to comply with Federal Railroad Administration (FRA) regulations and to Federal Motor Carrier Safety Administration (FMCSA) and United States Coast Guard (USCG) regulations concerning drug and alcohol programs.

States must annually certify on behalf of their Section 5311 subrecipients. Standard language for certification of compliance with the regulations appears in 49 CFR part 655 Subpart I. Recipients or subrecipients that receive only Job Access and Reverse Commute (JARC), New Freedom, or Section 5310 assistance are not subject to FTA’s drug and alcohol rules, but must comply with the FMCSA drug and alcohol testing rule for employees who hold Commercial Driver’s Licenses.

FTA’s rule requires testing of employees who perform a safety-sensitive function, which is defined in 49 CFR 655.4. The rule requires the following six types of testing: pre-employment for drugs (including transfer from a non-safety-sensitive position to a safety sensitive position); reasonable suspicion; random; post-accident; return-to-duty; and follow-up.

The rule requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The rule requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, the 49 CFR part 655 Subpart D establishes alcohol concentration levels and prohibited behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.

Oversight of this topical area is designed to ensure whether the covered subrecipient is aware of applicable requirements. TDOT will monitor drug and alcohol testing program requirements through other means than the Compliance monitoring program.

12. Does the subrecipient have a drug and alcohol program and policy statement as required by FTA drug and alcohol regulations?

Yes     No

If “Yes,” what is the date of the policy?

\_\_\_\_\_

Does the policy reflect the most recent regulatory updates to 49 CFR parts 40 and 655?

Yes     No

13. Did the subrecipient’s governing board approve the most recent policy update?

Yes     No

14. Have the subrecipient's transit supervisors responsible for making reasonable suspicion testing decisions all received the requisite additional training?

Yes     No

If "Yes," is this training appropriately documented in the respective employee's training file?

Yes     No

15. Has the subrecipient had any new hires in safety sensitive positions?

Yes     No

If "Yes," is the required 60 minutes of training provided in a timely manner?

Yes     No

If "Yes," is this training appropriately documented in the respective employee's training file?

Yes     No

16. Does the subrecipient maintain documentation and periodically verify that all professions (MROs, SAP, etc.) are appropriately and currently certified to perform their respective functions?

Yes     No

17. Has the subrecipient had any drug test cancelled due to an error on the part of the urine collector or had an alcohol test cancelled due to an error on the part of the BAT?

Yes     No

If "Yes," does the subrecipient have documentation that the urine collector or BAT has completed error correction training?

Yes     No

18. Is the subrecipient conducting all required drug and alcohol tests?

Yes     No

19. Describe the subrecipient's process for random test selection.

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If "Yes," do the random tests meet the following requirements?

- | Yes                      | No                       | Criteria:   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Are the tests spread randomly throughout the selection period (e.g., throughout the week, month, quarter, etc)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Are the employees notified only immediately before the test?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Are tests spread throughout the service day?  |

20. How many employees are classified as safety-sensitive?

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How many tests were performed?

\_\_\_\_\_ Alcohol (10%)                      \_\_\_\_\_ Drug (25%)

Did the subrecipient conduct the requisite number of tests?

- Yes       No

21. **Pre-Employment Tests.** Does the subrecipient conduct pre-employment tests as follows:

- | Yes                      | No                       | Criteria:   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient ensure that it has a verified negative pre-employment test result prior to the performance of safety-sensitive duties by a new employee?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient document the date that it received the verified negative test results and the date the employee began performing safety-sensitive duties?   |
| <input type="checkbox"/> | <input type="checkbox"/> | If a potential safety-sensitive employee has worked for a USDOT-regulated employer within the last two years, does the subrecipient obtain written consent from the prospective employee to contact the previous employer to obtain drug and alcohol records? |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient release drug and alcohol information to employers when a request is submitted and authorized by a previous employee within 30 days of receipt of the request?   |

22. **Post Accident Tests.** Does the subrecipient conduct post-accident tests as follows:

- | Yes                      | No                       | Criteria:   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient document accidents and record the decision to test or not test for each accident?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient only conduct drug and alcohol tests when the accident has met FTA thresholds?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient ensure that alcohol tests are conducted within 8 hours and drug tests are conducted within 32 hours following the accident? |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the subrecipient document the reason an alcohol test is not conducted within 2 hours following the accidents?                                |

23. Does the subrecipient maintain drug and alcohol testing records in a secure location?

- Yes     No

24. Does the subrecipient maintain drug and alcohol testing records for the length of time as required by the regulation?

- Yes     No

25. Does the subrecipient have any subcontractors who perform safety sensitive functions?

- Yes     No

If "Yes," are all such positions (with the exception of maintenance subcontractors) subject to drug and alcohol testing?

- Yes     No

How does the subrecipient monitor subcontractor adherence to the regulation?

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