STATE OF NEW YORK
STATE MANAGEMENT PLAN
SECTION 5311 PROGRAM
PUBLIC TRANSPORTATION IN NONURBANIZED AREAS

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
Policy and Planning Division
Office of Integrated Modal Services
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INTRODUCTION

This document comprises New York State’s Section 5311 Program State Management Plan prepared in compliance with the provisions of the Federal Transit Administration's Circular 9040.1G, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions".

New York State submitted an Interim Management Plan on May 30, 1979. In 1982, federal guidelines were modified to permit states the option of administering the program under a State Management Plan (SMP). New York State submitted its SMP which was approved in September 1984 and has been updated numerous times since.

This submission reflects the latest available FTA Guidelines as well as changes in New York State's organization and policies since the plan was last updated in June 2011. The plan will be updated periodically as new circulars applicable to the Section 5311 program and other guidance under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) its successor MAP-21 (Moving Ahead for Progress in the 21st Century Act) are issued.

This plan was prepared by the staff of the Public Transportation Bureau in the Office of Integrated Modal Services of the New York State Department of Transportation, Albany, New York. Questions and comments may be directed to:

Bill Telovsky, Acting Rural Program Manager
Public Transportation Bureau
Office of Integrated Modal Services
New York State Department of Transportation
50 Wolf Road, PCD 54
Albany, NY 12232
(518) 457-8335

OVERVIEW OF NEW YORK STATE’S SECTION 5311 & 5311(f) RECIPIENTS

Since the program's establishment in 1978-79, New York State’s program has grown to a total of 62 individual public and intercity bus transportation operators receiving program funds. Of these:

8 cities operate transit systems. The City of Olean is the newest grantee to receive Section 5311. Two cities contract with private operators; six cities operate their services themselves;

33 counties receive funds and either provide service themselves or through contracts with public or private operators. The total number of operators in these counties is 42;

3 public transportation authorities provide service in the rural portions of 12 counties. Three counties (Seneca, Oneida and Orleans) have joined public transportation authorities in the last few years.

9 private intercity bus operators provide intercity bus service throughout the State and 6
of those operators receive 5311(f) program funds.

PROGRAM GOALS AND OBJECTIVES

The New York State Department of Transportation’s Mission Statement is as follows:

"It is the mission of the New York State Department of Transportation to ensure our customers -- those who live, work and travel in New York State -- have a safe, efficient, balanced and environmentally sound transportation system."

To attain its mission the responsibilities, functions and duties of the Department of Transportation include:

Coordinating and developing comprehensive transportation policy for the State; coordinating and assisting in the development and operation of transportation facilities and services for highways, railroads, mass transit systems, ports, waterways and aviation facilities; and, formulating and keeping current a long-range, comprehensive statewide master plan for the balanced development of public and private commuter and general transportation facilities; and administering a public safety program for railroads and motor carriers engaged in intrastate commerce; directing state regulation of such carriers in matters of rates and service; and, providing oversight in matters relative to the safe operation of bus lines, commuter railroads and subway systems that are publicly subsidized through the Public Transportation Safety Board.

Goals have been established for the Section 5311 program that are consistent with the Mission Statement, the Federal Transit Administration Section 5311 program goals, and provide overall guidance and direction to the program in New York State:

- enhance the access of people in nonurbanized areas to health care, shopping, education, employment, public services, and recreation;
- assist in the maintenance, development, improvement, and use of public transportation systems in nonurbanized areas;
- encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in nonurbanized areas through the coordination of programs and services;
- assist in the development and support of intercity bus transportation; and
- provide for the participation of private transportation providers in nonurbanized transportation.

ROLES AND RESPONSIBILITIES

The Governor has designated the New York State Department of Transportation as the agency charged with administering the Section 5311 program. Within NYS DOT, the
Office of Integrated Modal Services (OIMS) provides modal policy analysis and planning expertise, program administration and statewide, regional and multi-state collaboration for all transportation modes. The Public Transportation Bureau, under OIMS, administers several Federal and State programs, including the 5311 program, for mass transit in New York State (see NYSDOT organization charts in Appendix A). The Public Transportation Bureau’s staff work directly with local governments (cities and counties), regional transit authorities and other eligible applicants developing grants and projects, and reviewing projects and actions for compliance with Federal statutes and regulations. The Public Transportation Bureau’s staff also works with other agencies such as the NYS Division of the Budget, the State Attorney General, and the Office of the State Comptroller to execute State subrecipient contracts, submit grants and amendments to FTA, and process payment requests. The Public Transportation Bureau’s staff also coordinate closely with other subdivisions of the Department of Transportation such as the Office of Contract Management, to review and approve Grant Agreements and other contracts; the Office of Audit and Risk Management Services, to assist in auditing financial reports from operators and complying with Single Audit Act requirements; and the Office of Finance, to provide state matching funds for capital and operating projects and for program administration. The Grant Administration unit in the Department’s Accounting Bureau is responsible for the drawdowns of federal funds through the ECHO system and the annual reporting of expenditures in the Financial Status Report. In addition, the Public Transportation Bureau’s staff work with the Office of Modal Safety and Security to conduct vehicle safety inspections and develop system safety plans.

The Department is also divided into a number of Offices, Divisions and Bureaus and there are 11 Regional offices around the state that develop transportation plans and manage the Department’s work program in their respective areas. The Regional offices have a role in the rural transit programs by considering and including rural transit projects within the transportation goals and program in the Region, and in selecting projects for funding within the flexible funding categories authorized in (SAFETEA-LU) or its successor, MAP-21.

The Public Transportation Bureau is active in and works closely with the New York Public Transit Association (NYPTA), a group representing the transit industry in the State. NYPTA and NYSDOT collaborate on three Statewide Transit Conferences each year as a forum for issues in the industry. The Bureau is active in meeting and discussing Section 5311 issues with NYPTA’s Small Operators Committee. NYPTA is an effective organization for the review of policy issues and consultation on matters of concern between NYSDOT and the transit operators. More information is available at their website www.nytransit.org.

COORDINATION

In 1987 the New York State Legislature established the Rural Public Transportation Coordination Assistance Program (RPTCAP). This program provided funds for rural counties (under 200,000 populations) to develop and implement coordinated public transportation service. The objective of this program was to provide expanded and more efficient transportation service to poor, seniors, youth and disabled individuals by consolidating various existing human service and public transportation services into a single system under the management and operation of a Coordinated Service operator.
The CSO would then contract for service with agencies who had voluntarily given up their transportation functions. The coordinated service would be open to the public, eligible for State and Federal operating assistance, and would be given a higher priority in capital funding for vehicles. Under this program, 13 counties received funding and 11 developed coordinated systems, all of which are still operating today. Funding for the RPTCAP program has ended, but the commitment to coordination has not.

NYSDOT currently is active in the Federal United We Ride initiative. Along with other state agency partners, DOT seeks to revitalize the coordination movement by building on the successes of the RPTCAP program and learning from its shortcomings. A State Agency working agreement has already been reached that seeks a rational cost sharing based on ridership. Efforts to include other entities in this group continue. At the 2006 Rural and Specialized Transportation Conference, representatives from several state agencies who are part of the United We Ride state partnership made a presentation to the conference on coordination opportunities. Since that time, the subject of coordination has been a major portion of the agenda for each Rural and Specialized Transportation Conference.

The Section 5311 operating and capital funding applications mandate that other transportation providers and those with transportation needs be made aware of the service being funded and be given the opportunity to coordinate, and in the case of capital applications, to request a public hearing. Within the NYSDOT, staff for the Section 5311 and Section 5310 program work closely together to ensure coordination among their respective subrecipients.

Within the 5311 allocation process, NYSDOT gives more funding potential to those subrecipients who coordinate and do so in a financially prudent manner. With this policy, technical advice is provided on how to price systems and therefore apply a fully allocated cost to coordinating agreements. Staff also seek to disseminate the knowledge and best practices from all available sources.

NYSDOT views coordination as a goal that all subrecipients should strive toward. However measurements and even definitions prove elusive. Barriers still exist and environment constantly change. “Maximization” is therefore illusionary. NYSDOT views coordination has a continuum where even successes can and should be improved upon, and local and federal initiatives supported.

**ELIGIBLE SUBRECIPIENTS**

New York State requires that local public bodies must be the grantees for Section 5311 funds. Any county, city, Indian tribe or regional transportation authority, wholly or partially within a nonurbanized area, may apply for Section 5311 funds for public transportation serving nonurbanized area residents. Opportunities are made available to public bodies not currently participating to join the program. An eligible county within the jurisdiction of a regional transportation authority may designate that authority to act on its behalf and become the applicant. This is the case for 12 counties located within the district of three regional transportation authorities. Third party for-profit or non-profit operators may participate through subcontracts with municipal corporations. For Section 5311(f) funding only, private intercity bus operators are eligible grantees.
While there are other categories of eligible recipients under FTA guidelines, New York State restricts recipients to those who qualify to participate in the Statewide Mass Transportation Operating Assistance Program (STOA), as described in the following section and available on NYSDOT’s website.

**ELIGIBLE SERVICES AND SERVICES AREAS**

In New York State, transit providers are eligible to participate in the Section 5311 program if:

- They provide service to non-urbanized area residents;
- They are open to the public on an equal opportunity and regular and continuing basis;
- They qualify for funding from the New York Statewide Mass Transportation Operating Assistance Program (STOA).

The STOA program provides operating assistance funding to transit operators under Section 18-b of the State Transportation Law through quarterly payments based on the number of revenue passengers and revenue vehicle miles. NYSDOT requires that a system qualify for STOA funding for it to be eligible for Section 5311 funding to ensure that the service will be operated as open to the public in accordance with the STOA definitions of “Public transportation system” and “Mass transportation services eligible for state transportation operating assistance.” The STOA rules also address the issue of service outside of New York State. The eligibility of such services is limited to circumstances where the primary reason for operating outside of the State is to transport NYS passengers to and from their NYS origins and destination. The STOA Rules and Regulations are available at the following website:


NYSDOT uses the U.S. Census boundaries to determine the eligible nonurbanized areas. The needs of residents in rural areas wishing to travel to destinations within urbanized areas are met by several transit systems which are recipients of Section 5311 funds and may also receive Section 5307 funds, and by intercity bus operators that receive 5311(f) funds and State funds. Grantees who receive Section 5311 and Section 5307 funds are required to document which services and expenses are eligible for Section 5311 funding based on a method which may include the percentage of the total service, passengers or miles. The methodology used by the grantees is reviewed and approved by PTB. Rural vs. Urban splits are also checked against annual financial and operating reports submitted by grantees as part of the State Article 17-A budget process.

**ELIGIBLE ASSISTANCE CATEGORIES**

New York State uses the list of eligible assistance categories in the FTA Section 5311 Program Guidelines for determining project eligibility. New York has limited its eligible assistance categories for subrecipients to capital expenses and operating expenses. The majority of capital projects are vehicle acquisitions, primarily vehicle replacements. However there are also projects for the purchase of related equipment such as fare collection, communication systems, computer equipment, shelters and signs. Flexible
funding opportunities made possible through federal transportation legislation have made it possible to fund a few bus facility needs as well. Eligible operating expenses are those directly related to system operation. New York State has not chosen to treat subrecipient project administration expenses as a separate cost category eligible to be funded to an 80 percent Federal share.

LOCAL SHARE AND LOCAL FUNDING REQUIREMENTS

For capital projects under Section 5311, New York State provides up to 50 percent of the nonfederal share, not to exceed 10 percent of the total project cost. New York State does not use the other Federal funding percentage options greater than 80%. The combination of 80 percent federal share and 10 percent State matching funds maximizes the number of projects that can be funded. For bus purchases, New York requires that the local share be in cash. For other types of capital project, such as bus garages, the local share could be in the form of property or services such as engineering or site preparation, recognizing all relevant FTA rules and regulations. Local share is reviewed and approved during project application and again during the reimbursement process of each capital project. 5311 funded ARRA (American Recovery and Reinvestment Act) capital projects were funded at 100% federal.

For operating projects, a 50 percent local match of the net operating deficit is required. The New York State operating assistance program (STOA) pays an amount to each operator through a formula based on miles and passengers. The localities must provide an approximately 13 percent match to STOA funds. In the majority of cases in New York, the STOA, plus local match, is sufficient to meet the required match for Section 5311. Where it is not sufficient, New York permits human service agency contract revenue to be considered part of the local match. Otherwise, the locality must provide the additional local funds to make up the remaining deficit. Local share is reviewed and approved during project application and again during the annual report review process of each operating project.

PROJECT SELECTION CRITERIA AND METHOD OF DISTRIBUTING FUNDS

New York’s Section 5311 apportionment is used for both capital and operating needs. From each annual apportionment, after setting up to 15% for State administration and 15% for the intercity bus program, approximately $4.0 million is reserved for operating assistance projects, with the remaining funds forming the basis for the capital program.

For operating assistance under Section 5311, allocations are made to all currently participating eligible systems by use of a formula. The formula is as follows: 25% of the funds distributed by nonurbanized population served; 25% by passengers per mile; 25% by the number of system buses; and the final 25% is distributed in proportion to the amount of local government revenues for each system. The criteria used reflect funding per capita equity statewide (population), service effectiveness (passengers per mile), equity based on costs to provide services (number of buses) and promoting local commitment and oversight (local government resources). Once the basic allocation is determined, adjustments may be made based on the level of local support and coordination efforts, as well as expected expansion plans. The formula allocations are updated biennially to reflect any changes in passengers and miles, system buses and
new census figures. New York announces the annual allocations for two years to all eligible subrecipients and sets the timetable for application submission. The subrecipients submit a combined two year application for funding. Any potentially eligible locality or Indian tribe not currently participating in the program is eligible to request participation. An allocation would be made based on preliminary information provided by the prospective grantee and staff would assist the applicant in applying. Information on the Section 5311 program, as well as other requirements for participation in public transportation programs in New York State, is available on the NYSDOT website and is periodically made available to potentially eligible applicants: https://www.dot.ny.gov/portal/page/portal/modal/bus

NYSDOT has been very proactive in making information available to potentially eligible recipients. It is important to note that there are only 4 counties in New York State that have no public transportation service: Hamilton County, which is located in the Adirondack Park and has a population of 5,379; Washington County, population 63,216, and Yates County, population 25,348, which recently conducted a study on the feasibility of public transportation and is considering its options.

For capital projects, vehicle and other acquisition needs are solicited from all eligible recipients. These needs are evaluated against the project selection criteria which give priority to requests meeting certain conditions as follows:

- Serve non-urbanized areas;
- Replace vehicles or equipment needed for existing service (based on meeting the useful life and/or mileage criterion);
- Provide service where applicant has maximized opportunities for human service agency clients to use public transit;
- Have no other sources of funds reasonably available to the system;
- Demonstrated need for expanded service;
- Enhance the service in ways that improve its quality and increase ridership.

Using the above criteria, New York has been able for several years to meet most subrecipient requests for vehicle replacement or other capital projects and vehicles requested for new services. This approach is fair and equitable based on meeting the needs statewide of all who request capital assistance. Any new applicant requesting a capital project would be given the same consideration as current subrecipients. In addition, Federal funds transferred into the Section 5311 program from the FTA or flexible highway categories are allocated to the area/system for the purpose they were intended. Limited amounts of 100% State Dedicated Funds (from State gas/petroleum taxes) have been used, and may be used in the future, to supplement Section 5311 funding.

New York’s grant processes and methods for allocating funds are fair and equitable in considering and involving Indian and other minority populations. Indian reservations are eligible recipients for Section 5311 funding in New York and are advised of the availability of funds on a periodic basis. No federally recognized tribal nations have elected to date to participate directly in the program. However, one of our newer grantees, the City of Olean, is working with the Seneca Nation of Indians (SNI) on service coordination. The SNI has received Tribal Transit Funding to study transportation
options. We will work with the SNI to make funding available as needed through the 5311 program. There is also substantial service provided to tribal nations through intercity bus service, as well as through some public transit systems in counties where Indian reservations are located. Because NYSDOT contracts with municipal corporations only and not directly with human service agencies, reliance is placed on these county and city sponsors to design and implement services to meet the needs of all minority groups in the locality. Generally speaking, minority groups in the rural parts of the state are located in the small urban areas, such as Watertown, Amsterdam, and Gloversville where there is extensive service provided. Twenty-six of our current subrecipients are providing service in nineteen counties designated as Economically Distressed Areas by the federal government and are thus serving low-income populations. Periodic site visits by NYSDOT staff, which may include unannounced rides on buses, is one method used to ensure that any areas serving minority areas are appropriately served. Census data can be made available as needed. Involvement with local agencies and groups serving or representing minority populations is accomplished in part through the requirement to send a public notice describing the proposed project to human service agencies and other providers of public transportation services advising them of proposed projects and inviting comments and suggestions for service coordination. All comments and suggestions must be addressed by the grantees. All comments and responses must be included in the Section 5311 application.

New York coordinates its Section 5311 Program with its metropolitan planning organizations (MPOs), including those MPOs that are designated transportation areas, through copies of program guidance, project allocations, and other program information sent to subrecipients. The MPO's are invited to the tri-annual NYPTA transit conferences and the annual Department Rural and Specialized Transportation Conference. The Department, as well as transit systems eligible for and receiving Section 5311 funds in MPO areas, are members of the MPO.

INTERCITY BUS TRANSPORTATION

NYSDOT's support of the intercity bus industry predates the Federal 5311(f) program. Since 1974, NYSDOT has supported New York's intercity bus service through the Statewide Mass Transportation Operating Assistance (STOA) Program. NYSDOT's intercity bus program provides approximately $13 million in STOA plus the required 15% of the federal Section 5311 funds. With state and federal funds, NYSDOT supports 118 routes throughout the State that total slightly more than 10 million miles and carry 2.7 million passengers annually. Given the size and scope of the State and Federal programs, NYSDOT frequently communicates and meets with intercity bus operators to discuss needs and priorities. NYSDOT identifies intercity bus operators in the State through Russell's Guide, web searches, the American Bus Association (ABA) and existing participants in the program. Intercity bus operators are invited to statewide conferences and regional planning and local coordination meetings. Intercity operators are also included in the Coordinated Public Transit-Human Service Transportation Plans, and the MPO and statewide long-range planning processes. The main priority of the program is to preserve intercity bus service in rural areas through operating assistance. NYSDOT has been able to preserve service and also meet a secondary goal of expanding rural service in New York while rural intercity bus service has declined in other areas of the country. NYSDOT has never certified that the intercity bus service
needs of the State are met and does not anticipate making a certification in the future.

Operating Assistance allocations of 5311(f) are based upon an equitable formula comprised of the following three factors: rural population served, rural fleet size, and passengers per vehicle mile. Intercity operators are provided an opportunity to submit operating assistance grant applications every two years. 100% of the 5311(f) funds are used for operating assistance. In addition, projects proposed by counties and cities which use their transit systems to feed or otherwise interconnect with existing intercity services have become part of New York's Section 5311(f) program. Once an intercity project has met the Section 5311 and 5311(f) requirements, it follows an implementation process similar to other Section 5311 projects.

**ANNUAL PROGRAM OF PROJECTS DEVELOPMENT AND APPROVAL PROCESS**

**Process and Timetable:**

Capital: A comprehensive inventory of all buses and equipment used in eligible Section 5311 funded service is conducted every two years. Systems are asked to submit applications for Section 5311 vehicles, equipment and facility funding. Based on the inventory data and funding requests, and available Federal and State funding from all sources, a two year capital project program is developed using the criteria described in Project Selection Criteria. The process of funding on a two year basis is intended to streamline the capital project acquisition for the subrecipients and improve the process for meeting capital needs in a timely manner.

Funding requests may be discussed with the recipient and modified before final project determination. The available funding is applied to the list in priority order and all applicants are advised whether their project has been approved wholly, in part, or not approved. The selected projects are then added to the Annual Program of Projects as Category “A” projects, provided they have met all federal requirements. Others may be listed as Category “B” until they have met all requirements. The application is submitted electronically to FTA.

A process has been developed for larger capital projects such as maintenance garages and some vehicle acquisitions as a result of the availability of flexible funding in the transportation legislation. This process begins with individual funding requests to NYSDOT by project sponsors and goes through a number of steps involving coordination with the MPO and groups within NYSDOT Regional and Main Offices, preparation of grant agreements with the municipalities, preparation of plans and specifications, and construction contract administration. Such projects will be required to meet eligibility criteria and funding must be identified before they can be added to the Annual Program of Projects. The capital grant agreement includes procedures for construction projects.

Operating assistance: NYSDOT allocates operating assistance funds to all current eligible subrecipients based on the criteria described in Project Selection Criteria and Method of Distributing Funds. The Department announces the allocations for two years of funding to subrecipients and sets the timetable for application submission every other year. The subrecipients submit a combined two-year application, along with the local authorizing resolution. Applications are reviewed against a checklist and any areas
needing follow-up are addressed through discussions or correspondence with the subrecipient. Projects for which applications are approved are added to the Annual Program of Projects as Category “A”; those not fully meeting all requirements are added as Category “B”. The system’s annual financial report for the previous year is submitted with the application or shortly thereafter. For the second year of the project the annual financial report for the first year’s project must be submitted before payment can be made.

**FUNDS TRANSFERS**

New York State permits the transfer of funds between STP, CMAQ, Section 5307, Section 5310 and Section 5311, consistent with federal regulations. Section 5311 operating assistance allocations for small urbanized areas (SUZAs) are transferred to the Section 5307 program for use by those systems for their rural areas. Starting in 2008, capital funds for rural areas located within a small urbanized area are also being transferred to the 5307 program. The transfer of funds is intended to lessen administrative costs and allow the grantees in small urbanized areas to apply for all capital and operating assistance funds directly through FTA. Transfers between the Section 5310 and Section 5311 programs are allowable, but have not occurred for several years. Transfers of Surface Transportation Program (STP) and Congestion Mitigation/Air Quality (CMAQ) Program funds are being done in New York. Such transfers are sought for critical capital needs that cannot be funded under normally available Section 5311 resources.

**STATE ADMINISTRATION AND TECHNICAL ASSISTANCE**

New York State has not allocated any of the Administration, Planning and Technical Assistance funds to local areas, but may consider doing so in the future. To date, such needs have been met through normal capital and operating allocations and other State assistance. The State funding under the STOA program, in combination with Section 5311 operating assistance and local funds, are generally sufficient to meet these needs.

The administration funds are used for salaries, overhead, travel, supplies and equipment for the State staff administering the program. State staff also provide extensive technical assistance on an informal (telephone or e-mail) and formal written or site visit basis. The funds are used for technical assistance associated with the administration of the program by NYSDOT, while the technical assistance needs of the local operators are addressed through RTAP, as discussed in the section on State Rural Transportation Assistance Program. When Section 5311 administration funds are needed the 15% programmed allocation is drawn down.

**STATE RURAL TRANSPORTATION ASSISTANCE PROGRAM**

New York State directly administers the RTAP program using in-house staff, and has done so since 1996. This maximizes the amount of Federal funds that can be used to assist the State’s rural transportation providers. Accordingly, staff provides technical assistance to Section 5311 and rural Section 5310 operators by offering RTAP scholarship funds, a statewide driver training program, the annual Rural & Specialized Transportation Conference, telephone/e-mail/on-site technical assistance, and use of a
reference library containing materials from the National RTAP program as well as other sources. In addition to in-house assistance, New York State uses RTAP funds to contract with consultants to provide specific products or services, such as driver training, transit system operational analyses, marketing, and FTA substance abuse program compliance assistance and training.

Driver training courses are currently offered in several subject areas, including defensive driving, driver training simulator, emergency procedures, pre and post trip vehicle inspection, substance abuse program compliance, and passenger assistance/sensitivity. These are given at New York’s five regional training facilities developed under the program and located on-site at small transit operations. Training is also offered at other small transit operators where staff trainers are available. Some of these trainers have used RTAP funds to complete train-the-trainer courses.

NYSDOT also supports training for managers, supervisors, mechanics and other support staff with RTAP funds. Transit systems are encouraged send staff to courses sponsored by organizations such as CTAA, NTI, FTA, and TSI or to RTAP sponsored training in other neighboring states. NYSDOT is a founding member of the mid-Atlantic RTAP consortium of states which pools resources and sponsors training programs open to transit systems located in the mid-Atlantic region. Training activities offered have included: accident investigation, supervision, maintenance training, financial management, accounting, scheduling/dispatching, and train-the-trainer courses in some of these subject areas.

New York State involves operators in program development and implementation through an RTAP Advisory Committee, and also through the New York Public Transit Association, as discussed in Roles and Responsibilities. The RTAP Advisory Committee is comprised of 12 members representing Section 5311 and rural Section 5310 subrecipients. Two of the Advisory Committee members are also on the NYPTA Board of Directors which greatly enhances communication between these groups. The Advisory Committee meets formally at least once per year and NYSDOT communicates regularly with the members both by phone and electronically. The Advisory Committee is active in monitoring the progress of the program and in recommending RTAP activities. In addition, the committee members are consulted on numerous items and issues involving the broader Section 5311 program: transit coordination efforts, program development, and program administration.

In addition to the RTAP Advisory Committee, NYSDOT maintains regular communication with all subrecipients statewide to determine training and technical assistance needs. Subrecipients are surveyed periodically, and all receive training course announcements and schedules. NYSDOT has increased the use of the internet and electronic communication to maintain the involvement of rural transit operators in the development of RTAP activities.

The goals of the RTAP program in New York State are the same as the goals for the Section 5311 Program.

New York State imposes no local match requirements for RTAP funded activities.
PRIVATE SECTOR PARTICIPATION

New York State supports and encourages private sector participation in the provision of rural transportation services through both the Section 5311 program and the STOA program. Twenty-nine of the Section 5311 funded systems operating in the State are operated entirely or in part by private firms under contract to a city or county. New York State, as part of all Section 5311 applications for operating and capital assistance, requires assurances by the recipient that it is complying with all provisions for Private Sector Participation. Public notices must be published and an opportunity for private sector proposals for service provision must be provided. Subrecipients are also encouraged to competitively bid for new transit services. In addition, as noted in the section on Intercity Bus, NYSDOT has an extensive intercity bus program run by private operators.

CIVIL RIGHTS

NYSDOT is required to assure, and all subrecipients and subcontractors are required as part of each application for capital and operating assistance and standard contract agreement established with NYSDOT to assure compliance with all federal civil rights requirements, including Title VI, Equal Employment Opportunity (EEO) and Disadvantaged Business Enterprise (DBE). Any required compliance reports are forwarded to the Department's Office of Civil Rights for inclusion in the Department's report to USDOT. For a detailed description on New York State's Civil Rights program, see appendix C.

I. TITLE VI

NYSDOT meets the standard assurance, general requirements and program specific requirements for Title VI compliance through its approved FTA Title VI Program, and as follows:

A. FTA Title VI Standard Assurance:
   - NYSDOT complies with the Title VI Standard Assurance requirements by certifying compliance with the Federal Certifications and Assurances for FTA Assistance each year for grant applications submitted by the Department to the FTA, and also by passing down these requirements to each subrecipient. Applicants for FTA Section 5311 program funding must agree to the Federal Certifications and Assurances for FTA financial assistance with each grant application for federal funding submitted for evaluation.
   
   - Applicants for FTA Section 5311 funding are required to have a current Civil Rights policy adopted, conspicuously displayed, that complies with Title VI of the Civil Rights Act of 1964. They are further directed to NYSDOT’s Title VI policy on the Department’s website for adaptation or adoption if they do not have a current policy in place. The procedure for filing discrimination complaints is described on the Department’s website, with detailed information on how to use the procedure. FTA Section 5311 program subrecipients of the Department are advised of the complaint
procedure in application materials and can obtain further information from the Department’s Office of Civil Rights.

B. General Requirements:
NYSDOT meets the general requirements by requiring each subrecipient to submit, with each application it files with NYSDOT, a certification regarding any lawsuits or discrimination complaints and a summary of any civil rights compliance review activities. Reports of any lawsuits or complaints or any civil rights compliance review activities are forwarded to the Department’s Office of Civil Rights for inclusion in the Department’s report to USDOT. NYSDOT is required to submit to FTA once every three (3) years the following information on behalf of its subrecipients:

1. A description of any lawsuits or complaints alleging discrimination in transportation service delivery in the last year and the status or outcome;
2. A summary of all civil rights compliance review activities conducted in the last three years; and
3. An analysis of any environmental and/or social impacts as a result of proposed construction projects, including the impact on minority communities, for projects that do not qualify as a categorical exclusion in the environmental process.

The NYSDOT Title VI/Environmental Justice program is administered and implemented by the Office of Civil Rights under the Audit & Civil Rights Division. Any required compliance reports are forwarded to the Department’s Office of Civil Rights, for inclusion in the Department’s report to USDOT.

C.. Program Specific Requirements:
NYSDOT strives to assist subrecipients in applying for FTA Section 5311 program funding assistance, including efforts to assist Limited English Proficient (LEP) and minority applicant populations. This includes technical assistance outreach through the NYSDOT website, one-on-one personal assistance when requested, training opportunities to assist applicants in meeting the state and federal requirements for providing public transportation in New York State, workshops held at a variety of locations throughout the state which provides an additional opportunity for individualized assistance in aspects of applying for FTA federal financial assistance and meeting FTA Section 5311 program requirements.

Program Administration

NYSDOT assures that it distributes Section 5311 funds without regard to race, color or national origin and that minority populations are not denied the benefits of or excluded from participation in the program in the following ways:

(1) Because there are sufficient funds for all requested eligible projects, as well as funding for any potential new projects, the program is conducted in a non-competitive manner. It should be noted that all potential grantees who meet the
eligibility requirements and have requested to be part of the program have received funding. Efforts are also made to advise potentially eligible grantees of the availability of funds. Should the demand for program funds require a competitive selection process, a record of all approved and rejected applications would be maintained. The record will include the percentage and proportion of minority and low income individuals in the service area.

(2) The process by which the state develops its annual program of projects submitted to FTA as part of its Section 5311 grant application, including the method used to ensure fair and equitable distribution of funds, including to Native American tribes and areas serving minority populations, has been described in the section entitled Project Selection Criteria and Method of Distributing Funds. To summarize, applications are requested from all current subrecipients and opportunities are provided for other potentially eligible applicants, including Native American tribes and any localities not currently participating, to apply for funding.

(3) NYSDOT’s criteria for selecting transit providers to participate in the program, including its efforts to include subrecipients serving significant minority populations has been described in the sections entitled Eligible Recipients and Project Selection Criteria and Method of Distributing Funds. To summarize, all current grantees are given an allocation of operating assistance funds and invited to submit capital applications. Any potentially eligible new grantees are given the same consideration.

(4) NYSDOT’s efforts to assist subrecipients in applying for Section 5311 assistance, including efforts to assist minority applicants, include a wide range of areas such as technical assistance through the NYSDOT website, written and personal assistance when required, extensive training opportunities to assist applicants in meeting the State and federal requirements for providing public transportation in New York State, funding of studies and consultant services to assist in areas such as determining the feasibility of service, and an annual conference sponsored by NYSDOT which provides an additional opportunity for individualized assistance in all aspects of applying for funds and meeting program requirements. These efforts are also described in the sections entitled Project Selection Criteria and Method of Distributing Funds, State Rural Transit Assistance Program, and State Administration and Technical Assistance. As noted in Eligible Recipients, only public bodies are eligible to be Section 5311 subrecipients in New York State. If an organization serving minority populations was interested in starting or expanding public transportation, NYSDOT would work with the organization and the appropriate public body to pursue funding and sponsorship.

NYSDOT’s ongoing process to monitor subrecipient compliance with Title VI includes remote site visit questionnaires, detailed on-site reviews of subrecipients and the review of applications (which include a Title VI certification).

NYSDOT’s Civil Rights Bureau (CRB) Title VI Unit has implemented affirmative measures, such as desk audits of documents and held training sessions on Title VI, Environmental Justice, and Limited English Proficiency for the employees of NYSDOT (Main Office and Regions) and sub-recipients, in order to determine
These actions ensure and provide continuity and assurance of compliance with all pertinent regulations promulgated by federal and state requirements. Other activities include reviewing and making appropriate recommendations as to where revisions are necessary, regarding Department procedure manuals. This is to ensure that the inclusion of policies, procedures, strategies and guidelines meet the requirements of Title VI of the Civil Rights Act of 1964 (as amended), ADA, NEPA, Environmental Justice (EJ), Limited English Proficiency, Fair Housing, and the D.B.E. program requirements as mandated by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and other modal agencies.

The planning, public involvement process, and project development and selection processes are areas which require Title VI, Environmental Justice, and Limited English Proficiency compliance. The aforementioned activities include, but are not limited to, ensuring public involvement is inclusive to all segments of the community. A joint effort by the Department, other implementing agencies, interested groups, individuals, and community-based organizations is necessary in order to have a proactive impact and to eliminate disparate impacts as they are identified. The interaction techniques used in this process include: task forces, technical advisory committees, focus groups, presentations at community board meetings, use of media (newspapers, radio, TV), public access channels, newsletter, computer bulletin boards, and the Internet. This concerted effort will be ongoing and continuing to ensure that the disadvantaged and those traditionally under-served are involved in the selection process.

The development of the metropolitan transportation plans by the MPOs and the planning phase of project development by the NYSDOT, involves the identification and evaluation/analysis of the socio-economic and environmental impacts of these plans, programs, and recommendations. The types of impacts analyzed may include the effect on residential areas and on a neighborhood’s (i.e., ethnic) character and stability; the effect of an improvement on minority businesses and residencies and those of other special groups and interests; and the effect on employment (gains and losses) for minorities, women and other groups. In addition, the MPO planning process must compare the minority and/or low-income populated areas to other income areas to ensure equitable transportation services and access in the metropolitan areas.

The Department, as a Federal requirement, must complete its Annual Accomplishments Report and Update by October 1st each year, and it includes the following: the submission of Department’s Disadvantaged Business Enterprises (D.B.E.) Plan, and the updated Title VI Plan; Title VI Assurances for each MPO and each grant recipient of the Section 5310 and 5311 programs; data and other reports that are used to monitor right-of-way acquisitions, negotiations, appraisals, relocations and property management to ensure that minority and low income populations were not adversely impacted. Further, the Report must demonstrate that the protected population groups obtained access to meetings, public hearings and as a community participated in the process.

The Department will continue to follow the Title VI Program Accomplishments.
Report and Annual Work Plan, which details procedures to insure compliance with Title VI of the Civil Rights Act of 1964 and Environmental Justice Executive Order 12898, and Limited English Proficiency 13666. A Title VI/Environmental Justice and Limited English Proficiency PowerPoint training course has been developed with a general part and modules for various NYSDOT program areas. Included therein are annual update reporting templates for each of the Departmental program areas, regional offices, Metropolitan Planning Organizations (MPOs), and other sub-recipients. The combination of nondiscrimination training, reporting formats, and technical assistance will identify program area products, employment and procurement activities, and areas where the public intercepts with the Department’s programs to determine where complaints could arise. CRB conducts on a rotational basis “risk” assessment of Department program areas, and MPOs’ activities.

CRB offers technical assistance to the Department program areas in order to minimize the risks of complaints of discrimination against programs and on projects administered by NYSDOT and its sub-recipients.

**Recording Title VI Investigation, Complaints and Lawsuits**

NYSDOT meets the requirements by having each subrecipient submit, with each application it files with NYSDOT, a certification regarding any lawsuits or discrimination complaints and a summary of any civil rights compliance review activities. Reports of any lawsuits or complaints or any civil rights compliance review activities are forwarded to the Department’s Civil Rights Office for inclusion in the Department’s report to USDOT. The analysis of any environmental or social impacts resulting from proposed construction projects is forwarded to FTA when any subrecipient applies for a project which would meet the specified criteria.

The NYSDOT Title VI complaint procedure process can be found on the Department’s website at [www.dot.ny.gov](http://www.dot.ny.gov).

**Notifying Beneficiaries of Protection Under Title VI**

As noted above, the NYSDOT makes clear, through its website and brochures available to the public that protections are provided under Title VI. Each subrecipient to the NYSDOT is obliged to afford these same protections. NYSDOT has provided a copy of the Department’s policies on Title VI to all grantees and received confirmation from each grantee that they would abide by those policies.

**Submittal of a Title VI Program**

The NYSDOT submits its update to its Title VI Program every three years. The most recent update was submitted and approved effective through June 2014.

**Analysis of Construction Projects**
Any construction projects funded through the Section 5311 Program include an environmental justice analysis in the National Environmental Policy Act documentation. The FTA Categorical Exclusion checklist is used to document compliance with environmental justice and community disruption. All construction projects in which Section 5311 funding has been used have been categorical exclusions.

**Promoting Inclusive Public Participation**

Each applicant for funding is required, as part of the application process, to publish a public notice of its intent to apply for Section 5311 funding. The notice requests comments on the project from the public, other transportation providers and human service agencies. In addition to publication in newspapers, the notice also must be mailed to human service agencies and other providers. Any comments received must be considered in the development of projects.

**II. ADA REQUIREMENTS**

New York State requires, as part of all applications for capital and operating assistance, that the recipient assure that they are in compliance with the requirements of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990. Any written complaints alleging discrimination received are referred to the NYSDOT Office of Civil Rights.

Assurance of Nondiscrimination on the Basis of Disability is required of all applicants for FTA Section 5311 program funding, who must certify in their application through the most recent FTA Certifications and Assurances that they will not discriminate on the basis of disability, and are accountable to this through the executed standard contract agreement.

NYSDOT is responsible for its own compliance and for assuring FTA that all subrecipients are in compliance with federal requirements prohibiting discrimination on the basis of disability. New York State requires, as part of all applications for capital and operating assistance, that the recipient assure that they are in compliance with the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990. Any written complaints alleging discrimination received are referred to the NYSDOT Civil Rights Bureau.

Although not a reporting requirement, it should be noted that all applicants are required to acquire buses with wheelchair accessibility. In the event a bus is requested without wheelchair accessibility, a “Certification of Equivalent Transportation Service” must be completed by the applicant indicating the equivalent services can and will be provided.

Operational and maintenance provisions of ADA are provided via web site at: [https://www.dot.ny.gov/divisions/policy-and-strategy/public-transportation/reports-publications#A](https://www.dot.ny.gov/divisions/policy-and-strategy/public-transportation/reports-publications#A)
III. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

NYSDOT is responsible for its own compliance and for ensuring that all subrecipients provide DBEs the maximum opportunity to compete for and perform contracts and subcontracts financed in whole or in part with federal funds. In addition, there must not be discrimination on the basis of race, color, national origin, or sex in the award and performance of FTA-assisted contracts. All subrecipients must submit a DBE assurance with each application filed with NYSDOT. The assurance describes the necessary and reasonable steps each grantee must take to ensure the maximum opportunity to compete for contracts and subcontracts. Subrecipients receiving more than $250,000 in FTA funds (exclusive of rolling stock) must file a DBE program. The NYSDOT Civil Rights Bureau reviews DBE programs and sets statewide goals. The current DBE goal for FTA assisted projects is 3.1%. Information on the DBE program is posted on the NYSDOT website.

Also, the FTA Section 5311 program in NYS permits the purchase vehicles through the State's central purchasing agency, the Office of General Services (OGS). The OGS State contract developed for FTA Assistance Programs requires the contractor to certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of disadvantaged business enterprises in the procurement of transit vehicles. The contractor must also certify that it has complied with the requirements of 41 CFR Part 60, relating to Equal Employment Opportunity. Absent this certification, properly completed and signed, the prospective contractor's bid is deemed non-responsive.

IV. EQUAL EMPLOYMENT OPPORTUNITY (SUBRECIPIENT) REQUIREMENTS

Any FTA Section 5311 program subrecipients in the State of New York receiving capital assistance in excess of $1 million, or planning assistance in excess of $250,000 and having more than 50 transit employees must comply with all applicable Equal Employment Opportunity (EEO) requirements. The subrecipient is required to submit its EEO Program and provide updates every three years to ensure compliance.

NYSDOT is responsible for its own compliance and for assuring FTA that all subrecipients are in compliance with FTA’s EEO requirements, which are to not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or handicap; to 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; and to post in conspicuous places, and make available to employees and applicants for employment, notices setting forth an EEO policy.

V. LIMITED ENGLISH PROFICIENCY (LEP)

The FTA Section 5311 program in NYS strives to provide access to funding for all qualified applicants. The Department has entered into vendor contracts to have language translation services upon request. Language translation services are available for technical assistance by phone throughout a project solicitation period. If there
becomes a need, the contract can be extended to include this service year-round. The current vendor selected is the only Minority and Women owned Business Enterprise (MWBE) on the list of available vendors through an OGS State contract for services.

**ASSET MANAGEMENT, SAFETY AND SECURITY**

All capital Grant Agreements and lease and service agreements covering Section 5311 funded vehicle, facilities or real property include clauses that require the recipient to maintain the assets in proper condition during their useful lives. Any grantee with a Section 5311 funded facility or equipment is also required to have a facility and equipment maintenance plan. The Section 5311 field site visit review involves a review of maintenance records. Grantees are made aware of the requirements for maintaining ADA accessibility features and this is reviewed during site visits. Frequent training opportunities are also provided on wheelchair operation and maintenance. A biennial inventory updates the condition on all vehicles, facilities, property and other equipment purchased with federal funds. NYSDOT tracks federally acquired assets through an active and dynamic inventory management system. Assets are removed and added to the inventory as they are purchased and disposed. This inventory management system has a mechanism to adjust the service life of any FTA funded asset that is removed from service for an extended period of time (greater than 15 days). Subrecipients wanting to dispose of federally funded assets at the end of their useful life or before the end of their useful must follow the NYSDOT disposition policy. Early retirement requests require an explanation for early retirement and a plan to return the remaining Federal/State interest to the respective parties.

Finally the subrecipient must also document how it enforces warranty claims on federally acquired assets. This documentation should identify warranty repairs, record the warranty claim, and show how the subrecipient follows-up on any unpaid claims.

NYSDOT ensures that subrecipients use FTA funded real property for project purposes. Examples of monitoring procedures include: annual certifications of use, site visit inspections, or deed restrictions. Title to real property acquired under grant will vest with the grantee or the subrecipient. The FTA interest in the real property continues until it is sold.

Incidental use is defined as authorized use of real property (and equipment) acquired with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Such use must be compatible with the approved project purposes of the project, must not interfere with intended public transportation uses of project assets, and must not in any way interfere with the grantee's continuing control over the use of the property. To that end, any subrecipient must inform the Department via letter or email of its request to use FTA acquired property for a purpose other than transit. Such request, letter or email, must contain the following detailed information:

1. Proposed incidental use
2. Duration of such use
3. Pledge that such use will not interfere with transit use and control of asset will be constant and undisputed.

4. Estimate of any revenues raised from such incidental use

5. Pledge to use all revenues raised from such incidental use to fund transit and will not be used to supplant existing local match for the capital asset being acquired

6. A market analysis was done stating that the revenues earned from such incidental use are competitive in nature and pay the current market rate.

NYSDOT will make the determination if such use is warranted and if NYSDOT makes the determination that such use is warranted, then NYSDOT will seek FTA’s approval for such incidental use. The above mentioned procedure would be followed if the subrecipient wishes to lease a federally acquired transit asset for incidental use.

The NYSDOT Office of Modal Safety and Security makes safety inspections every 6 months of all buses operated by private third party operators and many of the public operators in the Section 5311 program. These safety inspections include a review of the vehicle maintenance since the previous inspection, and operation and maintenance of the ADA accessibility features. Buses that do not pass inspection cannot be operated until they pass in a re-inspection.

All transit systems are required to prepare and have approved safety plans which include maintenance of vehicles and facilities. This is required under the authority of the New York State Public Transportation Safety Board (PTSB), which was created in 1984 and is the first board of its kind in the nation. The PTSB is statutorily responsible for the safety oversight of all public transportation systems operating in New York State that receive State Transit Operating Assistance (STOA). The mission of the PTSB is to reduce the number, rate and severity of public transportation accidents. The PTSB has broad, legislatively mandated powers to enable it to fulfill its mission, including: establishing accident reporting, investigation and analysis procedures; conducting comprehensive accident investigations; taking a proactive role in public safety by reviewing, approving and monitoring system safety program plans submitted by each public transportation system; conducting system safety program and maintenance field audits; analyzing critical safety issues and concerns; and recommending the establishment of new safety legislation, rules and regulations, and transportation system procedures based on accident investigations, special studies and audits.

All drivers of vehicles designed to carry 16 or more passengers must have a commercial driver’s license. This applies also to mechanics who drive vehicles.

**CHARTER RULE**

The new charter regulations, effective January 14, 2008, have been made available to all subrecipients in the Section 5311 program.

Pursuant to 49 USC 5323(d) and 49 CFR 604, recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to
provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under these exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

To assist grantees in compliance with the rules, NYSDOT staff provides technical assistance to subrecipients as needed at regional meetings and conferences, through site visits, as well as through our grant applications instructions. NYSDOT staff instructs subrecipients to apply for charter service exemptions or exceptions through a form developed by NYSDOT PTB and also directs subrecipients to FTA’s website if they receive a request or have questions about exemptions or exceptions. 

http://ftawebprod.fta.dot.gov/CharterRegistration

New York State also requires, as part of all applications for capital and operating assistance, that the recipient, as well as any third party operators, sign the FTA Annual Certifications and Assurances.

Subrecipients are also required to report quarterly to NYSDOT on any charter service provided under one of the four exceptions. A report is available on NYSDOT PTB’s website and a reminder email is sent out to all subrecipients quarterly. Quarterly reports on charter activity from the subrecipients, if any, are then consolidated for reporting through TEAM.

Any complaints alleging subrecipient noncompliance with the charter service agreement will be investigated and appropriate action taken consistent with the charter services rules.

SECTION 504 AND ADA REPORTING

Each subrecipient is required to track any complaints of discrimination on the basis of disability and to report any complaints or lawsuits in each application for funding submitted to NYSDOT. Each subrecipient also has a complaint procedure which may be used by any employee or beneficiary of federal transit aid.

NTD REPORTING

The New York State Department of Transportation (NYSDOT) began an annualized reporting process in 2007 into the National Transit Database (NTD). The requirements pursuant to 49 USC 5335 (49 USC 5311) are to report subrecipient information for statewide operational/capital statistics of rural transit systems through an internet login reporting process. Requirements include operating costs, annual revenue, sources of revenue, capital costs, fleet size and type, and related facilities. Current data gathered by the NYSDOT meet or exceed the requirements of the NTD, therefore reporting requirements are easily met.

STATE PROGRAM MANAGEMENT

Over the approximately 30 years that rural transit funding has been available, New York State has developed and updated a set of policies and procedures to administer the program consistent with Federal laws and guidelines and State laws, policies and goals. These procedures and policies cover a wide range of activities and interrelate with one
another and with other programs. In the early years of the program, procedures were set up for processing capital and operating assistance grants to ensure a fair and equitable allocation of funds. The various processes for establishing the Annual Program of Projects and carrying out other aspects of the program have been discussed previously in this document.

Section 5311 funding recipients are subject to periodic review as to their continuing eligibility. The application process includes data on operations and other assurances that the type of service provided meets eligibility requirements. Each application for funding must include a signed copy of the current Federal Certifications and Assurances for Federal Transit Administration Assistance Programs. NYSDOT staff maintain frequent contact with each recipient including periodic site visits to monitor operations and any changes, to inspect equipment funded by Section 5311, and to provide technical assistance as required. The State Transportation Operating Assistance (STOA) Program annually has consultants audit a number of transit systems, including potentially all Section 5311-funded systems, based on a risk assessment program. NYSDOT reviews all STOA audits for Section 5311-funded systems to determine if State and Federal eligibility requirements are met. In addition, staff routinely attend FTA triennial reviews of operators that provide both urbanized and non-urbanized services. Staff note any concerns raised at these reviews, ask questions relating to the rural services, and follow-up with the subrecipient on any items that need to be addressed for the rural services.

NYSDOT maintains a financial management system of contract execution, financial reporting, accounting records, internal controls, budget controls and project auditing for the Section 5311 projects. Applications and Grant Agreements are required to be signed by responsible officials. Funds are obligated and disbursed under procedures that include appropriations, allocations, obligation, requests for payment with documentation, and a well established system of vouchers and payment procedures (overseen by the Department’s Accounting & Budgeting Bureau’s fiscal and budgeting staff, the Division of the Budget, and the State Comptroller). Projects are audited under requirements of the Federal Single Audit Act. For operating assistance projects, NYSDOT requires that a financial annual report be submitted and certified by the chief fiscal officer of the locality as meeting all audit requirements. This report is forwarded by the grantee to the auditor completing the Federal Single Audit. Close out of each year's operating assistance project occurs when the financial report has been received and approved and when the Single Audit has been received and accepted by NYSDOT. Any items raised by the audit report are forwarded to the subrecipient with a request that the items be addressed.

For bus purchase projects, subrecipients may use one of two processes: the Office of General Services contracting process for the purchase of six different types of buses or a competitive bid process, both of which involve NYSDOT staff review to be sure that the process has been consistent with federal and State regulations. Where available, grantees use piggyback options. Other equipment, such as radios, fare collection systems, passenger shelters, computer hardware and software are competitively procured. All procurements are overseen by NYSDOT staff from start to finish. Facility construction projects involve separate competitive processes for design and construction. NYSDOT Main Office and regional engineering staff review the plans, specifications and estimates, and the progress of construction. The actual purchase of
the equipment under both processes and construction of facilities is conducted by the sub-recipients with the concurrence of NYSDOT. Leasing of capital assets is allowed if it can be demonstrated that it is more cost effective than purchasing or constructing the equipment. More specific information is located at:

A financial database is kept by project for every annual program. Expenditures are periodically verified internally against drawdowns of federal funds. It is also used for the submittal of the annual program status report for all programs of projects. Project closeouts occur following the reimbursement of each project.

Once vehicles, other equipment and facilities are placed in service, use of those assets is monitored to ensure that such use is consistent with federal and state guidelines. Vehicles and facilities obtained with Section 5311 funds are owned by a local government body, and where appropriate, leased to a third party operator via a lease & service agreement developed by NYSDOT. Vehicles must continue to be used for Section 5311 eligible services during their useful lives. If not, they will be transferred to another operator to be used in eligible service. A vehicle disposition policy has been established by the Department setting guidelines for retirement, sale, transfer or disposal of vehicles funded under the program which includes the protection of the federal and state share of funding during the life of the vehicle. A copy of these guidelines is included with the capital application. A database Capital Inventory lists every vehicle and all equipment purchased, where it is housed, purchase date, funding, its life expectancy and disposition. This inventory is completely updated every two years, and data for specific vehicles is updated for changes when new purchases are paid, vehicles are disposed, or other actions. A facility inventory has also been developed to address every Section 5311-funded facility, as well as those locally or privately funded or owned. As noted above, the capital inventories are used to develop project needs for the capital project portion of Section 5311 programs of projects.

While New York State does not currently promulgate service standards or guidelines for Section 5311 recipients other than the basic eligibility requirements, operating data is used to compare operators within peer groups to establish the range of operating criteria and to identify which systems are operating at a lower level of efficiency when compared to similar systems. Allocations of operating assistance include performance based criteria. Technical assistance is made available to Section 5311 recipients through site visits, training and through the RTAP program to assist systems that need assistance in improving the efficiency, economy or effectiveness of the system.

**OTHER PROVISIONS**

**Project Inclusion in TIP and STIP**

NYSDOT includes the Section 5311 program in the Statewide Transportation Improvement Program, based on the majority of projects being located outside of metropolitan planning boundaries. Projects that are in an MPO area may also be listed as TIP only in individual Metropolitan Transportation Improvement Programs.
Procurement Restrictions

NYSDOT agrees to abide by all procurement regulations, directives and guidance through each Master Agreement and through its annual filing of the Certifications and Assurances for Federal Transit Administration Assistance Programs. Each subrecipient and each third party operator also signs the annual Certifications and Assurances. The capital grant agreement between NYSDOT and each subrecipient include a reference to the latest Third Party Contracting Requirements Circular. All procurements conducted by subrecipients are overseen by NYSDOT from start to finish.

Public Hearing Requirements

NYSDOT requires each applicant for funding under Section 5311 to publish a public notice to solicit input and to send a copy of the notice to all public and private transportation providers and human service agencies. For each capital project, each subrecipient must provide an opportunity for a public hearing if the project affects significant economic, social or environmental interest. Each subrecipient must also ensure that such projects are consistent with local community plans and that the economic social and environmental effects of the projects are considered.

Environmental Protections

All projects included in NYSDOT’s federal Section 5311 program are classified as categorical exclusions (CEs). This includes the garage construction projects which NYSDOT has participated in to date. Documentation is provided to FTA through the Categorical Exclusion checklist which is filed for each construction or other applicable project.

Clean Air Act

There are no projects currently being considered by NYSDOT for the federal Section 5311 program which would fall into the transportation conformity process. Should there be any in a future project, NYSDOT would consult with FTA on the requirements.

Real Property Acquisition and Relocation Assistance

For all construction projects funded to date with federal Section 5311, there have been no instances in which displacement of people has been involved. Should there be in the future, NYSDOT would consult with FTA on the requirements. Real property has been contributed for capital projects as part of the local matching share. In these instances, an appraisal is completed and then reviewed by NYSDOT real estate staff to determine the current market value. Only the portion of the property used for the scope of the project is included in the in-kind contribution.

Pre-Award and Post-Delivery Reviews
Pre-award and post-delivery reviews are included in the project bid solicitation procedures for any vehicle procurement of more than 20 buses. Grantees must submit a certification prior to bid award and after delivery of the vehicles to ensure they are in compliance with FMVSS, Buy America and specification requirements. Bus testing reports are required with each bid submittal.

**Buy America**

Buy America provisions are included in all applicable bid solicitations over the $100,000 threshold. Vendors are required to provide written certifications in their bid documents regarding their compliance with all applicable requirements.

**Labor Protections**

The Davis-Bacon Act prevailing wage requirements are required for all Section 5311 construction projects. Besides being cited in the attachments to each application grantees submit for funding, they are included in the federal required clauses attached to each bid solicitation and contract between a subrecipient and construction contractors.

For labor protection under Section 5333(b), agreement to the 5333(b) warranty and other written documentation is required as part of all project applications. The transit systems that should be covered under a subrecipient’s warranty are reviewed for consistency with public and private transit operators in the subgrantee application service area. The warranty and other written documentation are forwarded to USDOL at the time a project is approved for Category A. Subgrantees have been provided with a copy of the Special Section 5333(b) Warranty and USDOL’s “Rural Transportation Employee Protection Guidebook”.

**Drug and Alcohol Testing and Drug-Free Workplace**

NYSDOT staff and a company that specializes in Drug and Alcohol Compliance, Precision Compliance, Inc. (PCI), provide all Section 5311 subgrantees with policy and program guidance, on-site program assessments for subgrantees and their drug and alcohol service agents, and formal training on regulation changes, program management, and supervisory training. NYSDOT annually notifies its subgrantees of drug and alcohol testing requirements through the grant application process and provides them with appropriate information and resources to be able to comply with the requirements. Subgrantees are required to certify that they are complying with the requirements of the Substance Abuse Certifications as part of their applications. In addition, NYSDOT’s policy is to conduct a detailed, on-site, drug and alcohol program assessment at each subgrantee if there are indicators of program deficiencies, such as staff changes, TPA and service agent changes, or requests for assistance. Also, NYSDOT annually requires that subgrantees submit original drug and alcohol testing MIS forms or copies of the forms that were directly submitted to the FTA. Forms are reviewed for completeness and any deficiencies found are corrected by the systems. MIS reports requested by FTA are then submitted by the
March 15th deadline. In addition, NYSDOT has provided extensive training and technical assistance to Section 5311 systems through program management workshops, supervisory training, drug and alcohol update presentations at the annual Rural & Specialized Transportation Conferences, and distribution of supervisory training materials, best practices and implementation guidelines to subgrantees. NYSDOT also devotes a section of its web site to drug and alcohol testing program compliance and has resources available there plus a link to the FTA/VOLPE Center web site. The site visit checklist used by NYSDOT staff in the field also includes a review of the testing policy and program with the subgrantee. If a subgrantee is found to be out of compliance at any time, NYSDOT provides technical assistance to correct the deficiencies and holds funding until the subgrantee complies with the regulations.

NYSDOT has a Drug-Free Workplace Policy which is made available to employees through a bulletin sent to all employees annually. Opportunities for training and resources are also made available to employees.

**Restrictions on Lobbying**

All subrecipients and third party contractors receiving FTA awards over $100,000 must submit the required lobbying certification. It is included as a part of all procurements exceeding the $100,000 limit.

**Debarment and Suspension**

Language is included in all solicitations and contracts to ensure that debarred or otherwise ineligible parties may not be awarded a contract, including lower tier contractors. Sources such as the Excluded Parties List System at USGSA and NYS information are consulted before contracts are awarded.

**School Transportation**

New York State requires, as part of all applications for capital and operating assistance, that the recipient enter into the School Transportation Agreement (included in the FTA Certifications and Assurances) agreeing that they will provide school transportation operations with FTA funded equipment or facilities, only to the extent permitted by exception provided by that agreement and will comply with 49 CFR part 606. Staff site visits include reviewing subgrantee compliance with the school transportation agreement. In 1999, NYSDOT surveyed all subgrantees for compliance with the school bus transportation prohibitions. Any subgrantee requests for exceptions will be reviewed and, if appropriate, forwarded to FTA for determination whether the exception should be granted.