

CONTENTS

PREFACE.....	xiv
SECTION 1 TRANSIT-RELATED GOVERNMENTAL INSTITUTIONS	1-1
A. INTRODUCTION.....	1-3
B. SURFACE TRANSPORTATION ENABLING LEGISLATION	1-3
C. THE FEDERAL TRANSIT ADMINISTRATION	1-6
D. OTHER RELEVANT FEDERAL AGENCIES	1-10
E. STATE AUTHORITY OVER TRANSPORTATION	1-11
1. State Departments of Transportation	1-11
2. State Police Power	1-12
F. METROPOLITAN PLANNING ORGANIZATIONS	1-13
G. TRANSIT AGENCY ORGANIZATION	1-14
1. Formation of the Transit Organization	1-16
2. The Governing Board	1-16
3. The General Manager	1-17
4. The General Powers of the Transit Organization	1-17
APPENDIX.....	1-19
SECTION 2 TRANSPORTATION PLANNING.....	2-1
A. METROPOLITAN TRANSPORTATION PLANNING: AN OVERVIEW	2-3
1. Metropolitan Planning Organizations.....	2-3
2. ISTEA.....	2-3
3. TEA-21	2-4
B. MPO BOUNDARIES, STRUCTURE, AND DESIGNATION.....	2-5
1. Federal Requirements.....	2-5
2. State Requirements.....	2-6
C. TRANSPORTATION MANAGEMENT AREAS (TMAS).....	2-9
D. PLANNING: GENERAL CONSIDERATIONS	2-9
1. Public Input and Acceptance	2-9
2. The Planning Organization.....	2-10
3. Needs Assessment and Demand Forecasting	2-10
4. Alternatives Analysis, Engineering, and Design	2-11
5. New Starts Planning and Project Development Process.....	2-11
6. Zoning and Land Use Issues.....	2-11
E. COOPERATIVE, COMPREHENSIVE, AND CONTINUOUS (3-C) PLANNING.....	2-11
1. Cooperative Planning	2-12
2. Comprehensive Planning.....	2-13
3. Intermodal Transportation Planning	2-14
4. Continuous Planning	2-15
F. TYPES OF PLANS.....	2-16
1. Long-Range (20-Year) Transportation Plans	2-16

2. Transportation Improvement Program	2-17
3. Unified Planning Work Programs	2-20
4. Statewide Transportation Plan	2-21
5. Statewide Transportation Improvement Program	2-22
G. AIR QUALITY CONFORMITY REQUIREMENTS.....	2-23
H. NATIONAL AND INTERNATIONAL PLANNING	2-23
I. FEDERAL REVIEW AND CERTIFICATION OF MPOS	2-24
J. THE ROLE OF MPOS IN TRANSPORTATION PLANNING.....	2-25
SECTION 3 ENVIRONMENTAL LAW.....	3-1
A. THE STATUTORY REGIME: AN OVERVIEW	3-3
B. THE NATIONAL ENVIRONMENTAL POLICY ACT [NEPA]	3-4
C. PUBLIC PARK AND RECREATION LANDS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORICAL SITES.....	3-10
D. AIR QUALITY.....	3-11
1. Evolution of Federal Air Pollution Control	3-11
2. The Clean Air Act	3-13
3. Transportation Planning for Clean Air	3-14
4. Nonattainment and Conformity	3-17
5. Gridlock in Atlanta: A Case Study	3-19
E. THE ENDANGERED SPECIES ACT [ESA].....	3-23
F. WATER QUALITY	3-24
1. Introduction	3-24
2. The NPDES Permit Program	3-25
3. The Dredge or Fill Permit Program	3-28
G. THE RESOURCE CONSERVATION AND RECOVERY ACT [RCRA]	3-29
1. The Hazardous Waste Management Program	3-29
2. The Solid Waste Disposal Program	3-30
3. Hazardous Materials Transportation	3-30
H. THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT [CERCLA].....	3-30
1. Overview of CERCLA	3-30
2. The Paoli Railroad Yard: A Case Study	3-34
I. THE SAFE DRINKING WATER ACT	3-36
J. WILD AND SCENIC RIVERS.....	3-36
K. COASTAL ZONE MANAGEMENT ACT AND FLOODPLAINS	3-36
L. NATIONAL HISTORIC PRESERVATION ACT	3-37
M. ENERGY CONSERVATION	3-38
N. USE OF RECYCLED PRODUCTS	3-39
O. ENVIRONMENTAL JUSTICE	3-39

SECTION 4 TRANSIT FUNDING & FINANCE.....	4-1
A. INTRODUCTION.....	4-3
B. PLANNING.....	4-4
C. URBANIZED AREA FORMULA PROGRAM.....	4-5
D. NONURBANIZED AREA FORMULA PROGRAM.....	4-5
E. THE RURAL TRANSIT ASSISTANCE PROGRAM.....	4-6
F. THE RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM	4-6
G. THE ELDERLY AND PERSONS WITH DISABILITIES FORMULA PROGRAM	4-6
H. THE CAPITAL INVESTMENT PROGRAM	4-7
1. Bus and Bus-Related Projects.....	4-7
2. Fixed Guideway Modernization	4-8
I. THE NEW STARTS PROGRAM.....	4-8
1. Historical Development of the New Starts Program	4-8
2. Criteria for Approval	4-9
3. Project Management Plans	4-15
4. Project Management Oversight	4-16
J. THE JOB ACCESS AND REVERSE COMMUTE PROGRAM.....	4-18
K. THE FLEXIBLE FUNDING PROGRAM	4-19
L. INTERMODAL FACILITIES AND EQUIPMENT	4-21
M. AUDIT, ACCOUNTING, REPORTING, AND CERTIFICATION REQUIREMENTS	4-25
N. LOCAL FINANCIAL COMMITMENT	4-26
1. Introduction	4-26
2. Local Funding Sources	4-27
O. INNOVATIVE FINANCING: AN OVERVIEW.....	4-29
P. DEBT	4-32
1. Introduction	4-32
2. Certificates of Participation	4-32
3. Tax-Increment Financing	4-33
4. Fare Box Revenue Bonds	4-33
5. Revolving Loan Funds	4-33
6. Grant Anticipation Debt	4-33
7. Tax-Anticipation Debt.....	4-34
8. TIFIA.....	4-34
Q. STATE INFRASTRUCTURE BANKS.....	4-35
R. LEASING.....	4-36
1. Capital Leases.....	4-36
2. Cross-Border Leasing.....	4-37
3. Structural Domestic Lease Transactions	4-37
4. Lease-In/Lease-Out	4-38

S. JOINT DEVELOPMENT	4-38
SECTION 5 PROCUREMENT	5-1
A. OVERVIEW	5-3
B. THE PROCUREMENT PROCESS.....	5-3
1. Procurement Procedures	5-3
a. Best Practices Manual & FTA Master Agreement	5-3
b. Application of Grant Requirements	5-3
c. The Three Stages of the Procurement Process	5-5
d. Employee Conduct	5-5
e. Written Record	5-6
f. Full and Open Competition	5-6
g. Minimum Needs Doctrine	5-7
h. Leasing	5-7
i. Qualified Products and Bidders Lists	5-8
j. Procurement and Awards Process	5-9
k. Payment Systems	5-11
2. Advertisement for Bids and Proposals	5-12
3. Submission of Bids and Proposals	5-14
4. Bid Mistakes and Withdrawals	5-15
5. Contract Awards and Rejections of Bids and Proposals	5-16
6. Indemnification and Suretyship	5-18
7. Collusive Bidding and RICO	5-19
8. Environmental Requirements	5-22
9. Architectural, Engineering, or Related Services	5-23
10. Grants and Cooperative Agreement Cost Principles	5-23
11. Procurement Challenges	5-24
C. BUY AMERICA REQUIREMENTS	5-24
1. Buy America Overview	5-24
2. Applicability of Buy America	5-26
3. FTA Buy America Investigations	5-28
4. Buy America Waivers	5-30
5. Pre-Award Buy America Audit	5-31
6. Post-Delivery Buy America Audit	5-32
7. Other “America First” Regulations	5-33
D. PROPERTY ACQUISITION.....	5-34
1. Real Property Acquisition and the URARPAPA	5-34
2. The Appraisal Process	5-35
a. Content of Appraisals	5-35
b. Appraiser Qualifications	5-36
c. Appraisal Reviews	5-36
3. The Real Property Acquisition Process	5-36
4. The Relocation Process	5-38
5. Nondiscrimination in Housing	5-40
6. Energy Assessments	5-41
7. Property Management	5-42
8. Flood Insurance	5-43
E. ACQUISITION OF ROLLING STOCK	5-43
1. General Acquisition Rules	5-43
2. Bus Testing	5-44
F. RAIL LINE, TRACKAGE RIGHTS, AND RIGHTS-OF-WAY	5-45
1. Line Sales to Noncarriers	5-46
2. Financial Assistance Program	5-46

3. Rails-To-Trails Program.....	5-47
G. INTELLECTUAL PROPERTY	5-49
H. THE METRIC SYSTEM	5-50
I. PROPERTY DISPOSITION	5-51
J. OTHER PROCUREMENT REQUIREMENTS AND CONSIDERATIONS.....	5-53
SECTION 6 ETHICS	6-1
A. INTRODUCTION.....	6-3
B. CODE OF ETHICS FOR THIRD-PARTY PROCUREMENTS	6-4
C. DISCLOSURE OF CONFLICTS OF INTEREST	6-6
D. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS	6-6
E. LOBBYING RESTRICTIONS	6-7
F. EMPLOYEE POLITICAL ACTIVITY	6-7
G. SPECIAL GRANT OR SUBGRANT CONDITIONS FOR “HIGH-RISK” GRANTEES.....	6-8
H. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION	6-9
1. Overview	6-9
2. The Executive Orders	6-10
3. Determination of Responsible Grantees	6-11
I. AGENCY ACTIONS THAT RESULT IN EXCLUSION	6-12
1. Suspension.....	6-12
a. Causes for Suspension.....	6-13
2. Debarment	6-13
a. Causes for Debarment	6-14
b. Consideration of Mitigating Factors	6-14
c. Settlement and Voluntary Exclusion.....	6-15
3. Scope of Suspension and Debarment	6-15
J. SUSPENSION AND DEBARMENT PROCEEDINGS.....	6-16
1. Opportunity to Contest Proposed Debarment or Suspension	6-16
2. Settlement: Administrative Agreement	6-17
3. Debarring Official’s Decision	6-17
4. Arbitrary and Capricious Determination	6-18
K. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION	6-18
L. QUI TAM ACTIONS UNDER THE FALSE CLAIMS ACT	6-19
M. OFFICE OF INSPECTOR GENERAL	6-21
SECTION 7 SAFETY	7-1
A. RAIL SAFETY	7-3
1. Federal Legislation	7-3
2. FRA/FTA Jurisdiction	7-3

3. Regulatory Authority.....	7-7
4. Track and Equipment Safety Standards.....	7-7
5. Employee and Operating Safety Standards	7-8
6. Accident Investigations and Emergency Orders.....	7-10
7. Inspections and Civil Penalties.....	7-11
8. Drug and Alcohol Testing	7-12
9. State Safety Oversight of Rail Fixed Guideway Public Systems	7-13
B. FTA SAFETY INITIATIVE	7-15
C. DRUG AND ALCOHOL ABUSE AND MISUSE.....	7-15
1. Introduction	7-15
2. Drug Abuse and Alcohol Misuse Statutes and Regulations	7-16
3. Applicability of the Drug and Alcohol Regulations	7-17
4. Anti-Drug and Anti-Alcohol Certifications.....	7-18
5. Alcohol and Controlled Substances Testing.....	7-19
6. FTA Drug and Alcohol Audits.....	7-23
7. Constitutionality of Drug and Alcohol Testing	7-23
8. Preemption.....	7-25
D. MOTOR VEHICLE DRIVER QUALIFICATIONS.....	7-26
1. Federal Statutes	7-26
2. Commercial Motor Vehicles.....	7-27
3. National Driver Register Program.....	7-27
4. Driver Requirements, Suspension, and Disqualification	7-27
5. State CMV Regulation.....	7-29
E. BUS EQUIPMENT AND TESTING REQUIREMENTS.....	7-29
F. FINANCIAL RESPONSIBILITY AND FITNESS REQUIREMENTS.....	7-30
G. CONSTRUCTION SAFETY REGULATION	7-30
H. SECURITY.....	7-31
I. STATE AND LOCAL SAFETY REGULATION	7-33
SECTION 8 OPERATIONAL LIMITATIONS	8-1
INTRODUCTION.....	8-3
I. STATUTORY AND REGULATORY BACKGROUND.....	8-3
A. Charter Service	8-4
B. Exceptions.....	8-5
1. The No “Willing and Able” Private Carriers Exception.....	8-5
2. The Contract Exception	8-5
3. The Hardship Exception	8-6
4. The Special Events Exception.....	8-6
5. The Nonprofit and Government Agencies Exception.....	8-6
6. The Non-Urbanized Area Exception	8-7
7. The Agreement with Private Operators Exception	8-7
8. Charter Service with Locally Funded Equipment and Facilities.....	8-7
II. SCHOOL BUS OPERATIONS	8-8
A. The General Prohibition	8-8
B. Exceptions.....	8-9
C. Tripper Service	8-9
D. Distinguishing School Bus from Charter Operations	8-9
E. Complaints, Remedies, and Appeals.....	8-10

SECTION 9 LABOR LAW	9-1
A. INTRODUCTION	9-3
B. THE RAILWAY LABOR ACT	9-3
1. Introduction	9-3
2. Applicability of the RLA	9-3
3. Purposes.....	9-4
4. Union Certification	9-4
5. Duty of Fair Representation	9-6
6. Duty To Bargain in Good Faith.....	9-6
7. Dispute Resolution	9-6
a. Types of Disputes.....	9-6
b. Representation Disputes.....	9-7
c. Major Disputes	9-7
d. Commuter Rail Major Dispute Procedures	9-8
e. Minor Disputes.....	9-9
8. Labor Protective Provisions	9-9
C. RAILROAD EMPLOYMENT LAWS	9-13
1. Retirement and Unemployment Compensation	9-13
2. Railroad Hours and Overtime Laws	9-13
D. THE FEDERAL TRANSIT ACT	9-14
1. Introduction	9-14
2. Section 13(c) Certification Procedures.....	9-15
3. Protected Employees	9-16
4. Standard 13(c) Agreements	9-16
5. Continuation of Collective Bargaining Rights	9-17
6. Arbitration	9-18
E. FEDERAL VS. STATE JURISDICTION	9-18
F. THE NATIONAL LABOR RELATIONS ACT	9-20
1. Introduction	9-20
2. Representation	9-20
3. Collective Bargaining.....	9-20
4. Arbitration	9-21
5. Unfair Labor Practices.....	9-21
6. Judicial Review	9-22
7. Federal Preemption.....	9-23
G. MINIMUM WAGE LAWS	9-24
1. The Davis-Bacon Act	9-24
2. The Service Contract Act	9-26
3. The Fair Labor Standards Act	9-26
H. STATE LABOR LAW	9-27
I. MISCELLANEOUS FEDERAL STATUTES	9-28
SECTION 10 CIVIL RIGHTS	10-1
A. INTRODUCTION	10-3
B. FEDERAL CIVIL RIGHTS LEGISLATION—AN OVERVIEW	10-3
C. CONTRACTING REQUIREMENTS OF FEDERAL GRANTEEES	10-4

1. Equal Employment Opportunity Program	10-4
2. Certification of Nondiscrimination	10-4
3. Disadvantaged Business Enterprises	10-6
a. Federal Legislation	10-6
b. DBE Certification	10-7
c. Quotas, or Aspirational Goals?	10-8
d. Recipient Eligibility	10-8
e. Adarand	10-10
f. Adarand Reprise	10-11
D. CONSTITUTIONAL CLAIMS AGAINST STATES AND THEIR SUBDIVISIONS	10-12
1. Section 1983 Claims	10-12
2. Due Process	10-14
3. Equal Protection	10-15
4. Free Speech	10-16
E. EMPLOYMENT DISCRIMINATION	10-18
1. Types of Unlawful Employment Practices	10-18
2. Exhaustion of Administrative Remedies	10-18
3. Three-Part Discrimination Analysis	10-19
a. Plaintiff's Prima Facie Case	10-20
b. Defendant's Burden	10-21
c. Plaintiff's Rebuttal	10-21
4. Retaliation Claims	10-22
5. Hostile Work Environment	10-23
6. Racial Discrimination	10-24
7. Reverse Discrimination	10-26
8. National Origin Discrimination	10-26
9. Religious Discrimination	10-26
10. Sexual Discrimination	10-27
11. Sexual Harassment	10-28
12. Age Discrimination	10-28
13. Alcohol and Drug Use Discrimination	10-30
14. Disabilities Discrimination	10-30
a. The Rehabilitation Act of 1973	10-30
b. The Americans with Disabilities Act	10-32
F. TRANSPORTATION DISCRIMINATION	10-34
1. Racial Discrimination	10-34
2. Disabilities Discrimination	10-37
a. Development of the Law of the Handicapped in Transportation: The Long and Winding Road	10-37
b. Purposes of the Americans with Disabilities Act	10-40
c. Definition of "Disability"	10-41
d. Public Transit Providers: Discrimination	10-42
e. Public Transit Providers: Accessibility Requirements	10-43
f. Private Transit Providers: Discrimination	10-50
g. Private Transit Providers: Accessibility Requirements	10-50
h. Remedies	10-51
SECTION 11 LIABILITY	11-1
A. INTRODUCTION	11-3
B. NEGLIGENCE	11-3
1. Common Carriage	11-3
2. Elements of Negligence	11-4
3. Reasonably Prudent Person	11-4
4. Calculus of Risk	11-4
5. Duty	11-5

6. Custom.....	11-5
7. Statutory Violation	11-6
8. Res Ipsa Loquitur	11-7
C. CAUSE-IN-FACT	11-8
1. The But-For Test	11-8
2. Multiple Tortfeasors	11-8
3. Vicarious Liability	11-8
D. PROXIMATE CAUSE	11-9
1. Foreseeability	11-9
2. Substantial Factor	11-11
3. Rescue	11-11
4. Direct Consequences	11-11
5. Intervening Causes	11-12
6. Emotional Injury.....	11-13
7. Economic Injury	11-13
E. DEFENSES	11-14
1. Contributory Negligence	11-14
2. Last Clear Chance.....	11-15
3. Assumption of Risk	11-15
4. Comparative Fault	11-15
5. The Federal Employers' Liability Act.....	11-16
6. Sovereign Immunity	11-16
F. TRESPASS AND NUISANCE.....	11-18
G. STRICT LIABILITY.....	11-20
1. Products Liability	11-21
2. Metamorphosis of the Law of Torts and Contracts	11-21
3. Rationale for Expanded Liability	11-23
4. Criteria of Products Liability	11-25
5. The Three Categories of Defective Products.....	11-25
6. Defective Design	11-25
7. Defective Warning.....	11-27
8. Sales vs. Services.....	11-28
9. Warranty.....	11-28
10. Causation	11-28
H. COMPARATIVE NEGLIGENCE AND STRICT LIABILITY.....	11-29
I. RISK MANAGEMENT	11-29
INDEX	I-1
INDEX OF CASES	I-21