

and amount of matching funds. As appropriate, the cost proposal also must set forth the nature and value of in-kind resources that team members will contribute to meet the match requirement.

Provide a line-item budget for the total project, with enough detail to indicate the various key components of the project. As FTA may elect to fund only a portion of a proposal rather than the full amount requested by the applicant, the budget should set forth the minimum amount necessary to fund specific project components. As funding for the Innovative Public Transportation Workforce Development Program (Ladders of Opportunity Initiative) is limited, an application that can be scaled may receive additional consideration for funding.

#### 8. Performance Measurement

Provide an approach for demonstrating the local, nationwide or regional impact(s) of the project on the transit industry and broader employment opportunities. The proposal should include a description of the applicant's plan for recording the outcomes and reporting in a Final Report, at a minimum, the following to FTA at the end of the project:

- The number of individuals affected by the project. Applicants should define "affected individuals" in terms that make sense for the proposed project. For example, other common reported outcomes could include:

- Target Individuals (Veterans, Women, Youth, Incumbent Workers, etc.);
- Number of eligible individuals entered into program;
- Number of individuals who successfully complete the program, achieve applicable credential, etc.;
- Number of placed new workers and/or advanced incumbent workers;
- Number of retained workers after 90 days.

- The costs of the project and the share of federal investment.
- At least one performance metric. Quantitative metrics are preferred, but qualitative metrics will be considered if they are based on the experiences of those affected by the program (as opposed to the self-assessment of the applicant or partner agencies). Metrics could include, but are not limited to, survey results; exit interviews; or longitudinal tracking of staff (during the period of performance only).

- A 1–2 page project description that will state the project's initial goals and measure achievements against those goals. This statement can also include "lessons learned."

- A 1–2 page statement of applicability to other entities. Once the program is complete, the applicant must describe how the project could be scaled and/or altered for application elsewhere, and what types of benefits could be realized by doing so.

- Any other performance measure that the applicant determines would describe the strengths and weaknesses of the project.

As part of the proposal, provide projections (for quantitative measures) or short hypotheses (for qualitative measures) of what type of impact/performance FTA could expect from the project.

#### 9. Project Management

Describe the applicant's approach for managing and staffing the project, including the distribution of responsibilities among partner entities and an organizational chart, if applicable. Include responsibilities such as regular reporting, performance measurement, and technical/management interactions with FTA. Quarterly cost and activity progress reporting is required and can be submitted in the FTA electronics grant award system and by email submission to the FTA Workforce Program Manager. FTA will provide a template upon request.

#### 10. Project Staff

List each organization, operator, consultant, or other key individuals who will work on the project, along with short descriptions of their appropriate technical expertise and experience (such as past, relevant research). Attach resumes or curriculum vitae if available. Project staff resumes or curriculum vitae will not count towards the total page count for proposal submissions.

#### IV. Award Information

FTA will award grants of a minimum of \$200,000 and a maximum of \$1,000,000. FTA intends to award as many meritorious projects as possible, and may elect to award less than the amount requested by an applicant. In addition, geographic diversity and the applicant's receipt of other discretionary awards may be considered in FTA's award decisions.

A. Notification. After FTA has selected the proposals to be funded, successful applicants will be notified by email or telephone of their status. In addition, FTA will publish a notice in the **Federal Register** announcing successful applicants. Upon notification of intent to award funds, FTA may withdraw its offer to provide Federal

assistance if the recipient does not provide a formal application consistent with its proposal submission within 90 days following the date of the offer.

B. Execution of the FTA Agreement. FTA will instruct successful applicants on how to execute their cooperative agreements in FTA's electronic grants management system.

C. Start Date and Incurred Costs. Absent special circumstances, costs incurred prior to FTA award are not eligible as project expenses. Absent highly unusual circumstances, FTA cannot retroactively approve a project. The recipient may begin to incur project costs as of the date the award letter is signed by FTA and the awardee executes the final signature. FTA expects grantees to implement the projects awarded as soon as possible and to fully expend grant funds during the period of performance, recognizing that full transparency and accountability are required for all expenditures.

#### V. Contacts for Additional Information

Prospective applicants may visit the following Web sites for more information:

- <http://www.fta.dot.gov>.
- For more on managing projects in accordance with FTA Circular 6100.1D: Transit Research and Technology Programs: Application Instructions and Program Management Guidelines: [http://fta.dot.gov/legislation\\_law/12349\\_12669.html](http://fta.dot.gov/legislation_law/12349_12669.html). This Circular includes requirements on project management and administration including quarterly reporting, financial management, and payment.

For general program information, please use the contact information identified in the front of this notice. Please contact the Grants.gov Helpdesk for assistance with electronic applications at <http://www.grants.gov>. You also may contact [support@grants.gov](mailto:support@grants.gov) or call toll-free (800) 518-4726.

**Therese W. McMillan,**  
*Acting Administrator.*

[FR Doc. 2014-25310 Filed 10-23-14; 8:45 am]

**BILLING CODE P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Transit Administration

[Docket No. FTA-2013-0023]

##### Formula Grants for Rural Areas: Guidance and Application Instructions

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of final circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance in the form of a circular to assist grantees in implementing the Section 5311 Rural Area Formula Program. The purpose of the circular is to provide recipients of FTA financial assistance with updated instructions and guidance on program administration and the grant application process. The revisions to FTA Circular 9040.1F are a result of changes made to the Rural Area Formula Program by the Moving Ahead for Progress in the 21st Century Act (MAP-21). FTA is updating the circular due to these changes in the law.

**DATES:** The final circular becomes effective November 24, 2014.

**FOR FURTHER INFORMATION CONTACT:** For program questions contact, Mary Leary, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E44-409, Washington, DC 20590, phone: (202) 366-2204, fax: (202) 366-7951, or email, [Mary.Leary@dot.gov](mailto:Mary.Leary@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, fax: (202) 366-3809, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Overview**

FTA is updating Circular 9040.1F, “Non-urbanized Area Formula Program Guidance and Grant Application Instructions,” last revised in 2007, in order to incorporate changes in the law subsequent to passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141). MAP-21 renamed the Section 5311 Program as the Formula Grants for Rural Areas

Program. Generally the Section 5311 Program provides formula funding to States and Indian tribes for the purpose of supporting public transportation in areas with a population of less than 50,000. Funding may be used for capital and planning projects, job access and reverse commute projects, operating assistance and administration expenses.

On September 26, 2013, FTA issued a notice of availability of the proposed circular in the **Federal Register** (78 FR 59415) and requested public comment on the proposed circular. The comment period closed on November 25, 2013. FTA received comments from 41 entities, including trade associations, State DOTs, metropolitan planning organizations, public transportation providers, human service agencies, and individuals. This notice addresses comments received and explains changes FTA made to the proposed circular in response to comments.

Some comments were outside the scope of the circular and are not addressed in the chapter-by-chapter analysis. For example, two commenters asked whether mobility management would be an eligible expense for the Section 5339 Bus and Bus Facilities Program. FTA invites interested stakeholders to review the recently published proposed circular for the Section 5339 program: <http://www.gpo.gov/fdsys/pkg/FR-2014-07-30/pdf/2014-17926.pdf> (79 FR 44241, July 30, 2014). Several commenters noted typographical errors, pagination errors and links to Web sites that were not operational. FTA has edited the circular to address these issues.

The Section 5311 Program, as amended by MAP-21, provides for expanded eligible activities and set-asides that support rural transit program such as the Appalachian Development Public Transportation Assistance Program, the Rural Transit Assistance Program, and the Tribal Transit Program. The Section 5311 Program permits activities authorized under the repealed Job Access and Reverse Commute (JARC) program to qualify as Section 5311 eligible activities. Additionally, since MAP-21 changed the program’s name from the Formula Grants for Other Than Urbanized Area Program to the Formula Grants for Rural Areas Program, the term “rural” replaces “non-urbanized area” or “other than urbanized area” throughout the circular.

In addition to MAP-21 updates addressed above and outlined below, the circular updates the organization and wording of the previous circular to improve clarity and consistency with FTA’s other circulars and to reflect

other changes in the law. This document does not include the revised circular; however, an electronic version is available on FTA’s Web site, at [www.fta.dot.gov](http://www.fta.dot.gov). Paper copies may be obtained by contacting FTA’s Administrative Services Help Desk, at (202) 366-4865.

**II. Chapter-by-Chapter Analysis**

*A. Chapter I—Introduction and Background*

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for FTA programs generally, includes definitions applicable to the Section 5311 Program, and provides a brief history of the Section 5311 Program. Where applicable, we have used the same definitions found in statutes, rulemakings, and other circulars to ensure consistency.

FTA received nine comments on this chapter, all related to definitions. A number of commenters suggested that FTA should be consistent with its definitions throughout each of its circulars. Two commenters specifically indicated there is a discrepancy between FTA’s and the Federal Highway Administration’s (FHWA) definition for “force account,” suggesting the two definitions could confuse State Departments of Transportation. FTA notes that FHWA’s definition is broader than that included in the circular. However, both the FTA and FHWA definitions essentially refer to a recipient’s use of its labor, equipment, materials, and supplies that are utilized under its direct control. Although the FTA definition is narrower than FHWA’s, FTA does not believe its definition will cause confusion and thus it remains unchanged from the proposed circular.

One commenter suggested that FTA use either “applicant” or “grant applicant” throughout the circular. These terms were used interchangeably in the proposed circular, but we have struck references to “grant applicant” and used only “applicant” in the final circular. The commenter further noted that the definition for “capital asset” proposed for the Section 5311 circular should be consistent with the definition of “capital asset” in Circulars 5010.1D and 9300.1B. In response, FTA acknowledges that the circulars referenced by the commenter have a slightly different definition for the term “capital asset,” but we note that 5010.1D and 9300.1B will be updated to

reflect the definition included in this circular.

One commenter recommended deleting “all maintenance costs related to vehicles and non-vehicles” from the proposed definition for “preventive maintenance.” The commenter noted that preventive maintenance includes all maintenance performed to keep assets operating properly and avoid breakdown and deterioration that results in restorative maintenance. In response, FTA notes that the definition included in the proposed circular is consistent with the definition in the National Transit Database (NTD); therefore the definition is included in the final circular without change. The same commenter also suggested consistent use of the terms “recipient” or “direct recipient” otherwise it may cause confusion. These terms were used interchangeably in the proposed circular, but we have struck references to “direct recipient” in every section except in chapter III’s discussion of Indian tribes as direct recipients. In that particular paragraph, we want to emphasize the difference between tribes as subrecipients and tribes as direct recipients.

Lastly, commenters questioned the definitions FTA included in the proposed circular for the terms “senior” “welfare recipient” and “eligible low-income individual.” One commenter noted that the Older Americans Act defines “elderly” as 60 years of age or older. Federal transit law at 49 U.S.C. 5302(18) defines “senior” as an individual who is 65 years of age or older. In addition, Federal transit law defines “welfare recipient” and “eligible low-income individual” at 49 U.S.C. 5302(9), and we have included these statutory definitions in the circular. We note that for purposes of eligibility for reduced fares or specialized services, public transportation providers may define “senior” to include individuals under age 65, as a lower age would be inclusive of those over age 65. Since these definitions are statutory, the proposed definitions for the terms are included, without change, in the final circular. FTA has added definitions for joint development and transit-oriented development” to the Definitions section of the Circular.

#### *B. Chapter II—Program Overview*

In chapter II, FTA proposed updating the program goals section by adding three additional goals of the Section 5311 Program: (1) providing financial assistance to help carry out national goals related to mobility for all, including seniors, individuals with

disabilities, and low-income individuals; (2) increasing availability of transportation options through investments in intercity bus services; and (3) encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development.

One commenter supported the addition of these new goals; however, the commenter indicated the circular lacked specifics regarding how the goals would be reported, the timeframe for reporting, and how the data would be reported. In response, FTA notes the program goals are not intended as performance goals and recipients will not report on these overall program goals. The program goals are provided as a means to facilitate State management and FTA oversight of the Section 5311 Program and should be included as content for the State Management Plan as noted in Chapter VI of the circular.

Another commenter noted that its ability to replace deteriorating vehicles in its fleet has been impacted significantly with the repeal of the Section 5309 discretionary bus grant program. In response, FTA notes that congressional action would be required in order to reinstate the provisions of the Section 5309 program, however, the new Section 5339 Bus and Bus Facilities Formula Program is designed to provide a reliable funding stream for bus replacement. In addition, FTA notes that Section 5311 provides the Governor with discretion to allocate funding as deemed appropriate to mitigate rural transportation gaps within the State.

#### *C. Chapter III—General Program Information*

FTA received a number of comments on this chapter, many related to the proposed changes in job access reverse commute project eligibility. A few commenters indicated FTA should permit the State to continue to fund job access and reverse commute projects that were previously funded with SAFETEA-LU Section 5311 funds as job access and reverse commute maintenance projects under the program as it is now authorized by MAP-21. In response to comments, we have clarified the language in the circular to permit SAFETEA-LU Section 5311 funded projects that qualified as job access and reverse commute projects to continue to be considered job access and reverse commute maintenance projects under this program. This does not apply under the Section 5307 program in which job access and reverse commute projects must have either been previously

funded with Section 5316 funding to be considered job access and reverse commute maintenance projects or be new as of October 1, 2012 to be considered development projects. Each State should ensure it has expended all of its Section 5316 JARC funds available under SAFETEA-LU before funding job access and reverse commute-type projects with Section 5311 funds authorized by MAP-21. As a reminder, there is no floor or ceiling for the amount of Section 5311 funds spent on job access and reverse commute projects under MAP-21. Further, although there is no statutory requirement for job access and reverse projects to be part of a coordinated plan, FTA continues to encourage States and rural communities to consider including these projects in a coordinated planning process consistent with the Statewide planning process.

Several commenters indicated that FTA should revise Chapter III to clarify that nonprofits are eligible as subrecipients for Section 5311 funding and eliminate any reference to projects in large urbanized areas. In response, FTA has revised the chapter accordingly and it now specifically indicates that nonprofit organizations are eligible subrecipients for Section 5311 funding. In addition, we have removed language related to large urbanized areas.

One commenter recommended that FTA require States to factor the percentage of low-income individuals in the allocation of formula funds to rural transit districts. In response, FTA does not have the statutory authority to require States to do so; however, the law does require States to distribute funds in a fair manner. 49 U.S.C. 5311(b)(2)(C).

One commenter asked about the oversight responsibilities of the State when an Indian tribe elects to be a subrecipient of the State and not a direct recipient of funds. When a Tribe is a subrecipient of a State, the State has the same oversight responsibilities of that Tribe as it does for other subrecipients. However, when a tribe elects to receive a 5311 allocation directly from FTA, it is responsible for compliance with all 5311 program requirements. States would not be responsible for oversight for tribes that receive direct grants from the FTA, unless there are additional State resources or requirements that require State oversight.

A few commenters requested clarification in sections 3 and 4 of this chapter related to operating expenses, program income, and local match requirements with respect to human service contracts. FTA has reviewed the sections and finds the language to be consistent: Both sections state that

income from such contracts may be used either to reduce the project cost (treated as revenue) or used as local match for Section 5311 operating grants (treated as program income). In addition, we have added additional language regarding the timing of applying these funds to a grant. FTA will also update the Section 5307 circular to reflect the additional language it has included in the Section 5311 circular.

Lastly, one commenter requested clarification regarding the availability of Section 5311 funding for safety certification training of employees directly responsible for safety oversight. Title 49 U.S.C. 5329(e)(6) provides that Section 5311 recipients may use not more than 0.5 percent of their formula funds to pay not more than 80 percent of the cost of participation in the public transportation safety certification training program established under subsection 49 U.S.C. 5329(c), by an employee who is directly responsible for safety oversight. Further guidance regarding the safety certification training will be forthcoming as FTA is implementing the requirements for safety certification training via rulemaking.

#### *D. Chapter IV—Program Development*

In this chapter, FTA proposed adding information regarding MAP-21's new performance-based planning approach and revising the program of projects (POPs) section. FTA received comments from four entities on this chapter.

Regarding FTA's effort to further performance-based planning in accordance with MAP-21, one commenter asked for confirmation that State designation of "Rural Transportation Planning Organizations" (RTPO's) would not impact its current rural transportation planning process. FTA notes the language in the circular comes from 49 U.S.C. 5304(l), and States are not required to designate RTPO's, so such designation should not negatively impact the commenter's rural transportation planning process.

Two commenters expressed support for FTA's proposal to provide greater flexibility to States when making minor revisions to the POP. Commenters noted that while the POP is not a MAP-21 requirement, the Statewide Transportation Improvement Plan (STIP) is, and therefore, FTA should avoid language in the circular that might lead FTA regional offices to require applicants to include unnecessary details with the POP submissions.

In response, FTA notes there may be instances when a regional office may require additional information for

oversight purposes that may not be listed in the circular. In addition, if a State includes projects for both rural areas and small urbanized areas in the POP, the regional office may need additional information in order to obligate the funds. Reviewing the POP at the time an applicant submits a grant application is necessary to allow FTA to check that the requirements of the Federal Funding Accountability and Transparency Act (FFATA) are met and that the distribution of resources seems reasonable.

Some commenters recommended that FTA amend its pre-award process to provide recipients with immediate approval to incur costs and seek Federal reimbursement for certain categories of projects. In response, FTA notes that currently, pre-award authority for formula funds is granted for a period of time consistent with the current authorization or two fiscal years in advance, whichever is longer. This allows recipients to expend anticipated resources in advance of the funds being obligated so long as all Federal requirements have been met. We believe this level of pre-award authority for Section 5311 funds is broader than what the commenters recommend.

Some commenters asserted the proposed text for revising POP submissions in section 5b(3)(c)(1) was vague and recommended it be revised for clarification. In response, FTA has revised the circular to include a specific example to assist with interpreting this requirement. FTA also notes that it is in the process of developing a new electronic award management system and will continue to consider ways to streamline the grant process as a part of the new system.

One commenter stated the 15 percent requirement for service that supports intercity bus has proven impracticable, and that this "fixed percentage" does not allow States and communities to determine the appropriate mix of public transportation services. The commenter suggested FTA's "rigid definition" of intercity bus makes services between significant employment, housing, recreational and retail centers ineligible, even though such services are critical to the economic vitality of rural communities. Title 49 U.S.C. 5311(f) states that "at least" 15 percent of Section 5311 funds made available to a State in a fiscal year will be used for the intercity bus transportation program. This is a floor, not a ceiling, and each State has discretion regarding whether to expend more than the statutory minimum of 15 percent for intercity bus. FTA further notes that one objective of the intercity bus program is

to support connections between rural areas and the larger regional or national system of intercity bus service. Transportation between employment, housing, recreational and retail centers may be provided by fixed route, demand-responsive, or commuter bus service. Please see the discussion of chapter VIII, below, for additional comments on intercity bus service.

#### *E. Chapter V—Program Management and Administrative Requirements*

FTA proposed amendments to this chapter to clarify and update established requirements for recipients of Federal funds.

In the proposed circular under section 3, Equipment Management, FTA added statutory language found in 49 U.S.C. 5334(h) related to the transfer of property. Several commenters sought clarification regarding the process FTA will use for reviewing the transfer of property acquired with Section 5311 funds and no longer needed for a public transportation purpose. In particular, commenters found this to be inconsistent with the direction given in 49 CFR 18.32, which allows States to follow their own procedures for use, management, and disposition of equipment. In response, when equipment has reached the end of its useful life, States may follow their own procedures. However, and consistent with FTA's Master Agreement, if a State withdraws equipment from public transportation service prior to the end of the equipment's useful life, FTA retains a Federal interest in that equipment and the State must notify FTA of the withdrawal. FTA has added language to this section to clarify this requirement.

One commenter, addressing language in section 5, Procurement, asked if a competitive process must be used before a local governmental authority may pass through funds to a non-profit organization subrecipient. A bidding process is not required before a local governmental authority may pass through Section 5311 funds to a non-profit organization provided the non-profit would otherwise be eligible under Section 5311 to receive funds directly from the State as a subrecipient, and the non-profit uses the funds to pursue its own rural area transit project.

Two commenters noted that the small purchase threshold was listed at \$150,000 in section 5.a and at \$100,000 in section 5.d and asked which was correct. On December 26, 2013, the Office of Management and Budget issued final guidance 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" also

known as the “Super Circular.” 78 FR 78590. The guidance, which will take effect when the U.S. DOT issues new regulations consistent with the guidance and will supersede and apply in lieu of the common grant rule (49 CFR parts 18 and 19), will change the simplified acquisition threshold from \$100,000 to \$150,000 to match the Federal Acquisition Regulation. See 2 CFR 200.88. Until U.S. DOT adopts the Super Circular by regulation, the threshold will remain \$100,000. We have edited the final circular accordingly.

One commenter asserted that the Federal Funding Accountability and Transparency Act (FFATA) reporting deadlines cannot be met due to administrative processing delays. The commenter noted that in a specific instance, five weeks after a grant was pinned (funds obligated) the grant was not yet in the FFATA database. As a reminder, the reporting deadline is not contingent on when FTA awards the grant to the recipient, but when the recipient makes an award to a subrecipient. FTA does not have the authority to change the reporting deadline, and advises recipients to report as expeditiously as possible when there is a delay in having the grant posted to the FFATA database.

#### *F. Chapter VI—State Management Plans*

FTA proposed two substantive changes to this chapter. One change required the State to document the process used to validate the source of in-kind match for intercity bus transportation when it is used as the local match. The second change aligned the circular with changes to 49 U.S.C 5310 as amended by MAP–21, which no longer permits Section 5310 funds to be transferred to Section 5311.

FTA did not receive any substantive comments to this chapter. We have made minor technical corrections. For example, in section 1, General, we struck a sentence reading, “A State may be required to update its SMP if section 5339 funds are transferred to an area with a population under 50,000.” In its place, we have added section 5339 to the list of programs that States must include in their policies and procedures (i.e., section 5310, 5311, 5316, 5317 and 5339). We also made a technical correction to the charter language so it is consistent with the charter rule.

#### *G. Chapter VII—Appalachian Development Public Transportation Assistance Program*

FTA proposed a new chapter for this circular in order to provide guidance for the Appalachian Development Public

Transportation Program (ADTAP), a new program established by MAP–21. The ADTAP provides funds to support public transportation service in the Appalachian Region, which includes all of West Virginia and eligible counties in 12 other States: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia.

Two entities commented on this chapter. One commenter asked if ADTAP funding would be in addition to Section 5311 funds that may be allocated for a project within an eligible Appalachian county. Funding for ADTAP projects is a set-aside from available Section 5311 funds and a separate allocation to States in the Appalachian Region. States should use ADTAP formula funds for transit projects within the designated Appalachian region and use other Section 5311 funds to address needs not covered by the ADTAP allocation.

The other commenter recommended elimination of the ADTAP funding in its entirety. In response, FTA notes that ADTAP was established by statute; therefore, FTA will implement the program in accordance with Section 5311(c)(2). FTA did not make any substantive changes to this chapter.

#### *H. Chapter VIII—Intercity Bus*

FTA proposed two revisions for intercity bus transportation services to reflect a change and a deadline in the law. FTA noted that the previous “Intercity Pilot Match Program,” which FTA established in 2007, is now codified under 49 U.S.C. 5311(f) and we requested comments on the proposed guidance for “in-kind” match to implement the statute. Second, FTA deleted the section on the over-the-road bus accessibility incentive program, as MAP–21 repealed the program, and we updated the ADA regulation section of this chapter to reflect the requirement in 49 CFR 37.185 that as of October 29, 2012, over-the-road buses (OTRB) that provide fixed route service must be accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Nearly half of the entities commenting on the circular commented on this chapter. The majority of commenters disagreed with FTA’s proposal regarding the determination for in-kind match for intercity bus services. The commenters asserted that FTA’s proposal to limit eligible costs to capital costs was inconsistent with 49 U.S.C. 5311(g)(3)(D). In response, FTA has revised section 5 of this chapter to reflect that FTA will allow the eligible

net cost to be calculated using one of two options. FTA funds may only be used to fund the net costs of a project, so in either option, fare revenue must be subtracted from the total cost to determine the eligible amount of in-kind match. In the final circular, FTA maintains the option of using capital cost of contracting ratios for simplicity in calculating the net costs of the project. In addition, the final circular further notes that on a case-by-case basis, if a private operator has excess funds of both unsubsidized capital and operating costs for providing intercity services, FTA may allow these funds to count toward the in-kind match. The private provider must demonstrate that some of the operating costs of the service are being cross-subsidized by profits elsewhere on its system, and not fully covered by farebox revenue. The appropriate FTA regional office will be available to assist a recipient in determining in-kind match determinations and the documentation required to support a private operator’s cost basis.

One commenter suggested that FTA change the term “intercity bus service” to “intercity transportation service” in order to not “favor connections to one mode over connections to others.” By statute, Section 5311(f) addresses the eligibility of “intercity bus transportation,” so FTA declines to make that change. Another commenter asserted that because the guidance limits the definition of “intercity bus service” to service “that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available,” that this has been interpreted as prohibiting the use of these funds for intercity bus service that connects to the national aviation or intercity passenger rail networks.

In response, FTA notes that the guidance in this chapter does not prohibit intercity bus feeder service from providing access to intercity connections with rail or air service. However, FTA believes that feeder service linkage to the national rail network that is not linked to small public transportation operators (e.g., through an intermodal terminal/stop) does not comply with 49 U.S.C. 5311(f). To clarify the eligibility of connections with rail service when part of an intermodal terminal, we have amended section 8, Eligible Activities, to provide that private intercity bus operators may participate in improvements to existing intercity terminal facilities for rural passengers, as well as modifications to transit facilities to facilitate shared use

by intercity bus, *intercity rail*, and rural transit operators.

One commenter was encouraged by the definition of “feeder service” but recommended that FTA require or provide incentives to States for Section 5311 intercity bus service projects that directly involve rural districts to ensure better and more meaningful access to intercity bus service. In response, FTA notes that States have flexibility to administer the program to meet the needs of their rural regions and districts, so declines to make the suggested change.

Lastly, one commenter read Section 10, ADA Regulations, to mean that any and all Section 5311(f) over-the-road intercity bus recipients, subrecipients and contractors must use vehicles that are fully wheelchair accessible. While that is true of large operators that are Class I motor carriers providing fixed-route service, the ADA regulations allow small operators greater flexibility. Small operators can either ensure that vehicles are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or ensure that equivalent service is provided to individuals with disabilities. We have amended this section accordingly.

#### *I. Chapter IX—Rural Transportation Assistance Program (RTAP)*

FTA did not propose any substantive changes for this chapter and did not receive any comments. The RTAP continues to provide funding to assist in the design and implementation of training and technical assistance projects, research, and other support services. We did not make any substantive changes to this chapter.

#### *J. Chapter X—Public Transportation on Indian Reservations*

FTA proposed a new chapter in the circular to address public transportation on Indian reservations, or the “Tribal Transit Program.” Section 5311(c) authorizes \$5 million annually for this program, distributed on a competitive basis; and \$25 million annually for this program, apportioned by a statutory formula found in Section 5311(j). The formula apportions funds on the basis of vehicle revenue miles and the number of low-income individuals residing on tribal lands. FTA received comments from six entities regarding this chapter. Two commenters expressed appreciation for the new formula funding, while others had concerns about the basis for determining how much assistance Tribes receive, and expressed concern that they no longer

receive enough Tribal Transit funding to operate their existing systems.

FTA understands that the transition from a \$15 million discretionary program to a mixed formula and discretionary program has been challenging for some Tribes, despite the fact that the total funding level doubled. Generally, the comments FTA received on the Section 5311 circular were addressed as part of the tribal consultation process FTA initiated last year. On November 9, 2012, FTA published a notice in the **Federal Register** (77 FR 67439) in order to (1) introduce FTA’s consultation process and schedule for implementing changes to the Tribal Transit Program due to MAP–21; (2) describe and seek comment on the methodology for the formula allocation and the assumptions made regarding which Tribes are eligible for the formula program; (3) seek comment on the terms and conditions for the formula and discretionary components of the program; and (4) seek comment on how the discretionary program resources should be allocated. As part of the tribal consultation process, FTA conducted two outreach meetings in November and December of 2012. After considering comments, FTA published a subsequent notice in the **Federal Register** (78 FR 27284, May 9, 2013) in which it responded to issues presented as a result of the consultation process. That notice also announced the funding levels and framework for the Tribal Transit Program, as well as a notice of funding availability (NOFA) for FY 13 funds. FTA encourages interested stakeholders to review the two **Federal Register** notices, available on FTA’s Web site ([http://www.fta.dot.gov/legislation\\_law/federal\\_register\\_notices.php](http://www.fta.dot.gov/legislation_law/federal_register_notices.php)) if they have additional concerns about the funding or framework of this program. FTA has not made any substantive edits to this chapter.

#### *K. Chapter XI—Other Provisions*

This chapter describes cross-cutting Federal requirements that apply to the Section 5311 Program. FTA did not receive any substantive comments on this chapter and did not make any substantive edits.

#### *L. Appendices*

One commenter requested FTA include additional information related to the requirements of 49 U.S.C. 5333(b) (labor protections) in Appendix A. It is not clear to us what additional information would be helpful, and we recommend that interested stakeholders contact their FTA regional office if they

have questions regarding the role of the Department of Labor in processing Section 5311 grants.

Another commenter recommended that Appendix B include a POP section for JARC. In response, we have added language indicating that JARC projects must be coded under 646–00 SCOPE in the grant and reserved using FPC 03.

Lastly, one commenter asked for clarification regarding section 3 of Appendix F and the methodology for excess or insufficient in-kind match determinations for intercity bus. FTA provided additional clarification in revisions to Chapter VIII, Intercity Bus and eliminated Appendix F as the information was redundant with the information contained in the chapter.

**Therese W. McMillan,**  
*Acting Administrator.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

[Docket No. FD 35863]

#### **Massachusetts Department of Transportation—Acquisition Exemption—Pan Am Southern LLC**

The Massachusetts Department of Transportation (MassDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Pan Am Southern LLC (PAS) certain railroad assets and associated rail line right-of-way, known generally as a portion of the Connecticut River Main Line (also known as the “Knowledge Corridor”), approximately 49.67 route miles in length, from Station 2+25 in Springfield, Mass., to the Massachusetts-Vermont border at Station 2613+66.85 at East Northfield, Mass. (the Railroad Assets). As part of this transaction, MassDOT would also acquire any right, title, or interest that PAS may currently possess to operate passenger trains over a segment of Amtrak-owned line between Springfield and the Massachusetts-Connecticut border. According to MassDOT, it is not acquiring any freight operating rights, and PAS will retain a permanent, exclusive freight operating easement over the Railroad Assets.<sup>1</sup>

MassDOT states that the proposed transaction has been agreed upon

<sup>1</sup> Concurrently with its verified notice of exemption, MassDOT filed a motion to dismiss it on the ground that the transaction does not require authorization from the Board. The motion to dismiss will be addressed in a subsequent Board decision.