



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

#### **49 CFR Part 602**

**[Docket No. FTA-2013-0004]**

**RIN 2132-AB13**

### **Emergency Relief Program**

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

**ACTION:** Interim final rule; request for comments

**SUMMARY:** This action establishes procedures governing the implementation of the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program under 49 U.S.C. 5324, as authorized by the Moving Ahead for Progress in the 21<sup>st</sup> Century Act. FTA is issuing this interim final rule in order to comply with the Disaster Relief Appropriations Act of 2013. FTA will accept comments on the interim final rule and will publish a final rule after the comment period closes.

**DATES:** This interim final rule becomes effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on this interim final rule are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable. In compliance with the Paperwork Reduction Act, FTA is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Please submit all comments relating to new information collection requirements to FTA and to the Office of Management and Budget (OMB) at the address listed in the ADDRESSES section on or before

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments to OMB are most useful if submitted within 30 days of publication.

**ADDRESSES:** Please submit your comments by only one of the following methods, identifying your submission by docket number FTA-2013-0004. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

- 1) Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- 2) Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- 3) Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- 4) Fax: 202-493-2251.

Comments regarding the proposed information collection should be submitted to FTA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, N.W., Washington, DC 20503, Attention: FTA Desk Officer.

**Instructions:** You must include the agency name (Federal Transit Administration) and Docket number (FTA-2013-0004) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided and

will be available to internet users. You may review DOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Adam Schildge, Office of Program Management, 1200 New Jersey Ave., S.E., room E44-420, Washington, DC 20590, phone: (202) 366-0778, or e-mail, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). For legal issues: Bonnie Graves, Office of Chief Counsel, same address, room E56-306, phone: (202) 366-4011, or e-mail, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21, Pub. L. 112-141) authorized the Public Transportation Emergency Relief Program at 49 U.S.C. 5324. The Emergency Relief Program allows FTA to make grants for eligible public transportation capital and operating costs in the event of a catastrophic event, such as a natural disaster, that affects a wide area, as a result of which the Governor of a State has declared an emergency and the Secretary of Transportation has concurred, or the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. 5121-5207).

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), enacted on January 29, 2013, provides \$10.9 billion for FTA's Emergency Relief Program solely for recovery, relief and

resiliency efforts in areas affected by Hurricane Sandy. The law provides that not more than \$2 billion shall be made available no later than March 30, 2013. On February 6, 2013, FTA issued a notice of availability of emergency relief funds for the first \$2 billion (78 FR 8691). In accordance with the statute, the remainder of the appropriated funds will be made available only after FTA enters into a Memorandum of Agreement (MOA) with the Federal Emergency Management Agency (FEMA) as required by section 20017(b) of MAP-21, and FTA issues interim regulations for the Emergency Relief Program. FTA entered into an MOA with FEMA on March 4, 2013 (available at [http://www.fta.dot.gov/documents/FTA\\_FEMA\\_MOA.pdf](http://www.fta.dot.gov/documents/FTA_FEMA_MOA.pdf)). This interim final rule meets the requirement for interim regulations.

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is waived for this program in accordance with guidance to be issued by the Office of Management and Budget. In all cases, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

This interim final rule applies to FTA's Emergency Relief Program, authorized at 49 U.S.C. 5324, and is not limited to Hurricane Sandy response. The rule includes a description of eligible projects, the criteria FTA will use to identify projects for funding, and additional details on how FTA will administer the program. As with FTA's recent Federal Register notice of availability of emergency relief funds for Hurricane Sandy (78 FR 8691, Feb. 6, 2013), FTA will set priorities regarding the type of projects that will most likely receive funding for each specific emergency, based on the facts of the emergency and the type of relief most needed, as well as the availability of annual and supplemental appropriations. FTA seeks public comment on this interim final rule.

## **Authority**

Section 5324(a)(2) of title 49, United States Code, defines an “emergency” as follows:

The term ‘emergency’ means a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—

- (A) the Governor of a State has declared an emergency and the Secretary has concurred; or
- (B) the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Section 5324(b) of title 49, United States Code, authorizes the Secretary to make awards for

FTA’s Emergency Relief (Emergency Relief) Program as follows:

General Authority.—The Secretary may make grants and enter into contracts and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) for—

- (1) capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency; and
- (2) eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—
  - (A) the 1-year period beginning on the date of a declaration described in subsection (a)(2); or
  - (B) if the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration described in subsection (a)(2).

In addition, section 5324(d) provides that a grant awarded under section 5324 shall be subject to the terms and conditions the Secretary determines are necessary, and made only for expenses that are not reimbursed under the Stafford Act. Accordingly, FTA will not fund project expenses that FEMA has funded.

## **Section-by-Section Analysis**

### Section 602.1 Purpose.

This section states the purpose of the rule, which is to establish policy and provide program requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which have suffered or are in danger of suffering serious damage by a natural disaster over a wide area or a catastrophic failure from an external cause.

### Section 602.3 Applicability.

This section specifies that part 602 applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

### Section 602.5 Definitions.

This section provides definitions that apply to terms used in part 602. Some of the definitions are statutory, such as “emergency,” which is found in 49 U.S.C. 5324, “major disaster,” found in the Stafford Act, and “net project cost,” found in 49 U.S.C. 5302. Other definitions, such as “catastrophic failure,” “emergency repairs,” “external cause,” “heavy maintenance,” and “serious damage” are included in the Federal Highway Administration’s (FHWA) emergency relief rule (23 CFR part 668). For consistency, FTA has incorporated these definitions into the FTA Emergency Relief Program.

The definition of “emergency operations” is consistent with the definition in 49 U.S.C. 5324. Eligible emergency operating assistance expenses are for operating costs outside the scope of a recipient’s typical service or operations, and include but are not limited to: costs to assist with evacuations prior to an emergency and to assist with rescue operations; the net project cost of providing temporary public transportation service, such as bus or ferry service around inoperable

rail lines, or additional service to meet the needs of an influx of evacuees; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Section 5324 provides that capital projects to “protect” equipment and facilities in danger of suffering serious damage are an eligible expense. FTA has included two definitions that address these types of projects. First, “emergency protective measures” are actions taken immediately before, during or after an emergency to protect public health and safety, and to protect property from immediate damage or from further immediate damage. Such actions eliminate or lessen immediate threats to public health or safety, or eliminate or lessen the immediate threat of significant damage or additional damage to an affected recipient’s property through measures that are cost effective. This definition is consistent with FEMA’s description of emergency protective measures in 44 CFR 206.225. Some examples of emergency protective measures include, but are not limited to: moving rolling stock to protect it from damage, for example, to higher ground in order to protect it from storm surges; emergency communications; security forces; sandbagging; bracing/shoring damaged structures; debris removal; dewatering; and removal of health and safety hazards.

Second, for this rule, we have defined the term “resilience” to mean a capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment. This definition of “resilience” is consistent with the definition in the 2010 Interagency Climate Change Adaptation Task Force Progress Report to the President and America’s Climate Choices: Adapting to the Impacts of Climate Change by the National Academy of Sciences. A “resiliency project” is a project designed and built to address future vulnerabilities to a public transportation facility or system

due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns. “Permanent repairs” are defined as those repairs undertaken following the disaster occurrence for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure to a state of good repair. For all capital projects, the cost to perform the work, whether by in-house or contracted personnel, is an eligible cost. FTA seeks public comment on these definitions.

#### Section 602.7 Policy.

This section describes FTA’s policies related to the Emergency Relief Program. FTA’s first goal in the Emergency Relief Program is to assist public transportation agencies in restoring public transportation service and in repairing and reconstructing transit assets to a state of good repair as expeditiously as possible. FTA has not defined the term “state of good repair” in this rule. This summer, FTA plans to issue interim policy guidance on the definition of the term state of good repair, and also plans to issue an advance notice of proposed rulemaking for the transit asset management program authorized by 49 U.S.C. 5326. In conjunction with repair and reconstruction activities, a second goal is to increase the resiliency of affected public transportation systems in order to help protect those systems from damage due to future emergencies and major disasters.

Grants awarded with section 5324 funds, as well as grants awarded under sections 5307 and 5311 for emergency relief purposes, may be made only for expenses that are not reimbursed by FEMA under the Stafford Act, or by other Federal agencies, or by insurance proceeds. If an applicant has already received FEMA or other Federal agency funding or insurance proceeds, the

applicant may not apply for FTA emergency relief funding for the same project expenses. However, partial compensation for a loss by such other sources will not preclude FTA participation for the part of the loss not compensated. For example, insurance proceeds may only cover the value of a vehicle at the time it was destroyed, and not the cost to replace that vehicle. Consistent with FTA Circular 5010.1D, FTA may participate in the replacement cost beyond what the insurance proceeds may cover.

If FTA makes a grant and the recipient subsequently receives compensation from another source, the funds received from the other source must be used to reduce FTA's share of the project cost. FTA seeks public comment on the aforementioned policies and other policies for ensuring emergency relief funds are expended efficiently and consistent with the law's purposes.

The language in FTA's Emergency Relief Program at 49 U.S.C. 5324 is the same as the FHWA's Emergency Relief Program at 23 U.S.C. 125, in that assets must have "suffered serious damage." FHWA's Emergency Relief Program rule provides that the Emergency Relief Program "is not intended to fund heavy maintenance or routine emergency repair activities which should normally be funded as contingency items in the State and local road programs." 23 CFR § 668.105(j). Therefore, FHWA has determined that eligible Emergency Relief repair activities in a State in the range of \$700,000 (Federal share) or more are usually significant enough to justify approval of Emergency Relief funds.

FTA has not included such a provision in this interim final rule, but has included a definition of heavy maintenance and § 602.13 provides that heavy maintenance is not an eligible activity. FTA seeks public comment on whether and how, in a final rule, FTA should establish a similar policy that sets a minimum monetary damage threshold for FTA participation in the cost of repair, reconstruction, or replacement activities for public transportation systems after an

emergency. Similarly, FTA seeks comment on whether there should be a minimum monetary cost threshold for emergency protective measures or emergency operations. Further, on what basis should FTA establish minimum cost thresholds for FTA participation, given that the size of public transportation systems and the resources of entities that operate them vary? In other words, should such a threshold vary based on the size of public transportation systems, as measured by annual revenue miles, directional miles, number of vehicles, unlinked passenger trips, budget, or some other basis?

#### Section 602.9 Federal share.

This section of the interim final rule provides that the Federal share for emergency relief project funds made available under 49 U.S.C. 5324, for both operating and capital projects, shall be for up to 80 percent of the project cost, unless the Secretary waives the local share requirement. This section also provides that when a recipient chooses to use funds available to it under 49 U.S.C. 5307 or 5311 for emergency projects, the Federal share will be 80 percent for capital projects and 50 percent for operating projects, which is consistent with the Federal share requirements of those sections. FTA seeks public comment on these Federal share requirements.

#### Section 602.11 Pre-award authority.

This section describes the conditions under which FTA will grant pre-award authority. The purpose of pre-award authority is to allow affected recipients to respond to critical needs in preparation for, or in the immediate aftermath of, an emergency or major disaster, and in advance of receiving a grant from FTA under the Emergency Relief Program. Generally, pre-award authority will be effective beginning on the effective date of the declared emergency or major disaster, and subject to the appropriation of Emergency Relief Program funds. In expected

weather events, such as hurricanes, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective within a reasonable period of time in advance of the event, such as during the period the storm is forecast with some certainty to hit the affected area. FTA seeks comment on whether the language “forecast with some certainty to hit the affected area” is specific enough, or if FTA should adopt a policy with more specificity. FEMA Policy FP 010-4, May 18, 2012, ([pre disaster emergency declaration requests policy fp010 4\[2\].pdf](#)) provides the conditions under which FEMA will fund pre-disaster emergency protective measures. For example, a Federal agency must determine or affirm that a potential major disaster is imminent, the Governor must take action under State law and direct execution of the State emergency plan, and Direct Federal Assistance must be needed to meet critical emergency protection requirements before impact that are beyond the capability or capacity of the State, tribal or local governments; or the appropriate State, tribal, or local governments must have issued evacuation orders for three or more areas or for a geographical area with a combined population of more than 100,000 individuals. Adopting text similar to this in the final rule would provide affected recipients with some certainty as to when FTA would fund emergency protective measures, evacuations, etc.

Pre-award authority shall be subject to a maximum amount as determined by FTA. Except as provided in section 602.15 of this interim final rule, all applicable Federal grant requirements must be met for the project to remain eligible for Federal funding. As with pre-award authority for FTA’s other programs, pre-award authority is not a legal or implied commitment that the project will be approved for FTA assistance or that FTA will obligate Federal funds, and affected recipients expend local funds at their own risk. Furthermore, pre-award authority is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for

inclusion in the project. In other words, not all activities undertaken by the applicant may be eligible for Federal assistance, even if the project is otherwise eligible. FTA seeks public comment on the use of pre-award authority for the Emergency Relief Program.

#### Section 602.13 Eligible activities.

This section describes the eligible activities under 49 U.S.C. 5324, as well as activities ineligible for emergency relief funding. An affected recipient may apply for section 5324 emergency relief funds on behalf of itself as well as affected subrecipients.

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects, as those terms are defined in section 602.5 of this rule, are eligible for emergency relief funding. Affected recipients should repair, replace or reconstruct seriously damaged public transportation system elements as necessary to restore the elements to a state of good repair taking into account current as well as future conditions and risks. For example, replace destroyed rolling stock with new rolling stock, replace older seriously damaged elements with new ones, incorporate current design standards, replace a destroyed facility at a different location when replacing at the existing location is not practical or feasible, or when doing so will eliminate vulnerabilities to future disasters, incorporate additional required features resulting from the environmental review process, and incorporate or add protective features or design standards in order to protect the equipment or facilities from future damage. In other words, FTA does not expect affected recipients to replace old, destroyed rolling stock, equipment, and elements of facilities with similarly-aged rolling stock, equipment, and elements of facilities. Instead, affected recipients should replace these destroyed elements with new ones. New rolling stock acquired to replace destroyed rolling stock should be fully compliant with current safety and other design standards, including the Americans with Disabilities Act (ADA),

as well as Buy America requirements. Facilities damaged by the emergency or disaster that require substantial work to bring into a state of good repair should be similarly brought up to current design standards, including the ADA. In addition, where feasible, resiliency projects should be incorporated into replacement and repairs such that equipment, facilities and infrastructure will be protected from future disasters.

It is not the intent or purpose of the Emergency Relief Program to provide substitute funding for regular capital maintenance that is not a result of an emergency or major disaster. Therefore, heavy maintenance and projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster are not eligible expenses under the Emergency Relief Program. In addition, FTA will not fund project costs for which the recipient has received funding through FEMA, another Federal agency or through insurance proceeds. In general, projects that change the function of the original infrastructure, and do not enhance or otherwise improve system resiliency—for example, a change from a bus rapid transit system to light rail, or a replacement of bus shelters with intermodal facilities, or projects that significantly upgrade a maintenance facility—do not qualify for Emergency Relief funding. However, formula and other funds available to the recipient may be used in conjunction with Emergency Relief Program funds to make substantial changes or improvements to an affected transit asset during the course of an Emergency Relief project.

Replacing damaged diesel buses with compressed natural gas or other clean fuel buses is eligible under the Emergency Relief Program, but any costs associated with new alternative fueling stations or maintenance facilities is not eligible for Emergency Relief funds. Those associated costs are eligible, however, under FTA's formula programs, and recipients and subrecipients may use funds apportioned under sections 5307 or 5311 formula funds for those

costs. Lost revenue as a result of service disruptions is not an eligible expense. Finally, project costs associated with the replacement or replenishment of stockpiles of materials that are not the property of the affected recipient and have not yet been integrated into the public transportation system are not eligible. This would include contractor-owned property on a construction site that has not yet been installed, and would be covered by the contractor's insurance company. This is distinguished from the cost to replace spare parts and other maintenance items necessary for the operation of the system that are seriously damaged or destroyed as a result of an emergency, which is an eligible expense. FTA seeks public comment on the list of eligible and ineligible activities.

FTA also requests comment on the extent of the benefit-cost analysis that is appropriate to carry out in the context of emergency repairs, permanent repairs, and resiliency projects. Because the benefits of resiliency projects include a reduction in the risk of damage from future emergencies, FTA particularly requests comments on the extent of risk analysis that should be conducted for resiliency projects. Similarly, factoring in the full cost of the loss of the function or service provided by critical transit infrastructure can affect how benefit-cost analyses should be addressed. For example, damage to rail and transit infrastructure can result in additional costs to transit riders who would use alternative modes of travel or forgo a trip, and result in decreases in business productivity because employees cannot get to work. Similarly, the transit system serves to help move people and goods before, during and after an emergency, a function that is very detrimental to lose and expensive to replace once lost. FTA welcomes comment on how these costs should be taken into account in a benefit-cost analysis.

#### Section 602.15 Grant requirements.

Section 5324(d) of title 49, United States Code provides that a grant awarded under sections 5324, 5307 and 5311 that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. In general, projects will be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

This section provides information as to when FTA may determine the inapplicability of Federal requirements in order to expedite restoration of service through delivery of Emergency Relief Program funds. FTA will determine the terms and conditions of Emergency Relief grants based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

FTA may determine the inapplicability of requirements associated with public transportation programs as necessary and appropriate for emergency repairs, permanent repairs, and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. This 45-day period is consistent with FTA's charter rule at 49 CFR 604.2(f), which provides that the charter rule does not apply to a recipient for actions directly responding to an emergency or major disaster. If FTA determines that any requirement does not apply, this determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

In the event an affected recipient or subrecipient finds that FTA requirements would limit the recipient's or subrecipient's ability to respond to an emergency or major disaster, the affected recipient or subrecipient may request that applicable requirements be waived in accordance with

the emergency relief docket process as outlined below. Affected recipients and subrecipients should never assume that a waiver will be granted.

Under 49 CFR part 601, subpart D, FTA establishes an emergency relief docket each calendar year. The purpose of the docket is to allow recipients affected by national or regional emergencies to request relief from FTA administrative requirements set forth in FTA policy statements, circulars, guidance documents, and regulations. As stated above, 49 U.S.C. 5324(d) provides that a grant awarded under section 5324 or under section 5307 or 5311 to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. Effective with calendar year 2013, recipients affected by an emergency or major disaster may request waivers of chapter 53 requirements when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster. Recipients must follow the procedures as set forth in 49 CFR part 601, subpart D when requesting a waiver of statutory or administrative requirements. FTA seeks public comment on the types of requirements that FTA should prospectively determine inapplicable or waived in the event of an emergency or major disaster.

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. The Executive Order provides an eight-step process that agencies should carry out as part of their decision-making on projects that have potential impacts to or within the floodplain. Executive Order 11988 is further implemented by DOT Order 5650.2, Floodplain Management and Protection.

Since this rule addresses natural disasters, including weather events that can produce serious flooding, FTA has included a provision in this rule that addresses Executive Order 11988. Specifically, recipients shall not use grant funds for any activity in an area delineated as a ‘special flood hazard area’ or equivalent, as labeled in the Federal Emergency Management Administration’s (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain, in accordance with Executive Order 11988. To guide decision making, recipients shall use the “best available information” as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the “best available information” in accordance with Executive Order 11988.

The final determination on “best available information” shall be used to establish such reconstruction requirements as a project’s minimum elevation. In certain situations, notably where a project or activity is located within a special flood hazard area, use of FTA funds will require that a project and activity shall be designed and constructed in accordance with specific and additional reconstruction terms, such as elevated minimums for project elevations (e.g. best available data plus one foot in elevation), as determined necessary to adequately enhance long-term structural resilience, and mitigate against the reoccurrence of flood-related damages. Additionally, in scenarios where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the competing minimums would apply. This standard does not necessarily mean that transit agencies will be required to move

existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients should consider updated design features or added protective features (resiliency projects) in order to reduce the risk of damage from future disasters. A base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM. Recipients shall also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding. In all instances, FTA retains the authority to award funds in direct alignment with recipient acceptance of and continued compliance with Federal determinations regarding increased standards for floodplain management. FTA seeks public comment on this provision.

#### Section 602.17 Application procedures.

Applications for Emergency Relief funding must include a detailed damage assessment report to support the request for assistance for capital projects. Typically, a damage assessment involves on-the-ground visits to the damaged sites to verify the extent of the damage and to estimate the cost of repairs. The damage assessment report should be coordinated with FEMA, if appropriate, to avoid duplication of effort. FTA seeks comment on how to maximize harmonization of FTA and FEMA requirements for damage assessment reports. The damage assessment report should include, by political subdivision or other generally recognized administrative or geographic boundaries, a description of the types and extent of damage to public transportation systems and a preliminary estimate of cost of restoration, replacement, or reconstruction for seriously damaged systems in each jurisdiction. Pictures showing the kinds and extent of damage and sketch maps detailing the damaged areas should be included, as appropriate, in the damage assessment report. In addition, the damage assessment report should

include recommendations for resiliency projects to protect equipment and facilities from future emergencies and disasters.

FTA is requesting public comment regarding whether, with respect to requests for Emergency Relief funding for permanent repairs or resiliency projects relating to damaged or destroyed facilities, it is appropriate to incorporate requirements of Section 1315(b) of MAP-21 such that the damage assessment report should include an evaluation of whether such damaged or destroyed facilities have repeatedly required repair or reconstruction in the past. If so, FTA seeks comment as to whether the applicant should evaluate whether there are reasonable alternatives that could reduce the need for Federal funds to be expended on such repair or reconstruction activities in the future, better protect public safety, health and the environment, and/or meet transportation needs as described in relevant and applicable Federal, State, local and tribal plans.

Generally, a damage assessment report should be completed within six weeks of the emergency or major disaster. For large disasters where extensive damage to public transportation systems is readily evident, the appropriate FTA Regional Administrator may approve a grant application under section 602.17(f) prior to submission of the damage assessment report. In these cases, the applicant shall prepare and submit to the appropriate FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

The applicant shall include the damage assessment report as an appendix to the grant application. In addition to the report, an applicant shall submit a copy of the Governor's declaration or a Presidential declaration; a list of projects which describes emergency operations, emergency protective measures, and emergency repairs completed as well as permanent work

needed to repair or replace the damaged or destroyed rolling stock, equipment, facilities, and infrastructure; and supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

Applications for emergency operating expenses must include the dates, hours, number of vehicles, and total fare revenues received (if any) for the emergency service. Only net project costs may be reimbursed.

Applicants that apply for and/or receive funding from another Federal agency, including FEMA, for operating expenses and also seek funding from FTA for operating costs must include a copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other Federal agency funded operating costs, as well as the scope of service and dates for which the applicant is seeking FTA funding. Applicants that apply for and/or receive funding from another Federal agency, including FEMA, for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include a copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and a list of projects included in the other Federal agency's application.

Each applicant is responsible for preparing and submitting a grant application, and the appropriate FTA regional office may provide technical assistance to the applicant in preparing a list of projects for the grant application. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent corrective work the applicant will undertake. The data collected must be sufficient to make a determination of eligibility of the proposed work. The FTA Regional Administrator's approval of the grant application constitutes

a finding of eligibility under 49 U.S.C. 5324. FTA seeks public comment on the application procedures.

### **Rulemaking Analyses and Notices**

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. A final rule may be published at any time after close of the comment period.

### **Immediate Effective Date**

As required by the Disaster Relief Appropriations Act of 2013, FTA is issuing this interim final rule in order to implement the Emergency Relief Program and to provide information regarding the application procedures for Emergency Relief Program grants in response to Hurricane Sandy. This interim final rule is effective immediately. In addition, FTA requests comments on the rule, given that its requirements will apply to the Emergency Relief Program in general, and not only to grant funds disbursed in response to Hurricane Sandy.

The Administrative Procedure Act (5 U.S.C. 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. Here, FTA has determined that good cause exists for immediate effectiveness of this rule because the rule is expected to address the immediate need to repair transit system facilities, infrastructure and equipment damaged by Hurricane Sandy. Hurricane Sandy affected mid-Atlantic and northeastern states in October 2012, and particularly devastated transit operations in New Jersey and New York. Through

immediate promulgation of the interim final rule, many of the much-needed Hurricane Sandy recovery efforts can occur in a more expeditious manner. Thus, it is in the public interest for this final rule to have an immediate effective date.

FTA will publish a notice responding to any comments received and, if appropriate, will amend provisions of the rule. If FTA subsequently establishes criteria or conditions for grants made under the Emergency Relief Program that are different from those in this interim final rule, the different criteria or conditions will not be applied retroactively to applications submitted or grants awarded consistent with this interim final rule, unless the change benefits the applicant.

**Executive Order 12866 (Regulatory Planning and Review), EO 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

FTA has determined preliminarily that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures because of substantial congressional, State and local government, and public interest. Those interests include restoring public transportation service as quickly as possible after an emergency or major disaster, the receipt of Federal financial support for repairing and replacing public transportation investments damaged or destroyed by emergencies and major disasters as expeditiously as possible, and the receipt of Federal financial support for emergency operations before, during and after emergencies and major disasters.

FTA has determined that this is an economically significant rule within the meaning in Executive Order 12866 because of the amount of funding FTA reasonably expects to distribute as a result of Hurricane Sandy. FTA was appropriated \$10.9 billion for the Emergency Relief Program in response to Hurricane Sandy, and FTA expects to distribute more than \$100 million

to entities impacted by the hurricane in the upcoming year. The Obama Administration's budget request included \$25 million for fiscal year 2013 for the Emergency Relief program, and the authorization in 49 U.S.C. 5338(f) is for "such sums as are necessary to carry out section 5324." Congress did not appropriate any funds for the Emergency Relief Program in the 2013 Continuing Appropriations Resolution (Pub. L. 112-175). Hurricane Sandy was an extraordinary event resulting in historical damage to public transportation systems. While it is impossible to predict how much funding Congress might appropriate for the Emergency Relief Program for extraordinary events such as Hurricane Sandy, in a typical year without an extraordinary event such as Hurricane Sandy, FTA does not expect this rule to have an economic impact greater than \$100 million.

The purpose of this interim final rule is to provide grant application procedures and describe eligible activities as directed by statute. The rule itself does not affect the total amount of grant funds available to States or local governmental authorities. That amount will be specified in annual or supplemental appropriations acts of Congress. FTA will distribute funds through the Emergency Relief Program consistent with the requirements of this rule to those States and local governmental authorities that have experienced emergencies or major disasters.

Through the Emergency Relief Program, FTA will reimburse affected recipients for eligible operating and capital costs incurred as a result of an emergency or major disaster. MAP-21 generally prescribes the criteria and types of projects eligible for emergency relief grants, and FTA has exercised limited discretion in this rulemaking to implement the statute.

While complying with the application procedures set forth in this rule is a requirement for receiving grant funds, the rule does not impose any mandate on States or governmental authorities to submit an application. However, should a State or local governmental authority

choose to submit an application, there are some costs and burdens associated with the application process. FTA received emergency clearance from OMB under the Paperwork Reduction Act (PRA) for funds made available by the Disaster Relief Appropriations Act, and included in this notice is a request for comment for the information collection required by this rule. Interested persons should consult the Paperwork Reduction Act section of this document for further information.

### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of this interim final rule on small entities and has determined the interim final rule will not have a significant economic impact on a substantial number of small entities. Recipients of Emergency Relief Program funds are generally States and local governmental authorities. The only burden placed upon local governments by this rule is the small paperwork burden associated with the application process, which is addressed in the Paperwork Reduction Act section of this notice and is designed to minimize the paperwork burdens of the rule. For this reason, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

### **Unfunded Mandates Reform Act of 1995**

This interim final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The Federal share for grants made under the Emergency Relief Program is 80 percent, and the Secretary may waive all or part of the non-Federal share. This interim final rule will not result in the expenditure by State, local,

and tribal governments, in the aggregate, or by the private sector, of \$143.1 million or more in any one year (2 U.S.C. 1532).

### **Executive Order 13132 (Federalism)**

This interim final rule has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this interim final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this interim final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

### **Executive Order 12372 (Intergovernmental Review)**

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this interim final rule.

### **Paperwork Reduction Act**

On February 6, 2013, in compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget (OMB) implementing regulation at 5 CFR 1320.13, FTA received emergency approval from OMB for an Information Collection for funds appropriated by the Disaster Relief Appropriations Act (Information Collection number 2132-0575). The approval for this information collection will expire on August 13, 2013.

In compliance with the PRA and OMB implementing regulation at 5 CFR 1320.8(d), FTA is seeking longer-term approval from OMB for Information Collection number 2132-0575, for which FTA received emergency approval, as abstracted below. The Information Collection

includes not only funds specific to Hurricane Sandy but for the Emergency Relief Program in its entirety. In order to receive emergency relief funds, applicants will be required to fill out and submit a grant application. This is the same grant application used by FTA recipients for other FTA programs and will be submitted electronically through the Transportation Electronic Award and Management (TEAM) system. In addition to the grant application, applicants will be required to develop a damage assessment report. FTA is seeking comment on whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

Type of Review: OMB Clearance. Updated information collection request.

Respondents: In any given year, FTA estimates that as many as 20 recipients may experience an emergency that is declared by a Governor of a State or the President. The PRA estimate was based on a total of 20 recipients seeking emergency relief funds per year.

Frequency: Information will be collected periodically whenever an applicant applies for emergency relief funding.

Estimated Total Annual Burden Hours: 3,600. FTA estimates the average annual time burden per applicant is 180 hours. This estimate includes: 1) 50 hours for preparation of a grant application, including any supplemental emergency relief forms (49 CFR 602.17(b)); 2) 50 hours per grant recipient to develop a damage assessment report (49 CFR 602.17(a)); and 80 hours for project management, including submission of Milestone Progress Reports, Federal Financial Reports and other required reports.

Additional documentation detailing FTA's Paperwork Reduction Act Information Collection Request, including FTA's Justification Statement, may be accessed from OMB's Web site at <http://www.reginfo.gov/public/do/PRASearch>, Information Collection number 2132-0575. OMB is required to file comments or make a decision concerning the proposed information rule within 60 days after receiving the information collection request submission from FTA. FTA will summarize and respond to any comments on the proposed information collection request from OMB and the public in the preamble to the final rule.

### **National Environmental Policy Act**

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), requires Federal agencies to analyze the potential environmental effects of their proposed actions either through a Categorical Exclusion, an Environmental Assessment or an Environmental Impact Statement. This interim final rule is categorically excluded under FTA's NEPA implementing procedures at 23 CFR 771.118(c)(4), which covers planning and administrative activities which do not involve or lead directly to construction, such as the promulgation of rules, regulations and directives. FTA has determined that no unusual circumstances exist and that this Categorical Exclusion is applicable.

### **Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)**

Executive Order 12898 directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The DOT's environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without sacrificing safety or mobility.

FTA has developed a program circular addressing environmental justice in transit projects, C 4703.1, Environmental Justice Policy Guidance for Federal Transit Administration Recipients.

The Circular is designed to provide a framework to assist recipients as they integrate principles of environmental justice into their transit decision-making process. The Circular contains recommendations for State DOTs, MPOs and transit providers on (1) how to fully engage environmental justice populations in the transportation decision-making process; (2) how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) how to avoid, minimize, or mitigate these effects.

#### **Executive Order 12630 (Taking of Private Property)**

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

FTA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this interim final rule will not cause an environmental risk to health or safety that may disproportionately affect children.

### **Executive Order 13175 (Tribal Consultation)**

FTA has analyzed this action under Executive Order 13175 (Nov. 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws.

Therefore, a tribal summary impact statement is not required.

### **Executive Order 13211 (Energy Effects)**

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

### **Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review U.S. DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

## **List of Subjects in 49 CFR Part 602**

Disaster assistance, Grant programs, Mass transportation, Transportation.

Issued on: March 25, 2013.

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Peter M. Rogoff  
Administrator

For the reasons set forth in the preamble, FTA amends Chapter VI of Title 49, Code of Federal Regulations, by adding Part 602, as set forth below.

### **PART 602 – EMERGENCY RELIEF**

Sec.

- 602.1 Purpose.
- 602.3 Applicability.
- 602.5 Definitions.
- 602.7 Policy.
- 602.9 Federal share.
- 602.11 Pre-award authority.
- 602.13 Eligible activities.
- 602.15 Grant requirements.
- 602.17 Application procedures.

Authority: 49 U.S.C. 5324 and 5334; 49 CFR 1.91.

**§ 602.1 Purpose.**

This part establishes the procedures and eligibility requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which are found to have suffered or are in danger of suffering serious damage by a natural disaster over a wide area or a catastrophic failure from an external cause.

**§ 602.3 Applicability.**

This part applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

**§ 602.5 Definitions.**

The following definitions apply to this part:

Affected recipient. A recipient or subrecipient that operates public transportation service in an area impacted by an emergency or major disaster.

Applicant. An entity that operates or allocates funds to an entity to operate public transportation service and applies for a grant under 49 U.S.C. 5324.

Catastrophic failure. The sudden failure of a major element or segment of the public transportation system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance.

Emergency – A natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm or landslide) or a catastrophic failure from any external cause, as a result of which:

(1) The Governor of a State has declared an emergency and the Secretary of Transportation has concurred; or

(2) The President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Emergency operations. The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: evacuations; rescue operations; bus or ferry service to replace inoperable rail service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Emergency protective measures. (1) Capital projects undertaken immediately before, during or following the emergency or major disaster for the purpose of protecting public health and safety or for protecting property. Such projects:

(i) Eliminate or lessen immediate threats to public health or safety; or

(ii) Eliminate or lessen immediate threats of significant damage or additional damage to an affected recipient's property through measures that are cost effective.

(2) Examples of such projects include, but are not limited to:

(i) Moving rolling stock in order to protect it from damage, e.g., to higher ground in order to protect it from storm surges;

(ii) Emergency communications;

(iii) Security forces;

(iv) Sandbagging;

- (v) Bracing/shoring damaged structures;
- (vi) Debris removal;
- (vii) Dewatering; and
- (viii) Removal of health and safety hazards.

Emergency repairs. Capital projects undertaken immediately following the emergency or major disaster, until such time as permanent repairs can be undertaken, for the purpose of:

- (1) Minimizing the extent of the damage, or
- (2) Restoring service.

External cause. An outside force or phenomenon that is separate from the damaged element and not primarily the result of existing conditions.

Heavy maintenance. Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, debris removal from seasonal thunderstorms, or heavy repairs necessitated by excessive deferred maintenance. This may include work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's routine maintenance, emergency or contingency program.

Major Disaster. Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

Net project cost. The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302.

Permanent repairs. Capital projects undertaken following the emergency or major disaster for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, as necessary to restore the elements to a state of good repair.

Recipient. An entity that operates public transportation service and receives Federal transit funds directly from FTA.

Resilience/Resiliency. A capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.

Resiliency Project. A project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns.

Serious damage. Heavy, major or unusual damage to a public transportation facility which severely impairs the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

State. Any one of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands.

Subrecipient. An entity that operates public transportation service and receives FTA funding through a recipient.

**§ 602.7 Policy.**

(a) The Emergency Relief Program is intended to aid recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster.

(b) Emergency relief funds are not intended to supplant other Federal funds for correction of preexisting, non-disaster related deficiencies.

(c) In conjunction with repair and reconstruction activities, recipients may include projects that increase the resiliency of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters.

(d) The expenditure of emergency relief funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work completed after the emergency or major disaster.

(e) Emergency relief funds, or funds made available under 49 U.S.C. 5307 (Urbanized Area Formula Program) or 49 U.S.C. 5311 (Rural Area Formula Program) awarded for emergency relief purposes shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude FTA emergency relief fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds for repair or replacement of the public transit equipment or facility must be used upon receipt to reduce FTA's emergency relief fund participation in the project.

**§ 602.9 Federal share.**

(a) A grant, contract, or other agreement for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects under 49 U.S.C. 5324 shall be for up to 80 percent of the net project cost.

(b) A grant made available under 49 U.S.C. 5307 or 49 U.S.C. 5311 to address an emergency shall be for up to 80 percent of the net project cost for capital projects, and up to 50 percent of the net project cost for operations projects.

(c) The FTA Administrator may waive, in whole or part, the non-Federal share required under paragraphs (a) and (b) of this section.

**§ 602.11 Pre-award authority.**

(a) Except as provided in paragraph (b) of this section, pre-award authority for the Emergency Relief Program shall be effective beginning on the effective date of a declaration of emergency or major disaster, and subject to the appropriation of Emergency Relief Program funds.

(b) For expected weather events, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective within a reasonable period of time in advance of the event, such as during the period the storm is forecast with some certainty to hit the affected area.

(c) Pre-award authority shall be subject to a maximum amount determined by FTA based on estimates of immediate financial need, preliminary damage assessments, available Emergency Relief funds and other criteria to be determined.

(d) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a

legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).

(e) Except as provided in § 602.15, all FTA statutory, procedural, and contractual requirements must be met.

(f) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(g) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(h) When FTA subsequently awards a grant for the project, the Financial Status Report in FTA's electronic grants management system must indicate the use of pre-award authority.

**§ 602.13 Eligible activities.**

(a) An affected recipient may apply for emergency relief funds on behalf of itself as well as affected subrecipients.

(b) Eligible uses of Emergency Relief funds include:

(1) Emergency operations;

(2) Emergency protective measures;

(3) Emergency repairs;

(4) Permanent repairs;

(5) Actual engineering and construction costs on approved projects; and

(6) Resiliency projects.

(c) Ineligible uses of Emergency Relief funds include:

(1) Heavy maintenance;

(2) Project costs for which the recipient has received funding from another Federal agency;

(3) Project costs for which the recipient has received funding through payments from insurance policies;

(4) Projects that change the function of the original infrastructure;

(5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;

(6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster.

(7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation.

(8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

**§ 602.15 Grant requirements.**

(a) Funding available under the Emergency Relief program is subject to the terms and conditions FTA determines are necessary.

(b) The FTA Administrator shall determine the terms and conditions based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

(1) In general, projects funded under the Emergency Relief Program shall be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

(2) The FTA Administrator may determine requirements associated with public transportation programs are inapplicable as necessary and appropriate for emergency repairs, permanent repairs, emergency protective measures and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. If the FTA Administrator determines any requirement is inapplicable, the determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

(3) FTA shall publish a notice on its web site and in the emergency relief docket established under 49 CFR part 601 regarding the grant requirements for a particular emergency or major disaster.

(c) In the event an affected recipient or subrecipient believes an FTA requirement limits its ability to respond to the emergency or major disaster, the recipient or subrecipient may request that the requirement be waived in accordance with the emergency relief docket process as outlined in 49 CFR part 601, subpart D. Applicants should not proceed on projects assuming that requests for such waivers will be granted.

(d) In accordance with Executive Order 11988, Floodplain Management, recipients shall not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and

current data source unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain.

(1) Except as otherwise provided in this subparagraph, recipients shall use the “best available information as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations (ABFEs)), preliminary and final Flood Insurance Rate Maps (FIRMs), or Flood Insurance Studies (FISs).

(2) If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as “best available information” in accordance with Executive Order 11988.

(3) The final determination on “best available information” shall be used to establish such reconstruction requirements as a project’s minimum elevation.

(4) Where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the competing minimums would apply.

(5) A base flood elevation from an interim or preliminary or non-FEMA source may not be used if it is lower than the current FIRM.

#### **§ 602.17 Application procedures.**

(a) As soon as practical after occurrence, affected recipients shall make a preliminary field survey, working cooperatively with the appropriate FTA Regional Administrator and other governmental agencies with jurisdiction over eligible public transportation systems. The preliminary field survey should be coordinated with the Federal Emergency Management Agency, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible public transportation systems.

(1) The affected recipient shall prepare a damage assessment report. The purpose of the damage assessment report is to provide a factual basis for the FTA Regional Administrator's finding that serious damage to one or more public transportation systems has been caused by a natural disaster over a wide area, or a catastrophic failure. As appropriate, the damage assessment report should include by political subdivision or other generally recognized administrative or geographic boundaries—

(i) The specific location, type of facility or equipment, nature and extent of damage;

(ii) The most feasible and practical method of repair or replacement;

(iii) A preliminary estimate of cost of restoration, replacement, or reconstruction for damaged systems in each jurisdiction.

(iv) Potential environmental and historic impacts;

(v) Photographs showing the kinds and extent of damage and sketch maps detailing the damaged areas;

(vi) Recommended resiliency projects to protect equipment and facilities from future emergencies or major disasters.

(2) Unless unusual circumstances prevail, the damage assessment report should be prepared within six weeks following the natural disaster or catastrophic failure.

(3) For large disasters where extensive damage to public transportation systems is readily evident, the FTA Regional Administrator may approve an application prior to submission of the damage assessment report. In these cases, the applicant shall prepare and submit to the FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

(b) Before funds can be made available, a grant application for emergency relief funds must be made to, and approved by, the appropriate FTA Regional Administrator. The application shall include:

(1) A copy of the Governor's declaration or a Presidential declaration;

(2) A copy of the damage assessment report, as appropriate;

(3) A list of projects, as documented in the damage assessment report, identifying emergency operations, emergency protective measures, and emergency repairs completed as well as permanent repairs needed to repair or replace the damaged or destroyed rolling stock, equipment, facilities, and infrastructure; and

(4) Supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

(c) Applications for emergency operations must include the dates, hours, number of vehicles, and total fare revenues received for the emergency service. Only net project costs may be reimbursed.

(d) Applicants that receive funding from another Federal agency for operating expenses and also seek funding from FTA for operating expenses must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other agency funded operating costs; and

(2) The scope of service and dates for which the applicant is seeking FTA funding.

(e) Applicants that receive funding from another Federal agency for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement and the amount funded; and

(2) A list of projects included in the other agency's application or equivalent document.

(f) Applicants are responsible for preparing and submitting a grant application. The FTA regional office may provide technical assistance to the applicant in preparation of a program of projects. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent repairs the applicant will undertake. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility of proposed work. If the appropriate FTA Regional Administrator determines the damage assessment report is of sufficient detail to meet these criteria, additional program support data need not be submitted.

(g) The appropriate FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324.

(h)

(i)

(j) [FR Doc. 2013-07271 Filed 03/28/2013 at 8:45 am; Publication Date: 03/29/2013]