



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

**PROPOSED
FTA C 9040.1F**

DATE

**Subject: NONURBANIZED AREA FORMULA PROGRAM GUIDANCE AND
GRANT APPLICATION INSTRUCTIONS**

1. **PURPOSE.** This circular is a re-issuance of guidance on the administration of the transit assistance program for nonurbanized areas under 49 U.S.C. § 5311, and guidance for the preparation of grant applications. This revision incorporates provisions of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and includes the most up-to-date available guidance for the program.
2. **CANCELLATION.** This circular cancels Federal Transit Administration (FTA) Circular 9040.1E, “Nonurbanized Area Formula Program Guidance and Grant Applications Instructions,” dated October 1, 1998.
3. **REFERENCES.**
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Pub. L. 109-59).
 - c. Additional references will be added at the time the Final Circular is published.
4. **WAIVER.** FTA reserves the right to waive any requirements of this circular to the extent permitted by law.

Distribution: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)

OPI: Office of

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SECTION 5311 PROGRAM CIRCULAR

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CHAPTER I:

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION. FTA is one of nine modal administrations within the U.S. Department of Transportation. Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office and ten regional offices which assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation takes place buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways, and people movers, as well as vans in demand response service.

The Federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of State and local transit providers, primarily through its ten regional offices. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal mandates along with statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-059), signed into law on August 10, 2005 provides \$286.4 billion in guaranteed funding for Federal surface transportation programs over six years through FY 2009, including \$52.6 billion for Federal transit programs – a 46% increase over transit funding guaranteed in the previous authorization Transportation Equity Act for the 21st Century (TEA-21).
3. HOW TO CONTACT FTA. FTA's Regional and metropolitan offices are responsible for implementation of grants and the provision of financial assistance to FTA customers, other than specific programs that are the responsibility of headquarters. Inquiries should be directed to either the Regional or metropolitan office responsible for the geographic area in which you are located. See Appendix H for additional information.

For further information, visit the FTA Homepage: <http://www.fta.dot.gov> or contact FTA Headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
400 Seventh Street, SW
Washington, DC 20590
Phone: 202- 366-4043
Fax: 202- 366-3472

4. GRANTS.GOV. To simplify the grants management process, Grants.gov is one of 24 Federal cross-agency E-government initiatives designed to improve access to government services

via the internet. Grants.gov enables grant-making agencies and the grant community to come together to make grants management easier and more efficient for everyone. Led by the U.S. Department of Health and Human Services, in partnership with Federal grant-makers including 26 agencies, 11 commissions and several States, Grants.gov is the one Web site for information on all Federal grant opportunities. More information about Grants.gov is available at <http://www.grants.gov> FTA competitive grant opportunities are posted on Grants.gov.

5. DEFINITIONS. All definitions in 49 U.S.C. § 5302(a) apply to this circular, as well as the following definitions.
 - a. Consultation means one party confers with another identified party in accordance with an established process and, prior to taking action(s), considers that party's views and periodically informs that party about action(s) taken.
 - b. Federally Recognized Indian Tribal Government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community, (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, (43 U.S.C. § 1601 *et seq.*) certified by the Secretary of the Interior as eligible for the special programs and service provided through the Bureau of Indian Affairs.
 - c. Intercity Bus Service means regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.
 - d. Local Governmental Authority includes (A) a political subdivision of a State; (B) an authority of at least one State or political subdivision of a State; (C) an Indian tribe; or (D) a public corporation, board, or commission established under the laws of a State.
 - e. Mobility Management means eligible capital expenses consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental authority, but excluding operating public transportation services transportation services. [49 U.S.C. § 5302(a)(1)(L)]
 - f. Other than Urbanized (Nonurbanized) Area. The terms "nonurbanized areas", "rural and small urban areas" and "rural" are used synonymously to mean any area outside of an urbanized area with a population of 50,000 or more as designated by the Bureau of the Census.
 - g. Pre-Award Authority means authority given under specific and limited circumstances to incur costs for eligible projects before a grant is made without prejudice to possible Federal participation in the cost of the projects(s). Applicants must comply with all

Federal requirements. Failure to do so will render a project ineligible for FTA financial assistance.

- h. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by AMTRAK.
 - i. Recipient means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.
 - j. Subrecipient means a State or local governmental authority, a non-profit organization, or operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.
6. PROGRAM HISTORY. Prior to 1978, virtually all Federal transit assistance went to urban areas. In that year, in response to a Department of Transportation (DOT) proposal, Congress created a new program through Section 313(a) of the Federal Public Transportation Act of 1978 (Pub L. 95-599). The new program, which created Section 18 of the Urban Mass Transportation Act (49 U.S.C. App. § 1601 *et seq.*), provided public transportation funds for services in areas with populations of less than 50,000.

Federal Funding for rural transit remained fairly steady through 1991. With the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240), Federal rural transit spending began increasing, although not without occasional significant funding downturns. In 1994, legislation codified the Federal Transit Program, changing the citation for the rural transit program from 49 U.S.C. app. § 18, to 49 U.S.C. § 5311.

The Transportation Equity Act for the 21st Century (TEA-21) (Pub L. 105-178) dramatically increased funding for all transit, including Section 5311. Furthermore, TEA-21 established guaranteed funding levels for Section 5311 programs. By 2003, the end of TEA-21's authorization period, Federal rural transit funding reached \$240 million, an 80% increase from 1998 and a 266% increase from 1991. States can transfer additional funds to rural transit from their flexible funds available for either highway or transit projects and the formula transit funds for the small urbanized areas (between 50,000 and 200,000 population). These flex fund transfers have significantly increased the funding available for rural transit.

CHAPTER II:

PROGRAM OVERVIEW

1. SECTION 5311 STATUTORY AUTHORITY. The nonurbanized formula assistance program for public transportation is authorized by 49 U.S.C. § 5311. The Federal Transit Administration (FTA), on behalf of the Secretary of Transportation, apportions the funds appropriated annually to the Governor of each State for public transportation projects in nonurbanized areas. Eighty percent of the statutory formula is based on the nonurbanized population of the States. Twenty percent of the formula is based on land area. No State will receive more than 5% of the amount apportioned for land area. In addition, amounts apportioned based on nonurbanized population according to the growing States formula factors in Section 3038 of SAFETEA-LU (amending 49 U.S.C. § 5340) are added to the amount made available for grants under Section 5311.

Each State prepares an annual program of projects, which must provide for fair and equitable distribution of funds within the States, including Indian reservations, and is expected to provide maximum feasible coordination with other rural transportation services. In addition to funds Indian tribes receive from States through the Section 5311 program, a portion of formula funding is set aside each year for the Transit Tribal Program. The funds set aside for Indian tribes are not meant to replace or reduce funds that Indian tribes receive from States through the Section 5311 program but are to be used to enhance public transportation services for Indian tribes.

Program funds may be used for capital, operating, and administrative assistance to State agencies, governmental authorities and nonprofit organizations (including Indian tribes and groups), and operators of public transportation services, including service agreements with private providers of public transportation services. There is no limitation on operating assistance. The State must use at least 15% of its annual apportionment to support intercity bus service, unless the Governor certifies, after consultation with affected intercity bus providers, that the intercity bus needs of the State are adequately met. Starting in FY2006, Rural Transportation Assistance Program (RTAP) is funded as a 2% takedown from the amount authorized and appropriated for Section 5311 and can be used for technical assistance, training, research, and related support activities. From the amounts made available for RTAP, up to 15% may be used by the Secretary to carry out projects of a national scope with the remaining balance allocated to the States.

The terms "nonurbanized areas" and "rural" are used synonymously to mean any area outside of an urbanized area, as designated by the Bureau of the Census.

The code assigned to formula grants other than urbanized areas in the Catalogue of Federal Domestic Assistance is 20.509.

2. PROGRAM GOAL. The goals of the nonurbanized formula program are: to enhance the access of people in nonurbanized areas to health care, shopping, education, employment, public services and recreation; to assist in the maintenance, development, improvement, and

use of public transportation systems in rural and small urban areas; to encourage and facilitate the most efficient use of all rural transportation funds used to provide passenger transportation in nonurbanized areas through the coordination of programs and services; to assist in the development and support of intercity bus transportation; and to provide for the participation of private transportation providers in nonurbanized transportation to the maximum extent feasible.

The program supports the national policy stated in Section 3003 of SAFETEA-LU:

It is in the interest of the United States, including its economic interest, to foster the development and revitalization of public transportation systems that (1) maximize the safe, secure, and efficient mobility of individuals; (2) minimize environmental impacts; and (3) minimize transportation-related fuel consumption and reliance on foreign oil.

As stated in 49 U.S.C. § 5301(f), Congress found that “significant public transportation improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities and economically disadvantaged individuals in urban and rural areas of the United States.

The general purpose of FTA funding, as stated in Section 5301(f), is:

(1) to assist in developing improved public transportation equipment, facilities, techniques, and methods with the cooperation of both public transportation companies and private companies engaged in public transportation; (2) to encourage the planning and establishment of areawide public transportation systems needed for economical and desirable urban development with the cooperation of both public transportation companies and private companies engaged in public transportation; (3) to assist States and local government and their authorities in financing areawide public transportation systems that are to be operated by public transportation companies or private companies engaged in public transportation as decided by local needs; (4) to provide financial assistance to State and local governments and their authorities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals; and (5) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its public transportation requirements.

One of FTA's goals is to ensure that all Americans, including those who live in rural and small urban areas, have access to transit to meet basic mobility needs. The significantly higher funding levels for the nonurbanized formula program authorized in SAFETEA-LU should enable the States to extend transit service to areas currently not served and improve service levels in areas which currently have minimal service.

3. STATE ROLE IN PROGRAM ADMINISTRATION. To the extent permitted by law, FTA gives the States maximum discretion in designing and managing the Section 5311 program to meet nonurbanized public transportation needs. Where possible, FTA defers to States and State instrumentalities in developing program standards, criteria, procedures and policies in

order to provide the States flexibility to standardize their management of FTA assistance and related State programs. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18 (sometimes referred to as the "Common Grant Rule"), permit States to rely on their own laws and procedures instead of Federal procedures in the areas of financial management systems, equipment, and procurement. States may pass these procedures down to their subrecipients that are public authorities. When a private provider of public transportation services enters into a third party contract, rather than a subagreement, with a State or public subrecipient of a State, the State's procedures will apply to the third party contract. While subrecipients that are private nonprofit entities must comply with DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, FTA delegates authority to the State wherever allowed.

- a. Role of the State Agency. The Governor designates a State agency which will have the principal authority and responsibility for administering the Section 5311 program. Specifically, the role of the State agency is to:
 - (1) document the State's procedures in a State management plan;
 - (2) notify eligible local entities of the availability of the program;
 - (3) plan for future transportation needs, and ensure integration and coordination among diverse transportation modes;
 - (4) solicit applications;
 - (5) develop project selection criteria;
 - (6) review and select projects for approval;
 - (7) forward an annual program of projects and grant application to FTA;
 - (8) certify eligibility of applicants and project activities;
 - (9) ensure compliance with Federal requirements by all subrecipients;
 - (10) monitor local project activity; and
 - (11) oversee project audit and closeout.

- b. State Administration of Projects. In addition, the State agency may carry out a project directly. The State must exercise adequate oversight to ensure that only eligible activities receive Federal assistance and that subrecipients meet Federal requirements. In administering the project, the State must:
 - (1) provide for appropriate technical assistance for nonurbanized areas;

- (2) ensure that there is a fair and equitable distribution of program funds within the State, including funds to Indian tribes;
- (3) ensure a process whereby private transit operators are provided an opportunity to participate to the maximum extent feasible, including private providers of public transportation services through service agreements with operators of public transportation services or as subrecipients;
- (4) expend funds for the support of intercity bus transportation to the extent required by law; and
- (5) provide for maximum feasible coordination of public transportation services assisted by FTA with transportation services assisted by other Federal programs. Additional information on coordination of public transportation services can be found in Chapter V.

The State must include its Section 5311 apportionment, along with all other Federal highway and transit funds, in a Statewide Transportation Improvement Program (STIP) approved by FTA and the Federal Highway Administration (FHWA). FTA subsequently obligates Section 5311 funds and any flexible funds transferred to Section 5311 based on the program of projects included in the State's Section 5311 grant application. Before the State may expend Federal funds on behalf of a subrecipient, the State must enter into an agreement with the subrecipient, and the subrecipient must have met all statutory and program requirements. The State certifies to FTA annually that the State and subrecipients have met, or will meet, all Federal requirements.

4. FTA ROLE IN PROGRAM ADMINISTRATION.

a. FTA headquarters:

- (1) provides overall policy and program guidance for the Section 5311 program;
- (2) apportions funds annually to the States;
- (3) develops and implements financial management procedures;
- (4) initiates and manages program support activities; and
- (5) conducts national program review and evaluation.

b. FTA regional offices have the day-to-day responsibility for administration of the program. The regional office:

- (1) reviews and approves State grant applications;
- (2) obligates funds; manages grants; oversees the State's implementation of the annual program, including revisions to the program of projects;

- (3) receives State certifications;
- (4) reviews and approves State Management Plans;
- (5) provides technical assistance, advice and guidance to the States as needed; and
- (6) performs State management reviews every three years, or as circumstances warrant.

FTA uses contractor support to conduct State management reviews. The reviews examine the State's management procedures, based on the approved State Management Plan. In each area reviewed, a finding is made of compliance or deficiency with corrective action to be taken within a scheduled timeframe. FTA places emphasis on providing the information needed to help the State come into compliance with Federal requirements in all areas. FTA periodically conducts State management review seminars to assist the States in understanding the requirements. If a particular problem area is observed, a more detailed oversight review may be scheduled in the areas of procurement, financial management, drug and alcohol testing, or ADA or any other civil rights laws

5. RELATIONSHIP TO OTHER FTA PROGRAMS.

- a. Statewide Transportation Planning. FTA statewide planning program funds are apportioned annually to the States for use in the development of plans and programs including developing a statewide transportation plan and a statewide transportation improvement program for all areas of the State including metropolitan areas. Some of the statewide planning funds may be sub allocated to metropolitan planning organizations (MPO) in urbanized areas at the State's discretion. Other eligible uses, at the State's discretion, include public transportation, research, development, and technology. FTA metropolitan planning program funds are also apportioned annually to the State for allocation to MPO's for planning in urbanized areas.

In addition to planning program funds allocated to the States, a State may use up to 15% of its Section 5311 apportionment for planning and technical assistance. While RTAP funds are also available to the States for technical assistance, training, research, and support services, it is not intended that RTAP be viewed as a planning resource. However, the State may use RTAP for special projects which support its planning program for rural and small urban areas. Similarly, the State may use its statewide planning funds to support or supplement the technical assistance program it provides through RTAP. States are encouraged to develop a coordinated program of planning, research, training, and technical assistance for rural areas, taking statewide planning, 5311, and RTAP resources into consideration, and to include intercity bus needs in statewide planning activities.

- b. Urbanized Area Formula Assistance Program (Section 5307). Section 5307 provides funding for urbanized areas for capital assistance, planning, and operating assistance for public transportation in an urbanized area with a population less than 200,000. Funds for urbanized areas under 200,000 populations are made available to the Governor or the Governor's designee(s). For urbanized areas of 200,000 or more in population, funds are

available to the designated recipient(s) for capital and planning assistance. A number of urbanized area recipients of Section 5307 funds also receive Section 5311 funds to carry out projects in outlying nonurbanized areas. The Governor has the authority to transfer Section 5307 funds apportioned to the State for urbanized areas under 200,000 to supplement the State's Section 5311 apportionment. The Governor may also transfer Section 5311 funds to supplement the State's apportionment of Section 5307 funds for small urbanized areas. The transfer provisions were established to give Governors greater flexibility in allocating formula transit funds in both urbanized and nonurbanized areas, and to ensure that funds available to the State are fully utilized. Guidance for Section 5307 is found in the most recent version of FTA C 9030.

- c. Clean Fuels Grant Program (Section 5308). This program assists in financing the acquisition of clean fuel buses and related facilities for agencies providing public transportation and operating in an urbanized area designated as a non-attainment or maintenance area for ozone or carbon monoxide. Eligible recipients are the designated recipients for Section 5307 in large urbanized areas and the State, on behalf of small urbanized areas. Nonurbanized areas are not eligible recipients under this program. Eligible projects include the following: the purchase or lease of clean fuel buses, the construction or lease of clean fuel electrical recharging facilities, and improvement of existing facilities to accommodate clean fuel buses. In addition, clean fuel, bio-diesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies may be used at the Secretary's discretion. Not more than 25% of the authorized amount for this program may be used for clean diesel projects.
- d. Capital Investments (Section 5309). Section 5309 provides capital assistance for fixed guideway modernization in areas over 200,000 population with fixed guideway segments at least seven years old, construction and extension of new fixed guideway systems, and purchase of bus and bus related equipment and facilities in both urbanized and nonurbanized areas. States and local governmental authorities are eligible applicants for Section 5309 funds. States may apply for Section 5309 bus grants on behalf of private nonprofit agencies, private providers of public transportation systems, and public subrecipients. Many States look to the bus capital program to supplement vehicles acquired under Section 5310 and Section 5311 or to construct facilities. While distribution of capital program funds is often determined in accordance with congressional direction, FTA encourages States to be the applicant on behalf of nonurbanized areas. Guidance for Section 5309 is found in the most recent version of FTA C 9300. Prior to approval of Section 5309 grants, FTA sends the grant to the Department of Labor (DOL). FTA cannot release grant funds until DOL, on behalf of the Secretary of Labor, concludes that the interests of employees affected by the assistance are protected by fair and equitable arrangements.
- e. The Elderly and Individuals with Disabilities Program (Section 5310). Section 5310 authorizes FTA to make funds available to the Governor of each State to assist private nonprofit organizations in the purchase of vehicles and related equipment to provide transportation services which meet the special needs of elderly individuals and

individuals with disabilities, if public transportation is unavailable, insufficient, or inappropriate. Governmental authorities meeting either of the following two conditions are eligible subrecipients of Section 5310 funds:

- (1) Governmental authorities approved by the State to coordinate services for elderly individuals and individuals with disabilities, or
- (2) Governmental authorities that have certified to the Governor that no nonprofit organizations are readily available in an area to provide services for elderly individuals and individuals with disabilities.

Many Section 5310 subrecipient organizations serve clients in rural and small urban areas. While the overall objectives of Section 5311 and Section 5310 differ (the former is to provide transportation to the general public in nonurbanized areas and the latter is to serve elderly individuals and individuals with disabilities in both rural and urbanized areas), there are parallels which make it desirable for States to consider both resources and plan for their use in a complementary way. With a few exceptions, the two programs are administered by the same State agency. Many Section 5311 subrecipients are private nonprofit organizations, and in some cases a single agency receives funding under both Section 5311 and Section 5310. In other cases, subrecipients of Section 5311 funds participate in coordinated service arrangements which also include Section 5310 funded organizations. FTA encourages participation in such coordinated efforts as long as the coordinated services will continue to meet the purposes of both programs. Purchase of service is an eligible capital expense under Section 5310. Section 5310 funds can be used to purchase service from public transit agencies as well as private providers.

The State's Section 5310 apportionment may be used to administer, plan, and provide technical assistance. A State may transfer Section 5310 funds to the Section 5311 program for eligible projects selected under Section 5310. The State must conduct a statewide solicitation for grant applications. Beginning in fiscal year 2007, the State must certify that: (1) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human service providers, and participation by the public.

- f. Tribal Transit Program (Section 5311(c)(1)). SAFETEA-LU creates a new Tribal Transit Program as a takedown under the Section 5311 program. Federally Recognized Indian Tribes are defined as eligible direct recipients. The funds are apportioned for grants to Indian tribes through an annual national competitive selection process conducted by FTA. The funds may be used for any purpose eligible under Section 5311, which includes planning, capital and operating assistance for rural public transit services. Support for rural intercity bus service is also eligible.

In addition to funding under the Tribal Transit program, States must continue to include the tribes in the equitable distribution of the Section 5311 funds apportioned to the States, and are encouraged to assist tribes with planning and technical assistance using the 15% allowed the State for program administration and State RTAP funds.

Transit projects are also eligible activities under the FHWA's Indian Reservation Roads Program (IRR). In developing the program of projects for Section 5311, the State should take into consideration any transit capital projects tribes may have developed with Indian reservation roads funds, as well as projects funded under FTA's Tribal Transit Program.

- g. Job Access and Reverse Commute (JARC) Formula Program (Section 5316). This FTA program has been changed to a formula grant program in SAFETEA-LU. The JARC program funds public transportation projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment. In addition public transportation projects designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities are eligible for funding. Of the funds authorized, 20% is apportioned to States for projects in other than urbanized areas. The Federal DOT share is 80% of capital costs and 50 percent of operating costs, and contract income and funds from other Federal agencies may be used for the local match. Up to 10% of this program's apportionment may be used to administer, plan, and provide technical assistance. A State may transfer funds to the Section 5311 program for eligible job access and reverse commute projects only after consulting with responsible local officials and public transportation operators in each area for which the amount was originally awarded in the State's competitive selection process for JARC. The State must conduct a statewide solicitation for grant applications and certify that: (1) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human service providers, and participation by the public.
- h. New Freedom Program (Section 5317). SAFETEA-LU included a new program to provide new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. Up to 10% of this program's apportionment may be used to administer, plan, and provide technical assistance. Of the funds authorized, 20% is apportioned to States for projects in other than urbanized areas. A State may transfer funds to the Section 5311 program for eligible New Freedom projects only after consulting with responsible local officials and public transportation operators in each area for which the amount was originally awarded in the State's competitive selection process for New Freedom. A recipient of New Freedom funds must conduct a statewide solicitation for grant applications. Beginning in fiscal year 2007, a recipient must certify that: (1) The projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) The plan was developed through a process that included representatives of public, private, and nonprofit transportation and human service providers, and participation by the public.
- i. Alternative Transportation in the Parks and Public Lands. The purpose of this FTA program (49 U.S.C. § 5320) is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program funds capital and

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planning expenses for alternative transportation systems in parks and public lands. Federal land management agencies and State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant are eligible to apply. The program is to be implemented by FTA in consultation with the Department of the Interior and other Federal land management agencies. The Secretary of Transportation will develop cooperative arrangements with the Secretary of the Interior that provide: (1) technical assistance; (2) interagency and multidisciplinary teams to develop alternative transportation policy, procedures, and coordination; and, (3) procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of selected projects. The Secretary of the Interior, after consultation with and in cooperation with the Secretary of Transportation, will determine the final selection and funding levels of an annual program of qualified projects. Section 5311 subrecipients in gateway communities may be selected for funding under this program.

- j. FHWA Flexible Funds. SAFETEA-LU maintained the flexible funding provisions of ISTEA, which established the Surface Transportation Program (STP) as a source of flexible funding for both highway and transit projects. At the State's discretion, funds allocated under the STP for highways and transit in rural areas may be used for any capital transit project eligible for assistance under 49 U.S.C. Chapter 53, and for vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus. Certain other program funds, for example, Congestion Management and Air Quality (CMAQ), may also be used for either highway or transit projects. These flexible funding sources may be used to supplement the nonurbanized formula program. When the State decides to use flexible funds for rural public transit, the funds are transferred and managed within the Section 5311 program of projects.
- k. State Infrastructure Banks (SIB). SAFETEA-LU established a new State Infrastructure Bank (SIB) program under which all States, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are authorized to enter into cooperative agreements with the Secretary of Transportation to establish financial entities that provide various types of transportation infrastructure credit assistance for fiscal years 2005–2009. This new program is a continuation and expansion of similar programs created by the National Highway System Act of 1995 (Pub. L. 104-59) and TEA-21. It gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. The program provides greater flexibility to the States by allowing other types of project assistance in addition to grant assistance. Section 5311 funds may be used to capitalize a SIB, as specified at 23 U.S.C. § 610(d)(2).

6. COORDINATION WITH OTHER FEDERAL PROGRAMS.

- a. The Coordinating Council on Access and Mobility. The Interagency Transportation Coordinating Council on Access and Mobility (CCAM), comprised of 11 Federal departments and agencies, was established by Executive Order 13330, "Human Service Transportation Coordination," signed by President George W. Bush on February 24, 2004. The members consist of the Secretaries of the U.S. Departments of Transportation, Health and Human Services, Labor, Education, Agriculture, Housing and Urban Affairs, Interior, the Commissioner of Social Security, Veterans Affairs, and the Attorney General, and the National Council on Disabilities. The CCAM coordinates 62 Federal programs providing transportation funding for older Americans, persons with disabilities and low-income populations that do not have access to or cannot use automobile transportation options.

The Executive Order requires that CCAM members work together to provide the most appropriate, cost effective services within existing resources, and reduce duplication to make funds available for more services. The CCAM is tasked with seeking ways to simplify access to transportation services for persons with disabilities, persons with lower incomes, and older adults.

To implement the Executive Order, the CCAM launched United We Ride to break down the barriers between programs and set the stage for local partnerships that generate common sense solutions and deliver A-plus performance for everyone who needs transportation. United We Ride has been working with States and communities to address gaps and needs related to human service transportation in their geographic regions. This includes assistance with the development of action plans or taking steps to implement an existing action plan.

Coordination Councils at the State and local levels include participation from public and private transportation providers, human service providers, and consumers, including individuals with disabilities. These councils are actively working on identifying needs, resources, and gaps for individuals with disabilities and others who require assistance with transportation services.

- b. Other Interagency Coordination. FTA encourages State DOT participation in other interagency efforts such as the State Rural Development Councils.
- c. Meal Delivery for Homebound Individuals. Public transportation service providers receiving Section 5311(c) funds may coordinate and assist in regularly providing meal delivery service for homebound individuals, if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

CHAPTER III:

GENERAL PROGRAM INFORMATION

1. APPORTIONMENTS.

- a. Designated State Agency. The chief executive officer of each State designates an agency with the requisite legal, financial, and staffing capabilities to receive and administer Federal funds under this program. The designated State agency is the grantee for all Section 5311 funds within the State except those FTA awards directly to tribes, whether it applies on its own behalf or on behalf of subrecipients. Existing designations remain in effect until changed by official notice of redesignation to the Federal Transit Administration (FTA) regional administrator. The term chief executive officer of a State includes the designee of the chief executive officer.
- b. Apportionment of Section 5311 Funds. SAFETEA-LU makes available from the Mass Transit Account of the Highway Trust Fund to carry out Section 5311 Nonurbanized Area Formula Program \$388,000,000 for fiscal year 2006, \$404,000,000 for fiscal year 2007, \$438,000,000 for fiscal year 2008, and \$465,000,000 for fiscal year 2009.

Funding for the Tribal Transit Program, 0.5% for oversight activities, and 2% for the Rural Transportation Assistance Program (RTAP) will be taken off the top before amounts are apportioned to the States.

Section 5311 funds are apportioned to the States by a statutory formula using the latest available U.S. decennial census data.

Twenty percent of the funds are allocated by the ratio of nonurbanized land area of each State to the nonurbanized land area of all of the States with no State receiving more than 5% percent of these funds. Eighty percent are allocated by the ratio of the nonurbanized population of each State to the nonurbanized population of all of the States.

In addition to the funds made available to States under Section 5311, approximately 16% of the funds authorized for the new Section 5340 Growing States and High Density States formula factors will be apportioned to States for use in nonurbanized areas and merged with the Section 5311 apportionment.

The Section 5311 program apportionments and RTAP allocations to the States are published in the *Federal Register* annually, approximately 10 days after the Department Of Transportation (DOT) Appropriation Act is signed.

- c. Funds Availability. Section 5311 funds remain available to the States for obligation for three fiscal years, beginning with the year of apportionment plus two additional years. For example, funds apportioned to a State in FY 2006 will lapse at the end of FY 2008 unless obligated under Section 5311 or transferred to the Section 5307 program and then obligated for urbanized areas under 200,000 population. Unobligated funds which have

lapsed in a particular State are included in a subsequent FTA apportionment to all the States.

Funds which are deobligated from an approved program of projects remain available to the State for reobligation during the time period in which the funds were originally available to the State. Funds deobligated after the period of availability lapse to the State and are reapportioned by FTA among all the States.

If a State has carryover funds available, it should obligate the oldest funds first. If a grant contains funds from more than one fiscal year, FTA will generally disburse the oldest funds first. However, if a grant included funds restricted to non-operating projects (for example, transfer of flex funds) restricted funds would be disbursed for a capital drawdown, even if older non-restricted funds remained available in the grant.

Procedures for revising an approved program of projects are described in Chapter IV. Many revisions can be made without changing the scope of the program of projects. Those revisions that do change the scope can only be made so long as there are sufficient undisbursed funds remaining that are within their period of availability.

- d. Transfer of Apportionments Under Different Programs. Funds may be transferred to and from certain other programs to balance State transit and highway needs. The transfer of funds from other programs to Section 5311 does not increase the amount of funds required to be expended for intercity bus.

- (1) Notification of Transfer. The State initiates the transfer of FTA funds by notifying FTA regional administrator of the intent to transfer funds. For transfers of Section 5307, 5310, 5316 and 5317 funds to the State's apportionment for Section 5311, this notice should include the following: amount of funds to be transferred; fiscal year in which they were apportioned; program section(s); and contact information if questions arise that must be addressed prior to processing funds. For Sections 5310, 5316, and 5317, the request must also include the specific competitively selected 5311 projects to which the funds are to be applied.

For transfers of flexible funds, the State must notify both the Federal Highway Administration (FHWA) and FTA and request FHWA to transfer the funds. The State must notify FTA's regional administrator when the State expects FTA to obligate the transferred funds. Procedures for initiating flexible fund transfers can be found in Appendix D.

- (2) Transfer of Section 5307 Funds to Section 5311. The Governor may transfer any amount of the State's apportionment for urbanized areas under 200,000 population to any urbanized area in the State, or to supplement the State's Section 5311 program. The Governor may make such transfers only after consultation with responsible local elected officials and publicly owned operators of mass transportation services, including public agencies having service agreements with private providers of public transportation services, in each area to which the funding was originally apportioned.

The Governor may transfer funds without consultation within the last 90 days in which the funds are available for obligation.

If Section 5307 funds are transferred to supplement a State's Section 5311 apportionment, the funds are treated as additional Section 5311 funding and all the requirements of Section 5311 apply. Two conditions, however, follow the Section 5307 funds when they are transferred to Section 5311.

- (a) The transfer of Section 5307 funds to Section 5311 does not increase the amount of Section 5311 funds which may be used for State administration, planning, and technical assistance, with no local share. This is limited to 15% of the State's original Section 5311 apportionment. However, funds transferred from Section 5307 may be used for planning activities without respect to the cap, with a Federal share not to exceed 80%.
 - (b) The period of availability of the transferred funds remains that of the Section 5307 apportionment, one year longer than the same year's Section 5311 apportionment.
- (3) Transfer of Section 5310/5316/5317 Funds to Section 5311. Section 5310 (the Elderly and Individuals with Disabilities), 5316 (Job Access and Reverse Commuter) and 5317 (New Freedom) program funds may be transferred to the Section 5311 but only to implement projects competitively selected under these programs. The purpose of the transfer provision under SAFETEA-LU is for administrative streamlining of grant making, not to supplement the resources available under the Formula Grants for Other than Urbanized Areas Program. FTA has established new scope codes: (641) to track Section 5310 projects, (646) for Section 5316 projects, and (647) for Section 5317 projects included within a Section 5311 grant. Transfer to Section 5311 is permitted but not required. FTA will also award stand-alone Section 5310/5316/5317 grants with the appropriate Section code in the project number to the State.
- (4) Transfer of Section 5311 Funds to 5307. The Governor may also transfer Section 5311 funds to supplement Section 5307 funds apportioned to the State for urbanized areas under 200,000 population. Transferred Section 5311 funds may not be used for urbanized areas with populations of 200,000 and over. While there is no statutory requirement for local consultation, FTA expects that any transfers would be made in consultation with the State agency that administers Section 5311. Transferred funds are subject to any limitations applicable to the original apportionment of the funds, not of the receiving program. Transfer of part of a State's Section 5311 apportionment to Section 5307 does not reduce the amount of the Section 5311 apportionment subject to the intercity bus requirement, nor does it reduce the amount of Section 5311 funds which may be used for State administration of the Section 5311 program. The use of the sliding scale match is not allowed for transferred Section 5311 funds obligated in a Section 5307 grant. The period of availability of the transferred funds is that of the Section 5311 apportionment (three years).

- (5) Transfer of FHWA Flexible Funds. Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, and certain other “flexible” funds, may be transferred from FHWA to FTA for use by the State for transit projects. Projects in rural areas and urban areas of less than 50,000 population (excluding projects on the National Highway System (NHS) and projects funded with Bridge and Interstate Maintenance funds) are selected by the State in cooperation with affected local officials. STP, CMAQ, or other flexible funds transferred to Section 5311 are treated under the program requirements applicable to Section 5311, with limited exceptions. Capital and project administration are eligible with an 80% Federal share or applicable sliding scale share for eligible States. Up to, but no more than, 15% percent of the transferred funds may be used for State administration, including planning and technical assistance. No local share is required for State administration. The period of availability of flexible funds transferred to Section 5311 is three years.

Since planning for both transit and highways is eligible under FHWA’s formula programs, flexible funds to be used for a rural transit planning project should not be transferred to Section 5311, where they become subject to the cap on State administration which limits the use of the funds for planning.

- e. Consolidation of Grants to Insular Areas. FTA grants to insular areas may be consolidated under the provisions of 48 U.S.C. § 1469a. This provision permits Federal agencies to streamline and consolidate certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. These insular areas receive Section 5311 apportionments and RTAP allocations annually as well as Section 5310, 5316, and 5317 funds. Specifically, 48 U.S.C. § 1469a permits:
- (1) Federal agencies to consolidate any or all grants to each of the insular areas and to waive requirements for matching funds, applications, and reports with respect to the consolidated grants, and
 - (2) Each insular area to use the consolidated grant funds for any purpose or program authorized for any of the consolidated grants.

FTA implements this consolidation of Section 5310, 5311, 5316, and 5317 funding into a single grant by transferring funds from one Section to another, similar to the transfer of funds between Section 5311 and Section 5307 for small urbanized areas described above. The insular areas may transfer all or a portion of the funds apportioned for Section 5310, 5316, or 5317 to Section 5311 for use under any of these Sections. This should improve the efficiency of grant making and grant management for these areas which have small staff resources and receive small amounts of funds under each of these programs. Those insular areas interested in submitting applications for consolidated grants should notify the appropriate FTA regional office for application procedures and consolidation requirements. Among other things, the area should identify the intended use of consolidated funds and should document that the transportation of the elderly individuals and individuals with disabilities will not be adversely affected.

In addition, 48 U.S.C. § 1469a(d) allows a Federal agency to waive any local matching share requirements for grants to insular areas. FTA has no authority under 48 U.S.C. § 1469a to waive any cross-cutting requirements, such as Buy America or drug and alcohol testing.

2. ELIGIBILITY.

- a. Eligible Recipients. Eligible recipients include a State or a Federally recognized Indian tribe. Eligible subrecipients include a State or local governmental authority, a nonprofit organization, or an operator of public transportation or intercity bus services. The definition of local governmental authority includes both Federally recognized and other Indian tribes. Eligible nonprofit organizations may also serve tribal transportation needs. Private for-profit operators of transit services or intercity bus services may participate in the program as third party contractors for direct recipients or subrecipients, or as subrecipients. State agencies may further limit subrecipient eligibility requirements in order to comply with State laws or to further program goals.
- b. Tribes as Direct Recipients. A Federally recognized tribe is defined as an eligible direct recipient. Once the State has notified a Federally Recognized Indian Tribe of the selection of its project(s) and the amount of funds to be allocated to the Tribe from the State's apportionment, the Tribe will then need to decide whether to receive funds as a subrecipient of the State or apply directly to FTA. If the Tribe notifies the State of its intent to become a direct recipient, the State will notify FTA by letter of the project(s) and amount of funds that have been allocated to the Tribe.

As a direct recipient of Section 5311 funds not derived from the Section 5311(c) Tribal Transit Program, the responsibilities of the tribe include all management requirements of the program as well as compliance with all terms and conditions of FTA's standard grant agreements.

- c. Eligible Service and Service Areas. Section 5311 funds can be used for public transportation projects and intercity bus transportation projects in areas other than urbanized areas. Public transportation is defined to mean mass transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation. Limitations on the provision of charter and school service are described in Chapter X, Other Provisions. A State must spend at least 15% of its Section 5311 apportionment to develop and support intercity bus transportation. Guidance on funding for intercity bus transportation is found in Chapter VIII of this circular.

The purpose of Section 5311 assistance is the provision of public transportation services and maximum feasible coordination with other rural transportation services. Incidental use of a Section 5311 vehicle for non-passenger transportation on an occasional or regular basis, for example, package delivery, must not result in a reduction of service quality or availability of public transportation service. This policy on incidental use does not preclude the use of Section 5311 assistance to support the transportation of passengers by a private provider not primarily engaged in passenger transportation, for

example a contract mail carrier which incidentally provides intercity passenger transportation provided that the carrier has appropriate regulatory authority to carry passengers.

Section 5311-funded services may be designed to maximize use by members of the general public who are transportation-disadvantaged persons, including elderly individuals and individuals with disabilities. Coordinated human service transportation which primarily serves elderly individuals and individuals with disabilities, but which is not restricted from carrying other members of the public, is considered open to the general public if it is advertised as public transportation service.

Transit service providers receiving assistance under Section 5310 or Section 5311 may coordinate and assist in providing meal delivery service for homebound individuals on a regular basis if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. It is expected that the operating costs attributable to meal delivery will be borne by the nutrition program which provides the meals. Section 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

The terms “nonurbanized areas”, “rural”, and “rural and small urban areas” are used synonymously to mean any area outside of an urbanized area, as designated by the Bureau of the Census. An urbanized area consists of a core area and the surrounding densely populated area with a total population of 50,000 or more, with boundaries fixed by the Bureau of the Census. Areas not currently within the urbanized area are eligible for Section 5311 funding even if they are included within the metropolitan area planning boundary, which includes the surrounding area expected to be urbanized within twenty years and/or the air quality non-attainment boundary.

Since the goal of Section 5311 is to enhance the overall mobility of people living in nonurbanized areas, Section 5311 projects may include transportation to and from urbanized areas.

The service area may include destinations across a State line. Operators of interstate service may also be required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations.

- d. Joint Urbanized and Nonurbanized Projects. In some localities, a subrecipient receives both Section 5307 and Section 5311 funding to provide public transportation for an urbanized area and surrounding nonurbanized areas. Section 5311 funds should be used only to assist the nonurbanized portion of those localities. Because of the wide range of circumstances under which an operator could be providing services in both urbanized and nonurbanized areas, FTA expects the subrecipient to develop a reasonable basis for allocating operating costs between the two funding sources which is related to the service provided. This procedure should also be applied to “joint” capital projects. Likewise in the interest of flexibility and coordination, vehicles purchased under either program may be used in any part of a combined urbanized and nonurbanized service area, but capital

replacement policies should ensure that program funds are used appropriately. Where there is a question, FTA would look to the State to make a determination as to the reasonableness of the cost allocation methodology. Section 5307 program information is contained in the most recent version of FTA Circular 9030.

e. Eligible Assistance Categories.

- (1) State Administration, Planning, and Technical Assistance. The State may use an amount not to exceed 15% of its apportioned Section 5311 funds, including funds apportioned under Section 5340 but not the RTAP allocation, to administer the program and to provide technical assistance to subrecipients. Allowable administrative costs include salaries, overhead expenses, supplies, and office equipment used to administer the program. Allowable technical assistance costs may include project planning, program development, development of vehicle and equipment specifications, management development, coordination of public transportation programs (public and private for-profit and non-profit), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in nonurbanized areas. No local share is required for these expenses. The State may pass any portion of these funds on to subrecipients for the same purposes and, at its discretion, may impose a local share requirement.

The eligibility of planning costs is limited to funds within the 15% State administration cap, with several limited exceptions. As described in Chapter VIII, planning and marketing for intercity bus services funded with a 20% local share is not limited by the 15 percent cap on State administrative expenses. Planning is also an unlimited eligible use of funds transferred from Section 5307, with a 20% local share required. Flex funds transferred into Section 5311, however, are subject to a 15% limitation on planning and other State administration activities, with no local share required.

While many administrative and technical assistance activities useful to the State may also be funded as RTAP projects, those technical assistance activities more directly related to the administration of the Section 5311 program, such as conducting procurements and monitoring subrecipients are more appropriately funded as State administration expenses, with RTAP being used to deliver training and technical assistance needed by rural providers.

FTA treats the limitation on State administration as applicable to Section 5311 funds apportioned to the State over time, not necessarily to the apportionment for a particular fiscal year. FTA encourages the State to include all the available State administration funds they intend to use routinely in each annual grant application. However, a State may accumulate the "entitlement" to State administration within the period of availability of the funds to augment the funds available for a special administrative need in a subsequent year, such as a major planning study for which current year administrative funds would be insufficient. The period over which the cap is accumulated may not exceed three years. If a State includes planning or State

administration expenses in excess of the 15% limitation in its grant application, it should document the unused State administration cap from prior years available to augment the cap in the current apportionment.

- (2) Capital expenses. Capital expenses include the acquisition, construction and improvement of public transit facilities and equipment needed for a safe, efficient and coordinated public transportation system as well as mobility management.

Examples of eligible capital expenditures include, but are not limited to:

- (a) buses;
- (b) vans or other paratransit vehicles;
- (c) radios and communications equipment;
- (d) passenger shelters, bus stop signs, and similar passenger amenities;
- (e) wheelchair lifts and restraints;
- (f) vehicle rehabilitation, remanufacture, or overhaul;
- (g) preventive maintenance, defined as all maintenance costs;
- (h) extended warranties which do not exceed industry standards;
- (i) the public transportation portion of ferry boats and terminals;
- (j) operational support such as computer hardware or software;
- (k) installation costs, vehicle procurement, testing, inspection and acceptance costs;
- (l) construction or rehabilitation of transit facilities including design, engineering and land acquisition;
- (m) facilities to provide access for bicycles to transit facilities or equipment for transporting bicycles on transit vehicles;
- (n) lease of equipment or facilities when lease is more cost effective than purchase. Note that when lease of equipment or facilities is treated as a capital expense, the State must establish criteria for determining cost effectiveness, in accordance with FTA Regulations, "Capital Leases," 49 C.F.R. Part 639;
- (o) the capital portion of costs for service provided under contract. Such costs are commonly referred to as the "capital cost of contracting" and include depreciation, interest on facilities and equipment, as well as those allowable capital costs that would otherwise be incurred directly, including maintenance. Under this provision, only privately owned assets are eligible. No capital assets

(vehicle, equipment, or facility) that have any remaining Federal interest in them, nor items purchased with State, or local government assistance, may be capitalized under the contract. Costs incurred in the provision of services ineligible for FTA assistance such as charter or school bus service may not be capitalized under the contract. Capital costs of contracting may be computed as a fixed percentage of the contract without further justification, as detailed in Appendix G;

- (p) joint development projects. The definition of joint development projects in 49 U.S.C. § 5302(a)(1)(g) has been expanded by Section 3004 of SAFETEA-LU to include “construction, renovation, and improvement of intercity bus and intercity rail stations and terminals.” Further, the limitation that made “commercial revenue-producing facilities” ineligible for FTA assistance has been lifted with respect to intercity bus stations or terminals. Intercity bus stations and terminals are no longer required to provide a fair share of revenue for public transportation that will be used for public transportation. The result of these changes is that FTA funds can now be used for all aspects of intercity bus and rail facilities in facilities (such as intermodal terminals) which meet the criteria in Section 5302(a)(1)(G) for joint development projects (physical or functional relationship to public transportation);
 - (q) the introduction of new technology, through innovative and improved products, into public transportation;
 - (r) mobility management, consisting of short-range planning, management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental authority, but excluding operating expenses;
 - (s) crime prevention and security; including projects to refine and develop security and emergency response plans; projects aimed at detecting chemical and biological agents in public transportation; the conduct of emergency response drills with public transportation agencies and local first response agencies; and security training for public transportation employees; but excluding all expenses related to operations, other than such expenses incurred in conducting activities described above;
 - (t) transit related intelligent transportation systems; and
 - (u) the provision of ADA paratransit service (may not exceed 10% of the State’s annual apportionment of Section 5311 and may be used only by recipients that are in compliance with ADA requirements for both fixed route and demand-responsive service).
- (3) Operating Expenses. Operating expenses are considered those costs directly related to system operations. At a minimum, the following items must be considered

operating expenses: fuel, oil, drivers' salaries and fringe benefits, dispatcher salaries and fringe benefits, and licenses.

Maintenance may be treated as either operating or capital for funding purposes, at the State's discretion. Likewise, for the Section 5311 program only, FTA gives the State the option of classifying certain other expenses as either operating or non-operating (project administration). Even if these expenses are eligible to be funded at the capital match, they may be classified as operating expenses in the transportation provider's internal accounting system, under generally accepted accounting principles. For funding purposes, the same cost may not be counted twice.

Net operating expenses are those expenses that remain after operating revenues are subtracted from eligible operating expenses. At a minimum, operating revenues must include farebox revenues. States may further define what constitute operating revenues. Farebox revenues include fares paid by riders who are later reimbursed by a human service agency, or other user-side subsidy arrangements, but do not include payments made directly to the transportation provider by human service agencies. When a college, university or similar institution assesses a voluntary or mandatory fee on all its students for reduced fare or free transit services, the State may define whether the fee-based payment to the transit provider is farebox revenue. FTA will defer to the State's judgment.

Operating assistance projects of up to two years' duration may be included in the annual program of projects. Operating costs incurred as of the beginning of the local fiscal year but prior to grant award may be approved for reimbursement.

- (4) Project Administrative Expenses. Under the Section 5311 program, the State has the option to treat project administrative expenses incurred by a local provider as a separate cost category from either capital or operating expenses. This allows administrative expenses to be considered "non-operating" expenses, which may be funded up to the 80% Federal share.

Eligible project administrative costs may include, but are not limited to, general administrative expenses such as salaries of the project director, secretary, and bookkeeper; marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing. Administrative costs for promoting and coordinating ridesharing may be eligible if the activity is part of a coordinated public transportation program. Interest on short-term loans for operating assistance is an eligible administrative expense if approved by the State.

3. FEDERAL/LOCAL MATCHING REQUIREMENTS.

- a. Capital and Project Administration. The Federal share of eligible capital and project administrative expenses may not exceed 80% of the net cost of the project. There are three exceptions to the 80% match for capital projects.

- (1) Bicycle Projects. Under 49 U.S.C. § 5319, the Federal share may be 90% for those capital projects used to provide access for bicycles to transit facilities, or to install racks or other equipment for transporting bicycles on transit vehicles.
- (2) ADA and Clean Air Act. Under 49 U.S.C. § 5323(i), the Federal share may also be 90% for vehicle-related equipment or facilities required by the Americans with Disabilities Act of 1990 (ADA) or vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the Clean Air Act, as amended (CAA). According to 49 U.S.C. § 5323(i), it is only the incremental cost of the equipment required by the ADA or CAA that may be funded at 90%, not the entire cost of the vehicle, even if the vehicle is purchased for use in service required by the ADA or CAA. Alternatively, for administrative simplicity FTA allows grantees to compute the Federal share at 83% for accessible vehicles. For facilities, FTA will consider the incremental cost of the ADA or CAA equipment on a case by case basis.
- (3) Sliding Scale. Higher Federal share rates for capital costs are available to 14 States described in 23 U.S.C. § 120(b). The higher Federal shares pursuant to 23 U.S.C. § 120 (b)(1), shown in Table 1, are based on the ratio of designated public lands area to the total area of these 14 States. For FTA capital grants, the Federal share increases from 80% in proportion to the share of public lands in the State. For FTA operating grants in these same States, the Federal share increases from 50% to 62.5% (5/8) of the rate for capital grants.

Table 1: Sliding Scale Rates for FTA Section 5311 Grants (23 U.S.C. § 120 (b)(1))
(Numbers represent the maximum Federal share, as a percentage of net project cost.)

State	Sliding Scale Rate for Transit Capital Grants	Sliding Scale Rate for Transit Operating Grants	State	Sliding Scale Rate for Transit Capital Grants	Sliding Scale Rate for Transit Operating Grants
Alaska	90.97	56.86	Nevada	94.89	59.31
Arizona	90.49	56.55	New Mexico	85.44	53.40
California	83.57	52.23	Oregon	84.63	52.90
Colorado	82.79	51.75	South Dakota	81.95	51.22
Hawaii	81.30	50.81	Utah	89.52	55.95
Idaho	84.97	53.11	Washington	81.42	50.89
Montana	82.75	51.72	Wyoming	86.77	54.23
<i>Source: FHWA Notice N 4540.12, Attachment 1 (3/17/1992)</i>					

Additional higher Federal share rates are shown in Table 2 and are based on the ratio of the area of nontaxable Indian land, public domain lands (reserved and unreserved), national forest, and national parks and monuments to the total area of each State. These rates are available only for States that have already in place signed agreements with FHWA pursuant to 23 U.S.C. § 120(b)(2). For FTA Section 5310 and 5311 projects, any State having such an agreement with FHWA is eligible for the higher federal match permitted in Section 120(b)(2). States may not enter into new Section 120(b)(2) agreements with FTA for Section 5310 or 5311 grants. In the absence of a Section 120(b)(2) agreement with FHWA, Section 120(b)(1) sets the sliding scale rates for Section 5310 and 5311 grants.

Table 2: Sliding Scale Rates for FTA Section 5311 Grants

(Numbers represent the maximum Federal share, as a percentage of net project cost.)

State	Federal Share of 5311 Capital Grants	Federal Share of 5311 Operating Grants	State	Federal Share of 5311 Capital Grants	Federal Share of 5311 Operating Grants
Alabama	80.4	50.25	Nebraska	80.18	50.11
Alaska	94.95	59.34	Nevada	95	59.38
Arizona	94.3	58.94	New Hampshire	82.45	51.53
Arkansas	81.55	50.97	New Jersey	80.14	50.09
California	88.53	55.33	New Mexico	87.92	54.95
Colorado	87.31	54.57	New York	80.1	50.06
Connecticut	80.04	50.03	North Carolina	80.98	50.61
Delaware	---	--	North Dakota	80.93	50.58
Florida	81.93	51.21	Ohio	80.16	50.10
Georgia	80.48	50.30	Oklahoma	80.58	50.36
Hawaii	82.48	51.55	Oregon	89.73	56.08
Idaho	92.66	57.91	Pennsylvania	80.38	50.24
Illinois	80.15	50.09	Rhode Island	80.05	50.03
Indiana	80.17	50.11	South Carolina	80.63	50.39
Iowa	80	50.00	South Dakota	82.82	51.76
Kansas	80.05	50.03	Tennessee	80.66	50.41
Kentucky	80.58	50.36	Texas	80.22	50.14
Louisiana	80.41	50.26	Utah	93.23	58.27
Maine	80.28	50.18	Vermont	81.08	50.68
Maryland	80.11	50.07	Virginia	81.5	50.94
Massachusetts	80.12	50.08	Washington	86.5	54.06
Michigan	81.83	51.14	West Virginia	81.36	50.85
Minnesota	81.42	50.89	Wisconsin	81.11	50.69
Mississippi	80.83	50.52	Wyoming	90.49	56.56
Missouri	80.69	50.43	District of Columbia	83.15	51.97
Montana	86.58	54.11	Puerto Rico	80.25	50.16

*Including National Forests, national parks and monuments

Source: FHWA Notice N 4540.12, Attachment 1 (3/17/1992)

- b. Operating Expenses. With respect to operating expenses, 49 U.S.C. § 5311(g)(2) provides that the Federal share shall not exceed 50% of the net operating cost of the project. For States eligible for the sliding scale match under 23 U.S.C. § 120(b), the Federal match for operating assistance is set at 62.5% of the match for capital projects in those States (see Tables 1 and 2 above).

Pursuant to Subsection 5311(g)(3)(A), funds received pursuant to a service agreement with a State or local social service agency or a private social service organization may be used as local match.

Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5311 operating assistance. In either case, the cost of providing the contract service is included in the total project cost.

The manner in which a subrecipient applies income from human service agencies to a project affects the calculation of net operating expenses and, therefore, the amount of Section 5311 operating assistance the project is eligible to receive. A State's method of sub-allocating its apportionment among its subrecipients is a discretionary action, subject only to the statutory requirements described in this circular. While a State may not prohibit a subrecipient from using income from human service agency contracts as a source of local match according to Subsection 5311(g)(5), the State may elect to regard the degree to which a subrecipient demonstrates local financial commitment to the project from other sources of local funds as a rating factor in its discretionary allocation decisions.

- c. State Administration and RTAP. No local share is required for State administration and RTAP.
- d. Sources of Local Match. Pursuant to Subsection 5311(g)(3), the remainder of net project costs:

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; (B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the [U.S.] Department of Transportation) that are eligible to be expended for transportation; and (C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by Section 204 of title 23.

Examples of non-Federal sources of local match which may be used for any or all of the local share include: State or local appropriations; dedicated tax revenues; private donations; and net income generated from advertising and concessions. Non-cash shares such as donations, volunteered services or in-kind contributions are eligible to be counted toward the local match only if the value of each is formally documented and supported, and represents a cost which would otherwise be eligible under the project. Guidance on this subject is provided in the Federal administrative rules for grants and cooperative agreements at 49 C.F.R. Parts 18 and 19. The value of in-kind contributions is included in net project cost to the extent it is used as local match.

Funds from other Federal agencies (non-DOT) may be used for the entire local match if they are made available to the grantee for the purposes of the project. The only

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Department of Transportation (DOT) funds that can be used for local match for Section 5311 projects are from the Federal Lands Highway program cited. Section 5310 funds used to purchase service from a Section 5311 subrecipient can not be used to match Section 5311 program fund.

CHAPTER IV:

PROGRAM DEVELOPMENT

1. FAIR AND EQUITABLE DISTRIBUTION. The program of projects the State submits to the Federal Transit Administration (FTA) for approval must provide for fair and equitable distribution of the apportionment in the State, including Indian reservations, as well as maximum feasible coordination with other public transportation services assisted by other Federal sources. The Tribal Transit Program funds set aside for Indian tribes are not meant to replace or reduce funds that Indian tribes receive from States through the Section 5311 program but are to be used to enhance public transportation on Indian reservations and other tribal transit services. FTA encourages the States to use the dramatic increase in funding for rural transit under SAFETEA-LU to support expansion of transit service to areas not currently served and to improve the level of service or coverage in areas which currently have minimal service.
2. PLANNING REQUIREMENTS. With limited exceptions, all Federal funds to be used for highway or transit projects must be included in a Statewide Transportation Improvement Program (STIP) pursuant to 23 U.S.C. § 135 and 49 U.S.C. § 5304. Section 5311 funds must be included in the STIP. Unlike the annual program of projects the State submits with its grant application, the STIP generally covers four program years. For the purposes of the STIP, the State may group its planned expenditures of Section 5311 and Rural Transportation Assistance Program (RTAP) funds into broad statewide projects such as vehicle acquisition for rural and small urban transportation services, operating assistance, intercity bus projects, facility construction, State administration, and training and technical assistance, or show the Section 5311 apportionment as one aggregate project.

Metropolitan planning organizations (MPOs) are responsible for transportation planning and programs in metropolitan areas. Where Section 5311 projects are being proposed within the MPO's current planning/study area boundaries, which may include areas that are currently nonurbanized but are expected to become urbanized within twenty years, then these projects must be included in the MPO's Transportation Improvement Program (TIP). While the State is ultimately responsible for distribution of nonurbanized formula funds within the State, Section 5311 projects within the metropolitan area planning boundaries of a Transportation Management Area (certain urbanized areas over 200,000) should be selected by the MPO in cooperation with the State.

For further guidance on planning, programming and project selection see the joint Federal Highway Administration (FHWA)/FTA planning regulations at 23 C.F.R. Part 450 and 49 C.F.R. Part 613.

3. NOTICE AND PUBLIC HEARINGS. 49 U.S.C. § 5323(b) requires applicants to provide an adequate opportunity for public review and comment on a capital project that will substantially affect a community, or the public transportation services of a community; after providing notice to hold a public hearing on the project if the project affects significant economic, social, or environmental interests; to consider the economic, social, and

environmental effects of the project; and to find that the project is consistent with official plans for developing the community.

Compliance with this requirement is included in the annual certifications and assurances signed by the State. Evidence that the applicant has complied is included in the environmental record for the capital project. See Chapter X, Part 4 for more details.

4. INTERCITY BUS CONSULTATION REQUIREMENT. Section 5311(f) requires each State to spend 15% of its annual Section 5311 apportionment “to carry out a program to develop and support intercity bus transportation,” unless the Governor certifies that “the intercity bus service needs of the State are being met adequately.” SAFETEA-LU requires a State to consult with intercity bus providers before the Governor certifies. The required percentage applies only to the amount of FTA’s announced annual apportionment of Section 5311 funds to the State, not to any funds the State subsequently transfers to its nonurbanized area formula program from another program. Further information on intercity bus consultation can be found in Chapter VIII.
5. PROGRAM OF PROJECTS. The program of projects identifies the subrecipients and projects for which the State is applying for financial assistance. The Section 5311 annual program of projects submitted to FTA for approval must indicate the total number of subrecipients; identify each subrecipient and indicate whether they are governmental authorities, private non-profit agencies, or private providers of transportation services; and identify any that are Indian tribal governments or tribal transit agencies. In addition, the program of projects must include a brief description of each project which includes the counties served and any tribal transportation needs served by the project. For each project, the total project cost and the Federal share must be shown.

The projects to support intercity bus transportation required by Section 5311(f) should be grouped together and subtotaled. Specific RTAP projects should also be described, within the broad areas of eligibility. Information for developing a RTAP program of projects is contained in Chapter IX of this circular. Projects transferred from other FTA programs (Job Access and Reverse Commute, New Freedom, and the Elderly and Individuals with Disabilities) should also be included and grouped together by program. The program of projects also includes any funds the State will use for planning, technical assistance, and administration, within the 15% limitation, and any other projects the State will conduct directly.

The total Federal funding level for the program of projects cannot exceed the total amount of Section 5311 funds available, including funds from the current fiscal year apportionment, unobligated carryover funds from previous years and funds transferred from other FTA programs or flexible funds for highway or transit. Upon submission of the annual program of projects and other application requirements, FTA will review, approve, and obligate funds for the total amount of funds available. In general, States should not include projects that will extend for more than two years in duration. Exceptions to this should be discussed with the regional office. Grants not fully implemented within two years are subject to being terminated and closed out by FTA and the remaining funds deobligated.

- a. Categories of Approval. FTA's approval of a program of projects does not reflect unconditional approval of all projects within the program. Nor does FTA's approval of a program of projects reflect unconditional approval of all prospective subrecipients identified in the program. FTA recognizes that not all projects in a State program of projects may be at the same stage of development, and therefore, not all applications to the State may be complete at the time the State forwards its annual program of projects to FTA. FTA also recognizes that all subrecipients identified in the program of projects may not yet be in compliance with all applicable Federal requirements. To expedite grant award, FTA allows States to separate projects and funds included in its program of projects into three different categories, depending on how completely Federal requirements have been met.
- (1) Category A. This category includes those projects certified by the State as having met all the Federal statutory and administrative requirements for approval applicable to both the project activities and subrecipient that will carry out those activities. Upon grant award, FTA's approval of Category A projects is unconditional. Upon execution of the grant, the State may start drawing down funds to implement projects in Category A. Most, if not all, of the projects included in the State's program of projects are expected to be in this category.
 - (2) Category B. Projects in Category B are those the State anticipates approving during the current year, but which have not yet met all Federal statutory and/or administrative requirements, such as certification by the State to the Department of Labor that the special labor protection warranty has been signed, or, in the case of a major capital project other than vehicle purchase, completion of the environmental review process, or are proposed to be implemented by a subrecipient that has not yet met all applicable Federal requirements. When the necessary Federal requirements have been satisfied for a project, FTA's approval of that project becomes unconditional, and the State may advance the project to Category A. Cash drawdowns for that project may commence after the State advances it to Category A. In addition, any Category B project that does not qualify as a categorical exclusion under 23 C.F.R. § 771.117(c) requires environmental clearance from FTA before being advanced to Category A. (See Chapter X, Other Provisions, for information regarding categorical exclusions.) If a State can list all of its projects in Category A, it would not list any projects in Category B.
 - (3) Category C. Category C consists of funds to finance as yet unidentified Section 5311 projects not included in the State's program of projects submitted with its grant application. The category was established to enable States to obligate the entire annual apportionment at one time, even if the State has not designated all the projects for which its entire Section 5311 apportionment should be used at the time of application to FTA. For example, if the State cannot immediately identify specific projects that would use the entire 15% of the apportionment required to be expended for intercity bus transportation, the remaining intercity bus funds may be listed in Category C designated for intercity bus projects.

This optional Category C represents a “program reserve” and is designed to accommodate unanticipated program needs. It should not be confused with funds for reasonable contingencies for the projects designated in the State program of projects, which the State may include in Category A or B project level budgets, or as a capital or operating contingency set-aside to be allocated among the designated projects as needed. No more than 10% of the total amount obligated in the grant may be included in Category C program reserve. FTA strongly encourages the State not to include more funds in Category C than it reasonably expects to allocate to new projects capable of meeting the applicable Federal requirements or to budget adjustments in existing projects within twelve months. If, in the near future, the State does not expect to select projects for which all its Category C funds will be used, the State should defer obligating those remaining funds until the following year. In any case, Category C funds must be allocated to specific projects within the period of availability of the funds. FTA will deobligate any Category C funds not so allocated within the period of availability. (If a grant contains funds apportioned in more than one fiscal year, FTA assumes that the funds remaining in Category C are the newest funds.) Funds deobligated after the period of availability lapse to the State and are redistributed to all the States in the subsequent year's apportionment. When a State selects projects to be advanced out of Category C, it must notify FTA of the changes to the program of projects. Any new project that does not qualify as a categorical exclusion under 23 C.F.R. § 771.117(b) requires environmental clearance from FTA before funds can be advanced to Category A.

- b. Revisions to Program of Projects. The State may revise an approved program of projects without constituting a change in scope which would require the deobligation and reobligation of funds. The scope of the grant is the approved program of projects in its entirety. The addition of Federal funds to the approved program of projects is a change in the scope of the approved program of projects and requires an amendment of the grant agreement.

For changes that affect the budget line items in the grant budget, the grantee will notify FTA by setting up a budget revision in TEAM. For those changes that only affect the program of projects (POP) the grantee should attach a new POP to the project management milestones section and notify FTA via e-mail that this has been done. Also when submitting their annual program status report the grantee should mention that a new POP was attached on (DATE).

Below are examples of project and funding revisions that do not change the scope of the approved program of projects. Unless FTA notifies the State otherwise, the following levels of notification and FTA approval apply to revisions:

- (1) Revisions Not Requiring Prior Notification or FTA Approval. The State may make the following revisions without any prior notification to or approval by FTA:
 - (a) Delete a project from the program of projects if the project cost is less than the \$250,000 or 10% of the total of the program of projects, whichever is greater;

- (b) Advance projects from Category B to Category A, provided the prospective subrecipient is in compliance with all applicable Federal requirements, and the State has no information suggesting otherwise;
 - (c) Allocate Category C funds to existing projects, if the funds are within their period of availability;
 - (d) Reallocate funds within an approved program of projects among approved projects within a local area or from one local area to another. This includes adjustments of local project funding levels to accommodate changes in vehicle or equipment requirements, including number and type of vehicles and changes in operating costs;
 - (e) Add equipment or property transferred from a subrecipient to another subrecipient listed in the program of projects, regardless of whether the items were originally funded from a different grant;
 - (f) Transfer funds designated for intercity bus projects within the program of projects for use in other intercity bus projects, or to other projects if more than the required percentage has been allocated for intercity bus projects and the transfer of funds to another project would not reduce the intercity funding below the required percentage; and
 - (g) Transfer funds designated for RTAP projects within the program of projects for use in other RTAP projects.
- (2) Revisions Requiring Notification to FTA, But Not FTA Approval. The State may make the following revisions after notifying FTA:
- (a) Allocate Category C funds to new operating assistance projects or capital projects under \$250,000, within the period of availability of funds, provided the prospective subrecipient is in compliance with all applicable Federal requirements, and the State has no information suggesting otherwise;
 - (b) Create new operating assistance projects or capital projects under \$250,000 with funds subtracted from other projects within the approved program, or assign transferred equipment or property to a recipient not previously listed in the program of projects, provided the prospective subrecipient is in compliance with all applicable Federal requirements, and the State has no information suggesting otherwise; and
 - (c) Delete or reduce a project by more than \$250,000 or 10% of the total program of projects, whichever is greater.
- (3) Revisions Requiring FTA Approval. The State may make the following revisions to an approved program of projects only after obtaining approval from FTA:

- (a) Allocate more than over \$250,000, or 10% of the total of the program of projects, whichever is greater, for any new capital project;
 - (b) Change intercity bus projects if the change would result in less than 15% of the annual apportionment being designated for intercity projects. This change can only be made if the Governor certifies that the intercity bus transportation needs of the State are adequately met, as described in Chapter VIII;
 - (c) Advance to Category A any prospective subrecipient with serious questions of compliance with Federal requirements remaining unresolved;
 - (d) Advance to Category A any project that does not meet the NEPA requirements for a categorical exclusion; or
 - (e) Advance to Category A any project for the acquisition of property with a value in excess of \$250,000.
- c. Update to Program of Projects. The most recently updated program of projects submitted by the State to FTA in its annual program status report or in the course of making revisions will be considered the approved program of projects, incorporated by reference in the grant agreement. Only the addition of Federal funds or a change in the scope of the approved program of projects requires amendment of the grant agreement.
- d. FTA's Right to Defer Section 5311 Assistance. If serious questions are raised about the compliance of any subrecipient or project with civil rights requirements, FTA reserves the right to require the State to defer provision of Section 5311 funds to that subrecipient or project until FTA finds the subrecipient or project in compliance or expressly approves the expenditure of Section 5311 funds involving that subrecipient or project.
6. CERTIFICATIONS AND ASSURANCES. In order to receive a grant under Section 5311, the designated State agency must annually assure FTA that certain requirements have been met or will be met by the State and subrecipients. The State should maintain adequate files documenting the basis for all assurances which it makes. Each fiscal year, FTA publishes the required certifications and assurances in the *Federal Register* and updates the certifications and assurances in the Transportation Electronic Award and Management (TEAM) system. The notice indicates which items apply to all grantees or to certain kinds of awards, and which is required for grants under specific sections. The State submits the appropriate certifications and assurances electronically each fiscal year for all grants expected to be made during that fiscal year. See the current year notice for a list of required certifications and assurances. Grantees should use the most recent version FTA has issued, which can be found in TEAM.
7. PRE-AWARD AUTHORITY. FTA allows grantees to incur costs prior to grant award in the formula programs. In order for the pre-award costs to be eligible for subsequent reimbursement, the project must have met all FTA statutory, procedural and contractual requirements, in other words the project must qualify as a "Category A" project in the program of projects. Reimbursement is subject to the availability of funds and grant award.

Specific information is included in FTA's annual apportionment Notice, and in Chapter X, Part 18, of this circular.

8. GRANT AWARD AND PROJECT APPROVAL. FTA awards grants and obligates funds for the total amount the State requests for all three categories and the RTAP program of projects. FTA grant award constitutes FTA approval of the State's annual program of projects. But FTA approval of the Section 5311 program of projects does not constitute unqualified approval of each project in the program. Grant award does constitute FTA approval of those projects in Category A. Thus the State may draw down Federal funds immediately upon execution of the grant agreement. Grant award also constitutes FTA's approval of those projects in Category B on the condition that all applicable Federal requirements will be met. The State must ensure that those requirements are met and advance the projects to Category A before funds can be drawn down to support those projects. In addition, the grant award obligates Federal funds for Category C projects and constitutes approval of Category C projects, not identified at the time of award, that have met or will meet all applicable Federal requirements. The State, however, must allocate Federal funds awarded for Category C within the period of availability of those funds to new or existing projects that have met or will meet all of the necessary statutory and administrative requirements.

CHAPTER V:

LOCAL PUBLIC TRANSIT –HUMAN SERVICES COORDINATION

1. COORDINATION. Under three FTA formula programs (the Elderly and Individuals with Disabilities Program (Section 5310), Job Access and Reverse Commute (Section 5316), and New Freedom (Section 5317)), there is a requirement that the projects must be derived from a locally-developed public transit-human service transportation plan. Although public transit operators, including those funded under both the urbanized and nonurbanized formula programs (Sections 5307 and 5311), are not specifically listed in the coordination provisions, FTA expects them to be included in the local planning process for coordinated public transit-human service transportation in those areas applying for funds under Sections 5310, 5316, or 5317. In addition, intercity bus transportation needs should be considered during the development of the locally developed coordinated public transit-human service transportation plan and FTA encourages the inclusion of private intercity bus operators in the 5310, 5316, 5317 planning process. The intercity bus needs of human service transportation agencies identified in the planning process may help the State with its intercity bus needs assessment.

CHAPTER VI:

PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. **GENERAL**. The basic grant management requirements for State and local governments are contained in the Department of Transportation (DOT) regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18. The comparable U.S. DOT rule for private nonprofit organizations is "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19. Parts 18 and 19 are collectively known as the "Common Rule." The provisions of the common rule apply except where inconsistent with Federal statutes or authorizing legislation.
2. **PROGRAM ADMINISTRATIVE REQUIREMENTS**. The common rule identifies three areas in which the administrative requirements for State grantees and their subrecipients which are governmental authorities may differ from Federal requirements for local government grantees: equipment management, procurement, and financial management systems. The basic intent in these areas is to shift the emphasis from national uniformity to uniformity of procedures and requirements within a State, in order to provide greater flexibility to the States in standardizing the management of related State and Federal programs. The three areas are discussed in detail later in this chapter. Part 18 permits States to pass down State procedures in these three areas to subrecipients that are authorities. Part 19 does not allow States to pass down State procedures to subrecipients that are non-profit organizations. However, so long as the State procedures are not inconsistent with Part 19, the State may apply the same procedures for all its subrecipients. The State may use procedures that are more restrictive than Part 19, but in the case of non-profit organizations, State procedures may not be more permissive than Part 19. The basic intent of Part 19 is to establish nationally uniform procedures and requirements for private non-profit organizations that receive funds from multiple Federal agencies.

Unless an issue is specifically addressed in this circular or in other FTA guidance specific to the Section 5311 program, the most recent version of FTA Circular 5010 "Grant Management Guidelines," which provides guidance for other FTA programs, should be used as guidance for project management issues not unique to Section 5311.

The State must enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

3. **EQUIPMENT MANAGEMENT**.
 - a. **General**. Under the common grant rule, States may use, manage, and dispose of equipment acquired under a Section 5311 grant in accordance with State laws and procedures. Common grant rule procedures and requirements for governmental recipients that are not States and their subrecipients are more explicit. States are free to adopt the procedures established for other governmental subrecipients or use them as a guide in developing State procedures for equipment use, management, and disposition, but are not

required to do so. States may use the same procedures for private non-profit subrecipients as for governmental subrecipients, so long as those procedures are consistent with 49 C.F.R. Part 19.

- b. Transfer of Property. Section 5311(h) permits a State to transfer facilities and equipment acquired with assistance under Section 5311 to any subrecipient eligible to receive assistance under 49 U.S.C. Chapter 53 with the consent of the subrecipient currently in possession of such facilities or equipment, if the facility or equipment will continue to be used in accordance with the requirements of Section 5311. This provision complements the State's flexibility under the common grant rule to manage equipment and extends the State's flexibility in the management of facilities, including real property. The entity receiving equipment or facilities under this provision to provide Section 5311 service must comply with all the State and Federal requirements for Section 5311 recipients, including acceptance of the special Section 5333(b) labor protection warranty for Section 5311. The names of the entities involved in the transfer of equipment or real property, along with a description of the equipment or real property transferred should be included in a new or revised program of projects. The transfer may be shown in the program of projects for any active grant. It does not have to be in the grant under which the equipment or property was originally funded. The non-add scope code 998-00 is used to reflect transfers of Federal equity in the grant.

In addition, Section 5334(h) allows facilities and equipment and other assets (including land) which are no longer needed for the purposes for which they were acquired to be transferred to a local governmental authority to be used for a public purpose other than transportation with no further obligation to the Federal government, if authorized by the U.S. Secretary of Transportation (i.e., approved by FTA).

- c. Vehicle Useful Life and Replacement Standards. In keeping with the intent of the common grant rule that States be given greater flexibility in managing and disposing of equipment, FTA elects not to apply to the State-administered Section 5311, 5310, 5316 and 5317 programs its policies regarding useful life standards for vehicles, vehicle replacement, or the requirement to use the straight line depreciation method for determining fair market value and FTA reimbursement. Instead, FTA holds States responsible for establishing and implementing their own rolling stock requirements for all categories of vehicles acquired under the Section 5311, 5310, 5316 or 5317 programs. For these programs only, FTA permits State grantees to do the following:
- (1) establish their own minimum useful life standards for vehicles;
 - (2) use their own procedures for determining fair market value; and
 - (3) develop their own policies and procedures for maintenance and replacement of vehicles. Maintenance requirements and insurance coverage must be adequate to protect the Federal interest in the vehicle within the useful life determined by the State.

- d. Disposition. States and their subrecipients should follow State laws and procedures for disposing of equipment. States are not required to return to FTA proceeds from the disposition of equipment, regardless of the fair market value at the time the equipment is sold, but should follow their own procedures regarding the use of proceeds, so long as the proceeds remain in use for public transit purposes. This applies to all equipment currently in use that was purchased with Section 5311 funds. This blanket disposition instruction satisfies the provision of 49 C.F.R. Part 19 requiring private non-profit organizations to seek disposition instructions from the Federal awarding agency.
4. SATISFACTORY CONTINUING CONTROL AND RESPONSIBILITY. When capital equipment or facilities are acquired, built, or improved for use by any entity in nonurbanized area public transportation or intercity transportation, provisions must be made to assure satisfactory continuing control of that capital equipment and facilities. While the State agency serving as the FTA grantee may delegate these responsibilities to another entity, the State is ultimately responsible for compliance with this requirement. When vehicles or other equipment acquired with Section 5311 funds are operated by an entity other than the subrecipient, control and responsibility for the operation of the vehicles or other equipment must remain with the subrecipient unless transfer of the control and responsibility is made to another subrecipient authorized by the designated State agency to accept control and responsibility for those vehicles or equipment.
5. PROCUREMENT.
 - a. General. When procuring property, supplies, equipment or services under an FTA grant, the State will follow the same policies and procedures it uses for procurements from its non-Federal funds, to the extent permitted by Federal statutes and regulations. While the Federal threshold for small purchases is currently \$100,000, the State may set a lower threshold for itself and its subrecipients. All governmental subrecipients follow State procurement procedures. However, because of differences between 49 C.F.R. Part 18 and 49 C.F.R. Part 19, FTA third party contracting requirements are fewer for States and subrecipients that are local or tribal governments than for subrecipients that are private non-profit organizations. For the sake of consistency, the State may choose to use the more detailed FTA requirements included in FTA Circular 4220.1E for all subrecipients as part of its State procurement procedures.

In some cases, a State may choose to grant Section 5311 assistance to a subrecipient through an intermediary subrecipient. For example, for public policy reasons, the State might pass funds to a non-profit organization through a local governmental authority. The arrangement between the first tier and second tier subrecipient is not a third party contract if the ultimate subrecipient would otherwise be eligible under Section 5311 to receive funds directly from the State and the ultimate subrecipient intends to use those funds to pursue its own nonurbanized area transit project.

Each recipient of FTA seeking Federal assistance to acquire property or services in support of its proposed project is requested to certify to FTA, in accordance with 49 C.F.R. § 18.36(g)(3)(ii) that its procurements and procurement system will comply

with all applicable third-party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of Federal assistance if FTA determines that its procurement practices and procurement system are incapable of compliance with Federal laws, regulations and directives governing procurements financed with FTA assistance.

Procurement procedures used by States and their subrecipients, however, must comply with the following specific Federal procurement requirements:

- (1) States. State procurement practices must at a minimum comply with five specific Federal requirements contained in FTA Circular 4220.1E. These include, for rolling stock, a five year limitation on contract period of performance, a requirement for full and open competition, a prohibition against geographic preferences, the use of Brooks Act procedures for procurement of architectural and engineering services if the State has not adopted a statute governing procurement of such services, and inclusion in contracts of all Federal clauses required by Federal statutes and Executive Orders and their implementing regulations. These clauses are identified in specific Federal regulations cited in FTA's Master Agreement incorporated by reference into the grant agreement. Additional technical assistance for third party contracting is available in FTA's "Best Practices Procurement Manual", which can be found online at <http://www.fta.dot.gov/ftahelpline/index.htm>.
 - (2) Subrecipients that are Governmental Authorities. Subrecipients that are governmental authorities such as local or Indian tribal governments must comply with the same Federal requirements governing State procurements. States are responsible for ensuring that subrecipients are aware of and comply with Federal requirements.
 - (3) Subrecipients that are Private Nonprofit Organizations. Subrecipients that are private nonprofit organizations must comply with FTA procurement requirements contained in FTA Circular 4220.1E. States are responsible for ensuring that private non-profit subrecipients are aware of and comply with these additional requirements.
 - (4) Subrecipients that are Private, For-profit Organizations. Subrecipients that are private for-profit organizations must comply with FTA procurement requirements contained in FTA Circular 4220.1E for procurements conducted with Federal funds. States are responsible for ensuring that private for-profit subrecipients are aware of and comply with these additional requirements.
- b. Pre-Award and Post-Delivery Reviews. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 C.F.R. Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement," published May 1, 1995. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post delivery review to assure

compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than twenty vehicles (more than 10, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated State procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than twenty vehicles. See Chapter X, Part 9 for more details.

- c. New Model Bus Testing. Any new bus models must be tested at the FTA-sponsored test facility in Altoona, PA, before FTA funds can be expended to purchase them (49 C.F.R. Part 665). This requirement applies to all buses and modified vans procured with FTA funds. It does not apply to unmodified vans, including vans with raised roofs or lifts installed in strict conformance with the original equipment manufacturer modification guidelines. A “new bus model” is defined as a model that has not been used in public transportation service in the United States before October 1, 1988, or a model that has been used in such service but which, after September 30, 1988, is being produced with a major change in configuration or components. A “major change in configuration” is defined as a change which may have a significant impact on vehicle handling and stability or structural integrity. A “major change in components” is defined as a change in one or more of the vehicle's major components such as the engine, transmission, suspension, axle, or steering.

Purchasers of new model buses should ensure that the manufacturer has complied with the testing requirement by requesting a copy of the bus testing report from the Altoona Bus Research and Testing Center, 2237 Old Route 220 North, Duncansville, PA 16635. The Center's telephone number is 814-695-3404. Bus testing reports may also be downloaded from the Bus Testing Database at www.altoonabustest.com. This website also offers users the ability to search, filter, display, and export selected data from tested buses. Before expending any FTA funds for a new model bus, the purchaser must certify that it has obtained a copy of the official bus testing report. Information in the reports may be useful to operators throughout the vehicle procurement process, particularly when writing specifications.

- d. Other Procurement Requirements.

- (1) Buy America. Section 5323(j) provides that, with exceptions, Federal funds may not be obligated for mass transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Section 5311 recipients and subrecipients must conform with FTA regulations, 49 C.F.R. Part 661, and any amendments thereto. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

SAFETEA-LU continued the provision which allows a manufacturer or supplier to correct an incomplete certification or a certification of noncompliance after bid opening under certain circumstances if submission of the incorrect certification was

the result of an inadvertent or clerical error. In addition, Section 3023(i) of SAFETEA-LU added a provision to 49 U.S.C. § 5323 that allows a party adversely affected by an FTA action the right to seek review (Subsection 5323(j)(9)).

- (2) Debarment and Suspension. The purpose of the so-called "integrity" certification (which is required of the State as primary grantee, and the second tier certification required of subrecipients and contractors receiving more than \$100,000) is to ensure that Section 5311 funds are not given to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in Federally-assisted transactions. Only contractors and subcontractors that receive contracts in excess of the Federal small purchase threshold (currently \$100,000) must submit certifications. The U.S. General Services Administration (GSA) issues a document titled, "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" monthly. The list is available on the GSA Website: (<http://www.gsa.gov/index>). The burden of disclosure is on those debarred or suspended to identify their status. If at any time the grantee or other covered entity learns that a certification it made or received was erroneous when submitted, or if circumstances have changed, disclosure to FTA is required. U.S. DOT has issued implementing Debarment and Suspension regulations at 49 C.F.R. Part 29.

6. FINANCIAL MANAGEMENT.

- a. State Financial Management Systems. The common rule requires a State to expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subrecipients and cost-type contractors must be sufficient to:
 - (1) Permit preparation of reports described in this circular and reports necessary to comply with other program and statutory requirements; and
 - (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions applicable to the program.

Private non-profit subrecipients must comply with the standards for financial management systems provided in 49 C.F.R. Part 19. If States purchase vehicles and equipment for subrecipients and subrecipients receive no cash, this requirement does not apply.

- b. FTA Payment Procedures. FTA makes all payments by electronic funds transfer, regardless of the dollar amount involved. Payments are made under the Electronic Clearing House Operation Web (ECHO-Web) system, by means of a control number assigned to the State. The State agrees to comply with the ECHO-Web requirements contained in the Treasury Regulations, 31 C.F.R. Part 205, "Rules and Procedures for Funds Transfers," and as established by the "Guidelines for Disbursements" set forth in FTA's ECHO-Web system operations manual. Detailed information about ECHO-Web and ECHO-Web can be found in Appendix A. In general:

- (1) The State may initiate cash drawdowns only when actually needed for immediate disbursements for project purposes. The State must disburse the funds drawn down according to their Treasury-State Agreement or Subpart B of 31 C.F.R. Part 205, "Rules and Procedures for Efficient Federal-State Transfers." The State's access to the ECHO-Web system may be revoked or suspended, or other remedies may be invoked, if the State fails to expend the Federal funds within a reasonable period, to return the funds to FTA within a reasonable period, or is unwilling or unable to establish procedures that will minimize the time elapsing between cash advances and the disbursement.
 - (2) Costs incurred and available balances are reported annually on an accrual basis, on the Financial Status Report in FTA's Transportation Electronic Award and Management (TEAM) System.
 - (3) The State agrees to provide for control and accountability for all project funds consistent with Federal requirements and procedures for use of the ECHO-Web system.
 - (4) The State may not draw down funds for a project in an amount that would exceed the sum obligated by FTA or the current available balance for that project.
 - (5) The State shall limit drawdowns to eligible project costs and ensure that subrecipients also follow applicable financial requirements.
- c. State Financial Records. FTA does not maintain detailed financial records on individual projects within a program of projects. Financial records, supporting documentation, and all other records pertinent to a grant must be retained by the designated State agency (and its subrecipients) and must be made readily available to authorized representatives of the DOT and the Comptroller General of the United States for a period of three years from the date the State electronically submits the final Financial Status Report (SF-269A). If any litigation, claim or audit is started before the expiration of the three-year period, the records must be retained beyond three years, until all litigation, claims, or audit findings involving the records have been resolved.

The State's financial records should adequately document the computation of the Federal share and the provision of the required local share for each kind of project. The eligibility of any ADA, Clean Air Act, or bicycle projects for which the increased Federal share is claimed should be adequately documented.

7. ALLOWABLE COSTS. OMB Circular A-87 provides the Federal guidelines for allowable costs for recipients which are governmental authorities. OMB Circular A-122 provides comparable guidance for non-profit organizations. Expenses such as indirect costs or payments to a self-insurance fund must be documented appropriately. The restrictions on advertising and public relations in A-87, Attachment B, Section 2 permit advertising and public relations for "specific purposes necessary to meet the requirements of the Federal award." Similar provisions are also contained in A-122, Attachment B, Section 1. Transit

marketing and promotion are allowable project costs under these provisions, since transit ridership is the ultimate purpose of the Federal grant.

8. CLOSEOUT. States should initiate project closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed. The States should similarly initiate program of project closeout with FTA within 90 days after all work activities for the program of projects are completed. A final Financial Status Report (SF 269A), final budget and final program of projects are required to be submitted electronically via the TEAM system at the time of closeout.

FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame, generally two to three years. Although this circular provides the State a great deal of flexibility in developing and subsequently revising programs of projects, it is not FTA's intent that grants be continually revised or amended in ways which will excessively prolong the life of the grant, and consequently result in a large number of active Section 5311 grants. If small amounts of funds remain in an inactive grant, the State should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can reobligate the funds in a new grant to the State along with other currently available funds. Otherwise the deobligated funds lapse to the State and are reapportioned by FTA among all the States in a subsequent year.

9. AUDIT. State agencies are responsible for: ensuring that audits are performed pursuant to the requirements of OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations"; resolving audit findings; and bringing problems to FTA's attention. OMB has issued an audit compliance supplement for Section 5311 grants. FTA has not required an annual financial audit of a subrecipient when assistance is provided solely in the form of capital equipment procured directly by the State. Even if the amount of FTA funds the State passes to a particular subrecipient does not trigger the requirement for an A-133 audit, the State may wish to review A-133 audit reports prepared for subrecipients that are required to be audited because the total Federal funds from all sources exceed the threshold (currently \$500,000). At a minimum States should require subrecipients to bring to the attention of the State any audit findings relevant to their use of FTA funds.
10. REAL PROPERTY. Real property acquisition standards are included in FTA Circular 5010.1C, "Grant Management Guidelines" and in Chapter X, "Other Provisions." Subrecipients may use the State's staff appraisers to prepare required independent appraisals.
11. CONSTRUCTION MANAGEMENT AND OVERSIGHT. The responsibility for construction management and oversight lies with the State. FTA does not approve design plans for construction projects by subrecipients.
12. REPORTING REQUIREMENTS.
 - a. Annual Program of Projects Status Reports. By October 31 each year, the State should submit to FTA a program status report for each active grant, covering the 12-month period ending September 30. Status reports are intended to meet minimal program

information needs at the regional and national levels. Reports should include an updated program of projects for each approved grant which contains active projects. The updated program of projects should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. The updated program of projects can be attached in the electronic status report. If revisions to the program of projects result in changes to the line item budget for the grant, these changes should be submitted as budget revisions. Significant civil rights compliance issues occurring during the year (such as Title VI, Equal Employment Opportunity (EEO), or Disadvantaged Business Enterprise (DBE) complaints against the State or subrecipients) should be addressed in the annual status report. In addition, the State may report notable accomplishments or problems involving Section 5311 subrecipients.

- b. Milestone Activity Reports. For activity line items (ALIs) for which milestones were required at the time of grant application (for example, for vehicle procurements, construction projects, and program reserve), the grantee should enter revised milestone dates as part of the annual report. If the estimated completion date for the grant has changed, the revised date should be entered.
 - c. Financial Status Report. The State must submit electronically an annual Financial Status Report for each active grant, for the period ended September 30. For the purpose of this report, funds are considered encumbered when agreements are signed with subrecipients. Reports should be prepared using the accrual method of accounting.
 - d. Disadvantaged Business Enterprise (DBE) Reports. Annually, States must submit a statewide DBE program including goals for the utilization of DBEs by the State, if it is over a specified funding threshold, and by subrecipients which exceed the threshold. Semi-annually for entities required to submit a DBE program with goals, and annually for others, the State must submit contracting activity reports for itself and its subrecipients. Detailed requirements are described in Chapter X, "Other Provisions".
 - e. NTD Reports. The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary national database for statistics on the transit industry. Recipients of FTA's Nonurbanized Area Formula Program (Section 5311) grants are required by 49 U.S.C. § 5335(b) to submit data to the NTD as a condition of the award. Specific reporting requirements are included in the NTD reporting instructions manual issued each year. Section 5311(b)(4) specifies that each Section 5311 recipient shall submit an annual report containing information on capital investment, operations, and service provided under Section 5311. Items to be reported include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership.
13. STATE MANAGEMENT PLAN. The State management plan (SMP) is a document which describes the State's policies and procedures in administering the Section 5311 program. The SMP required for the Section 5310, 5316, and 5317 programs may be included in the same document. All States are required to have an approved SMP on file in the FTA regional office. Additions or amendments to the SMP must be made and submitted to FTA whenever

a State significantly changes its management of the program, or when new program management requirements are imposed by FTA. Changes may be required as the result of a State management review by FTA. Guidance on the contents of the SMP is included in Chapter VII of this circular, titled "State Management Plan."

14. FTA MANAGEMENT REVIEW. FTA's administration of Section 5311 results in relatively little Federal involvement in the day-to-day program activities or in the review of individual applications from subrecipients. In order to ensure that the program objectives are being carried out, the FTA regional office, with contractor assistance, conducts periodic State management reviews every three years or as circumstances warrant. The review includes an inspection of documentation on file at the regional office, a visit to the State offices to examine the procedures the State uses in administering the program, and local site visits. The review assesses the accuracy and adequacy of the SMP, and may result in recommendations for changes to the SMP. A draft report with preliminary findings is presented at an exit conference. The State has an opportunity to comment on the report and to take corrective actions before a final report is issued. The regional office follows up on corrective actions required in the final report.

FTA periodically conducts State Management Review seminars to help States understand the Federal requirements being reviewed and to provide technical assistance. Contact the regional office for a current schedule of seminars.

FTA also conducts more specific compliance reviews in particular areas, for example financial management, procurement, drug and alcohol testing compliance, and the various aspects of civil rights compliance, usually in response to a risk assessment or other indication of a possible problem. Reviews of subrecipients are coordinated with the State.

CHAPTER VII:

STATE MANAGEMENT PLAN

1. GENERAL. The State management plan (SMP) is a document that describes the State's policies and procedures for administering the State-managed portions of FTA's Section 5310, 5311, 5316, and 5317 programs. Each State is required to have an approved SMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The State should seek public comment when it revises the plan significantly. The State may include the required SMP for Section 5310, 5311, 5316, and 5317 programs in a single document or separate documents. Certain contents of the SMP, such as the project selection criteria, should be coordinated with the statewide transportation plan. FTA Order 1365.1, "Accessible Format Policy," requires that all public documents developed under a grant from FTA be prepared and submitted in electronic format
2. PURPOSE. The SMP is intended to facilitate both State management and FTA oversight by documenting the State's procedures and policies for administering the Section 5311 program in a single reference. The SMP should be a document which is useful to the State and subrecipients, as well as to FTA. At a minimum, this document must include the State's objectives, policies, procedures, and administrative requirements, in a form readily accessible to potential subrecipients, State staff, FTA, and the public. The SMP's primary purposes are to serve as the basis for FTA State level management reviews of the program, and to provide public information on the State's administration of the Section 5311 program. It may also be used internally by the State as a program guide for local project applicants. If the State has other relevant documentation that provides the same information requested for the SMP, such as an annual application instructions manual, it may be included by reference, as an attachment.
3. STATE MANAGEMENT REVIEWS. FTA conducts State management reviews to examine each State's management procedures, and the relationship of the procedures to the State Management Plan. When a State management review is scheduled, FTA and its contractors examine the SMP on file as part of a desk review at the regional office to determine whether the procedures in the SMP satisfy current requirements. At the site visit, the reviewers document whether or not the State is following its own stated procedures. Review findings relating to the SMP might include recommendations that the State revise the SMP to reflect its actual procedures, or that it change its procedures and document them in revisions to the SMP.
4. STATE MANAGEMENT PLAN CONTENT. While FTA does not prescribe a format for the SMP, the plan should address the following topics and provide the information as requested for each topic below.
 - a. Program Goals and Objectives. Describe the philosophy and policy underlying the State's management of the Section 5311 program. Include a description of any process which

exists for establishing long-term goals for providing nonurbanized public transportation in the State.

- b. Roles and Responsibilities. Specify the agency designated by the Governor to administer the Section 5311 program. Explain the respective roles and responsibilities of the State agency and its subdivisions, other State agencies or review boards, local governments, private providers, local applicants, and other involved parties.
- c. Coordination. Describe how the State coordinates with other agencies at the State level and encourages and enhances coordination at the project level. This could include a description of any State level coordinating mechanisms, legislation, review boards, and State policies that encourage or mandate coordination at the local level.
- d. Eligible Subrecipients. Describe which entities may apply to the State for funds as subrecipients and what kinds of projects the State may conduct itself as primary recipient. Identify any way in which State eligibility is more restrictive than Federal eligibility. Describe methods for participation by other entities, including private for-profit providers such as taxicab companies or intercity bus operators.
- e. Eligible Services and Services Areas. Describe eligible services and service areas, including any limitation the State imposes in addition to Federal rules. Definition of transit service area is a State and local decision. Include here any State policies and procedures related to the provision of service to destinations outside the State.
- f. Eligible Assistance Categories. Describe eligible assistance categories, particularly when more explicit or more restrictive than Federal categories. Include any restrictions on eligible expenses and the State's policy on allocation of costs between administrative and operating categories, and eligible capital costs.
- g. Local Share and Local Funding Requirements. Describe the State's policies on provision of local share. Include any State programs which provide matching funds for Section 5311.
- h. Project Selection Criteria and Method of Distributing Funds. Describe the State's criteria for selecting projects and distributing funds fairly and equitably among various applicants for funding, including tribal governments and other entities serving Native American populations. Whether the State uses a formula for allocation, imposes its own limitations on use of the funds (*e.g.*, capital only), or uses an entirely discretionary selection process, the plan should explain the policy rationale and the methods used. This description should cover the State's procedures for assuring equity of distribution of benefits among groups within the State, as required by Title VI of the Civil Rights Act. Describe the State's procedures for coordinating with the metropolitan planning organization responsible for project selection in any designated transportation management area within the State.
- i. Intercity Bus Transportation. Describe the State's procedures for implementing Section 5311(f), which requires the State to expend no less than 15% of its annual Section 5311

apportionment for the support of intercity bus transportation, unless the Governor certifies that the State's intercity bus service needs are adequately met. Describe the State's process for consultation with private intercity bus operators, and any other public participation process in connection with a certification that needs are adequately met. Describe the State's process for assessing intercity bus mobility needs in the State.

- j. Annual Program of Projects Development and Approval Process. Describe the State's process and timetable for soliciting, reviewing, and approving applications for local projects to be included in the State's annual program of projects for Section 5311. The SMP may include instructions to potential subrecipients on how to prepare local project applications.
- k. Funds Transfers. Describe any policy the State has for transferring Section 5307 and/or 5311 apportionments between urbanized and nonurbanized areas, or for transferring Section 5310, 5316, or 5317 rural projects to Section 5311 recipients for administration.
- l. State Administration and Technical Assistance. Describe the planning resources and technical and management assistance the State makes available to local areas. Also describe how the State uses Section 5311 within the 15% limitation for administration, planning, technical assistance, and research. Distinguish between the use of funds for State administration and the State Rural Transportation Assistance Program (RTAP) allocation, and describe any additional resources used for these purposes.
- m. State RTAP. Describe the State's procedures for administering its State RTAP, including project selection criteria, any local match requirements imposed by the State, goals and objectives, methods for involving operators in program development and implementation.
- n. Private Sector Participation. Describe the State's procedures for providing for maximum feasible participation by private mass transportation providers.
- o. Civil Rights. Describe how the State meets Federal civil rights requirements and monitors subrecipients to ensure compliance with the requirements of Title VI, EEO, and DBE. The State management plan must include the program-specific Title VI requirements detailed in Chapter X, Other Provisions, including the State's efforts to assist minority applicants and to include subrecipients serving significant minority populations. (Inclusion in the State management plan may satisfy certain requirements for one-time submissions in the civil rights areas.)
- p. Maintenance. Describe any maintenance plans and procedures required of subrecipients for vehicles and facilities, including maintenance of ADA accessibility features.
- q. Charter Rule. Describe the State's procedures for administering the charter regulation. Include the process used to determine if there are any willing and able private providers of charter service, any review process for subrecipients requesting exceptions from FTA, and any process the State has for reviewing complaints and appeals.

- r. Section 504 and ADA Reporting. Describe the State's method for monitoring subrecipients' compliance with Section 504 and ADA regulations and for processing the plans, reports and certifications submitted to it under the provisions of those regulations.
 - s. NTD Reporting. Describe the State's method for collecting and reporting the data elements specified in the annual NTD reporting mandate, as required by 49 U.S.C § 5335(b).
 - t. State Program Management. Describe how the State administers its program management responsibilities in such areas as procurement, financial management, property management, vehicle use, maintenance and disposition, accounting systems, audit and close-out. In addition, include any State procedures for management or financial reviews and project monitoring or on-site reviews. Describe any standards set by the State for matters such as productivity, cost-effectiveness, or service standards. Detail any State reporting requirements.
 - u. Other Provisions. Describe the process by which the State complies with other Federal requirements such as the employee protection provisions of Section 5333(b), environmental protection, Buy America provisions, pre-award and post-delivery reviews, prohibition of exclusive school transportation, and drug and alcohol testing, including the State's procedures for monitoring compliance by subrecipients.
5. STATE MANAGEMENT PLAN REVISIONS. All States must have an SMP approved by FTA on file with FTA's regional office. An approved SMP remains valid until FTA approves a later plan submitted by the State, or an FTA State management review results in a specific request to the State by FTA for a revised SMP, or FTA announces significant new program documentation requirements. FTA strongly encourages the State to issue timely revisions to the SMP, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. When the State proposes major changes to the SMP it should give an opportunity to comment at the minimum to potential subrecipients of assistance, potential service providers, other State agencies and representatives of other funding sources, and any relevant State associations and professional organizations.

If revisions are substantive but not pervasive, the State may submit changes and additions in the form of page changes that can be approved by FTA and incorporated into the SMP on file. If the State changes the SMP significantly, however, it should submit the entire revised plan to FTA for approval. The State is responsible for ensuring that FTA has a complete copy of the current SMP. The State may submit minor changes and technical corrections to FTA to update the approved plan, without the need for additional FTA approval. The State should reexamine the SMP to make sure it reflects current requirements of this FTA Circular 9040.1F and revise the SMP as necessary.

CHAPTER VIII:

INTERCITY BUS

1. **PROGRAM SUMMARY.** Section 5311(f) requires each State to spend 15% of its annual Section 5311 apportionment "to carry out a program to develop and support intercity bus transportation," unless the Governor certifies that "the intercity bus service needs of the State are being met adequately." SAFETEA-LU requires a State to consult with intercity bus providers prior to the Governor's certification. The required percentage applies only to the amount of the Federal Transit Administration's (FTA) announced annual apportionment of Section 5311 funds to the State, not to any funds the State subsequently transfers to its nonurbanized area formula program from another program.
2. **NATIONAL OBJECTIVES.** In many States, intercity bus service is a vital link between otherwise isolated rural and small urban communities and the rest of the nation. In the 1980's and more recently major intercity bus carriers abandoned many less productive routes. Patronage generated in rural and small urban areas, however, appears to be important to the continuing viability of the remaining intercity routes. One objective of the funding for intercity bus service under Section 5311, therefore, is to support the connection between nonurbanized areas and the larger regional or national system of intercity bus service. Another objective is to support services to meet the intercity travel needs of residents in nonurbanized areas. A third objective is to support the infrastructure of the intercity bus network through planning and marketing assistance and capital investment in facilities. FTA encourages States to use the funding under Section 5311(f) to support these national objectives as well as priorities determined by the State.
3. **GOVERNOR'S CERTIFICATION.** A State is required to expend at least 15% of its apportionment for an intercity bus program unless "the chief executive officer of the State certifies to the Secretary of Transportation, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately."

The statutory provision for certification by the chief executive officer implies a statewide assessment of intercity bus service currently available and of any existing needs. The legislative history indicates that the assessment of intercity bus needs may be made "relative to other rural needs in the State." A State certifying that its needs are adequately met must demonstrate that it has conducted an assessment of statewide intercity mobility needs no more than four years prior to the date of the certification. The State must document in the State Management Plan its consultation process and any process that it develops for periodically assessing statewide needs. Evidence that the State has followed its process will be evaluated every three years.

A State must certify for each fiscal year for which it does not intend to use 15% of its Section 5311 apportionment for intercity bus service, but may include more than one year in a single signed certification. If the State determines that expenditure of some amount of funds less than the full 15% will result in needs being adequately met, it may submit a "partial" certification for the remainder of the 15% and spend only the portion needed to ensure that

the intercity bus needs are adequately met. In some cases a State may have obligated and assigned funds to intercity bus projects in prior years, or reserved funds for intercity bus projects not yet selected. A State may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either of those cases, if the funds committed or reserved for intercity bus projects are later determined not to be needed for intercity bus service, the submission of a "retroactive" certification within the period of availability of the funds will permit the use of the prior year funds for other nonurbanized transit project, subject to the notification and approval conditions described in Chapter IV and consultation with intercity bus providers prior to certification.

Any certification must be signed by the chief executive officer of the State or his or her duly authorized designee, and directed to the Federal Transit Administrator, with a copy to the regional office. As part of oversight FTA will examine the basis for a Governor's certification. The assurance the State makes as part of the annual certifications and assurances that it will meet the requirements of Section 5311(f) does not substitute for a certification by the Governor that the needs are adequately met.

4. CONSULTATION PROCESS REQUIREMENTS.

- a. Consultation is defined in the Joint Federal Highway Administration (FHWA)/FTA Planning Regulations, 23 C.F.R. Part 450 as "one party confers with another identified party in accordance with an established process and, prior to taking action(s), considers that party's views and periodically informs that party about action(s) taken." For the purposes of this provision, FTA has adopted this definition of consultation.
- b. The State's intercity consultation process must include the following elements:
 - (1) identification of intercity bus providers in the State;
 - (2) activities the State will perform as part of consultation with identified providers and the intercity bus industry;
 - (3) an opportunity for intercity bus providers to submit proposals for funding as part of the State's distribution of its annual apportionment; and
 - (4) a direct correlation between the results of the consultation process and a determination that the State's intercity service needs are adequately being met.
- c. In developing the consultative process elements mentioned above, FTA suggests consideration of the following ideas, many of which are drawn from TCRP Report 79, "Effective Approaches to Meeting Rural Intercity Bus Transportation Needs":
 - (1) Identifying Private Intercity Carriers. Intercity carriers serving a State can be identified from several sources, including:
 - (a) Russell's Official National Motor Coach Guide;

- (b) The Bus Industry Directory;
- (c) State regulatory agency listings; and
- (d) Trade associations, such as the American Bus Association and the United Motorcoach Association.

(2) Activities of Consultation.

- (a) Inform intercity bus carriers of intent to certify and afford an opportunity to submit comments and/or request a public meeting to identify unmet needs.
- (b) Include intercity providers' participation in scheduled meetings, e.g. State agency transit meetings and public transit conferences.
- (c) Meet with individual intercity providers periodically.
- (d) Notify providers either through direct mail or advertise in various locations around the State of availability of funds for the current year intercity bus program.
- (e) Inform intercity bus providers about the development of the Coordinated Public Transit-Human Services Transportation Plans and encourage their participation.
- (f) Solicit comments through direct mail and advertise in newspapers in various locations around the State of the State's intent to certify unless needs are identified.

(3) Available Resources for Assessment and Analysis of Intercity Bus Needs.

- (a) It is appropriate and conducive for the State to work in partnership with the American Bus Association in periodic assessment of needs including meaningful connections to the national intercity bus network.
- (b) Include an assessment of intercity bus needs in the development of Coordinated Public Transit-Human Services Transportation Plans.
- (c) Include intercity bus transportation in statewide long range planning.
- (d) Use Section 5311 State administration funds, statewide planning apportionments, or State Rural Transportation Assistance Program (RTAP) allocations for periodic statewide assessments of needs.

5. STATE ROLE. The State implements Section 5311(f) as part of its management of the Section 5311 program. FTA encourages the State to look at the intercity bus transportation needs of the entire State and to work with neighboring States in order to adopt a program which will support a network of intrastate services and provide connections with a national network of interstate service. The State will provide available information to FTA or its

contractors upon request to support a national evaluation of the implementation of Section 5311(f).

6. **ELIGIBLE RECIPIENTS.** The definition of a subrecipient in Section 5311(a)(2) includes an operator of intercity bus service that receives Federal Transit Program grant funds through a State or Indian tribe that is a direct recipient. In some instances, certain intercity bus providers may be unwilling or unable to accept the terms and conditions the State applies to subrecipients and may prefer to maintain a contractual relationship, in order to isolate the remainder of their operations from Federal requirements related to a grant. The State may use either mechanism to provide assistance to private operators for intercity bus service. In either case, the State should use a merit based selection process to ensure that the private operator is qualified, will provide eligible service, can comply with Federal and State requirements, and is the best, or only, provider available to offer service at a fair and reasonable cost.
7. **ELIGIBLE SERVICE.** For the purpose of this provision, FTA defines intercity bus service as regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available. (Urban area is defined very broadly in 49 U.S.C. § 5302(a)(16) as "an area that includes a municipality or other built-up place that...is appropriate for a local public transportation system to serve individuals in the locality.") Schedule information for intercity service is typically maintained in the Official Bus Guide (Russell's Guide). Connection to the national network of intercity bus service is an important goal of Section 5311(f) and services funded must make meaningful connections wherever feasible. Package express service may be included, if incidental to passenger transportation. Commuter service (service designed primarily to provide daily work trips within the local commuting area) is excluded from the definition. Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Air, water, and rail service are not included.

While much of the public transportation service assisted under Section 5311 covers large distances because of the nature of the areas served, not all long distance trips are included in the definition of intercity service. For example, service which provides extensive circulation within a region (in contrast to regular but infrequent service from limited points in the community of origin to limited points in the destination community) is not considered intercity service, although it may be an eligible public transportation service. Similarly, service which only incidentally stops at an intercity bus facility among other destinations within the city at either end of a route which covers a long distance, without regard to scheduled connections, is eligible for Section 5311 assistance as public transportation, but is not an intercity feeder service. Likewise, commuter service is excluded because it is considered a local public transportation service, eligible for assistance under Section 5311 but not counting toward the required percentage for Section 5311(f).

8. **ELIGIBLE ACTIVITIES.** Assistance under Section 5311(f) must support intercity bus service in rural and small urban areas. Section 5311(f) specifies eligible intercity bus activities to include "planning and marketing for intercity bus transportation, capital grants

for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small transit operations and intercity bus carriers." This listing does not preclude other capital and operating projects for the support of rural intercity bus service. For example, the State may provide operating assistance to a public or private non-profit organization for the direct operation of intercity service after appropriate consideration of participation by private for-profit service providers. Capital assistance may be provided to purchase vehicles or vehicle related equipment such as wheelchair lifts for use in intercity service. Charter and tour services are generally not eligible for FTA assistance (see 49 C.F.R. Part 604).

FTA reminds States that 49 U.S.C. § 5323(a) requires the participation of private mass transportation companies to the maximum extent feasible in this and other FTA programs. Among the various types of projects in which private intercity bus operators may wish to participate are improvements to existing intercity terminal facilities for rural passengers, modifications to transit facilities to facilitate shared use by intercity bus and rural transit operators, operating assistance to support specific intercity route segments, and applications of Intelligent Transportation Systems (ITS) technology for coordinated information and scheduling.

In Section 5302(A)(1)(G), the definition of a joint development capital project has been expanded to include "construction, renovation, and improvement of intercity bus and intercity rail stations and terminals." Further, the limitation that made "commercial revenue-producing facilities" ineligible for FTA assistance has been lifted with respect to intercity bus stations or terminals. Intercity bus stations and terminals are not required to provide a fair share of revenue for public transportation that will be used for public transportation. The result of these changes is that FTA funds can now be used for all aspects of intercity bus and rail facilities in facilities (such as intermodal terminals) which meet the criteria in Section 5302(a)(1)(G) for joint development projects (physical and functional relationship to public transportation).

9. **FEEDER SERVICE.** The "coordination of rural connections between small transit operations and intercity bus carriers" may include the provision of service which acts as a feeder to intercity bus service. The feeder service is not required to have the same characteristics as the intercity service with which it connects, as defined in paragraph 7, above. For example, feeder service may be demand responsive, while intercity service is by definition fixed route. Examples of eligible costs include marketing and extended hours of service in order to connect with scheduled intercity service. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service. Rural transit providers operating feeder service with destinations across State lines are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations. Intrastate feeder service may also trigger compliance with FMCSA regulations if inter-lining is involved (issuing a single ticket for the feeder service and the trip provided by an interstate carrier).
10. **ADA REQUIREMENTS.** A governmental authority operating or contracting for intercity bus service is not required to provide complementary paratransit service for people with

disabilities who are unable to use the fixed route intercity bus service. Under ADA, commuter bus service is exempt by law from the requirement for complementary paratransit service. In its implementing regulation, the Department of Transportation (DOT) exempted certain other services from the complementary paratransit requirement because they are functionally like commuter bus service. Similarly, intercity bus service is functionally like commuter bus service in that the service is relatively infrequent and the distance between stops is great. Like commuter service, intercity bus service does not truly serve the entire corridor along which it passes. Fixed route feeder service provided by a governmental authority, however, must be evaluated on a case by case basis to determine if its characteristics are those of commuter service or of transit requiring complementary paratransit. Vehicles acquired for use in intercity service or feeder service may be required to be accessible. (See 49 C.F.R. Part 37. The exception for over-the-road buses in the original rule applied only to private entities.) DOT issued a final rule regarding ADA accessibility requirements for private over-the-road bus operators on October 1, 2003.

11. FEDERAL SHARE. The Federal share for intercity projects is the same as for the Section 5311 program as a whole: 50% of the net cost for operations and 80% of the net cost for capital projects and project administration. State administration, planning and technical assistance in support of intercity bus transportation are eligible at 100% Federal share if applied against the cap on State administration expenses. The amount of Section 5311 funds used for planning for intercity bus transportation is not limited by the 15% cap on State administration. However, the Federal share of any planning assistance for intercity bus not included in the 15% allowed for State administration is limited to 80% of the planning costs. The sliding scale match described in Chapter III, part 3 is applicable.
12. CAPITAL PROJECTS IN URBANIZED AREAS. Use of Section 5311(f) funds for capital projects in urbanized areas is limited to those aspects of the project which can be identified as directly benefiting and supporting service to and from nonurbanized areas. These projects are to be included in both the metropolitan Transportation Improvement Program (TIP) and the Statewide Transportation Improvement Program (STIP) and follow the appropriate project selection requirements contained in the joint planning rule.
13. OBLIGATION OF FUNDS. In the absence of a certification from the Governor that intercity needs are adequately met, 15% of the State's annual apportionment must be obligated for intercity bus transportation within the period of availability (three years).
 - a. Program of Projects. All projects in support of intercity bus service should be clearly identified and grouped together in the program of projects. Funds may be listed for specific projects in Category A or B, or reserved for intercity use in Category C. (Note, however, that funds in Category C must be advanced to identified projects within the period of availability.) Alternately, the percentage required to be expended for intercity bus transportation may be withheld and not obligated in a given year, if it is to be obligated at a later date along with funds from subsequent years' apportionments. The intention to withhold funds for later obligation should be noted in the State's application to FTA.

- b. Budget. In the project budget, the State should separately group the projects that are dedicated to the support of intercity service under the scope code 634, "Intercity Bus Transportation." Any activity code may be used under scope code 634 to describe the intercity projects (for example, capital, operating, and planning projects, or program reserve for intercity bus projects not yet identified).
 - c. Labor Protections. All Section 5311 operational projects, including intercity bus projects, require agreement to the terms and conditions of the standard Section 5333(b) special warranty for the Section 5311 program.
 - d. Enforcement of Compliance. If the State does not ultimately expend the funds for intercity service, the funds will lapse to the State. If a State chronically fails to comply with the requirement to fund projects for intercity bus needs within the period of availability, FTA may impose other sanctions. Within the parameters described in this chapter, FTA will rely on the State's determination of which projects support intercity bus transportation.
14. OVER-THE-ROAD BUS ACCESSIBILITY INCENTIVE PROGRAM. SAFETEA-LU continues a program to assist operators of over-the-road buses comply with the capital and training requirements of the DOT rule on ADA accessibility for over-the-road buses. This funding is separate from Section 5311 funding and is administered through a national solicitation for applications from operators of over-the-road buses. The Federal share is 90%. The grants are subject to the terms and conditions applicable to recipients of Section 5311(f). Assistance continues to be available to operators of over-the-road buses used substantially or exclusively in intercity, fixed route over-the-road bus service. Assistance is also available to operators of over-the-road buses in other service, including local commuter, charter and tour service. This program may supplement and/or complement assistance the States provide to intercity bus operators through Section 5311(f).
15. SURFACE TRANSPORTATION PROGRAM ELIGIBILITY. SAFETEA-LU continues the existing eligibility policy under the Surface Transportation Program (STP) to include "vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus." The State may transfer these funds to Section 5307 or 5311 to supplement assistance provided under 5311(f).

CHAPTER IX:

RURAL TRANSPORTATION ASSISTANCE PROGRAM

1. PROGRAM SUMMARY. Section 5311(b)(3) authorizes the Secretary "to make grants and contracts for transportation research, technical assistance, training and related support services in nonurbanized areas." The Rural Transportation Assistance Program (RTAP) provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in nonurbanized areas. Up to 2% of the funds appropriated for Section 5311 each year are available for RTAP. Of that amount up to 15% is available for projects of a national scope, with the balance apportioned to the States. The State program provides an annual allocation to each State to develop and implement training and technical assistance programs in conjunction with the State's administration of the Section 5311 formula assistance program. The national program provides for the development of information and materials for use by local operators and State administering agencies and supports research and technical assistance projects of national interest.
2. PROGRAM OBJECTIVES. The objectives of RTAP are:
 - a. to promote the safe and effective delivery of public transportation in nonurbanized areas and to make more efficient use of public and private resources;
 - b. to foster the development of State and local capacity for addressing the training and technical assistance needs of the rural/small urban transportation community;
 - c. to improve the quality of information and technical assistance available through the development of training and technical assistance resource materials;
 - d. to facilitate peer-to-peer self help through the development of local networks of transit professionals;
 - e. to support the coordination of public, private, specialized, and human service transportation services; and
 - f. to build a national database on the nonurbanized segment of the public transportation industry.
3. FUNDING AND ALLOCATIONS.
 - a. Authorization. SAFETEA-LU authorizes RTAP at 49 U.S.C. § 5311(b)(3)(B) with no more than 2% of the amount authorized for Section 5311.
 - b. Allocation. FTA allocates RTAP funds to the States by an administrative formula consisting of a \$65,000 floor for each State and Puerto Rico and \$10,000 to the Insular Areas of Guam, American Samoa, Northern Marianas, and the Virgin Islands with the balance allocated based on a nonurbanized population in the 2000 Census.

- c. Funds Availability. State RTAP funds have the same period of availability as the Section 5311 formula funds, the fiscal year in which they are allocated plus two additional fiscal years. If the State does not obligate its allocation during this period, FTA reallocates the funds among all the States the following fiscal year.
- d. Federal Matching Requirements. There is no Federal requirement for a local match for RTAP funds.

4. STATE PROGRAM DEVELOPMENT AND DELIVERY.

- a. Eligible Assistance Categories. States may use RTAP funds to support nonurbanized transit activities in four categories: training, technical assistance, research, and related support services. Capital costs are allowable if the equipment is purchased to support one of the four eligible activities.
- b. Program Development. The State should develop State RTAP activities through a process which provides maximum opportunity for the participation of nonurbanized transit operators, both public and private, in identifying and establishing priority areas of need for transportation research, technical assistance, training, and related support services in other than urbanized areas. Establishment of a State RTAP advisory committee is one effective way to enable nonurbanized transit operators within the State to provide ongoing review and comment on the State's program development and delivery. The costs associated with implementing a State RTAP advisory committee are eligible RTAP expenses.
- c. Program Delivery. States have broad discretion in deciding how best to provide assistance and implement projects under the State program. Delivery mechanisms include:
 - (1) assistance by in-house State staff;
 - (2) contracts with private consultants, universities, non-profit organizations, State transit associations or other organizations of operators;
 - (3) contracts for administration of the State program or particular elements of it by the State's Local Technical Assistance Program (LTAP) center (a Federal Highway Administration (FHWA) sponsored resource with a demonstrated capacity for delivering training and technical assistance on highway topics that may represent a valuable in-state resource for transit as well);
 - (4) support of peer-to-peer networks of individuals to provide assistance to each other;
 - (5) interagency agreements with other State agencies, both within the State and in other States; and
 - (6) scholarships or tuition and expenses for individuals to attend training courses or workshops.

- d. State Administrative Expenses. The State may not use State RTAP funds for State administrative or overhead expenses. However, any State administrative expense incurred in administering the State RTAP program may be covered by the 15% of a State's annual Section 5311 formula apportionment available for State administration. The direct cost of using State staff to deliver RTAP services such as training or technical assistance is a program expense, not an administrative expense. Contracts with other organizations to administer and deliver RTAP services may include reasonable administrative and overhead costs.
- e. RTAP Participation by Providers in Urbanized Areas. Providers of specialized transportation in urbanized areas, such as Section 5310 funded agencies, as well as public transit operators in small urbanized areas, have many of the same training and technical assistance needs as transit providers in nonurbanized areas. Participation by these providers in RTAP sponsored activities is permitted, at the State's discretion, so long as the activities are primarily designed and delivered to benefit nonurbanized transit providers. When urbanized area providers are more than incidental beneficiaries of an RTAP supported activity, the costs of the project should be allocated fairly between RTAP and other sources. RTAP should pay only for the proportion of the project costs attributable to the rural beneficiaries.
- f. Participation by Indian tribes. States should consider the needs of Indian tribes for technical assistance and training related to tribal transit service, including those tribes that are not receiving funding from the States Section 5311 apportionment.
- g. Pooling of State RTAP Funds. FTA encourages States to consider "pooling" or consolidating RTAP funds in order to support activities or projects that would be more effectively carried out on a larger scale than a single State. Such pooling could be done by two or more States within a region. Examples of activities that could be funded through pooled State RTAP funds include regional workshops or training courses, development of technical assistance information, and peer-to-peer assistance activities. Contributions to combined efforts such as the Multi-State Technical Assistance Project (MTAP) of the American Association of State Transportation Officials (AASHTO) are eligible only to the extent that they support RTAP objectives and benefit nonurbanized public transportation. FTA has determined that annual MTAP dues are an eligible State RTAP expense. Two methods are available to consolidate funding: (1) Each State involved can obligate funds for the joint project as part of the State RTAP program of projects in its Section 5311 grant and subsequently transfer the funds to the implementing organization through a contract or subagreement; or (2) Participating States may designate a single State to receive and administer all of the pooled funds. Each participating donor State then informs its FTA regional office in writing of the amount of State RTAP funds to be transferred to the allocation of the State administering the joint project. FTA will adjust the allocations accordingly and the administering State applies to FTA for the entire funding of the joint project as part of the State RTAP program of projects in its Section 5311 grant application.

5. PROGRAM MANAGEMENT. The State administers State RTAP funds in conjunction with its management of the Section 5311 formula assistance program. Application procedures and program administration and management requirements correspond to those for Section 5311 as described elsewhere in this circular.

6. NATIONAL PROGRAM. The purpose of the national RTAP is to support the State programs and develop information resources about rural public transportation. FTA generally determines national program activities in consultation with an eleven member project review board that includes both State administrators and local transit operators, including one Indian tribe representative. FTA directly funds the national program through cooperative agreements and contracts. The national program currently includes the following elements:
 - a. development of training materials and information resources;
 - b. a national resource center, including a toll-free hotline for information and technical assistance (800-527-8279), on-line information on the Internet (<http://www.ctaa.org/ntrc/>), and automated Fax-on-demand availability of many printed materials;
 - c. a peer-to-peer technical assistance network;
 - d. regional and national meetings and workshops which support the State RTAPs and promote information exchange about rural public transportation; coordination with a parallel initiative supported by the U.S. Department of Health and Human Services under the name CTAP (Community Transportation Assistance Project); and
 - e. periodic updates of the national rural transportation database and publication of directories of subrecipients under the FTA formula programs for other than urbanized areas and for elderly individuals and individuals with disabilities.

CHAPTER X:

OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements and guidance provided in this circular, FTA grantees are held to a number of FTA-specific and other Federal requirements. This document attempts to summarize those requirements and provide citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this document and the statute or regulation, the language of the statute or regulation controls. Readers should use this document in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that applicants must sign annually (via the TEAM system) to establish or renew their funding relationship with FTA. The Master Agreement and the Certifications and Assurances represent the grantees' legal affirmation to abide by FTA and other Federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized below, as a reminder to grant recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement and the Certifications and Assurances on the TEAM Web site, and in the references provided below. Grantees may contact their Regional Counsel for more detail about these requirements.

2. PROJECT INCLUSION IN TIP AND STIP. Before FTA may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide planning process specified in 49 C.F.R. Part 613 and 23 CFR Part 450. That is, all transit projects for which Federal funds are expected to be used and that are within Metropolitan planning boundaries must be included in a metropolitan Transportation Improvement Program (TIP) approved by the metropolitan planning organization (MPO) and the Governor and in a Statewide Transportation Improvement Program (STIP) that has been approved by FTA and the Federal Highway Administration (FHWA). Projects not within metropolitan planning boundaries are required only to be in the STIP. The application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers, and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s). Projects listed in the TIP and STIP must be derived from and consistent with the State's long range plan.
3. PROCUREMENT RESTRICTIONS. An applicant seeking Federal assistance pursuant to the Federal Transit Laws as codified at 49 U.S.C. § 5301 *et seq.* to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third-party procurement requirements. SAFETEA-LU recodified FTA's procurement requirements in 49 U.S.C. § 5325. In addition, regulations promulgated at 49 C.F.R. Part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) establish uniform administrative rules for Federal grants, cooperative agreements and subawards to State, local, and Indian tribal governments (private, nonprofit

organizations must comply with similar regulations in 49 C.F.R. Part 19). Provisions of the Common Rule pertaining to procurement requirements for FTA recipients that are governmental authorities are set forth at 49 C.F.R. § 18.36. Those requirements, as well as other FTA specific provisions, are also set forth in FTA's Master Agreement FTA MA(12) October 1, 2005, at Section 15. "Procurement," and will be updated annually with issuance of each new Master Agreement. Finally, FTA has published additional guidance relative to recipients compliance with third-party procurement requirements at FTA C. 4220.1E and its "Best Practices Procurement Manual". These regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process including planning, solicitation, award, administration and documentation of all Federally-funded contracts.

Each recipient of FTA assistance to acquire property or services in support of its proposed project is requested to certify to FTA, in accordance with 49 C.F.R. § 18.36(g)(3)(ii) that its procurements and procurement system will comply with all applicable third-party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of Federal assistance if FTA determines that its procurement practices and procurement system are incapable of compliance with Federal laws, regulations and directives governing procurements financed with FTA assistance.

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

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

- a. Provided an adequate opportunity for public review and comment on the project;
- b. Held that hearing if the project affects significant economic, social, or environmental interests;
- c. Considered the economic, social, an environmental effects of the project; and

- d. Found that the project is consistent with official plans for developing the community.
- e. Section 5323(b)(2) further states, "Notice of hearings under this subsection shall include a concise description of the proposed project; and shall be published in a newspaper of general circulation in the geographic area the project will serve."

Section 5323(b) must be read in concert with Section 5324(b) which states that FTA must review the public comments and hearing transcript to ascertain that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that FTA must make a written finding to this effect.

It should be noted that the public hearing requirements of 49 U.S.C. § 5323(b) are separate and apart from the requirements for public participation in statewide and metropolitan planning. All capital projects financially supported by FTA are subject to statewide transportation planning requirements and, in metropolitan areas, to metropolitan planning requirements. FTA and FHWA have codified procedures for compliance with the statewide and metropolitan planning statutory mandates-including the mandates for public participation in the development of long-range plans and Transportation Improvement Programs-in the two agencies' joint planning regulations. The practical effect of these statewide and metropolitan planning requirements is to expose every FTA-funded capital project to a certain level of public scrutiny, regardless of whether that project will "substantially" affect a particular community and its mass transportation service.

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

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

The second group of projects, described at 23 C.F.R. § 771.117(d), which normally qualify for a categorical exclusion are projects involving more construction and greater potential for off-site impacts. Examples are: new construction or expansion of transit terminals, storage and maintenance garages, office facilities, and parking facilities. Experience has shown that these projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible land use where the primary access routes are adequate to handle the additional transit vehicle traffic. These construction projects may be designated as categorical exclusions after FTA approval, but no presumption exists

concerning the significance of environmental effects. It is the applicant's responsibility to provide documentation which clearly demonstrates that the stated conditions or criteria are met and that no significant adverse effects will result. Such documentation is usually narrowly focused on one or a limited number of environmental concerns or questionable areas. Depending on the circumstances, some technical analysis may be required, such as a noise impact assessment or a street capacity analysis; but in most cases, the documentation will focus on consistency with local land-use plans, zoning and any State or local plans or programs governing the protection and management of environmental resources, such as air quality, water quality and noise abatement. The documentation will provide a written record of coordination with those State and local agencies having jurisdiction or a special interest in some aspect of the project. There is no formal public review for these types of environmental studies. FTA reviews this information and determines if a categorical exclusion is appropriate. In order to include or advance such a project to Category A, the State must have on file a letter from FTA approving the categorical exclusion.

For any project which is not found to be a categorical exclusion, the State may be required to prepare an environmental assessment (EA) for public comment and FTA review to determine if a finding of no significant impact (FONSI) is appropriate. A project which requires an EA may not be included in Category A before FTA has issued a FONSI for the project. In the unlikely event that significant environmental impacts are identified for a Section 5311 project, an environmental impact statement (EIS) will be required.

There are a number of environmentally related statutes, orders, and compliance procedures which may apply to a given project even if it is properly classified as a categorical exclusion. The environmental requirements which may come into play for Section 5311 projects are: Clean Air Act conformity provisions; protection of public parkland, wetland and waterfowl refuges, and historic sites (49 U.S.C. § 303); Section 106 of the National Historic Preservation Act (protection of historic and archaeological resources); and Section 404 of the Clean Water Act (Corp of Engineers' permit requirements for dredge and fill activities in "waters of the United States"). FTA policy is to require compliance with these environmentally related requirements within the overall environmental process. The EA or environmental documentation to support a categorical exclusion must address these related requirements. Compliance with these requirements must be completed before a construction

For purposes of NEPA, FTA's procedures categorically exclude most Section 5311 projects. States should screen potential projects when they are first identified to make an initial determination as to which projects clearly meet the FHWA/FTA criteria for categorical exclusions and which projects may require additional documentation. The latter should be coordinated with the FTA regional office early in project development so that any necessary environmental analysis and review will not delay implementation. Any project involving new construction of a facility or substantial rehabilitation of an existing facility must be discussed with FTA to determine the need for information supporting a categorical exclusion and the applicability of any additional environmental requirements. Early coordination is also necessary to identify those projects for which the State must prepare an EA. If an EA is required, further steps to develop the project will not be authorized (e.g., property acquisition, final design, and construction) until FTA makes a final environmental finding for

the project. Any Category B or C project that is not in the list of categorical exclusions in 23 C.F.R. § 771.117(c) requires environmental clearance from FTA before being advanced to Category A (see Chapter IV for discussion of the categories of approval).

6. CLEAN AIR ACT. The principal Clean Air Act requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency regulation (40 C.F.R. Part 93) and they apply in areas that currently violate one or more of the national ambient air quality standards (nonattainment areas) and also in areas that once violated the standards but have since been redesignated to attainment status by EPA (so-called maintenance areas). The transportation conformity process applies not only to Federally-funded projects but also to long-range transportation plans and transportation improvement programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the metropolitan planning organization. Determining conformity for individual projects is the project sponsor's responsibility. Major transit infrastructure projects, e.g., new fixed guideway projects and extensions will be analyzed at both the regional and local scales.

The transportation conformity regulation reserves detailed air quality analysis for large projects which have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that do not require any analysis. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The FTA regional office can also provide information on selected provisions of other laws that support clean air objectives--for example, the FHWA's Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Over the years, local transit agencies have benefited greatly from this program as a supplementary source of funding for transit. The CMAQ Program has its own eligibility requirements which the FTA regional offices are familiar with.

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

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

The most comprehensive FTA document regarding private enterprise requirements is a report titled *Private Enterprise Participation in Transportation Planning and Service Delivery*. The report is available on FTA's Website at http://www.fta.dot.gov/legal/16720_ENG_HTML.htm.

8. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use Federal financial assistance in a project which will require real property, the applicant must provide assurances--required by Sections 305 and 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)--that it will comply with the Uniform Act and with Department of Transportation (U.S. DOT) implementing regulations (49 C.F.R. Part 24).

The 49 C.F.R. Part 24 regulations is a government-wide regulation that applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced people. Grantees in the process of planning a Federally-assisted project that will require the displacement of people should be aware of the regulatory need for relocation planning during the early stages of project development.

The 49 C.F.R. Part 24 regulation is available from the Government Printing Office Web site at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html. Upon request FTA Regional Offices can provide a copy of the law, itself, in its amended form. In addition, the grantee should inform itself of State laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contribution-in-kind property will be valued at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property.

9. PRE-AWARD AND POST-DELIVERY REVIEWS. FTA requires grant recipients purchasing a certain number of revenue passenger rolling stock to undertake reviews of the rolling stock prior to the award of the contract and following delivery of the vehicles. The intention is to improve compliance with Buy America requirements, the grantee's bid specifications, and Federal Motor Vehicle Safety Standards. The requirement to undertake the pre-award and post delivery reviews arises from 49 U.S.C. § 5323(m) and is specified in FTA regulations at 49 C.F.R. Part 663. Compliance must be certified on the Annual List of Certifications and Assurances.

SAFETEA-LU amended this requirement so that procurements of 20 vehicles or fewer, purchased for serving rural areas and cities of less than 200,000 population, are not subject to the review procedure. In urbanized areas of greater than 200,000 population, the reviews are not necessary for a purchase of 10 or fewer vehicles. The procurement of unmodified vans, in any quantity, is not subject to the review requirement.

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

In carrying out the reviews, it may be useful to obtain a copy of the manual, "Pre-Award and Post-Delivery Reviews for Bus Vehicles," from the FTA regional offices. Also, when purchasing buses tested by the Altoona Bus Testing Center, the grantee must obtain a copy of the test report.

10. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. § 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(b) of the Act requires the Secretary to take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining "adequate assurance" that required labor standards would be maintained upon the construction work.
- b. Transit Employee Protection. 49 U.S.C. § 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. 49 U.S.C. § 5311(i) requires that the Department of Labor (DOL) use "a special warranty that provides a fair and equitable arrangement to protect the interests of employees" in order for the Section 5311(i) requirements to apply to Section 5311. FTA anticipates that DOL will revise the warranty and procedures currently in use. Opportunities for public comment will be provided during DOL's rulemaking

11. CIVIL RIGHTS. The Recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

- a. Nondiscrimination in Federal Transit Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

- b. Nondiscrimination - Title VI. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
- (1) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.";
 - (2) DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21;
 - (3) 49 U.S.C. § 5332(c) (Federal transit law). Under this statute, the Secretary of Transportation is required to take affirmative action to ensure that no person on the basis of race, color, creed, national origin, sex or age, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part by FTA;
 - (4) FTA's Circular 4702.1 "Title VI Program Guidelines for FTA Recipients." This document provides information on how FTA will enforce Title VI in accordance with its responsibilities as set forth by the Title VI regulations issued by the Department of Justice (DOJ) (28 C.F.R. Part 42) and DOT (49 C.F.R. Part 21);
 - (5) DOT Order To Address Environmental Justice in Minority Populations and Low-Income Populations. This order describes the process that the Office of the Secretary of Transportation and each Operating Administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities; and
 - (6) DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons. This guidance clarifies the responsibilities of recipients of Federal financial assistance from the U.S. Department of Transportation (DOT) and assists them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.
- c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue.
- d. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*, with implementing U.S. DOT regulations, "Nondiscrimination

on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

- e. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- f. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) The Rehabilitation Act of 1973, as amended by the Rehabilitation Act of 1993, Section 503, requires firms holding Federal contracts or subcontracts of \$10,000 or more to take affirmative action to hire and advance in employment individuals with disabilities.
 - (2) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
 - (3) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, prohibit discriminating against qualified individuals with disabilities in all programs, activities, and services of governmental authorities, as well as imposes specific requirements on public and private providers of transportation.
 - (4) DOT regulations implementing Section 504 and the ADA include 49 C.F.R. Parts 27, 37, and 38. Among other provisions, the regulations: specify accessibility requirements for the design and construction of new transportation facilities; require that vehicles acquired be accessible to and usable by individuals with disabilities, including individuals using wheelchairs (with limited exceptions); require governmental authorities providing fixed route service to provide complementary paratransit service to people with disabilities who cannot use the fixed route service; and include service requirements intended to ensure that people with disabilities are afforded equal opportunity to use transportation vehicles and facilities.
 - (5) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- g. Executive Order 11246, as amended by Executive Orders 11375, 12086, 11478, and 12106, prohibits employment discrimination on the basis of race, color, religion, national origin or sex in institutions or agencies with Federal contracts of over \$10,000.

- h. Department of Labor regulations (41 C.F.R. Part 60 *et seq.*) require that when an agency provides Federal non-construction contracts of \$50,000 or more and the recipient employs 50 or more employees, then the recipient is required to develop written affirmative action plan with employment goals. Federal agencies entering into construction contracts of \$10,000 or more, must comply with the requirements set out in Executive Order 11246.
- i. Disadvantaged Business Enterprise (DBE). To the extent required by Federal law, regulation, or directive, the Recipient agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:
- (1) The Recipient agrees and assures that it will comply with the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 1101(b), 23 U.S.C. § 101 note, which requires DOT to ensure that not less than 10% of funds authorized for highway and transit financial assistance programs be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.
 - (2) The Recipient agrees and assures that it will comply with DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26. Among other provisions, this regulation requires recipients of DOT Federal financial assistance, namely State and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of Disadvantaged Business Enterprise (DBE) firms to participate in their DOT-assisted contracts.
 - (3) The Recipient agrees and assures that it will comply with FTA's Circular 4716.1A, "FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers" which enumerates the required components of a DBE program.
 - (4) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, national origin or disability in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from DOT or in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from DOT. As required by 49 C.F.R. Part 26 and approved by DOT, the Recipient's DBE program is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification by DOT to the Recipient of its failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement

under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.*

- j. For further guidance, refer to the Federal laws, regulations, and Executive Orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance on request.

12. BUY AMERICA. Section 5323(j) provides that, with exceptions, Federal funds may not be obligated for mass transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Section 5311 recipients and subrecipients must conform with FTA regulations, 49 C.F.R. Part 661, and any amendments thereto. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

SAFETEA-LU continued the provision which allows a manufacturer or supplier to correct an incomplete certification or a certification of noncompliance after bid opening under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. In addition, SAFETEA-LU added a provision that allows a party adversely affected by an FTA action the right to seek review, 49 U.S.C. § 5323(j)(9).

13. CHARTER SERVICE. Section 5323(d) places limits on the charter services which may be provided by Federally-funded public transportation operators. These limitations are specified in the FTA charter service regulation (49 C.F.R. Part 604). The charter service regulation (49 C.F.R. Part 604) prohibits FTA recipients from providing any charter service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide. The regulation applies to both buses and vans. Any Section 5311 recipient desiring to provide charter service must publish a notice annually and determine whether there are any private charter operators willing and able to provide the service. The State may conduct this process for itself and subrecipients or delegate this responsibility for the subrecipients to any or all of the subrecipients. The State must sign a charter agreement as part of the annual certifications and assurances and obtain and retain signed charter agreements from its subrecipients.

The regulation lists seven exceptions to the general prohibition on providing charter service. One exception allows FTA subrecipients in nonurbanized areas to petition FTA for an exception if the charter service that would be provided by willing and able private charter operators would result in a hardship on the customer because there are minimum durations pursuant to a State regulatory requirement or because the private charter operator is located too far from the origin of charter service. The regulation specifies the process for requesting this exception, which, if granted, is effective for no more than twelve months. Section 604.9 of the regulation provides specific guidance regarding exceptions which permit incidental charter service to meet the needs of the elderly, persons with disabilities, and persons served by DHHS funded programs listed in Appendix A of the charter regulation.

Service provided under contract to a social service agency will usually be public transportation, not charter service, if the service is under the control of the subrecipient, is open door, and the subrecipient can put any rider on the vehicle in addition to the agency's clients. The regulation should not discourage Section 5311 subrecipients from using FTA funded equipment in coordinated systems, or from providing service under contract to social service agencies, provided that the requirements of the regulation are met.

14. DRUG AND ALCOHOL TESTING. In the interest of safety of transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Program, 5311 Nonurbanized Area Formula Program, and other programs as determined by the Secretary are required by 49 U.S.C. § 5331 to establish drug and alcohol testing programs. The purpose of the testing program is to help prevent accidents and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Grant recipients identified above must also certify annually that they are in compliance with the two FTA regulations concerning drug and alcohol testing. Compliance with the regulations is a condition of FTA funding. Where applicable as discussed below, recipients of FTA funding are required to certify to Federal Railroad Administration (FRA) regulations and to Federal Motor Carrier Safety Administration (FMCSA) and United States Coast Guard (USCG) regulations concerning drug and alcohol programs.

To assure compliance with the drug and alcohol testing requirements, FTA has promulgated a regulation titled, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." The regulation applies to recipients of funds identified above. The regulation requires that FTA recipients follow the drug and alcohol testing procedures found in applicable FTA (49 C.F.R. Part 655) and DOT (49 C.F.R. Part 40) regulations.

The regulation applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes sub-recipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with the FTA regulations. Applicability to Capital funding is limited to revenue operations; it does not apply to construction phases of funded projects.

Section 5307 and Section 5309 recipients have been required to certify their compliance and test since 1996. States must annually certify on behalf of their Section 5311 subrecipients. Standard language for certification of compliance with the regulations appears in 49 C.F.R. Part 655 Subpart I. Recipients or subrecipients that receive only JARC, New Freedom, or Section 5310 assistance are not subject to FTA's rules, but must comply with the FMCSA rule for employees who hold Commercial Driver's Licenses.

The rule requires testing of employees who perform a safety-sensitive function, which is defined in 49 C.F.R. § 655.4. The rule requires the following six types of testing: pre-employment for drugs (including transfer from a non-safety-sensitive position to a safety-

sensitive position); reasonable suspicion; random; post-accident; return-to-duty; and follow-up.

The rule requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The rule requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, the 49 C.F.R. Part 655 Subpart D establishes alcohol concentration levels and prohibited behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration. Technical assistance materials and training information to help grantees implement the rules are available at the Web site (<http://www.fta.dot.gov> – click on ‘Safety & Security’) or through contacting the FTA Office of Safety and Security, FTA Headquarters, 400 Seventh Street, SW, Washington, D.C., 20590, suite 9301.

15. **DRUG-FREE WORKPLACE**. In accordance with 41 U.S.C. § 701 *et seq.*, the Drug-Free Workplace Act of 1988 (the Act), and 49 C.F.R. Part 32, each grantee is required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program. The grant applicant must agree that it will provide a drug-free workplace and comply with all requirements of 49 C.F.R. Part 32. However, these provisions apply only to States as FTA’s direct grantees and do not extend to subrecipients.

The grantee is required to provide a written Drug-Free Workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations.

The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA grantee is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the grantee/employer is required to provide written notice to FTA within 10 days of having received the notice. Within 30 days of receiving the notice of a conviction, the grantee/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help grantees implement the Drug-Free Workplace and Drug and Alcohol Testing rules are available through the FTA Office of Safety and Security, FTA Headquarters, 400 Seventh Street, SW., Washington, D.C. 20590.

16. **RESTRICTIONS ON LOBBYING**. Federal financial assistance may not be used to influence any Member of Congress or an officer or employee of any agency in connection with the

making of any Federal contract, grant, or cooperative agreement. The State, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of non-Federal funds for such purposes (49 C.F.R. Part 20). Other Federal laws also govern lobbying activities. For example, Federal funds may not be used for lobbying Congressional Representatives or Senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. § 1352). General advocacy for transit and providing information to legislators about the services a recipient provides in the community are not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

17. DEBARMENT AND SUSPENSION. The purpose of the so-called "integrity" certification (which is required of the State as primary grantee, and the second tier certification required of subrecipients and contractors receiving more than \$100,000) is to ensure that Section 5311 funds are not given to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in Federally-assisted transactions. Only contractors and subcontractors that receive contracts in excess of the Federal small purchase threshold (currently \$100,000) must submit certifications. The U.S. General Services Administration (GSA) issues a document titled, "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" monthly. The list is available on the GSA Web site: (<http://www.gsa.gov/index>). The burden of disclosure is on those debarred or suspended to identify their status. If at any time the grantee or other covered entity learns that a certification it made or received was erroneous when submitted, or if circumstances have changed, disclosure to FTA is required. DOT has issued implementing regulations at 49 C.F.R. § 29.115(a).

18. PRE-AWARD AUTHORITY.

a. General. FTA provides blanket, or automatic, pre-award authority in certain program areas described below. This pre-award authority allows grantees to incur certain project costs prior to grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This automatic pre-award spending authority, when triggered, permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Pre-award authority for design and environmental work on the project is triggered by the authorization of formula funds or appropriation of funds for discretionary projects and publication of those projects in FTA's annual *Federal Register* Notice of Apportionments and Allocations. Following authorization of formula funds or appropriation and publication of discretionary projects, pre-award authority for other capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental Record of Decision (ROD), Finding of No Significant Impact (FONSI), or a determination that the project is a categorical exclusion (CE).

All grantees are strongly encouraged to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and Federal requirements.

Pre-award authority for operating and planning projects under the formula grant programs is not limited to the authorization period, but there is no pre-award authority for JARC or New Freedom projects prior to being competitively selected.

- b. Conditions. In general, all Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. In specific,
- (1) Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (2) All FTA statutory, procedural, and contractual requirements must be met.
 - (3) No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.
 - (4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s). Local funds expended by the grantee prior to the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction prior to the date of pre-award authority for those activities (i.e., the completion of the NEPA process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.
 - (5) The Federal amount of any future FTA assistance awarded to the grantee 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/local match ratio at the time the funds are obligated.
 - (6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.
 - (7) When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority.
 - (8) More information regarding Pre-award authority can be found in the Federal Register Notice of 11/30/05, available at FTA's Web site. Pre-award authority may be updated in annual apportionment notices.

19. SAFETY. FTA's authority in the area of transit safety is set forth in Section 5329. Under this Section, FTA may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter, in order to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it. FTA may also require local jurisdictions to submit a plan for eliminating, mitigating, or correcting the deficiency. Finally, FTA may also withhold further financial assistance from any grantee that fails to correct any safety and security deficiency.
20. LEASE VERSUS BUY CONSIDERATIONS. A grantee may use capital funds to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. Grantees should refer to regulations at 49 C.F.R. Part 639 for further details on conducting the cost effectiveness comparison. For grantees with pre-award authority, it is necessary for the grantee to conduct the cost comparison before entering into the lease but it is not necessary to submit the comparison to FTA for FTA review. The cost comparison should be retained on file for later review or audit. In cases where a grantee intends to enter into a lease of considerable duration (rather than paying for the lease in a lump sum at the beginning of the lease period), it is necessary for the grantee to be able to complete the acquisition with local funds in the event FTA funds are not available in later years. Generally it is not considered cost effective to lease real estate. When a grantee has received an earmark for a project and proposes to enter into a capital lease for some element of the project, the grantee must submit the cost comparison for FTA approval as part of the grant application.
21. SCHOOL TRANSPORTATION. Section 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 C.F.R. Part 605) does permit regular service to be modified to accommodate school students along with the general public. For the purpose of FTA's school bus regulation, Head Start is a social service, not a school program. However, rules for the Headstart program limit the types of vehicles which may be used to transport Headstart children. FTA recipients may operate vehicles which meet the safety requirements for school transportation, but may not provide exclusive school service.
22. COMMERCIAL DRIVER'S LICENSE. All drivers of vehicles designed to transport more than 15 people (including the driver) must have a commercial drivers license (CDL). Mechanics who drive the vehicles must also have a CDL.

APPENDIX A:

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA

1. **PRE-APPLICATION STAGE**

- a. **System Access.** Applications for FTA grant program funds must be submitted electronically through the Transportation Electronic Award Management System (TEAM). Applicants must have access to FTA's TEAM system in order to enter a grant. If an applicant does not have access to TEAM, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix H.
- b. **Planning.** Prior to grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a Federally-approved: State Transportation Improvement Program (STIP) for capital and/or operating projects; or a Unified Planning Work Program (UPWP) for planning projects. In addition, FTA encourages projects to be derived from a locally developed, coordinated public transit-human service transportation plan, which should be integrated into and consistent with the metropolitan and statewide planning processes.
- c. **Environmental Determination.** The impact that a proposed FTA assisted project will have on the environment shall be evaluated and documented in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), prior to grant application.
- d. **Annual Submission of Certifications and Assurances.** A grant applicant applying for assistance under the other than urbanized formula program, or any other FTA grant program, must annually submit certifications and assurances that are applicable to the grant applicant's grant requests during the fiscal year. The certifications and assurances were discussed in Chapter IV, "Program Development." The certifications and assurances should be examined annually for changes and additions resulting from legislation.
- e. **Civil Rights Submissions.** Civil Rights submissions that may be required include a Title VI Plan, EEO Program, Disadvantaged Business Enterprise (DBE) Program, and Americans with Disabilities Act (ADA) Paratransit Plan. The FTA Regional Civil Rights Officer must verify that all required Civil Rights submissions are current at the time that the grant application is entered into TEAM. The required documentation must be submitted prior to the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. (See Chapter X, Other Provisions.)
- f. **Transferred Funds.** The request for transfer of funds should be made prior to applying for the grant in TEAM, if the grant application will fund projects using funds transferred from other programs. This includes funds flexed from the Federal Highway Administration, FHWA. (See Appendix E, "Procedures Related to Flexible Funding.")

2. APPLICATION STAGE (TEAM INFORMATION). Applicants for nonurbanized formula program funds should submit their grant applications electronically through the Transportation Electronic Award Management System, TEAM. TEAM is a database accessible via the Internet. The TEAM User Guide provides detailed information on how to access and use FTA's TEAM System. The user guide covers the creation, submission, award, and execution of a grant application; reporting requirements, grant amendments, budget revisions, and close-out procedures are also addressed. Information that should be entered into TEAM when preparing an application includes:
 - a. Recipient Information. Applicants should enter all required information about their organization in the appropriate fields in TEAM, including: recipient address, contact information, union information, urbanized area identification number (UZA), Congressional district(s), DUNS number, etc. The information shall be current and accurate for each grant and periodically updated as changes occur.
 - b. Project Information. Applicants should identify whether the application is a new grant, a grant amendment, or a budget revision. The project start/end date, program date, EO 12372 review date, Metropolitan Planning Organization (MPO) concurrence date (if applicable), and grant project costs shall be identified.
 - (1) Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. The Program of Projects (POP) should be attached or included in this section. At a minimum, the project description should identify subrecipients funded through the grant application and the projects being implemented by each subrecipient. There is a specific text field for this information associated with each activity line item. Project activities shall be sufficiently described to assist the reviewer in determining eligibility under the program.
 - (2) Program DATE and PAGE of STIP or Unified Planning Work Program (UPWP). All projects for capital and operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) in the most recently approved STIP on which the project(s) contained in the application are listed. The electronic system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities the UPWP date should be entered here, if possible, or in the project details section.
 - c. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All sources of funds shall be identified and confirmed. All rolling stock procurements shall include vehicle description and fuel type; expansion activities shall include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for specific funding programs. If the grant contains

funding for tribal governments, the non-add scope 992 should also be added to the budget and identify the amount of funding in the application allocated to each tribes. The non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Other non-add scopes are used for ITS, security funds, and other special emphasis areas.

- d. Project Milestones. Estimated completion dates for all milestones should be provided; revenue vehicles have particular milestone requirements. If milestones are not pre-populated by the TEAM system for a particular ALI, use the add function to add milestones for that ALI to the grant application.
- e. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 C.F.R. §§ 771.115 and 771.117.) Grant applicants should refer to Part 771.117(c) and (d) for a listing of the Class II projects. Most Section 5311 funded projects meet the criteria for a categorical exclusion and require no further action. However, if a project does not clearly meet the criteria for a categorical exclusion, a grant applicant is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.
- f. Fleet Status. Fleet status data are not required for Section 5311 grant applications.
- g. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, a grant number is then assigned. At this point, the grant is ready to be pinned and submitted in TEAM by the designated recipient/grantee.
- h. Certification of Labor Protective Arrangements. Section 5311 grants are covered by a special warranty and are not submitted to DOL. Currently States are required to submit a letter to DOL regarding subrecipient signing of the warrantee and labor union information. However, at the time of this draft, DOL is preparing to revise its procedures for Section 5311.
- i. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements have been met. FTA awards and obligates funds requested in the grant.
- j. Grant Execution. After FTA has approved and awarded the grant, the applicant shall execute the award before funds can be drawn down from the grant. Grants that include pre-award activity require the submission of a financial status report prior to grant execution.

3. APPLICATION CHECKLIST.

<p>Part I – Recipient Information</p> <ol style="list-style-type: none"> 1. Are Annual Certifications & Assurances pinned? 2. Is the Grantee Contact & Other information Complete? 3. UZA/Congressional District information entered and accurate 4. Is union contact information entered and accurate? 5. Has Civil Rights Program Documentation been approved by FTA? 6. Has the applicants DUNS Number been entered in the appropriate field? 	<p>Part IV – Budget</p> <ol style="list-style-type: none"> 1. Are ALI codes entered under the appropriate scope codes? 2. Have funding percentages been verified to ensure that Federal funds are not over the allowable share? 3. Does the funding amount entered in the budget match financial information entered in the “Project Information” field? <ol style="list-style-type: none"> a. Federal Funds b. Local Match 4. Does the rolling stock (vehicle) line item contain accurate information such as: <ol style="list-style-type: none"> a. Description b. Fuel Type
<p>Part II – Project Details</p> <ol style="list-style-type: none"> 1 Does the Project Description include adequate descriptive information of funded subrecipients and projects? 	
<p>Part III – Project Information Have the following fields been completed if applicable?</p> <ol style="list-style-type: none"> 1 New Application or Amendment? 2. Start/End Date? 3. Program Date (STIP date) (UPWP if planning activities included)? 4. Have control totals been entered? 5. If pre-award authority is applicable, has “yes” been selected? 6. Has the EO 12372 Review been completed, if applicable? 	<ol style="list-style-type: none"> 5. Details (Extended Budget Description) <ol style="list-style-type: none"> a. Has descriptive information been added in the details section of each ali that identifies the items being funded using the line item? 6. If the grant contains funding to tribal government, has a non-add scope been added to it that shows the funds allocated to the tribal governments? <p>Part V – Project Milestones</p> <ol style="list-style-type: none"> 1. Are milestones listed for each ALI? (If an ALI does not have milestones, they should be added.) 2. Have estimated completion dates been entered? <p>Part VI – Environmental Findings (NEPA)</p> <ol style="list-style-type: none"> 1. Has an environmental finding been entered for each ALI?

4. ECHO INFORMATION.

Office of Management and Budget (OMB) Circulars A-102, A-110 and 31 C.F.R. Part 205, governs payment to recipients for financing operations under Federal grant and other programs. These regulations require that payment to a grantee be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA "ECHO System Users Manual for Grantees."

ECHO Control Number
(ECN) _____

(For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

Initial Setup

Info. Change

Grantee Information Change

Information from this form is required under the provision of 31 U.S.C. § 3322 and 31 C.F.R. § 210. Treasury uses this to transmit payment data by electronic means to a company's or a grantee's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH Payment System.

Note: See the bottom for instructions on completing this form.

GRANTEE INFORMATION	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER: ()
CONTACT PERSON NAME:	
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ()
DATE: / /	
AGENCY INFORMATION	
NAME: <i>Federal Transit Administration</i>	
ADDRESS: <i>400 Seventh Street SW., Room 9422, TBP-24, Washington, D.C. 20590</i>	
CONTACT PERSON NAME:	<i>202-366-9748</i>
FINANCIAL INSTITUTION INFORMATION	
(Note: Have Your Bank Complete This Section)	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()

NINE DIGIT ROUTING TRANSIT NUMBER: _____		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF REPRESENTATIVE:	DATE: //	FAX NUMBER: ()

Revised 7/98

B>Instructions for Completing Form:

1. Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, Agency will assign ECHO Control Number.
2. Check appropriate box(es):
 - a. Initial Setup.
 - b. Change in Bank Information.
 - c. Change in Grantee Information.
3. Fill out information in the appropriate section(s) listed below:

Grantee Information Section-Print or type the name of the grantee and address that will receive ECHO/ACH payments. Also include a contact person's name, date, telephone and telefax numbers.

Financial Institution Information Section-Have your bank fill out this section. They should print or type the name and address of the financial institution who will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (grantee) account title, depositor (grantee) account number, and type of account (type can **ONLY** be designated as **Checking** or **Saving**), signature an title of representative, date and telefax number.

4. Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.
5. If there are any questions, please call **202-366-9748** and ask for the agency's ACH contact.

APPENDIX B:

SAMPLE SECTION 5311 PROGRAM OF PROJECTS

[Program of projects may be submitted as an electronic attachment. Format shown may be altered, so long as all information is provided.]

State: _____

5311: FY ___ Apportionment: \$_____ ; Carryover: _____

RTAP: FY ___ Allocation: \$_____ ; Carryover: _____

Transfer Funds (plus or minus): _____

Total Funds Available: _____

Total number of subrecipients funded in this Program of Projects: _____

LIST OF PROJECTS

In the following list, identify with an asterisk (*) those subrecipients which are Indian tribal governments or serve Indian tribal transportation needs. List Intercity Bus, Rural Transportation Assistance Program (RTAP) and any transferred projects from 5310, 5316, or 5317 separately.

CAPITAL, OPERATING, AND PROJECT ADMINISTRATION

(Projects may include reasonable contingencies)

Subrecipient Name	Subrecipient Category Type	Program Description	Counties Served	Net Project Cost	Federal Share
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
		SUBTOTAL – OPERATING		_____	_____
		SUBTOTAL – CAPITAL		_____	_____
		SUBTOTAL - PROJ. ADMIN		_____	_____

INTERCITY BUS PROJECTS [Section 5311(f)]

Subrecipient Name	Subrecipient Category Type A or B	Program Description Counties Served	Net Project Cost	Federal Share
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
		Subtotal Intercity Bus Capital	_____	_____
		Subtotal Intercity Bus Operating	_____	_____
		Subtotal Intercity Bus Admin.	_____	_____

SUBTOTAL INTERCITY BUS

STATE ADMINISTRATION, PLANNING AND TECHNICAL ASSISTANCE
 [Section 5311(e)]

(Not to exceed 15% of Section 5311 apportionment and any flex funds transferred to the Section 5311 account may be used to provide a 100% Federal share. Section 5307 funds transferred to the Section 5311 account may be used to provide 80% Federal share for planning projects without regard to the 15% cap.)

Subtotal State Administration (projects funded at 100%)	_____	_____
Subtotal Planning (projects funded at 80%)	_____	_____

RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP) [Section 5311(b)(3)]

Subtotal RTAP Training	_____	_____
Subtotal RTAP Technical Assistance	_____	_____
Subtotal RTAP Transit Research	_____	_____
Subtotal RTAP Support Services	_____	_____
Subtotal RTAP Reserve	_____	_____
 SUBTOTAL RTAP	_____	_____

APPENDIX C:

SECTION 5311 BUDGET INFORMATION

Use the chart of activity line item (ALI) codes to prepare a consolidated budget for the entire program of projects (Appendix B). Group related line items under appropriate scope codes. The scope is usually identified by the first three digits of the ALI followed by a two digit sequence number. A few exceptions for the 5311 program are noted below. The same scope may be used more than once in a complex budget. If so, the repeated scope is numbered sequentially. The State may enter the project and recipient descriptions from the program of projects as extended text associated with the scopes.

For each ALI, enter the net project cost and the Federal share. The Transportation Electronic Award Management System (TEAM) generates standard descriptions for each ALI code, but the text may be overridden to enter more specific descriptions that are consistent with the standard description.

CAPITAL

Use of the correct ALI codes identifies all vehicles as replacement or expansion, and indicates the size and type of vehicle or equipment. Enter a quantity for each vehicle ALI. For example, if there are 10 subrecipients in the program of projects and each will receive three replacement vans and one will get a mid sized bus for new service, the scope 111 (Bus, revenue rolling stock) would include two ALI codes - 11.12.15, quantity 30, and 11.13.03, quantity 1. The individual recipients and types of service provided could be identified in extended text. Through TEAM, the Federal Transit Administration (FTA) is able to use this information to generate detailed reports electronically on the use of program funds. When grantees use the higher Federal match for equipment purchased to meet clean air or accessibility requirements, a special non-add scope must be used for tracking, in addition to the usual coding. Use as many capital scopes and activity codes as necessary to aggregate capital projects from the program of projects. Capital projects in support of intercity bus transportation should not be included here, but rather under scope 634.

Listed below are new codes which reflect new capital definitions:

- 11.7L.00 Mobility Management (5302(a)(1)(L))
- 11.7M.00 Debt Service Reserve (5302(a)(1)(K))
- 11.7K.00 Crime Prevention and Security (5302(a)(1)(J))

OPERATING

The ALI for operating assistance for all FTA programs is 30.09.XX. The grant project number is sufficient to identify the program as Section 5311. Operating assistance may be shown either under scope 300 or grouped with other miscellaneous items in scope 600. Operating assistance for intercity bus projects should be shown under scope 634.

The last 2 digits 30.09.XX (Operating Assistance) indicates different match ratios available:

- 30.09.01 Up to 50% Federal Share
- 30.09.02 Sliding Scale (5311 or 5310 pilot only)
- 30.09.03 80% CMAQ

OTHER PROGRAM COSTS

The scope 600 may include the ALI's for all other program costs, such as State or program administration (11.80.00), project administration (11.79.00), and program reserve (11.73.00), and (optionally) operating assistance (30.09.xx). This creates a shorter printed project budget. Quantities are not used for these line items.

Alternately, these activities may also be listed under separate scopes in the 600 series:

- 610 - State administration
- 620 - project administration,
- 630 - program reserve.

It may be preferable to use the separate scopes if only one of these activities is included in the grant.

Show both net cost and Federal share for each ALI. The maximum Federal share for project administration is 80%; for operating, 50%; for program reserve, 80%; and for planning outside the cap, 80%. The 15% of the apportionment or transferred flex funds allowed for State administration, planning, and technical assistance may be funded at 100% Federal share.

New codes were added for Section 5310, JARC, and New Freedom projects included in a Section 5311 grant after funds for selected projects have been transferred to the non-urbanized formula program. These codes are additive, not non-add. Include all activities for the transferred 5310, JARC, or New Freedom projects under the relevant scope code in the main part of the project budget.

- 641.00 Section 5310
- 646.00 JARC
- 647.00 New Freedom

INTERCITY BUS [Section 5311(f)]

All projects used to fulfill the statutory requirement to spend 15% of the apportionment in support of intercity bus service must be included in scope 634. Any of the ALI codes may be used under this scope, even if they have been used elsewhere in the budget for other rural transit projects. However, the same project should not be double-counted. For example, if a single subrecipient receives capital and/or operating assistance for local rural transit services and also for service meeting the criteria for Section 5311(f), the costs would be separated out and only the intercity bus portion reported under scope 634 with the other project costs shown under other appropriate scopes.

The activity codes for intercity bus projects are the same as those used elsewhere. Eligible activities also include planning and marketing, in addition to capital and operating. Inclusion

under scope 634 identifies these activities as intercity projects and enables FTA to track and report on intercity bus obligations. To help track project costs subject to the expanded eligibility granted in SAFETEA-LU under 5302(a)(1)(G), changes/additions were made to the following ALIs under the 5th and 6th digit for Station Stops/Terminals:

- .03 Terminal, Intermodal (transit)
- .11 Terminal, Intermodal (Intercity bus)
- .12 Terminal, Intermodal (Intercity rail)

PLANNING

Planning ALI codes should be used in the project budget only if funds transferred from Section 5307 are being used for planning outside the State administration limitation, or if the planning or marketing activity is for intercity bus and is included in scope 634. The FPC 09 is used when obligating funds for planning permitted outside the State administration limitation. All other planning is subject to the 15% limitation on State administration and must be included in the ALI for State administration (11.80.00) and included in the funds obligated using FPC 06.

RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP)

The scope code for RTAP is 635. This code, which departs from the usual numbering scheme, was chosen so that RTAP would appear at the bottom of the printed budget used at the time, since it is funded from a separate allocation. There are five ALI codes for RTAP, which reflect the eligible assistance categories:

- 43.50.01 - training,
- 43.50.02 - technical assistance,
- 43.50.03 - research,
- 43.50.04 - support services, and
- 43.50.05 - program reserve (not to exceed 10% of RTAP allocation).

More specific project descriptions should be included either in the extended description at the grant level (i.e. the program of projects) or in the extended description fields for the RTAP ALI's.

NON-ADD SCOPES

FTA uses non-add scopes in the project budget to track the used of the enhanced Federal share for vehicle related equipment and facilities required for ADA or Clean Air Act compliance, for tribal projects, and for other special initiatives. Include under these non-add scopes the portions of ALIs used elsewhere in the project budget for these purposes. The amounts included in the non-add scopes are not computed in the budget totals.

A non-add code was added to enable FTA to track the funding for tribal transit under Section 5311 grants to States. Use this code to identify tribal projects under any program.

- 992.nn Tribal Projects

ACCOUNTING CLASSIFICATION CODES

FTA uses accounting classification codes to indicate the source of funds in a grant. Each digit in the code has a specific meaning. For example, the accounting classification code 2006.25.18.81.2 provides the following information:

The accounting classification codes have the following structure and meaning:

Positions 1-4: “Year” – indicates the year of appropriation or allocation of the funds.

Positions 5-6: “Appropriations” - indicates which of the several large FTA accounts is being used to fund the grant (Formula and Bus Grants, Capital Investment Grants, Research and University Centers, or Administrative). For example, ‘25’ represents the Formula and Bus Grants account funded entirely from the Mass Transit Account of the Highway Trust Fund.

Positions 7-8: “Section” – indicates the program under which the funds are being awarded. Many of the codes were established before the FTA Act was codified and refer to the former section numbers in the old statute (e.g. Section 5311 used to be Section 18). For the new programs, the new codes are related – to the extent possible – to the section number in the codified act. For example, ‘57’ is used for New Freedom, which is 49 U.S.C. § 5317.

Positions 9-10: “Limitation” – allows us to track set-asides, transfers, limits, and special uses. The next two digits indicate the specific program source of the funds. The original Section 5311 apportionment is coded 81. Funds transferred from Section 5307 are U8 (unrestricted). Section 5311 funds transferred to Section 5307 are coded T9. Section 5310 funds transferred to Section 5311 are coded B2. Each flexible funding program has its own code, so FTA and the Federal Highway Administration (FHWA) can track the specific source of the funds.

Position 11: Indicates whether funds are appropriated general funds (1) or contract authority (2). The funds from the Mass Transit Account (“trust funds”) are coded 2 for contract authority.

FINANCIAL PURPOSE CODES

When the funds are obligated for a grant, FTA uses a financial purpose code (FPC) to indicate any broad statutory restrictions on the funds. All funds used for State administration within the 15% cap are obligated using FPC 06. The RTAP funds are obligated under FPC 07. For Section 5311 only, everything else is obligated under FPC 09, the general purpose code. In other FTA grant programs, 00 is used for capital obligations, 04 for operating, and 02 for planning. Because the States have the flexibility to move funds around among projects within the program of projects, FTA maintains the maximum flexibility by aggregating the obligations as broadly as possible. When the funds are actually expended and drawn down, the State indicates the use of the funds by substituting a number for the X in the project number in the drawdown request. Operating (4), capital and project administration (0), and planning (2) all draw against FPC 09.

SAMPLE APPROVED PROJECT BUDGET

GRANTEE: ANYSTATE DEPARTMENT OF TRANSPORTATION

CAPITAL, ANYSTATE

PROJECT NO.: AN-18-X015-00 BUDGET NO.: 01

SCOPE	FEDERAL AMOUNT	TOTAL AMOUNT
111-01 BUS ROLLING STOCK		
QUANTITY 16.....	\$1,500,000	\$1,875,000
<u>ACTIVITY</u>		
11.12.01 PURCHASE REPLACEMENT		
<30 FT. BUSES WITH LIFTS		
QUANTITY 8	\$1,350,000	\$1,687,500
11.12.15 PURCHASE REPLACEMENT		
VANS WITH LIFTS		
QUANTITY 8	\$ 150,000	\$ 187,500
SCOPE		
300-01 OPERATING ASSISTANCE	\$1,750,000	\$3,500,000
<u>ACTIVITY</u>		
30.09.00 OPERATING ASSISTANCE	\$1,750,000	\$3,500,000
SCOPE		
600-01 OTHER PROGRAM COSTS	\$447,500	\$509,375
<u>ACTIVITY</u>		
11.73.00 PROGRAM RESERVE	\$ 47,500	\$ 59,375
11.79.00 PROJECT ADMINISTRATION	\$200,000	\$250,000
11.80.00 STATE ADMINISTRATION	\$652,500	\$652,500
SCOPE		
634-01 INTERCITY BUS PROJECTS	\$652,500	\$1,005,000
<u>ACTIVITY</u>		
11.33.01 REMODEL INTERMODAL		
TERMINAL	\$400,000	\$500,000
30.09.00 OPERATING ASSISTANCE	\$252,500	\$505,000
SCOPE		
635-01 RURAL TRANSIT ASSISTANCE		
PROGRAM	\$150,000	\$150,000
<u>ACTIVITY</u>		
43.50.01 TRAINING	\$50,000	\$50,000
43.50.02 TECHNICAL ASSISTANCE	\$25,000	\$25,000
43.50.03 RESEARCH	\$50,000	\$50,000
43.50.04 SUPPORT SERVICES	\$25,000	\$25,000

TOTAL.....	\$4,500,000	\$7,039,375
ESTIMATED NET PROJECT COST	\$7,039,375	
FEDERAL SHARE	\$4,500,000	
LOCAL SHARE	\$2,539,375	

OTHER (Scopes and Activities not included in Project Budget Totals)

SCOPE:

992.0 TRIBAL PROJECTS	\$ 50,000	\$ 62,500
ACTIVITY:		
11.12.15 PURCHASE VAN W/LIFT	\$ 50,000	\$ 62,500

SOURCES OF FEDERAL FINANCIAL ASSISTANCE

FUNDING UZA: 990000 FUNDINF UZA NAME: ANYSTATE

ACCOUNTING			PREVIOUSLY	AMENDMENT		
<u>CLASSIFICATION</u>	<u>FPC</u>	<u>FY</u>	<u>SEC</u>	<u>APPROVED</u>	<u>AMOUNT</u>	<u>TOTAL</u>
2006.25.18.81.2	09	2006	18		\$4,150,000	\$4,150,000
2006.25.18.81.2	06	2006	18		\$652,500	\$652,500
2006.25.18.R7.2	07	2006	18		\$150,000	\$150,000
				TOTAL	\$4,500,000	\$4,500,000

APPENDIX D:

PROCEDURES RELATED TO FLEXIBLE FUNDING

1. FLEXIBLE FUNDS

Flexible funding categories are those programs authorized under the Federal-aid highway program that are permitted to be used for either transit or highway projects. The funds may be used for any non-operating purpose eligible under the Federal Transit Administration (FTA) Urbanized Area Formula Program (49 U.S.C. § 5307), the Elderly and Individuals with Disabilities Program (49 U.S.C. § 5310) and the Nonurbanized Area Formula Program (49 U.S.C. § 5311), (including preventive maintenance) and project administration. Flexible fund programs include the Surface Transportation Program (STP), Donor State Bonus, Interstate Maintenance, Bridge Replacement and Rehabilitation, National Highway System, Substitute Highway, and the Congestion Mitigation and Air Quality Improvement (CMAQ) programs. Although these the Federal Highway Administration (FHWA) programs have intermodal flexibility, it is important to note that there are both programmatic and distributive limitations on the use of at least some portions of some programs.

2. PROCEDURES

The FTA and FHWA have jointly developed procedures to allow the use of flexible funds under the new provisions of SAFETEA-LU (draft) dated February 2006. The following guidance refers only to the funds transferred to the Nonurbanized Area Formula Program.

- a. General. For those flexible funds transferred from FHWA to FTA for use in an Nonurbanized area, the funds are placed in a State account under the Nonurbanized Area Formula Program. Thereafter, the funding will be treated as Nonurbanized Area Formula Program funds although they retain a special identifying code. Flexible funds should be combined with regular FTA formula funds in a single matching grant application, but identified as such.
- b. Funds Transferred to FTA. Funds available under the Surface Transportation Program (STP) may be transferred to FTA and used for any capital purpose eligible under the FTA Nonurbanized Area Formula Program. In addition, National Highway System (NHS) funds and portions of FHWA's Interstate Maintenance and Bridge programs may be transferred to the STP and then made available to FTA for transit capital projects consistent with FTA requirements of the Nonurbanized Area Formula Program. Finally, funds available under the Congestion Mitigation and Air Quality Improvement (CMAQ) program may be used in ozone and carbon-monoxide "nonattainment" areas for any transportation project or program (including several transit activities eligible under the Nonurbanized Area Formula Program) which helps lead to the attainment of national ambient air quality standards.

Transit projects in Nonurbanized areas (under 50,000) are to be funded under any of these flexible programs must be identified in a Statewide Transportation Improvement

Program (STIP). Inclusion into the STIP document constitutes a State's commitment to funding programmed projects with the identified FHWA source.

Once a project is ready to be implemented, the FTA grantee submits a complete application to the appropriate FTA regional office according to the application instructions of Appendix A. At the same time, the grantee notifies the designated State highway/transportation agency that it has submitted an application to FTA that will require a transfer of FHWA funds to FTA. Once the State highway/transportation agency determines that the State has sufficient obligation authority, the State agency notifies FHWA that the funds are to be used for transit purposes and requests that the funds be obligated by FHWA as a transfer project to FTA.

Once the project is approved and obligated, the grantee carries out the project following the guidance of FTA Circular 5010.1C, "Grant Management Guidelines." The FTA regional office will administer the project as a Nonurbanized Area Formula Program project.

- c. Matching Share for Flexible Funds. The provisions of Title 23, U.S.Code, regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA require the same non-Federal matching share that such funds would have had if used for highway purposes and administered by the FHWA.

An instance in which a higher than 80% Federal share could be maintained is in States with large areas of Indian and certain public domain lands, and National forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated on the basis of the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95%, is applicable to transit projects funded with flexible funds in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share.

There is no need to transfer STP, CMAQ, and NHS funds that would be used for planning, since planning for both transit and highways is eligible under FHWA's formula programs. Flexible funds to be used for a rural transit planning project should not be transferred to Section 5311, where they become subject to the cap on State administration which limits the use of the funds for planning.

APPENDIX E:

SAMPLE INTERCITY BUS CERTIFICATION

(On official letterhead)

Month, Day, Year

Ms. Sandra Bushue
Deputy Administrator
Federal Transit Administration
400 Seventh Street SW.
Washington, D.C. 20590

Dear Ms. Bushue:

I hereby certify to the Secretary of the United States Department of Transportation that the intercity bus service needs of the State of are being met adequately. Pursuant to Subsection 5311(f)(2) of 49 United States Code, the State accordingly does not intend to expend 15% of its Fiscal Year(s) Section 5311 apportionment(s) to carry out a program for the development and support of intercity bus transportation as would be required by Federal law in the absence of this certification.

Prior to this certification, as required by 5311 (f) (2) [the State] consulted with affected intercity bus operators as follows:

[The model letter constitutes a certification by the person signing the letter. Thus, if this letter is signed by anyone other than the Governor, explain the authority under which this person signs the certification.]

[Additional explanatory information may be added, for example, a description of the process used to assess whether unmet needs existed, the extent of any public participation in the decision, State financial support for intercity bus service, etc., or the amount to be used in the case that intercity bus needs can be adequately met using less than the full 15%.]

Sincerely,

Jane Doe
Governor

cc: FTA Regional Administrator

APPENDIX F:

**SPECIAL SECTION 5333(b) WARRANTY FOR APPLICATION TO THE SMALL
URBAN AND RURAL PROGRAM**

Reserved.

APPENDIX G:

CAPITAL COST OF CONTRACTING

Chapter III, 2, d, 2, O identifies the capital cost of contracting for service as an eligible capital expense. The following table shows the percent of various types of contracts which are eligible for FTA capital assistance without further justification to FTA. The percentages apply no matter whether the service is local, express, shuttle, or paratransit.

**PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE
WITHOUT FURTHER JUSTIFICATION**

Type of Contract	Percent
1. Service Contract (contractor provides maintenance and transit service; grantee provides vehicles)	40%
2. Service Contract (contractor provides transit service only; grantee provides vehicles and maintenance)	0%
3. Vehicle Maintenance Contract (contractor provides maintenance; grantee provides vehicles and transit service)	100%
4. Vehicle Lease Contract (contractor provides vehicles; grantee provides maintenance and transit service)	100%
5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; grantee provides transit service)	100%
6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50%
7. Vehicle/Service Contract (contractor provides vehicles and transit service; grantee provides maintenance)	10%

A recipient may request FTA participation in a higher percentage of the contract than is shown in the table, but must provide appropriate written cost information and documentation to justify the higher percentage to FTA. The State should obtain FTA's approval of any such requests for a level of capital participation higher than the percentages shown in the chart before advancing the project to Category A.

APPENDIX H:

FTA REGIONAL OFFICES

<u>Region/States</u>	<u>Office/Address</u>	<u>Telephone No.</u>
I. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	FTA Regional Administrator, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093	617-494-2055
II. New York, New Jersey, and U.S. Virgin Islands	FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10014-1415	212- 668-2170
III. Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124	215- 656-7100
IV. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee	FTA Regional Administrator, Atlanta Federal Center, Suite 17T50, 61 Forsyth Street, S.W., Atlanta, GA 30303	404-562-3500
V. Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606	312-353-2789
VI. Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	FTA Regional Administrator 819 Taylor Street, Room 8A36, Fort Worth, TX, 76102	817-978-0550
VII. Iowa, Kansas, Missouri, and Nebraska	FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO, 64106	816-329-3920
VIII. Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	FTA Regional Administrator, Dept. of Transportation, FTA, 12300 W. Dakota Ave., Suite 310, Lakewood, CO, 80228-2583	720-963-3300
IX. Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105	415-744-3133
X. Alaska, Idaho, Oregon and Washington	FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA, 98174-1002	206-220-7954

Lower Manhattan
Recovery Office

FTA LMRO Director,
One Bowling Green, Room 436,
New York, NY 10004

212-668-1770