

for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

#### Docket Number FRA-2007-27411

*Applicants:* Union Pacific Railroad Company, Mr. Thomas T. Ogee, Assistant Vice President, Engineering Design, 1400 Douglas Street, Mail Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance of a traffic control system on the Pocatello Yard Runner Track and the removal of Absolute Signal H1E, at approximately milepost 211.8, on UP's Pocatello Subdivision, in East Pocatello, Idaho. The proposed changes consist of the discontinuance of the signal system and removal of signal H1E.

The reason given for the proposed changes is that the signal is no longer needed for train operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the addresses listed above.

All communications concerning this proceeding should be identified by the docket number (FRA-2007-27411) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 23, 2007.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2006-24037]

#### Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, and New Freedom Programs: Final Circulars

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

**ACTION:** Notice of Availability of Final Circulars.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its website final guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC), and New Freedom Programs.

**DATES:** *Effective Date:* The effective date of these circulars is: May 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Henrika Buchanan-Smith or Bryna Helfer, Office of Program Management, Federal Transit Administration, 400 Seventh Street SW., Room 9114, Washington, DC, 20590, phone: 202-366-4020, fax: 202-366-7951, or e-mail, [Henrika.Buchanan-Smith@dot.gov](mailto:Henrika.Buchanan-Smith@dot.gov); [Bryna.Helfer@dot.gov](mailto:Bryna.Helfer@dot.gov); or Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC, 20590, phone: 202-366-4011, fax: 202-366-3809, or e-mail, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Availability of Final Circulars

You may download the circulars from the Department's Docket Management System (<http://dms.dot.gov>) by entering docket number 24037 in the search field, and then clicking on "reverse order." The circulars are the most recently posted documents. You may also download an electronic copy of the

circulars from FTA's Web site, at [www.fta.dot.gov](http://www.fta.dot.gov). Paper copies of the circulars may be obtained by calling FTA's Administrative Services Help Desk, at 202-366-4865.

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#### I. Overview

This notice provides summaries of the Section 5310, JARC, and New Freedom program circulars, and addresses comments received in response to the September 6, 2006, **Federal Register** notice (71 FR 52610). These programs are affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59), signed into law on August 10, 2005.

The Section 5310 program provides funding, allocated by a formula, to States for capital projects to assist in meeting the transportation needs of older adults and persons with disabilities. The States administer this program. FTA is updating the existing Section 5310 circular, last revised in 1998, to reflect changes in the law.

The JARC program was authorized as a discretionary program under the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, June 9, 1998), changed to a formula program under SAFETEA-LU and codified at 49 U.S.C. 5316. The JARC program provides formula funding to States and designated recipients to support the development and maintenance of job access projects designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment. The JARC program also supports reverse commute projects designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities. FTA is

issuing a new circular for the JARC program.

SAFETEA-LU established the New Freedom Program under 49 U.S.C. 5317. The purpose of the New Freedom program is to provide new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. FTA is issuing a new circular for the New Freedom program.

FTA conducted extensive outreach to develop these final circulars. First, FTA held listening sessions in Washington, DC, in September 2005. Then, FTA requested comments related to the Section 5310, JARC, and New Freedom programs in a **Federal Register** notice published November 30, 2005, (70 FR 71950), and held listening sessions in five cities around the country. Subsequent to that notice, FTA published in the **Federal Register** on March 15, 2006 (71 FR 13456), proposed strategies for implementing these programs and requested comments on those strategies. In addition, FTA conducted an all-day public meeting on March 23, 2006, and held a number of meetings and teleconferences with stakeholders. To ensure that we heard from a broad range of stakeholders and interested parties, we extended the comment period of the March 15, 2006, **Federal Register** notice through May 22, 2006. FTA received more than 200 comments from State departments of transportation (DOTs), trade associations, public and private providers of transportation services, metropolitan planning organizations (MPOs), individuals, and advocates. Finally, we published the proposed circulars on our website ([www.fta.dot.gov](http://www.fta.dot.gov)) and a **Federal Register** notice (71 FR 52610) on September 6, 2006, seeking public comment on the proposed circulars. FTA received an additional 70 comments in response to the September 6, 2006, notice and proposed circulars.

This document does not include the final circulars; electronic versions of the circulars may be found in the docket, at <http://dms.dot.gov>, docket number FTA-2006-24037, or on FTA's Web site, at [www.fta.dot.gov](http://www.fta.dot.gov). Paper copies of the circulars may be obtained by contacting FTA's Administrative Services Help Desk, at 202-366-4865.

FTA recognizes that implementation of the Section 5310, JARC and NF programs is still in the early stages. We expect to continue to learn from our

experience in administering the grants and from grantees' experiences in implementing the provisions at the State and local level. FTA will be monitoring the implementation of the programs, and we continue to be open to comments and suggestions. We value input from grantees and others as we put these programs into action, and we urge interested parties to communicate with FTA regional offices regarding successes, questions, and concerns that may arise.

#### Effect of Interim Guidance

On October 31, 2006, FTA issued a **Federal Register** notice (71 FR 63838) stating that the proposed circulars, developed after extensive notice and comment, should be used as interim guidance for grant applications filed in FY 2007 to the extent possible. In the notice, FTA acknowledged that some grantees may have proceeded with the interim guidance published on March 15, 2006, and noted that grantees would be "held harmless" for applications submitted in FY 2007 "based on coordinated planning or competitive selection processes substantially complete before the issuance of final guidance." The final circulars will take effect May 1, 2007; however, this "hold harmless" provision will continue to apply to FY 2007 grant applications for grantees who have substantially completed their planning or competitive selection processes using earlier guidance issued by FTA.

Three commenters requested that FTA allow the same flexibility in FY 2008 for developing the coordinated plan that we allowed in the interim guidance for FY 2007; namely, that planning agencies simply make "good faith efforts" to meet the planning requirements. The beginning of FY 2008 is a full two years after the passage of SAFETEA-LU, and FTA provided a phased-in approach for FY 2007. Because the law requires a coordinated plan, all grants obligated in FY 2008 and beyond must be in full compliance with the requirements of these circulars.

#### II. Chapter-by-Chapter Analysis

All three circulars generally follow the same format. Where possible, this notice discusses the chapters in general terms. Where the chapters vary significantly, as in Chapters III and IV, the discussion is specific to each program. This section briefly describes the content of each chapter and addresses public comments received in response to the September 6, 2006, notice. In addition to making changes to the circulars in response to public

comments, FTA has edited for clarity and consistency among the circulars.

One commenter suggested that FTA develop one coordinated circular for Section 5310, JARC, and New Freedom, especially since much of the material in the circulars is the same, and only a couple of chapters have program-specific information. FTA determined that many recipients would only receive funds from one of the three programs, and did not want to burden those recipients with unnecessary information; therefore, we developed three distinct circulars, one for each program.

#### A. Chapter I—Introduction and Background

Chapter I is an introductory chapter in all three circulars. This chapter covers general information about FTA and how to contact us, provides a brief review of the authorizing legislation for the specific program (i.e., Section 5310, JARC, or New Freedom), provides information about Grants.gov, includes definitions applicable to the specific program, and provides a brief program history.

Several commenters had suggestions for additional definitions of terms. Where we agreed with those suggestions, we have incorporated them into the circulars. For example, we added a definition for "elderly individuals" to the Section 5310 and New Freedom circulars, and we added a definition for "chief executive officer of a State" to all three circulars. We did not, however, change the definitions of "individual with a disability," "eligible low-income individual," or "welfare recipient." FTA acknowledges that there are many definitions for these terms. Since the circulars were developed under the authority of Federal transit law, we have decided to use the definitions in the transit law—49 U.S.C. Chapter 53. We also did not include definitions for "unavailable, insufficient, or inappropriate" public transportation services in the Section 5310 circular, as we believe the dictionary definitions of those terms are sufficient. We did not add, in the definition of coordinated plan, that passengers with disabilities be a part of the planning process. We have described the requirements for outreach and stakeholder input in Chapter V. Further, we declined to include local Workforce Investment Boards in the definition of human service transportation (as we did not include any specific agencies in that definition), but we did reference the Board in Chapter V in all three circulars.

One commenter asked FTA to identify the source data for “welfare recipients” for apportionment of JARC funds. The Census identifies persons whose income is at 150 percent of poverty level and below—this includes welfare recipients. The U.S. Department of Health and Human Services data on welfare recipients are not disaggregated in such a way that FTA could use the data for apportionment purposes; therefore, we use Census data for persons living at 150 percent of poverty or below.

#### B. Chapter II—Program Overview

Chapter II provides more detail about the programs. This chapter starts with the statutory authority for the specific program, including how authorized funds are apportioned. One commenter suggested that the amounts authorized for fiscal years 2006 through 2009 should not be part of the circulars, as the circulars are expected to be in effect past the authorization period of SAFETEA-LU. We agree, and have removed the authorized amounts, but retained the information regarding how the funds are apportioned. The chapter then discusses the goals of the program. We have added the performance measures for each program to this chapter, and, in response to comments, clarified that the indicators specified are targeted to capture program information on a National level—these measures will not be used to assess individual grants.

Next is a brief description of the State or recipient’s role and FTA’s role in program administration, followed by an overview of how the specific program relates to other FTA programs, and a description of coordination with other Federal programs through the Federal Interagency Coordinating Council on Access and Mobility (CCAM). The section on coordination has been updated to reflect CCAM’s recent adoption of policies on coordinated planning and vehicle sharing. In addition, in response to a commenter, the New Freedom circular contains a reference to joint guidance on funding resources regarding access to work, which was originally only in the proposed JARC circular.

Chapter II is an “overview” chapter that contains valuable information but not in the detail that later chapters cover. Some commenters requested that more information be included in this chapter; however, we believe it is more appropriate to include detail in later chapters. We have, however, provided more references to later chapters to direct readers toward the detailed information they are seeking.

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

Due to the differences in program requirements, the discussion of this chapter is divided by program.

##### 1. Elderly Individuals and Individuals With Disabilities (Section 5310)

The final Section 5310 circular hereby supersedes the Section 5310 circular last revised in 1998 (FTA Circular 9070.1E), and incorporates changes in transit law. Significantly, Section 5310, as amended by SAFETEA-LU, permits the use of up to 10 percent of funding for expenses related to program administration, planning, and technical assistance (consistent with FTA’s longstanding administrative practice). The law increases coordination requirements and allows the local funding share to include amounts available for transportation from other non-DOT Federal agencies, as well as Federal lands highway funding. SAFETEA-LU also establishes a pilot program that allows seven States to use up to 33 percent of their Section 5310 funds for operating expenses. One commenter requested that the pilot program be referenced in the circular; FTA issued general guidance for the pilot program in a **Federal Register** notice (70 FR 69201, Nov. 14, 2005) and announced the States selected to participate in a later **Federal Register** notice (71 FR 59101, Feb. 3, 2006). Since the pilot program has its own guidance, FTA did not include any specific guidance regarding this program in the final circular, however, we did make note of the pilot program in Chapter III.

Chapter III addresses State agency designation, apportionment of Section 5310 funds, when the funds are available to the States, under what circumstances funds may be transferred, consolidation of grants to insular areas, who is an eligible subrecipient, administrative expenses, eligible capital expenses, and Federal/local match requirements. This information compares to information found in Chapter II of the 1998 circular.

FTA made two changes to this chapter in response to comments. First, in paragraph 7, “State Administrative Expenses,” we added a provision allowing the administrative funds for Section 5310, JARC, and/or New Freedom to be combined to support activities such as coordinated planning that are common to all three programs. In the September 6, 2006, notice, we stated this was allowable, but we did not include this information in the proposed circular. Second, in paragraph

9, “Federal/Local Matching Requirements” we removed the reference to specific Federal programs and instead used generic terms to describe the types of programs that are a potential source for local match, including employment, training, aging, medical, community services, and rehabilitation services.

One commenter requested that the sliding scale table for Federal match, which addresses the “Sliding Scale Rate for Transit Capital Grants” include the “increased Federal share for operating assistance” for States participating in the Section 5310 pilot program. Section 3012 of SAFETEA-LU, which established the pilot program, caps the Federal share for operating expenses for this program at 50 percent (*see* Section 3012(b)(3)), so the sliding scale rate does not apply to the pilot program. As stated previously, FTA issued general guidance for the pilot program in a **Federal Register** notice (70 FR 69201, Nov. 14, 2005) and announced the States selected to participate in a later **Federal Register** notice (71 FR 59101, Feb. 3, 2006). Individuals interested in this program should refer to those documents.

Most comments on this chapter related to eligible activities. FTA proposed that eligible capital expenses would remain substantially the same as in the 1998 circular, with the addition of mobility management activities as eligible expenses. We pointed out in the September 6, 2006, **Federal Register** notice and the proposed circular that the list of eligible activities is illustrative and not exhaustive. Two commenters wanted to see mention of contracted service, or purchase-of-service agreements as an eligible capital expense. This item is in paragraph 8(m). One commenter asserted that any Intelligent Transportation Service (ITS) project should be eligible under all three programs. ITS is mentioned in paragraph 8(o), and is further identified as a project that is part of mobility management under paragraph 8(p)(7). One commenter asked FTA to reconsider funding the coordinated plan under mobility management. As we explained in the September 6, 2006, notice, mobility management is an eligible expense and includes project planning activities. However, any planning project must be derived from a coordinated plan. Therefore, mobility management funds may not be used to develop the coordinated plan. Mobility management activities are a capital expense funded at an 80/20 Federal/local funding share pursuant to 49 U.S.C. 5310(c).

One commenter explored the differences among the Section 5310, JARC, and New Freedom programs, and seemed to disagree with the fact that States are not required to competitively select Section 5310 programs. The commenter also seemed to imply that having Section 5310 projects included in the Statewide Transportation Improvement Program (STIP) and the Transportation Improvement Program (TIP) was a new requirement. Under Section 5310, States allocate funds to private non-profit organizations or governmental authorities. Most States choose to use a competitive process, and FTA encourages the practice, but the law does not require competitive selection for 5310 as it does for JARC and New Freedom. All grant funds are subject to planning requirements; Section 5310 projects have always had to be part of the STIP and TIP.

One commenter wanted to know if States could "pool" their JARC, New Freedom, and Section 5310 funds into a combined set of funds, provided that they could show that the priorities of all programs are being met. The transfer provisions in SAFETEA-LU do not permit such a pooling of funds; funds may not be "flexed" from one program to another. One commenter asserted that the authority granted in SAFETEA-LU to designated urbanized area recipients to develop their own competitive selection criteria for apportioned Section 5316 (JARC) and 5317 (New Freedom) funds could be extended to the Section 5310 program if States were permitted to sub-apportion some of their 5310 funds to the designated recipient. FTA notes again that while most States conduct a competitive selection process for Section 5310, there is no statutory competitive selection requirement for Section 5310. Second, States may allocate funds to government authorities (e.g., designated recipients) only when the government authority is approved by the State to coordinate services for elderly individuals and individuals with disabilities, or if the authority certifies that there are no non-profit organizations readily available to provide the special services, which is unlikely in a large urbanized area.

## 2. Job Access and Reverse Commute (JARC) and New Freedom

The JARC and New Freedom programs have similar statutory requirements, so Chapter III, with the exception of Eligible Activities, is the same or similar for each circular. This chapter covers recipient designation, including designation in urbanized areas where there are multiple recipients; the role of the designated

recipient; eligible direct recipients and subrecipients; apportionment, availability and transfer of funds; consolidation of grants to insular areas; recipient administrative expenses; eligible activities; and Federal/local matching requirements.

### a. Recipient Designation

FTA proposed, and adopts in the final circulars, that the designated recipient for JARC and/or New Freedom in urbanized areas over 200,000 in population *may* be the same as the designated recipient for Section 5307 (Urbanized Area Formula Grant Program) funds; however, it does not have to be the same designated recipient. The MPO, State, or another public agency may be a preferred choice based on local circumstances. The designation of a recipient shall be made by the governor in consultation with responsible local officials and publicly owned operators of public transportation, as required in 49 U.S.C. 5307(a)(2). Since the State is a public entity, a single State agency could be designated as the recipient of JARC and/or New Freedom funds apportioned to large urbanized areas. The recipient for JARC and New Freedom funds will apply to FTA for these funds on behalf of subrecipients within the recipient's area. Regardless of whether the JARC and New Freedom recipient is the same as or different from the Section 5307 designated recipient, the governor shall issue new designation of JARC and New Freedom recipient letters. Designations remain in effect until changed by the governor by official notice of redesignation to the appropriate FTA Regional Administrator.

In urbanized areas with populations less than 200,000 and in other than urbanized areas, the State is the designated recipient for JARC and New Freedom funds. The governor designates a State agency responsible for administering the funds and notifies the appropriate FTA regional office in writing of that designation. The governor may designate the State agency receiving Other Than Urbanized Area formula funds (Section 5311) and/or Section 5310 funds to be the JARC and/or New Freedom recipient, or the governor may designate a different agency.

FTA encourages the designation of a single designated recipient for each urbanized area over 200,000 in population, in order to streamline the administration of the program and foster coordination although some commenters asserted that a single designated recipient should be a requirement. However, FTA respects the

complexity of geographical and institutional histories of different areas, so this remains a local decision. Further, nothing precludes the designation of multiple designated recipients. When more than one recipient is designated for a single large urbanized area, the designated recipients must agree on how to divide the single apportionment to the urbanized area and notify FTA annually of the division and the geographic area each recipient will be responsible for managing. For multi-State urbanized areas of less than 200,000 in population, the designated recipient for each State is responsible for that State's portion.

In response to comments, FTA made two changes in order to clarify the responsibilities of designated recipients and direct recipients. First, we note that in some large urbanized areas, the competitive selection process may result in projects being awarded to a transit agency that is not the designated recipient for the JARC or New Freedom programs but is a Section 5307 designated recipient. If this happens and the 5307 designated recipient wants to apply directly to FTA for a JARC or New Freedom grant, the JARC or New Freedom designated recipient must enter into a supplemental agreement with the Section 5307 recipient. The supplemental agreement will release the designated recipient from any liability under the grant agreement.

Second, we note that if a State transfers JARC or New Freedom funds to a Section 5307 recipient in a small urbanized area (population between 50,000 and 200,000) for administration of a competitively selected project, the transfer of funds also transfers the oversight responsibilities from the State to the grant recipient. In this situation, the State will only be responsible for the program requirements (e.g., coordinated planning, competitive selection) and data collection for annual reporting purposes. When the funds are transferred to the 5307 direct recipient, the 5307 direct recipient could apply to FTA directly for the funds; however, the application must be submitted as a separate grant. For oversight purposes, FTA will include the JARC/New Freedom projects in the triennial review of the 5307 direct recipient.

One commenter encouraged FTA to accept Section 5307 designation for the JARC and New Freedom programs. These are new programs, and the recipients must go through the process of being designated by the Governor. If a State has a "blanket certification" that the State is the designated recipient for all FTA programs, the State simply needs an amendment to the certification

or an affirmation that the State or other designated recipient will be the designated recipient for all FTA programs, including JARC and New Freedom.

Some commenters expressed concern about the “administrative burden” associated with a designated recipient’s oversight responsibilities of subrecipients, some of which may be private operators. One commenter suggested that the burden of certifying compliance with Federal requirements could discourage selection of non-governmental entities for funding, and another suggested that private operators selected for funding should report directly to FTA, and not to the designated recipient. In response, FTA notes that the competitive selection process must be open and fair—criteria set by the designated recipient cannot discourage private participation. In addition, oversight of subrecipients is the responsibility of the designated recipient.

#### *b. Apportionment, Availability and Transfer of Funds*

FTA did not make any substantive changes to these sections of the circulars. One commenter wanted to confirm that recipients must obligate apportioned funds within the year of apportionment plus two years, and once obligated, they may be spent sometime after that period of availability. That is correct; only if funds remain unobligated after the period of availability will they lapse and be re-apportioned by FTA. This includes funds that have been administratively transferred to a Section 5307 recipient—the funds must be obligated within the period of availability or they will be re-apportioned by FTA. One commenter suggested that if JARC funds remain unobligated due to an absence of applications or insufficient local matching funds, States should have the flexibility to transfer those unobligated JARC funds to rural or large urbanized areas, if unmet needs exist in those areas. Another commenter wanted to know if there are any mechanisms to transfer JARC or New Freedom funds between urbanized and nonurbanized areas, or between urbanized areas. As stated in 49 U.S.C. 5316(c)(3), a State may use JARC funds apportioned for small urbanized and rural areas for projects serving either of these areas of the State, if the State’s chief executive officer certifies that all of the objectives of JARC are being met in the specified areas. Funds may also be transferred for use anywhere in the State including large urbanized areas, if the State has established a statewide program for

meeting JARC program goals. There is no authority to transfer funds apportioned to large urbanized areas to small urbanized or rural areas.

New Freedom funds cannot be transferred from one population area (such as rural) to another population area (such as small urbanized) within a State. While such a transfer provision is statutorily permitted under the JARC program, this provision is not included in the New Freedom program. Therefore, FTA cannot allow this transfer of funds. States may, however, transfer JARC and New Freedom funds to Section 5307 or Section 5311(c) to ease program administration, as long as the transferred funds are used for competitively selected JARC or New Freedom projects, respectively. Transfer requests must be submitted to the appropriate FTA Regional Administrator in writing. One commenter suggested that FTA permit transfers of funds between the JARC and New Freedom programs. The law does not permit such a transfer; funds must be used for the program for which they were apportioned except in insular areas.

#### *c. Recipient Expenses (10 Percent) for Administration, Planning, and Technical Assistance*

Up to 10 percent of program funds are available for the administration, planning, and technical assistance of Section 5310, JARC, and New Freedom programs. These funds may be used directly by the designated recipient or they may be passed through to subrecipients for these purposes. For example, the designated recipient may award grants to local areas to support the development of the coordinated plan. The competitive selection process is part of “administering” the programs and, therefore, these funds may be used to conduct the competitive selection process.

Several commenters expressed concern that 10 percent of the amount apportioned may not be sufficient to administer the program. FTA notes that there is no local match requirement for this funding, and we revised the final circulars to state that the administrative funding available under Section 5310, JARC, and New Freedom may be combined in order to develop a single coordinated plan to meet the needs of persons with disabilities, older adults, and low-income individuals. Further, as we stated in the September 6, 2006, notice, FTA treats the limitation on administrative funds as applicable to funds apportioned to recipients over time, not necessarily to the apportionment for a particular fiscal

year. A recipient may accumulate the “entitlement” to administrative funds for the year of apportionment plus two years to augment the funds available for a special administrative need in a subsequent year.

One commenter asked FTA to reconsider funding the coordinated plan under mobility management. As we explained in the September 6, 2006, notice, (and noted in the Section 5310 discussion of eligible activities, above) mobility management is an eligible expense and includes project planning activities. However, any planning project must be derived from a coordinated plan. Therefore, mobility management funds may not be used to develop the coordinated plan. Mobility management activities are funded at an 80/20 Federal/local ratio pursuant to the applicable program share requirements under Title 49 U.S.C. Chapter 53.

#### *d. JARC Eligible Activities*

Section 5316, as amended by SAFETEA-LU, requires that JARC projects selected for funding be derived from a coordinated plan (see Chapter V) and that grants will be awarded on a competitive basis (see Chapter IV). Funds are available for capital, planning, and operating expenses that support the development and maintenance of transportation services designed to transport low-income individuals to and from jobs and activities related to their employment, and for reverse commute projects. The list of eligible projects included in the final circular is consistent with the use of funds described in FTA’s April 8, 2002, **Federal Register** notice for JARC Program Grants (67 FR 16790). As requested by commenters, this list of eligible activities is illustrative, not exhaustive. In the final circular, we added reverse commute activities to the list of eligible activities. That is the only change we made to JARC eligible activities from the proposed circular to the final circular.

Commenters generally disagreed with FTA’s proposal that transit passes should not be an eligible expense under the JARC program. In addition to comments to the docket, on February 4, 2007, FTA received a letter from a trade association expressing their support for funding transit passes through the JARC program. FTA posted this letter to the docket. FTA strongly supports the implementation of transit pass programs and believes that such activities offer low-income persons affordable transportation opportunities, particularly during periods when transitioning from public assistance to employment. JARC legislation does

explicitly provide for the promotion of such transit pass programs for low-income persons as an eligible JARC expense, but the statute does not expressly provide language for the actual funding of transit passes. The JARC program instead concentrates on building additional transportation capacity to connect low-income persons to jobs and support services and to provide connections to suburban employment sites.

FTA notes that many other Federal human service partner programs are available to support customer fares on existing transit services. Examples include the Temporary Assistance for Needy Families (TANF) program, Workforce Investment Act funds, and other Federal, state, and local human services programs that assist individuals. These opportunities may be pursued within the new locally developed coordinated public transit-human services planning process where many of these agencies and organizations will be participating stakeholders. Further, the Internal Revenue Code at 26 U.S.C. 132(f) allows employers to pay for transit passes and the employee does not pay taxes on this transportation fringe benefit. Promotion of transit pass programs remains an eligible expense.

Several commenters expressed an interest in FTA approving all car ownership program models as eligible JARC projects, including car ownership programs that are not loan programs, such as rehabilitation or donation programs. The commenters requested that FTA remove the shared ride participation requirement, and remove the requirement that the agency administering the program hold the lien on the title of the vehicle, since the lending institution usually holds title.

FTA appreciates the interest of commenters in car ownership programs. In keeping with the original April 8, 2002, **Federal Register** notice, FTA has decided to continue funding auto loan programs but not rehabilitation or donation programs. In addition, FTA will continue the shared-ride requirement, which maximizes the benefits of the Federal investment to low-income populations. As for the lien on the title of the vehicle, the agency administering the loan program can often be a lien holder, in addition to the lending institution. FTA believes this is the best way to ensure satisfactory continuing control, which is a requirement under Section 5307.

One commenter asserted they should be able to prioritize existing JARC projects for funding. FTA believes this is a local decision made through the

planning process. Some existing JARC projects will be selected for funding while others may not, especially if new projects are considered more cost-effective and/or better serve a need of a community.

#### *e. New Freedom Eligible Activities*

Section 5317, as amended by SAFETEA-LU, requires that New Freedom projects selected for funding be derived from a coordinated plan (see Chapter V) and that grants will be awarded on a competitive basis (see Chapter IV). Funds are available for capital, planning, and operating expenses that support new public transportation services and new public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA), that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. As requested by commenters, the list of eligible activities is illustrative, not exhaustive.

FTA proposed, in our September 6, 2006, **Federal Register** notice, that “new” service is any service or activity that was not operational before August 10, 2005, (the date of passage of SAFETEA-LU) and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Plan (TIP) or the State Transportation Improvement Plan (STIP). In other words, if not for the New Freedom program, these projects would not be considered for funding and proposed service enhancements would not be available for individuals with disabilities. Some commenters were concerned that this definition of “new” would eliminate projects that were in place before August 10, 2005, but terminated due to a lack of funding prior to August 10, 2005. To address this concern, we have changed the wording to reflect that projects not operational on August 10, 2005, and without a dedicated funding source as evidenced by inclusion in the TIP or STIP at that time are considered “new.” This will allow projects discontinued prior to August 10, 2005, to be reinstated if the coordinated planning process determines the service is needed. Inclusion of projects in the metropolitan or statewide long-range transportation plans does not constitute a funding commitment. However, once a project is included in the TIP/STIP, it has an identified funding source. Therefore, projects identified in a long-range metropolitan or statewide plan may be eligible for New Freedom

funding, but not projects in the four-year program period of the TIP/STIP.

One commenter asked how long projects could be considered new; in other words, if a multi-year project is successful, does it lose its “new” status at some point? In response, eligible projects funded by New Freedom may continue to be eligible for New Freedom funding indefinitely as long as they remain part of the coordinated plan.

Many commenters objected to FTA’s interpretation that New Freedom projects are those that are both “new” and “beyond the ADA,” while others were in favor of the policy position set forth in the proposed circular. In addition, FTA received feedback from both Administration and Congressional offices in support of the proposed policy that New Freedom projects be “new public transportation services beyond those required by the ADA” and “new public transportation alternatives beyond those required by the ADA.” Therefore, we have not changed the description of eligible activities in the final circular. The only change we made in eligible activities was to clarify that Intelligent Transportation Services is an eligible project, and the incremental cost (if any) of changing the basic mode of service of an ADA paratransit system from curb-to-curb to door-to-door is an eligible project.

One commenter asserted that, in rural areas, it was difficult to conceptualize any new public transportation that is “beyond the ADA.” The commenter sought more examples of eligible rural New Freedom public transportation projects where the service in those areas is demand-responsive. One commenter wanted to know if demand-responsive or flex route services would be eligible for New Freedom funding, or if only fixed route and ADA paratransit were eligible. FTA acknowledges there are limits to the use of New Freedom funds in rural systems that operate only demand-response service; however, the substantial increase in funding to the Section 5311 program under SAFETEA-LU should be sufficient to cover many of the needs of these communities. Certainly vehicle modifications that are beyond the ADA, such as equipment to accommodate over-sized wheelchairs, or increased securement locations on vehicles, would be an eligible New Freedom expense on demand-response vehicles as well as other public transportation vehicles. Travel training and mobility management activities may be valuable public transportation activities in rural areas, as would the addition of new feeder service to outlying transit stations for which ADA complementary paratransit is not

required, such as commuter rail stations, express or commuter bus service, or an intercity bus stop or rail station. In addition, alternatives to public transportation such as accessible taxis and volunteer driver programs can be invaluable to rural residents. FTA encourages rural operators (as well as urbanized area operators) to use the planning process to create innovative solutions to meet the needs of individuals with disabilities in their communities.

One commenter asserted that the current U.S. DOT ADA proposed rulemaking (71 FR 9761, Feb. 27, 2006) introducing "reasonable modification" of policies and practices will essentially nullify the New Freedom program as it will be difficult for any service to be beyond the ADA. FTA disagrees with this assertion. As we understand the proposed rulemaking, it would call on transportation providers to make exceptions to otherwise appropriate general policies and practices on a case-by-case basis where needed to make service available to a particular individual. The purpose of New Freedom, on the other hand, is to enhance the availability of transportation services to persons with disabilities in a community.

One commenter asserted that the ADA regulations allow same-day service for ADA paratransit but do not require it, and similarly, allow door-to-door service but do not require it. The commenter asked why the implementation of same day service would be considered an eligible New Freedom project but door-to-door service would not. As we stated in the September 6, 2006, notice, the ADA regulation requires "origin-to-destination" service, and U.S. DOT guidance issued on September 1, 2005, reiterates the "origin-to-destination" language and notes that, "service may need to be provided to some individuals, or at some locations, in a way that goes beyond curbside service." The difference is that the provision of door-to-door service as a reasonable modification to make service possible to a particular individual in a system that otherwise provides curbside service may allow someone to use the service who otherwise could not access ADA paratransit at all. Same day service is an enhancement that makes the system more convenient and easier to use for all passengers.

FTA is persuaded, however, that the incremental cost increase (if any) of changing the basic mode of an operator's entire ADA paratransit service from curbside to door-to-door could be considered eligible for

New Freedom funding in the same manner as same-day service, inasmuch as the Department's ADA regulations and related guidance do not specify a basic mode of service beyond origin-to-destination. Therefore, if a change in mode of service from curbside to door-to-door is new, and is part of the coordinated plan, the incremental cost increase (if any)—and *only* the incremental cost increase—is an eligible expense. FTA has modified the eligible project list accordingly. The availability of New Freedom funds for this purpose does not imply that any transit system must change its service to door-to-door; it is simply one option among many possible projects that may be funded with New Freedom funds if it is part of the coordinated plan. A system that maintains a general curbside policy may not use New Freedom funds to provide a "reasonable modification" to the general policy of curbside to provide door-to-door service to individuals on a case-by-case basis.

Two commenters suggested that "travel training" should be included as an eligible project under mobility management, and therefore eligible for funding as a capital project. Travel training is listed as an eligible project, both independently and as part of mobility management. Travel training is eligible for up to an 80 percent Federal match.

#### *f. Federal/Local Match Requirements*

A grant for a capital project under the JARC and New Freedom programs may not exceed 80 percent of the net cost of the project. A grant for operating costs under these programs may not exceed 50 percent of the net operating costs of the project. One commenter expressed concern that a 50 percent match for operating expenses for New Freedom may prove to be too high for smaller organizations; however, these limits are set by law. (See 49 U.S.C. 5316(h) and 5317(g)). Finally, a grant for administrative expenses incurred by these programs (up to 10 percent of the annual apportionment), may be fully funded by FTA. The circular lists the potential sources of local funding match, including the types of other Federal programs that provide funding for transportation.

One commenter noted that the Section 5310 and Section 5311 circulars allow local match to come from DOT's Federal lands highways program, and suggested that Federal lands highways funds be available as local match for JARC and New Freedom, as well. The law specifically permits Federal lands highways funds to be used as local match for Sections 5310 and 5311;

however, this same provision is not in the JARC or New Freedom authority. Therefore, Federal lands highways funds may not be used as local match for the JARC and New Freedom programs.

One commenter asserted that if there are other Federal funding sources that can be used as local match for the JARC program, the circular should list the criteria which would qualify agencies to receive funding from these sources. Federal programs supporting human service transportation are listed on the United We Ride Web site: [www.unitedweride.gov](http://www.unitedweride.gov). We have included this link in the final circulars in the discussion of local match.

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

Due to the differences in program requirements, the discussion of this chapter is divided by program.

##### **1. Elderly Individuals and Individuals With Disabilities (Section 5310)**

Chapter IV provides an overview of planning requirements (described in further detail in Chapter V); describes the program of projects (POP), including the approval of and revisions to the POP; and describes pre-award authority, labor protections, and when public hearings are required. This information compares to information found in Chapter III of the 1998 Section 5310 circular (FTA C 9070.1E).

FTA proposed and adopted four changes to this chapter. First, the planning requirements now reference the coordinated plan required under SAFETEA-LU. Second, the 1998 circular states that grants are awarded on a quarterly release cycle; the new circular reflects FTA's current commitment to promptly process grants upon receipt of a complete and acceptable grant application. Third, under "Revisions to Program of Projects," FTA included a new paragraph for when grant revisions need to be made in FTA's Transportation Electronic Award and Management (TEAM) system. And fourth, the "Public Hearing" section clarifies and provides the statutory authority regarding public hearing requirements.

Two commenters suggested that contact information for subrecipients should be added to the list of information that FTA receives regarding the POP, including the specific geographical area served. As a result of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, Sept. 26, 2006), all Federal agencies are required to publish to a public Web site information regarding recipients of Federal grants, contracts, and other

forms of financial assistance equal to or greater than \$25,000. The Office of Management and Budget (OMB) and U.S. DOT will be developing criteria to allow FTA to report on grants awarded to subrecipients. To prepare for this new government-wide requirement, FTA is adding the location of the subrecipient (city, State and Congressional district) and primary location of project performance under the award to the subrecipient information for all three programs. Specific contact information (i.e., addresses, phone numbers, e-mail addresses) will not be included, but the name and location of the subrecipient will be, thus allowing interested parties to find contact information for subrecipients.

## 2. Job Access and Reverse Commute (JARC) and New Freedom

The JARC and New Freedom programs have the same statutory requirements for the areas covered by this chapter, so Chapter IV is the same for both circulars. This chapter provides a summary of the planning and coordination requirements (described in further detail in Chapter V); describes the competitive selection process and what constitutes a fair and equitable distribution of funds; describes the program of projects (POP), including approval of and revisions to the POP; and addresses certifications and assurances and pre-award authority.

Chapter IV includes guidance on how a designated recipient should conduct the competitive selection process. Some commenters continue to have concerns about a perceived "conflict of interest" if the designated recipient for JARC or New Freedom is also bidding on a project. The designated recipient is, by law, responsible for the competitive selection process. The designated recipient may take steps it deems appropriate to mitigate any conflict of interest, such as contracting out the competitive selection process. FTA declines to require designated recipients to establish conflict of interest provisions.

One commenter disagreed with the concept of competitive selection, stating that the development of a coordinated plan, coupled with current local, regional, and State coordination of projects provides an adequate means of coordinating projects and programs. The law requires that designated recipients and States conduct a "solicitation for applications for grants to the recipient and subrecipients under [the JARC and New Freedom programs]." (See 49 U.S.C. 5316(d) and 5317(d)). One commenter wondered for what purpose is the competitive selection; the purpose

is to select recipients and subrecipients that will carry out JARC and New Freedom projects.

Another commenter thought that once the planning process is complete and projects have been selected for funding, it would be reasonable to have existing FTA grantees subcontract with other providers, thus keeping the grant administrative process to a minimum. This commenter asserted that allowing anyone and everyone to compete for eligible projects will be cumbersome in oversight, coordination, and contradict the original purpose of streamlining processes. In our proposed circulars, FTA proposed significant flexibility within the process to address concerns such as these, and we have retained that flexibility in the final circulars. It is important to understand that projects to be funded are not selected through the planning process. Projects are prioritized, but selection occurs competitively. Anyone can compete for projects, including private non-profit and private for-profit companies. Entities selected to carry out the projects will be subrecipients, not subcontractors.

One commenter suggested that, for New Freedom funds, FTA should include in the selection process a requirement that a review of other funding sources occurs in order to ensure that limited New Freedom funds are not spent where other funds could be used. FTA declines to explicitly make this a requirement, but we note that a coordinated plan includes an assessment of existing resources and services—we expect this to be part of the plan. FTA strongly encourages communities to include potential strategies that could be funded from multiple sources, including other Federal programs.

Several commenters objected to the proposed two-year competitive selection cycle, and some suggested that the competition should occur at a "reasonable interval" based on local circumstances. In response, FTA has changed this so the competition may be held annually or at intervals up to three years as determined by the designated recipient based on local needs. Three years allows a sufficient period to determine if a multi-year project is successful and should be continued. If the competitive selection process is less frequent than every three years, it is possible that new needs will not be addressed, and interested participants may be shut out of the process. FTA encourages ongoing efforts of looking at how the needs are being met, and if the project selected is meeting the needs identified in the plan.

Several commenters wanted to see further clarification on what constitutes a "fair and equitable" distribution of funds. One commenter asked FTA to clearly state that fair and equitable does not mean funds are distributed on a pro rata basis, while another wanted to ensure "equal" allocation of resources among projects and communities. Several commenters asked about geographic distribution, in terms of evaluating "areas" rather than "projects" (example two in the selection process examples), and in terms of Title VI and Environmental Justice. As we stated in the September 6, 2006, notice, (and we have added this language to the final circular) equitable distribution refers to equal access to—and equal treatment by—a fair and open competitive process. The result of such a process may not be an "equal" allocation of resources among projects or communities. FTA added "geographic distribution" to the list of selection criteria that may be considered by designated recipients and States, but it is possible that some areas may not receive any funding at the conclusion of the competitive selection process. A successful competitive selection process will, however, minimize perceptions of unfairness in the allocation of program resources.

Some commenters had questions about the examples we provided in the proposed circulars. We have attempted to clarify the language in response to comments. Two commenters noticed that there was no language in the proposed circulars requiring designated recipients to choose projects/needs in order of the priority established in the coordinated plan. While the designated recipient certainly should consider the priorities identified in the plan, there may be times when the resources available are not sufficient to fund the first or second priorities listed. In cases such as these, it would be appropriate for the designated recipient to look at the resources available and fund what is possible, which may mean going further down the list of prioritized projects or strategies than the first one or two items. Therefore, we decline to require designated recipients to choose projects/needs in order of priority identified in the coordinated plan.

The rest of this chapter addresses the Program of Projects (POP). In response to commenters, we added some clarifying language and language addressing the Federal Funding Accountability and Transparency Act of 2006 (discussed above). Two commenters were concerned that categorizing projects as "A" or "B" could delay or deny funding. A POP is



necessary at the time of the grant application, but not at the time of developing the planning documents, unless a local area's process requires projects to be listed in the STIP at the project level rather than at the program level. Since projects can be described at either the project level or the program level, if the projects are listed in the STIP at the program level, then neither the STIP nor the TIP would need to be amended when projects are moved from category "B" to category "A." "A" and "B" categories differentiate between levels of readiness. This allows the designated recipient flexibility and reduces delays in FTA's grant process. Additional comments received about inclusion of projects in the STIP/TIP will be addressed in Chapter V.

#### *E. Chapter V—Coordinated Planning*

The Section 5310, JARC, and New Freedom programs all require the development of a locally developed, coordinated public transit-human services transportation plan ("coordinated plan"). Each of the circulars for these three programs has the same requirements for coordinated planning; therefore, Chapter V is identical in all three circulars. This chapter includes the definition of a coordinated plan, how a coordinated plan is developed, the level of public participation that is expected and strategies for inclusion, and the relationship of the coordinated plan to other planning processes.

FTA made changes to this chapter as a result of comments received. The required elements of a coordinated plan have been modified for clarification purposes. For example, in paragraph 2(b)(3), we have expanded the element as follows: "[s]trategies, activities *and/or projects* to address the identified gaps *between current services and needs, as well as opportunities to improve efficiencies in service delivery.*" We made additional clarifying changes to paragraph 4, "Relationship to Other Transportation Planning Processes." With regard to the relationship of the coordinated plan with other planning processes, we have added a new Appendix E to the Section 5310 circular, and Appendix G to the JARC and New Freedom circulars, and included a schematic drawing to clarify the timing and other elements related to the coordinated planning process, competitive selection, POP, and inclusion of projects in the STIP/TIP.

One commenter recommended allowing a "community" to be defined as a separate area within a larger urbanized area where different transportation solutions are necessary,

and allow the designated recipient to be made up of local municipalities. Another commenter asked if a "county" could be a local area for planning purposes. As we stated in the September 6, 2006, notice, the decision as to the boundaries of the local planning areas should be made in consultation with the State, designated recipients, and/or the MPO. In addition, "designated recipient" is defined in the law as an entity designated, in accordance with planning processes, by the chief executive officer of a State, responsible local officials, publicly owned operators of public transportation, or a State.

Several commenters expressed concern that 10 percent of the amount apportioned may be insufficient to administer the program. Some requested that FTA allow program funds to be used for the initial coordinated plan. As we stated above, the law allows up to 10 percent of funds to be used for administering the program, and development of the coordinated plan is part of that program administration—program funds may not be used to fund the coordinated plan. FTA notes that there is no local match requirement for this funding, and we revised the circulars to state that the administrative funding available under Section 5310, JARC, and New Freedom may be combined in order to develop a single coordinated plan to meet the needs of persons with disabilities, older adults, and low-income individuals. Several of the strategies outlined in Chapter V offer approaches that may be done with a range of resources based on local interest and need. Further, administrative funds for the coordination strategies discussed in Chapter V may be supplemented with Sections 5303 and 5304 Metropolitan Planning and Statewide Planning funds, Section 5307 formula funds, and administrative funding available under Section 5311.

One commenter suggested that FTA should maintain a central list that includes the designated planning entity in each community, contact information, and sample coordinated plans. A second commenter suggested that FTA regional offices collect coordinated plans and have a procedure for obtaining a copy. A third suggested that FTA facilitate information sharing across regions on plan development and implementation. A fourth commenter suggested that technical assistance from FTA could assist regions in managing expectations of what the coordinated plans can be expected to achieve. In response, FTA is funding several technical assistance centers to assist States and local communities during the

development and implementation of coordinated public transit-human service transportation plans. The Federal Interagency Coordinating Council on Access and Mobility (CCAM) has posted State Coordination Plans on the United We Ride Web site ([www.unitedweride.gov](http://www.unitedweride.gov)) which will also be linked to FTA's public Web site.

Some commenters asserted that other key Federal agencies need to be mandated to participate in the process, and that true coordination, without the involvement of those agencies, has little hope of substantive success. One commenter suggested that FTA actively seek opportunities to include similar coordination requirements in the authorizing legislation for all Federal programs receiving Federal dollars to provide transportation to their clients.

As stated in our March 15, 2006, and our September 6, 2006, **Federal Register** notices, FTA is committed to working with our Federal partners through the United We Ride initiative and CCAM to encourage agencies that receive Federal funding to participate in the coordinated planning process. In the 2005 Report to the President, CCAM outlined five recommendations for future action related to coordinated human services transportation. These recommendations include two policy statements adopted by CCAM members in late 2006 related to coordinated planning and vehicle sharing. We have included summaries of the policy statements in Chapter III of each circular, and Web links to the full policy statements. CCAM will work with each member Department to implement the policy statements that build participation in coordinated human service transportation services at the local level. In addition to these efforts, FTA encourages State DOT offices to work closely with their partner agencies and local governmental officials to educate policy makers about the importance of partnering with human service transportation programs and the opportunities that are available when building a coordinated system.

One commenter suggested that each plan should include a description of the planning process, specifically outlining how the planning entity involved the disability community in developing the plan. The commenter felt that including this description in the plan would be a safeguard to ensure that all interested stakeholders had an opportunity to be involved. Another commenter wondered why documentation of efforts, the process for adopting the plan, and human service needs related to intercity transportation are included

in the body of the circulars but not as required elements.

In an effort to streamline, we have identified what we believe are the key elements in the plan. A description of the planning process, documenting efforts, and adopting the plan are not elements. Further, whether available intercity transportation is meeting the needs of the community or not is part of identifying the needs, which is one of the required elements. Designated recipients must certify annually that projects selected were derived from a coordinated plan, and the plan must be developed through a process that includes members of the public, which includes persons with disabilities. FTA's oversight of these programs will include review of the outreach efforts engaged in by the designated recipient, as well as the list of participants, to ensure that interested parties are invited to participate.

One commenter asked if a State could unilaterally update a plan developed by a locally chosen lead agency. A second asserted that the MPO, as well as the designated recipient, should have a role in the planning process. A State should not be unilaterally updating a local coordinated plan—the planning team that developed the plan should do the updating as necessary. The circulars and the planning regulations encourage a collaborative process for developing the coordinated plan that includes key players such as the MPO and the designated recipient. As we stated in both previous **Federal Register** notices, the “public transit” in “locally developed coordinated public transit-human service transportation plan” is the local transit agency, which is often, but not always, the designated recipient, and that entity is expected to participate in the coordinated planning process. When everyone is at the planning table—the MPO; the designated recipient(s); passengers who are elderly, low income, or have disabilities; and other interested stakeholders—the opportunity for producing a truly coordinated plan that works for the whole community is realized.

FTA received several comments on the relationship between the coordinated planning process and other transportation planning processes. As stated previously, in response to comments, we have added an “Appendix E” to the Section 5310 circular and an “Appendix G” to the JARC and New Freedom circulars describing in more detail the relationship between the coordinated planning process and other transportation planning processes. Some commenters asserted that small JARC or

New Freedom projects may not rise to the level of “regionally significant” and therefore should be included in the STIP at the program level, rather than at the project level. FTA agrees, and stated that in the proposed circulars. We have retained that language in the final circulars, and therefore retained the language that projects should be “included in” the STIP, and not merely “consistent with” the STIP.

#### *F. Chapter VI—Program Management and Administrative Requirements*

Chapter VI provides more details for States and direct recipients on how to manage the administrative aspects of the three grant programs, and is similar for all three programs. FTA notes that Chapter VI in the final circulars is largely a reorganization of the Program Management chapter in the 1998 Section 5310 Circular 9070.1E (Chapter V). The chapter starts by noting that the basic grant management requirements for State and local governments are contained in DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR part 18, and “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19, which are collectively referred to as the “common grant rule.” Chapter VI provides summary information about certain aspects of the common grant rule, and how management of those aspects may be applied to these three programs. Chapter VI also notes that more detailed information about general program and grant management is found in FTA Circular 5010.1C, “Grant Management Guidelines.”

The common grant rule allows States to use slightly different standards for the establishment of equipment management, procurement, and financial management systems than are required for other FTA recipients. Therefore, throughout Chapter VI, distinctions are made between the requirements for States and other designated recipients. In addition, the Section 5310 circular has a section on leasing vehicles that is specific to that program. The only change made to the final circulars was in the section on “Reporting Requirements” regarding program performance measures.

FTA received a number of comments on our proposed performance measures; some in support, and others against. In response to comments, we have modified the reporting measures somewhat, placed them in Chapter II as well as Chapter VI, and clarified that the

indicators specified are targeted to capture program information on a National level—these measures will not be used to assess individual grants. Each program has different performance measures.

Two commenters noted that the circulars require States to submit annual reports, but urbanized areas must submit quarterly reports, and they questioned why there is a difference. This reporting requirement is consistent with FTA's reporting requirements for Section 5307 and 5309 grants.

One commenter suggested adding a provision to the Section 5310 circular that would require vehicles purchased with Section 5310 funds to be available in disasters and emergency situations, especially lift-equipped vehicles. FTA declines to add this provision to the final circular. Each community and/or State develops its own emergency plans, and should certainly have an inventory of available vehicles that includes those vehicles purchased with Section 5310 funds. In many cases, the non-profit agencies that own those vehicles use them to evacuate their consumers in cases of emergency. When necessary, however, those vehicles should be a part of a communities' emergency evacuation plan.

One commenter, in responding to paragraph 5(c) regarding transfers of equipment to another subrecipient when the property is no longer needed for the original grant purpose, and showing the transfer in an active POP, asserted that adding transferred property to a current POP is problematic if the grant under which the property was purchased has been closed. FTA does not view this as a problem. Recording the transferred equipment in an active grant is sufficient to indicate that the entity responsible for use of the vehicle has changed. The original grant does not have to be modified.

#### *G. Chapter VII—State and Program Management Plans*

FTA requires States and designated recipients responsible for implementing the Section 5310, JARC, and New Freedom (and Section 5311) programs to document their approach to managing the programs. Chapter VII includes guidance on how to create and use State Management Plans (SMP) (for the State-managed aspects of the programs), and Program Management Plans (PMP) (for designated recipient-managed aspects of the programs). The primary purposes of Management Plans are to serve as the basis for FTA management reviews of the program, and to provide public information on the administration of the programs. Chapter VII in the final

circulars is largely a restatement of the SMP chapter in the 1998 Section 5310 Circular 9070.1E (Chapter VII). FTA did not make any changes to the proposed Chapter VII; we have adopted the proposed Chapter VII as the final Chapter VII.

In all three program circulars, the first two parts of Chapter VII explain the general requirements and purpose of Management Plans. The third part, "Reviews," differs slightly among the programs. The Section 5310 circular discusses only State Management Reviews (as it is an entirely State-managed program), while the JARC and New Freedom circulars discuss reviews at both the State and designated recipient level. The "Reviews" part of Chapter VII is an addition to the 1998 Section 5310 circular.

The fourth part of Chapter VII discusses the content of Management Plans. The suggested content of SMPs and PMPs is essentially identical in all three circulars, but the Section 5310 circular reflects the fact that Section 5310 is entirely State administered. Management Plans are to include a section on use of the 10 percent of the apportionment available for administration and technical assistance, and a description of how the State or designated recipient makes additional resources available to local areas.

The final part of Chapter VII, which discusses revisions to the Management Plan, is the same for all three circulars, and mirrors the language in the 1998 Section 5310 circular.

One commenter requested that FTA make the information in the SMP and PMP more available to the public. Members of the public can obtain this information from the FTA regional office that serves the designated recipient or State. In addition, some grantees make this information available on their Web sites.

#### *H. Chapter VIII—Other Provisions*

This chapter is an expansion of the current "Other Provisions" chapter in the 1998 Section 5310 circular, and is virtually the same for all three circulars. Chapter VIII summarizes a number of FTA-specific and other Federal requirements that FTA grantees are held to in addition to the program-specific requirements and guidance provided in these circulars. This chapter explains some of the most relevant requirements and provides citations to the actual statutory or regulatory text. Grantees should use this document in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" to assure that they have met all

requirements. Grantees may contact FTA Regional Counsel for more details about these requirements.

In paragraph 10(b) of the proposed JARC circular, describing transit employee protection under 49 U.S.C. 5333(b), FTA stated that we anticipate the Department of Labor (DOL) will revise the warranty and procedures currently in use relative to Section 5311. One commenter wanted to know, until such action is taken by DOL, what provisions are being made to allow the Section 5311 process to be applied to rural grantees of the JARC program. We have removed this language from the JARC circular, and will amend the circular when/if DOL changes its procedures. Until DOL changes its procedures, the Section 5311 warranty will not apply to rural JARC projects, and FTA must transmit JARC grants to DOL for certification. JARC projects should not be combined in a single grant with Section 5311 funds.

Paragraph 14 discusses the Drug and Alcohol testing requirements for Section 5310, JARC, and New Freedom. Recipients that only receive Section 5310, JARC, or New Freedom funds are not subject to FTA's drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration's rule for employees who hold Commercial Driver's Licenses. Recipients of other FTA programs that also receive Section 5310, JARC, or New Freedom funds should include any employees funded under these programs in their testing program. One commenter asserted that FTA rules do not allow employees not covered by FTA's drug and alcohol rules to be tested under FTA rules, and therefore they would have to have two testing programs. An FTA compliant testing program, as required by the receipt of FTA operating or capital funding (5307, 5309, 5311), can be used for Section 5310, JARC, and New Freedom employees; there is no need to have two testing programs. Employees of a subrecipient of Section 5310, JARC, or New Freedom funds from a designated recipient of another FTA program (such as 5307 or 5311) should also be included in the designated recipient's testing program.

#### *I. Appendices*

The Appendices sections for the Section 5310, JARC, and New Freedom programs are intended as tools for developing a grant application. Appendix A specifically addresses steps and instructions for preparing a grant application, including pre-application and application stages. Appendix A also includes an application checklist and

information for registering with the Electronic Clearinghouse Operation System (ECHO). One commenter questioned why both an Allocation Letter and a Program of Projects (POP) needed to be submitted at the same time, since the POP is included with the grant application and includes the same information as the Allocation Letter. We have revised the language in paragraph 1(f) of Appendix A to state that the Allocation Letter is only necessary if the State is allowing a public entity in a small urbanized area under 200,000 in population to apply for funds directly from FTA.

Appendix B includes a sample program of projects. Appendix C in the 5310 circular and Appendix E in the JARC and New Freedom circulars provides contact information for FTA's regional offices. In the JARC and New Freedom circulars, Appendix C includes budget information and provides specific activity line item (ALI) codes for specific types of eligible costs (i.e., capital, operating, planning, etc.). A sample approved budget is included in Appendix D. Appendix C in the Section 5310 circular and Appendix E in the JARC and New Freedom circulars contain contact information for FTA's regional and metropolitan offices. Appendix D in Section 5310 and Appendix F in the JARC and New Freedom circulars list potential sources of technical assistance. In the final circulars, we added Appendix E in the Section 5310 circular and Appendix G in the JARC and New Freedom circulars, "Relationship Between Coordinated Planning and Metropolitan and Statewide Planning." The final Appendix in each circular is a list of References, traditionally at the front of FTA circulars. FTA has moved this list to an appendix for ease of reading.

Issued in Washington, DC, this 22nd day of March 2007.

**James S. Simpson,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-55 (Sub-No. 672X)]

#### **CSX Transportation, Inc.— Abandonment Exemption—in Manatee County, FL**

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.66-mile