

OMB Control Number: 2137-0610.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 CFR 192.947 requires operators of gas transmission pipelines located in or near high consequence areas to maintain a written integrity management program and records showing compliance with 49 CFR part 192, subpart O. In addition, operators must submit documentation relative to their integrity management program to PHMSA as applicable.

Estimated number of respondents: 721.

Estimated annual burden hours: 1,030,343 hours.

Frequency of collection: On occasion.

Issued in Washington, DC, on April 23, 2009.

John A. Gale,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E9-9775 Filed 4-28-09; 8:45 am]

BILLING CODE 4910-60-P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East

Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**Key to "Reason for Delay"**

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

**Meaning of Application Number Suffixes**

- N—New application.
- M—Modification request.
- PM—Party to application with modification request.

Issued in Washington, DC, on April 21, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
<b>MODIFICATION TO SPECIAL PERMITS</b>			
14167-M .....	Trinityrai, Dallas, TX .....	4	04-30-2009
8723-M .....	Alaska Pacific Powder, Company, Anchorage, AK .....	1	04-30-2009
<b>NEW SPECIAL PERMIT APPLICATIONS</b>			
14689-N .....	Trinity Industries, Inc., Dallas, TX .....	2,3	04-30-2009
14733-N .....	GTM Technologies, Inc., San Francisco, CA .....	1,3	06-30-2009
14767-N .....	Commodore Applied Technologies, Inc., Broomfield, CO .....	4	04-30-2009
14778-N .....	Metalcraft/Sea-Fire Marine Inc., Baltimore, MD .....	1	05-31-2009
14779-N .....	Corrosion Companies Inc., Washougal, WA .....	3	06-30-2009

[FR Doc. E9-9477 Filed 4-28-09; 8:45 am]

BILLING CODE 4910-60-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

[Docket FTA-2009-0003]

**Notice of Policy Statement for Eligible New Freedom Projects**

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is expanding the type of projects it considers to be "beyond the ADA" and thus increase the types of projects eligible for funding

under the New Freedom program. Under this interpretation, new and expanded fixed route and demand responsive transit service planned for and designed to meet the needs of individuals with disabilities are eligible projects.

DATES: Effective Date: May 29, 2009.

FOR FURTHER INFORMATION CONTACT: David Schneider, Transportation Program Specialist, Federal Transit Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 493-0175, or e-mail, David.Schneider@dot.gov; or Bonnie Graves, Attorney-Advisor, same address, (202) 366-0944 or e-mail, Bonnie.Graves@dot.gov.

SUPPLEMENTARY INFORMATION:

**Background**

The New Freedom Program (49 U.S.C. 5317) was established to fund capital and operating expenses that support new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA), in order to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

When developing guidance for the New Freedom program, FTA initially proposed that "new public transportation services" and "public transportation alternatives beyond those required by the ADA" be considered separate categories of service. (See 71 FR 13456, Mar. 15, 2006.) Subsequent to

this notice, FTA received feedback from the Congressional authors of the New Freedom program legislation that projects that do not meet both criteria—new and beyond the ADA—are not eligible for funding. FTA also determined that projects are “beyond the ADA” only if they allow a recipient to exceed its obligations under the ADA. For example, because the ADA and its implementing regulations at 49 CFR parts 37 and 38 provide very specific minimum requirements for ADA complementary paratransit service when an agency provides fixed route service, New Freedom funds can be used to expand the scope of ADA complementary paratransit service beyond the minimum requirements stipulated in the ADA regulations at 49 CFR part 37. On the other hand, the ADA does not require that a minimum level of public transit service be provided in any given geographic area. Once service is provided, however, it must be ADA compliant, so FTA determined that projects to establish or expand fixed route or demand responsive service would not result in an agency exceeding its obligations under the ADA, and therefore, would not be eligible for New Freedom funding. This interpretation was conveyed in subsequent **Federal Register** notices on the New Freedom program (71 FR 52610, Sept. 6, 2006, and 72 FR 14851, Mar. 29, 2007) and in the Frequently Asked Questions document on FTA’s Web site: [http://www.fta.dot.gov/funding/grants/grants\\_financing\\_3549.html](http://www.fta.dot.gov/funding/grants/grants_financing_3549.html).

Over the course of 2008, grant recipients have expressed concerns that FTA’s interpretation of which projects go “beyond the ADA” prevents agencies in rural and small urbanized areas with limited public transportation service from using New Freedom funds to provide new fixed route transit or demand response transit service that would be planned for and designed to meet the needs of people with disabilities. Stakeholders argue that these types of projects do go “beyond the ADA” because they represent transportation services that are not required under the Act or under the U.S. Department of Transportation (DOT) ADA implementing regulations. Although stakeholders in areas with limited public transportation service can use New Freedom funds to implement new alternatives to public transportation, such as accessible taxis, travel training, and mobility management, many potential recipients have informed FTA that their greatest need is for new fixed route or demand

responsive transportation services designed to meet the mobility needs of people with disabilities.

In response to these concerns, FTA published a notice of proposed policy for eligible New Freedom projects in the **Federal Register** (74 FR 4284, Jan. 23, 2009). This notice proposed that new or expanded fixed route service and new or expanded demand response service would be eligible for New Freedom funding provided that:

- (1) The service is identified in the locally developed, coordinated public transit-human services transportation plan;
- (2) The service is designed to meet the needs of individuals with disabilities;
- (3) The service removes barriers to transportation and assists persons with disabilities with transportation;
- (4) The service was not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and
- (5) The service is not designed to allow an agency to meet its obligations under the ADA or the DOT ADA implementing regulations at 49 CFR parts 37 and 38.

The proposed policy change retained the pre-existing requirement that services under the program be “new” services and adopted the interpretation voiced by transportation providers that transit services other than those that are required to be implemented under the ADA go “beyond the ADA.” Interested parties were invited to submit comments on this proposed change during the 30-day comment period, which ended on February 23, 2009.

#### Comments Received and FTA Response

FTA received comments from 32 entities in response to its January 23, 2009, **Federal Register** notice. Nine State DOT one other state agency, two Metropolitan Planning Organizations, nine public transportation agencies, seven private not-for-profit organizations, one private for-profit organization, and three individuals submitted comments.

*Comment:* A majority of commenters expressed support for the proposed policy change. These commenters stated that the change would increase the number of projects that could be funded under their state or large urbanized area’s New Freedom apportionment and therefore decrease the amount of unobligated funds; that the change would expand mobility and accessibility for people with disabilities;

that the change would help local stakeholders better meet the mobility priorities that they had previously identified; and that the change would provide stakeholders with greater flexibility and ensure that New Freedom funds are used more effectively. Some commenters cited specific services that they believed would be valuable to their community and that they believed would be eligible for funding under the proposed change. These comments are consistent with the feedback that prompted FTA to propose the policy change and they influenced our decision to issue a final policy that expanded the types of projects that are eligible for funding under the New Freedom program.

Three commenters expressed opposition to the proposed change. These commenters stated that the change was not consistent with the intent of Congress when it established the New Freedom program, that the policy change would favor public transportation services at the expense of taxi services, and that taxi companies that have already received New Freedom funding may not receive funding in the future should the proposed change be enacted. Commenters also stated that the change runs counter to the New Freedom program’s objective of promoting innovative services for people with disabilities, and that FTA should take steps to ensure that fixed route services are fully accessible for people with disabilities before it allows New Freedom funds to be used to expand fixed-route or deviated-route services. One commenter proposed that the policy change only apply to New Freedom program projects occurring in areas with populations under 200,000.

*FTA Response:* Congress’ intentions regarding which activities are eligible to receive New Freedom funding are expressed in 49 U.S.C. 5317(b)(1), which states that “the Secretary may make grants under this section to a recipient for new public transportation services and public transportation alternatives beyond those required by ADA 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.” While Congress provided examples of services that meet this provision, the meaning of the statute’s reference to services “beyond those required by the Americans with Disabilities Act” remains subject to interpretation.

FTA believes that it is in the public interest to broaden its existing interpretation of what services go

“beyond the ADA,” to include public transportation services designed to meet the needs of people with disabilities other than those that are required under the ADA, as well as public transportation services that allow providers to exceed their obligations under the ADA. These two options are not mutually exclusive. FTA’s new interpretation makes additional activities eligible for funding without foreclosing on services that were already eligible under FTA’s prior interpretation.

Under the policy change, New Freedom funds can continue to be used to purchase and operate accessible taxis and to provide individuals with disabilities with vouchers to purchase rides on taxi service, and those grant recipients that have previously received funds for taxi service can continue to receive funds. The program’s coordinated planning and competitive selection requirements, which are unaffected by this policy change, dictate the process by which specific eligible activities are selected by state and local communities. Participants in the New Freedom program’s coordinated public transit human service transportation planning process have discretion to determine whether or not accessible taxis or taxi service for people with disabilities or some other eligible activity best addresses the gaps between existing transportation services and the mobility needs of people with disabilities. Additional information on the coordinated planning process can be found in Chapter V of FTA’s New Freedom Circular 9045.1. The policy change does not affect the ability of local stakeholders to select eligible alternatives to traditional public transportation such as mobility management, travel training, or voucher programs. Whether these programs best meet the priorities and needs of people with disabilities is determined through the local coordinated planning process.

Regarding the comment that FTA should take steps to ensure that fixed route services are fully accessible for people with disabilities before it allows New Freedom funds to be used for expand fixed-route or deviated-route services, FTA is committed to ensuring that existing fixed route services comply with the ADA and follow the procedures for effecting compliance established under the DOT regulations at 49 CFR part 27. These regulations, rather than conditioning the New Freedom policy, provide the appropriate mechanisms for addressing non-compliance with the ADA.

Regarding the suggestion that the policy change apply only to areas with

populations under 200,000, while most of the concern over the pre-existing policy on eligible activities was expressed by stakeholders residing in small urbanized or non-urbanized areas, FTA’s policy change applies to New Freedom activities in all geographic areas. Participants in the coordinated planning processes in all areas can determine whether or not to choose activities that are now eligible under this policy change.

*Comment:* Several commenters expressed neither support nor opposition to the policy change, but instead posed questions regarding the proposal or requested that FTA clarify the proposal. Seven commenters raised questions or submitted feedback on the proposed policy’s requirement that new or expanded fixed route or demand response services be designed to meet the needs of individuals with disabilities in order to be eligible for funding. One commenter asked whether new or expanded fixed route or demand response transit service could serve members of the public in addition to people with disabilities. Two other commenters opposed projects that would provide segregated service for people with disabilities. A fourth commenter asked for guidance and criteria for determining whether a new or expanded service is designed to meet the mobility needs of people with disabilities as opposed to the mobility needs of the public at large. A fifth commenter cautioned that New Freedom funds should not be used to support projects that would serve the public at large and could be funded with general operating funds, and stated that U.S. DOT needs to provide oversight to ensure that services funded under the New Freedom program meet the intent of the law. Another commenter stated that if grantees intend to use the New Freedom funds for general fixed route service, they need to demonstrate in their grant application how the service would provide unique benefits to people with disabilities. Another commenter stated that a fixed route or demand response service should not be eligible for New Freedom funding simply because it provides accessible service for people with disabilities.

*FTA response:* The final policy reiterates FTA’s expectation that new or expanded fixed route and demand response services be open to the general public and that grant recipients refrain from creating new “silo” transportation that segregates individuals with disabilities from the public at large. At the same time, in order to ensure that new services provide benefits to people

with disabilities, the final policy states that the service must be planned and designed to meet the mobility needs of individuals with disabilities in response to circumstances where existing fixed route and demand response service is unavailable or insufficient. Examples of such services would be a fixed route service that is open to the general public but that is extended to serve a congregate living facility or a workplace serving large numbers of individuals with disabilities, or demand response service that is available to the general public but whose service area coverage or span of service is designed in response to mobility needs expressed by individuals with disabilities.

FTA will presume that a project is planned and designed to meet the mobility needs of individuals with disabilities if the project is identified in the grant applicant’s coordinated public transit human services transportation plan. These plans identify the transportation needs of individuals with disabilities, provide strategies for meeting these local needs, and prioritize transportation services for funding and implementation. New Freedom applicants are required to certify that projects were derived from a coordinated plan and reference the page number of the plan that contains information on the projects.

*Comment:* One commenter raised questions regarding the proposed policy change’s definition of “new” service, asking at what point in time a project funded with New Freedom projects would no longer be considered “new.”

*FTA response:* The definition of a “new” project has not changed. Once a New Freedom project has been funded, it remains “new” for the duration of the program and can continue to receive New Freedom funds.

*Comment:* FTA received comments from individuals or organizations on other aspects of the proposed policy change. Two commenters suggested that FTA pursue this change through a rulemaking process, and one commenter requested greater clarification on projects that will be eligible under the new guidance that would not have been available under previous rules and what barriers remain to full implementation of the New Freedom program. One commenter requested FTA review New Freedom applications more closely for genuine involvement of the disability community in the planning process.

*FTA response:* FTA determined that a rulemaking process was not necessary to change its determination of which projects are eligible under the New Freedom program because the policy does not impose binding obligations on

grant recipients or other parties. This notice provides additional clarification on which projects are eligible under the new guidance, however an analysis of what barriers remain to full implementation of the New Freedom program is beyond the scope of this notice.

Regarding concerns over a lack of involvement of the disability community in the coordinated planning process, FTA requires New Freedom grant applicants to certify that the coordinated plan from which New Freedom projects were derived was developed through a process that includes representatives of public, private, and non-profit transportation and human services providers and participation by members of the public. FTA's New Freedom circular includes guidance on ensuring adequate outreach to allow for participation and on providing explicit consideration and response to public input received during the development of a coordinated plan. However, FTA does not review details of a coordinated plan's public involvement process in advance of making a grant award because doing so could significantly delay the award of New Freedom, JARC, and Section 5310 program funds to recipients and subrecipients. Grant recipients are required to certify that the coordinated planning process' public participation requirements were met, and FTA reviews these certifications during Triennial and State Management Reviews. If recipients cannot document that the requirement was met, then FTA issues a finding of deficiency and the recipient is required to take corrective action.

FTA received several comments regarding the New Freedom program that were not germane to the proposed policy change, including a request that New Freedom funds subsidize capital expenses at a 50/50 rather than an 80/20 Federal local match, and that the New Freedom circular state specifically that the program provides reimbursements to grant recipients. FTA will consider these comments in the context of its ongoing work to provide guidance and technical assistance on the New Freedom program.

### Final Policy

New or expanded fixed route service and new or expanded demand response service constitute new public transportation services beyond those required by ADA of 1990 (42 U.S.C. Section 12101 *et seq.*) that assist individuals with disabilities with transportation, and are therefore eligible

for funding under the New Freedom program, provided that these services:

- (1) Are identified in the grant applicant's coordinated public transit-human services transportation plan;
- (2) Are available to the public at large but were planned and designed to meet the mobility needs of individuals with disabilities in response to circumstances where existing fixed route and demand response transportation is unavailable or insufficient to meet the mobility needs of individuals with disabilities.
- (3) Were not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and
- (4) Are not designed to allow an agency to meet its obligations under the ADA or the DOT ADA implementing regulations at 49 CFR parts 37 and 38.

Examples of such services would be a fixed route service that is open to the general public but that is extended to serve a congregate living facility or a workplace serving large numbers of individuals with disabilities, or demand response service that is available to the general public but whose service coverage or span of service is designed in response to mobility needs expressed by individuals with disabilities. FTA notes that expanded fixed route service may result in expanded ADA complementary paratransit service; since the ADA complementary paratransit service is required under the ADA, it would not be eligible for New Freedom funding. All new or expanded fixed route and demand responsive services funded under the New Freedom program will be subject to the requirements of the ADA and DOT ADA implementing regulations.

Issued in Washington, DC, this 17th day of April 2009.

**Matthew J. Welbes,**

*Acting Deputy Administrator.*

[FR Doc. E9-9774 Filed 4-28-09; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Public Transportation on Indian Reservations Program; Tribal Transit Program

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

**ACTION:** Notice of Funding Availability: Solicitation of Grant Applications for FY 2009 Tribal Transit Program Funds.

**SUMMARY:** This notice announces the availability of \$15 million in funding provided by the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)), a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 3013 (c). This notice is a national solicitation for grant applicants to be selected on a competitive basis, and it includes the grant terms and conditions; grant application procedures; and selection criteria for Fiscal Year (FY) 2009 projects. The Federal Transit Administration (FTA) announced the availability of, and competition for, the FY 2009 American Recovery and Reinvestment Act (ARRA) TTP funding in a separate notice published on March 23, 2009.

**ADDRESSES:** Applicants may submit applications in one of two ways: (1) Delivering five hard copies to FTA, 1200 New Jersey Avenue, SE., Washington, DC, 20590, Attn: Lorna R. Wilson; (2) sending by e-mail to [fta.tribalprogram@dot.gov](mailto:fta.tribalprogram@dot.gov). FTA will not accept applications via facsimile.

**DATES:** Applicants must submit completed applications by June 29, 2009. FTA will announce grant selections in the **Federal Register** when the competitive selection process is complete.

Applicants should be aware that materials sent through the U.S. Postal Service are subject to significant delays in delivery due to the security screening process. Use of courier or express delivery services is recommended.

**FOR FURTHER INFORMATION CONTACT:** Contact the appropriate FTA Regional Tribal Liaison (Appendix B) for application-specific information. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366-2053, e-mail: [Lorna.Wilson@dot.gov](mailto:Lorna.Wilson@dot.gov). A TDD is available at 1-800-877-8339 (TDD/FIRS).

### SUPPLEMENTARY INFORMATION

#### Table of Contents

- I. Overview
- II. Background
- III. Funding Opportunity Description
  - A. Authorized Funding for FY 2009
- IV. Award Information
- V. Eligibility Information
  - A. Eligible Applicants
  - B. Eligible Projects
- VI. Local Match
- VII. Terms and Conditions
- VIII. Guidelines for Preparing Grant Application
- IX. Application Content
  - A. Application Information
  - B. Technical, Legal, and Financial Capacity