

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 28, 2007.

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 630

[Docket No: FTA-2007-27319]

RIN 2132-AA94

#### National Transit Database: Amendment to Reporting Requirements and Non-Substantive Technical Changes

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

**ACTION:** Final rule.

**SUMMARY:** This notice announces the final rule requiring recipients of grants under 49 U.S.C. 5311, Formula Grants for Other Than Urbanized Areas (Nonurbanized Area Formula Grants,) to report annual data to the National Transit Database (NTD) as a condition for receiving these grants. In addition, this final rule makes non-substantive changes, technical corrections, and conforming amendments to the "National Transit Database" regulation.

**DATES:** *Effective Date:* January 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** For program issues: John D. Giorgis, Office of Budget and Policy, (202) 366-5430 (telephone); (202) 366-7989 (fax); or [john.giorgis@dot.gov](mailto:john.giorgis@dot.gov) (e-mail). For legal issues: Richard Wong, Office of the Chief Counsel, (202) 366-4011 (telephone); (202) 366-0675 (fax); or [richard.wong@dot.gov](mailto:richard.wong@dot.gov) (e-mail).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The National Transit Database (NTD) is FTA's primary national database for statistics on the transit industry. Section 3033 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59 (August 10, 2005)] amended the NTD provisions under 49 U.S.C. 5335 to require that each recipient receiving Formula Grants for Other Than Urbanized Areas (Nonurbanized Area Formula Grants), or any person that will receive benefits directly from these funds, must be subject to the

reporting and uniform systems of the NTD. Section 5335(b) continues to require NTD reporting for recipients of and beneficiaries of assistance from Urbanized Area Formula Grants.

In addition, section 3013(b) of SAFETEA-LU amended 49 U.S.C. 5311(b)(4) to require each recipient receiving Nonurbanized Area Formula Grants to submit an annual report containing information on capital investment, operations, and service provided with grant funds from this program. The recipient must include the following information in the report: Total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. The mandatory reporting criteria will assist FTA in understanding the effectiveness of Nonurbanized Area Formula Grants in improving rural public transportation. These data are similar to those already collected by FTA for recipients of Urbanized Area Formula Grants, but are streamlined for rural recipients.

This final rule revises 49 CFR Part 630, the Uniform System of Accounts and Reporting System, to conform with 49 U.S.C. 5335 and 5311, as amended by sections 3033 and 3013(b) of SAFETEA-LU.

##### II. Comments and FTA Response to Comments

On March 26, 2007, FTA issued a notice of proposed rulemaking (NPRM) that provided interested parties with the opportunity to comment on substantive amendments to FTA's NTD Regulation that would implement the annual reporting requirements for recipients and beneficiaries of Nonurbanized Area Formula Grants (72 FR 14061). In this NPRM, FTA proposed changes that would: (1) Require recipients of Nonurbanized Area Formula Grants to report data to the NTD; and, (2) require the annual reporting of rural transit data as a condition for receiving Nonurbanized Area Formula Grants. The proposed rule also contained technical corrections and conforming amendments, such as changes to statutory references. FTA invited comments on the proposed substantive amendments that would implement the annual reporting requirements for Nonurbanized Area Formula Grant recipients and beneficiaries. In accordance with 5 U.S.C. 553(b)(3)(A), FTA did not invite comments on the technical corrections and conforming amendments because those changes are "interpretative" in nature, and FTA was

not required to accept or consider comments on them.

FTA received ten comments on the proposed substantive amendments that would implement the annual reporting requirements for Nonurbanized Area Formula Grant recipients and beneficiaries. FTA hereby responds to these comments in the following order: (a) General Coordination and Reporting Concerns; (b) Failure to Report Data; (c) Late and Incomplete Reports; (d) Questionable Data Items; (e) Notice of FTA action; (f) Waiver of Reporting Requirements; (g) Proposed Appendix A; (h) Comments on the proposed 2007 Rural NTD Module Reporting Manual; and, (i) Additional Technical Revisions.

##### (a) General Reporting Concerns

Four comments expressed concern about the burden of the proposed reporting requirements. One commenter strongly encouraged FTA to follow its stated purpose to provide streamlined reporting requirements for the rural program. Another commenter expressed concern that rural systems will experience significant difficulties in complying with reporting, which will impact the reliability and usefulness of the data. One commenter noted that FTA's historical position has been to not be involved with subrecipients and that data collection on individual subrecipients is a major departure from this practice.

*FTA response:* FTA is seeking the data to comply with 49 U.S.C. 5335 and 49 U.S.C. 5311(b)(4), and the proposed reporting requirements are largely specified by statute. FTA notes that it is only requiring the States to complete and submit a one-page form for each Section 5311 grant subrecipient, and is only requiring Tribes that are direct recipients of Section 5311 grants to complete the same form. Comments on the specific nature of the reporting requirements, however, are outside the scope of this rulemaking. FTA considered these comments as part of the process of finalizing the 2007 Rural NTD Reporting Manual.

In response to the commenter regarding data collection from subrecipients, FTA notes that FTA has the statutory authority to require recipients to gather and report subrecipients' NTD data to FTA pursuant to 49 U.S.C. 5335. Section 5335(a) states that FTA may request and receive appropriate information for the NTD from "any source," which includes requesting information from a Nonurbanized Area Formula Grant subrecipient. Moreover, Section 5335(b) states that FTA "may award a grant under section 5307 or 5311 only if the

applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems." A subrecipient of Section 5311 is a direct beneficiary of the grant and, as such, is subject to providing information for the NTD to the extent FTA requires. FTA reminds the commenter that subrecipients must meet a number of grant requirements before the disbursement of grant money, and that the NTD reporting is one of these requirements.

FTA recognizes that rural systems may not have sophisticated technical resources. FTA has limited the information collection to data that any transit provider should collect for its own internal management purposes. FTA will train and work with reporters to ensure data quality, while recognizing that, in some cases, good-faith estimates may have to suffice.

FTA received three comments expressing concern about the ambiguity of the reporting requirements for those transit agencies receiving grants under both Section 5307 and Section 5311, and the burden that this would have on small transit agencies. One commenter particularly expressed concern about allocating operating data and safety data across separate reports for urbanized areas and for rural areas, and across funding sources. Another commenter asked FTA to specifically detail how it would prevent double-counting across urbanized area and rural area NTD submissions. One commenter suggested that FTA should relieve States from the responsibility of reporting on behalf of subrecipients that are already reporting directly to the NTD as an urbanized area reporter.

*FTA Response:* FTA accepts the suggestion of the commenter to relieve States from the responsibility of reporting on behalf of subrecipients that are already reporting directly to the NTD as an urbanized area reporter. Since the urbanized area reporting requirements are more extensive than the rural reporting requirements, all of the data required by the rural NTD reporting requirements can be captured through the urbanized area NTD reporting requirements. As such, FTA has amended § 630.4 to specify that States need not provide reports for those transit agencies that are already providing reports to the NTD as urbanized area transit agencies. This amendment to the rule will preclude the need for allocation of data in the rural reporting, and will eliminate the possibility of double-counting.

FTA understands, however, that as proposed, the rule may have been unclear as to which entity should

submit data to the NTD. As such, FTA replaced the term "reporting agency," in the proposed rule, with the term "reporting entity," which FTA defined as a transit agency, a State Department of Transportation that is a recipient of grants under 49 U.S.C. 5311, or a Federally-recognized Indian Tribe that is a direct recipient of grants under 49 U.S.C. 5311. FTA also added the definition of "State Department of Transportation" for clarification purposes.

One comment reminded FTA to be cognizant of the efforts of many rural transportation agencies in following the Executive Order on Human Service Agency Transportation Coordination, and to not provide additional barriers in the final rule that undermine those agencies in making the best use of limited transportation resources.

*FTA response:* FTA agrees with the second comment, and has taken coordinated funding sources and human service trips into consideration in the 2007 Rural NTD Module Reporting Manual. This rule does not conflict with the Executive Order on Human Service Agency Transportation Coordination.

One comment expressed the concern that removing the rural area ridership and revenue data from the previously-combined urbanized and rural services reporting will negatively affect Section 5307 funding for grant recipients that currently receive both Section 5307 and Section 5311 funding.

*FTA response:* FTA notes that it uses the data submitted to the Annual NTD Module for the apportionment of Section 5307 funds (Urbanized Area Formula Grants), and services provided in nonurbanized areas have never been permitted to be included in the apportionment of Section 5307 funds. In addition, FTA notes that under the current Annual NTD Module Reporting Manual (for Urbanized Areas) transit agencies providing service in urbanized areas subject to the apportionment of funds based on service data must separate their data for services provided in urbanized areas from services provided in non-urbanized areas.

Three commenters asked FTA to use a reporting system similar to the Management Information System (MIS) used for Drug and Alcohol testing so that individual subrecipients and their contracted providers can enter their own data, subject to a review by the State, rather than requiring the State to collect and enter the data into the NTD. One commenter asked FTA to implement an automated reporting system that did not require manual entry.

*FTA response:* FTA understands some transit agencies and State DOTs may prefer to have transit agencies enter their data directly. However, FTA believes State DOT reporting is in the public interest, and reduces the reporting burden on the smallest rural transit agencies. Therefore, FTA will continue to require the States to submit subrecipient data, as developed in consultation with State DOTs and Section 5311 grant subrecipients. While FTA is neither able to consider using the Volpe Center's MIS submissions system nor some similar automated reporting system for direct reporting by subrecipients at this time, FTA may explore implementing improvements in the reporting software as financial resources permit.

Two commenters identified a discrepancy between the definitions of "public transportation" in the proposed rulemaking and the 2007 Rural NTD Module Reporting Manual with regard to whether public transportation includes or excludes intercity bus. In particular, these commenters note that the proposed rule excludes intercity bus from public transportation, while the proposed 2007 Rural NTD Module Reporting Manual includes intercity bus as public transportation. These commenters ask for clarity and consistency between the two definitions. One commenter asked FTA to further clarify whether the State or the intercity bus company is responsible for reporting intercity bus data.

*FTA Response:* FTA understands that, as proposed, the definition of "public transportation" agency presents an apparent conflict with the definition of public transportation in the proposed 2007 Rural NTD Module Reporting Manual. FTA revised the proposed definition of "public transportation agency" to clarify that a transit agency means an entity providing public transportation as defined in 49 U.S.C. 5302, and updated the references to public transportation agency accordingly.

Under 49 U.S.C. 5311, intercity bus projects are identified as a beneficiary of a certain portion of Section 5311 grants, and 49 U.S.C. 5335 requires that all recipients or beneficiaries of Section 5311 grants be subject to NTD reporting requirements. FTA does not believe that Congress intended the definition of "public transportation" in 49 U.S.C. 5302 to provide States with an exception to NTD reporting for intercity bus transportation subrecipients. Thus, States should include information on all beneficiaries of the State's Section 5311 grants, including intercity bus

transportation, in the State's NTD report.

*(b) Failure to report data.*

Four commenters expressed concern that § 630.5 was unduly harsh in tying Section 5311 funding to compliance with a data collection program. These commenters argued that providing transit services was more important than providing data, and expressed concern that withholding funds from applicants who do not comply with NTD reporting requirements does not seem reasonable and may not be in the best interest of the applicant or the State.

*FTA Response:* Pursuant to 49 U.S.C. 5335(b), FTA may award a grant under section 5307 or 5311 only if the applicant, and any person that will receive benefits directly from the grant, are subject to NTD reporting. As a result, FTA does not have discretion to separate Section 5311 funding from compliance with NTD reporting.

Four commenters expressed concern that § 630.5 did not provide FTA with enough discretion in evaluating the compliance of recipients and direct beneficiaries of Section 5311 grants with NTD reporting, and that this section mandated automatic ineligibility for Section 5311 funding, even for non-major violations. These commenters recommended that FTA amend the first sentence of § 630.5 to substitute the word "may" for the word "will" when discussing ineligibility for future grants based on a failure to report data to NTD.

*FTA Response:* FTA understands the basis of the commenters' desire to amend the first sentence of § 630.5. However, the statute states that FTA may award a grant under Section 5307 or 5311 "only if the applicant and any person that will receive benefits directly from the grant are subject to the reporting and uniform systems." FTA does not have the discretion to award a grant under section 5307 or 5311 to a recipient that fails to report the required data to the NTD. Therefore, FTA did not adopt the commenters' suggestion to use the discretionary word "may" in this section.

One commenter suggested that § 630.5 be amended to require that the determination of ineligibility be possible only for data reporting efforts that, "when viewed as a whole," are not in "substantial conformance" with this part. This commenter also argued that reporting entities should receive "a written notice from FTA explaining the reasons why the data submitted, viewed as a whole, are not in substantial conformance with this part" and that a reporting entity should have "a

reasonable opportunity to file amended or additional data in response to such FTA notice."

*FTA Response:* FTA declines to adopt the commenters' suggestion to amend § 630.5 to require that the determination of ineligibility be made only for data reporting efforts that, when "viewed as a whole" are not in "substantial conformance" with 49 CFR part 630. FTA agrees that reporters should be given an opportunity to remedy deficiencies in their submissions and has provided this opportunity in a notice provision set forth in § 630.9 and the waiver provision set forth in § 630.10.

Five commenters asked if FTA intends to hold the entire State liable if only one subrecipient does not submit NTD data to the State.

*FTA Response:* FTA does not intend to hold the entire State liable if a subrecipient does not submit NTD data to the State. FTA reminds commenters that pursuant to Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Application Instructions," States must ensure that subrecipients of Section 5311 grants are in compliance with a number of FTA requirements. Ensuring that a subrecipient supports the State's ability to comply with NTD reporting would be one of these requirements. Pursuant to Circular 9040.1F, a State would be required to withhold the disbursement of funds to a subrecipient that did not support the State's ability to comply with NTD reporting. By withholding disbursement of funds to the subrecipient, that subrecipient would no longer be a direct beneficiary of the State's Section 5311 grant.

One commenter suggested that FTA amend the proposed part 630 to add a section that makes it clear that an agency declared ineligible for funding will be able to file for reinstatement when it: (1) Files data that sufficiently corrects deficiencies in its prior data submission; or (2) makes a filing consistent with the Alcohol Program Incentive Grant Program established by 23 U.S.C. 163(e). Another commenter asked FTA to clarify how long the subrecipient would be ineligible for funding once FTA determined ineligibility.

*FTA Response:* FTA has amended the proposed rule in § 630.5 to clarify that failure to report data in accordance with this part will result in the "noncompliant reporting entity" being ineligible to receive any Section 5307 or 5311 Grants until such time as a report is filed in accordance with this part. This change also clarifies that a transit agency that fails to report data as a

recipient of a Section 5307 grant would also be ineligible to be a beneficiary, as a subrecipient, of a Section 5311 grant. Pursuant to 49 U.S.C. 5335(b), FTA may make grants under Section 5311 only if the applicant and any person that will receive benefits directly from the grant are subject to the reporting and uniform systems. As a result, the approach outlined in 23 U.S.C. 163(e), which describes penalties for States that have not enacted or enforced safety incentives to prevent operation of motor vehicles by intoxicated persons, cannot be applied to the NTD program.

Two commenters were concerned that the proposed § 630.5 empowers FTA staff to determine ineligibility for funding if they find that the data submitted does not meet "regulatory requirements." These commenters suggested that § 630.5 be rewritten to require the Administrator to declare a reporting entity ineligible for Federal transit funds for noncompliance with NTD reporting.

*FTA Response:* FTA does not adopt the suggested revision to § 630.5 to require the Administrator to make a determination of ineligibility of funding. The FTA Administrator's concurrence, or that of his or her designee, will be sought prior to an ineligibility determination being issued.

*(c) Late and Incomplete Reports*

One commenter asked if FTA intends to require that NTD reports be accurate and complete. Another commenter argued that "if there is a data gap, it should not create a risk of ineligibility if, viewed as a whole, the agency data submission is in substantial conformance with the requirements." This commenter requested an amendment to permit agencies to provide good faith estimates.

*FTA Response:* FTA reminds the commenter requesting clarity concerning the accurateness and completeness of NTD data that Congress created the NTD to meet the needs of the Nation for information on which to base public transportation service planning. As such, data submitted must be accurate and complete. FTA does not accept the suggestion to explicitly allow for accepting good-faith estimates. Section 630.8 already provides for agencies to comply by "exhausting all possibilities for obtaining this information." Additionally, as set forth in § 630.10, FTA may grant waivers to reporting entities on a case-by-case basis when the reporting entity cannot furnish the data without unreasonable expense and inconvenience. Further, before taking final action under §§ 630.5 and 630.8, FTA will transmit a written

request to the reporting entity for it to provide the necessary information to FTA.

Two commenters suggested that FTA implement a process that provides new Section 5311 reporters with additional time for compliance. One commenter suggested the rules regarding timely submission proposed in § 630.6(a) should provide for (1) an extension of 30 days to be granted automatically, not as a matter of FTA discretion, and (2) longer extensions as a matter of FTA discretion for good cause shown.

*FTA Response:* FTA disagrees that it should provide Section 5311 reporters with additional time to comply with the reporting requirements. As set forth in 49 U.S.C. 5335, Congress established the NTD to meet the needs of all levels of government, and the needs of the public, for public transportation service planning. Public transportation service planners have consistently advised FTA that public transportation service planning requires current and complete data. Thus, late and incomplete reports have negative and severe impacts on the NTD's ability to fulfill its statutory purpose. FTA will grant reasonable waivers and extensions as provided in the rule, but FTA does not agree to institute an automatic waiver, which would constitute a *de facto* extension of all reporting deadlines by 30 days. As proposed, the rule gives reporting entities the opportunity to remedy deficiencies in their submissions by providing reporting entities with the opportunity to request a 30-day extension for submission, and the opportunity to request a waiver as set forth in § 630.10. However, FTA revised the proposed rule to clarify that a reporting entity may submit its report on an extended deadline, as opposed to on the due date prescribed in the reference documents.

#### (d) Questionable Data Items

FTA received two comments on the proposed § 630.8 "Questionable Data Items." These commenters expressed concern that the proposed § 630.8 provided the possibility of an apportionment adjustment for the Section 5311 program based on deficiencies in data. These commenters highlighted that the relevant factors for the Section 5311 grant program apportionments are (1) the non-urbanized area population, and (2) land area and suggested that FTA amend the proposed § 630.6 to delete reference to modification of 5311 apportionments. One commenter asked FTA to clarify how it intends to use the NTD information for rural programs to gauge how the increased apportionments

affect 5311 recipients when there is no previous data to analyze.

*FTA Response:* FTA agrees that the proposed § 630.8 inadvertently provided the possibility of an apportionment adjustment for the Section 5311 program based on deficiencies in data. FTA notes that the relevant factors for the Section 5311 grant program apportionments are (1) the population in nonurbanized areas, and (2) the land area in nonurbanized areas. Accordingly, FTA revised the proposed rule to clarify that FTA does not use data from rural transit agencies in the apportionment of Section 5311 funds. FTA notes that there are some previous studies of rural transit service to rely upon for retrospective comparisons. Additionally, FTA notes that this data collection will provide a consistent time series for rural transit data forwarding the future.

#### (e) Notice of FTA Action

FTA received two comments on the proposed § 630.9 "Notice of FTA action." One commenter noted that FTA should not make adjustments to any data submitted without speaking or writing directly to the agency submitting the data. Another commenter expressed concern that the proposed language, "request the necessary information," is insufficient notice to a reporting entity. This commenter recommended that FTA amend the proposed § 630.9 to specify that FTA's notice must "explain" to the agency what information the agency should provide to FTA.

*FTA Response:* FTA reminds the first commenter that, as proposed in § 630.9, FTA transmits a written request to the reporting entity to provide the necessary information to FTA before it takes final agency action. In addition, when FTA identifies questionable data items in NTD submissions, FTA contacts the reporter in writing, and provides the reporter with an opportunity to either explain or revise the questionable data item. FTA revised the proposed § 630.7 to clarify this procedure. FTA believes that the revised language in § 630.7 and FTA's current practice, adequately addresses this commenters concern. FTA finds the suggested amendment unnecessary.

#### (f) Waiver of Reporting Requirements

FTA received two comments on the proposed § 630.10 "Waiver of Reporting Requirements." These commenters suggested that FTA personnel should have considerable flexibility to grant waivers, extensions or leniency to transit agencies attempting to comply, particularly in the initial years of

implementation. One commenter suggested that FTA amend § 630.10 to add the following sentence: "Waivers of one or more of the requirements of this part may be granted for good cause shown. Each waiver will be for a specified period of time."

*FTA response:* FTA agrees that it should have flexibility to grant waivers. However, FTA declines to adopt the amendment as proposed by the commenter as FTA believes the proposed waiver provision already provides FTA with considerable flexibility to grant waivers to transit agencies attempting to comply.

#### (g) Proposed Appendix A to Part 630

FTA received two comments on the proposed Appendix A to Part 630. One commenter was unsure whether the auditor statement requirement set forth in Appendix A, Subsection F(2)(b) applied to all providers of transit using 5311 funds or only some. This commenter suggested that if FTA intends to impose such a requirement on only some Section 5311 providers, FTA should clarify this intent. This commenter suggested that if FTA intended to impose this requirement on all Section 5311 providers, FTA should indicate that FTA will require an audited statement on a case-by-case basis to avoid unnecessary costs and delays in filing. In particular, this commenter suggests that FTA reduce the burden of this requirement by requiring an audited statement for 5311 providers that have 20 or more vehicles in service. Another commenter suggested that FTA incorporate the CEO Certification and Assurances.

*FTA response:* FTA agrees that the proposed Appendix A to Part 630 caused a great deal of confusion, as it mixed the urbanized area NTD reporting requirements with the rural NTD reporting requirements, and duplicated information that is provided in the NTD Reporting Manuals. In order to ensure that the public has a single, consistent reference for NTD information, FTA is no longer proposing to include Appendix A as part of this rule. FTA believes that this change does not have a substantive effect on the regulated public since the same information is available in the NTD Reporting Manuals.

#### (h) Comments on the Proposed 2007 Rural NTD Module Reporting Manual

FTA received three comments on the proposed 2007 Rural NTD Module Reporting Manual.

Three commenters provided detailed comments on the proposed 2007 Rural

NTD Module Reporting Manual. Although these comments are outside the scope of this rulemaking, FTA considered the comments in the process of finalizing the Rural NTD Reporting Manual.

*(i) Additional Technical Revisions*

In addition to the revisions discussed above, FTA revised the proposed rule to update the proposed regulation and make certain provisions clearer. Such revisions include: (1) Replacing the term “section 5335 report” with the term “NTD submission”, (2) consistently using the definition of “reference documents,” (3) updating the titles of the NTD Manuals, (4) deleting reference to “optional report fields,” (5) specifying that the apportionment in § 630.11 is the Section 5307 apportionment, (6) combining § 630.4(a) with § 630.4(b), (7) updating the statutory authority, and (8) changing the title to reflect the commonly-used term “National Transit Database.” Additionally, FTA eliminated § 630.12, as it was redundant of existing requirements, and FTA removed language in § 630.4 that specified that FTA would annually mail CDs to reporters, as updated copies of the reference documents are electronically available on FTA’s NTD Web site. Reporters without Internet access may continue to request a CD, and reporters without computer access may request a printed copy. These changes have no substantive effect on the regulated public. Pursuant to 5 U.S.C. 553(b)(3)(A), such changes are “interpretative” in nature and, FTA is not required to accept or consider comments on them.

**Regulatory Process Matters**

*Executive Order 12866*

Executive Order 12866 requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” This final rule amends the NTD reporting and recordkeeping requirements to require recipients of Nonurbanized Area Formula Grants to report annual transit data to the NTD following previously established guidelines for a voluntary State-based rural data module developed in consultation with State Departments of Transportation.

FTA has determined that this action is not a significant regulatory action under section 3(f) of Executive Order 12866, and that the direct economic impact of this rulemaking would be

minimal. Section 3033 of SAFETEA-LU amended 49 U.S.C. 5335 to require that recipients and beneficiaries of Nonurbanized Area Formula Grants report annual transit data to the NTD. This final rule clarifies existing regulatory requirements, and the changes adopted do not adversely affect, in any material way, any sector of the economy. In addition, the final rule does not interfere with any action taken or planned by another agency and does not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

*Executive Order 13132*

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA analyzed the final rule in accordance with the principles and criteria contained in Executive Order 13132, and FTA determined that this final rule does not have sufficient implications to warrant the preparation of a federalism assessment. FTA also determined that this final rule does not preempt any State law or State regulation or affect States’ abilities to discharge traditional government functions.

*Executive Order 13175*

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Indian communities and that impose “substantial and direct compliance costs” on such communities. This final rule requires Indian tribes that are recipients of Nonurbanized Formula Program Grants to report to the NTD. In addition, this rule requires Indian tribes that are subrecipients of Nonurbanized Formula Program Grants to report NTD data to the State. FTA analyzed this rule under Executive Order 13175, and determined that the final rule does not have substantial direct effects on one or more Indian tribes; does not impose substantial direct compliance costs on Indian tribal governments; and does not preempt tribal laws. Therefore, a tribal impact statement is not required.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), FTA must

consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. FTA analyzed this rule under Regulatory Flexibility Act of 1980 and certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (Pub. L. 104–13, 109 Stat. 163), FTA may not conduct or sponsor, and a person is not required to respond to or may not be penalized for failing to comply with, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

OMB approved an extension of FTA paperwork collection number 2132–0008. The new expiration date of this collection number is August 31, 2008. On June 27, 2007, FTA sought to add the collection of rural data under the NTD to this collection number. This rule only has effect to the extent that the data collection provided for under this rule has approval under the Paperwork Reduction Act.

*Unfunded Mandates Assessment*

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule does not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FTA evaluated any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

*National Environmental Policy Act*

The National Environmental Policy Act of 1969, (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The rule does not have any effect on the quality of the environment under the National Environmental Policy Act of 1969.

### Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

### List of Subjects in 49 CFR Part 630

National Transit Database.

■ For the reasons discussed in the preamble, the Federal Transit Administration revises 49 CFR part 630 as follows:

## PART 630—NATIONAL TRANSIT DATABASE

### Subpart A—General

Sec.

- 630.1 Purpose.
- 630.2 Scope.
- 630.3 Definitions.
- 630.4 Requirements.
- 630.5 Failure to report data.
- 630.6 Late and incomplete reports.
- 630.7 Failure to respond to questions.
- 630.8 Questionable data items.
- 630.9 Notice of FTA action.
- 630.10 Waiver of reporting requirements.
- 630.11 Data adjustments.

**Authority:** 49 U.S.C. 5307, 5311, 5335, and 49 CFR 1.51.

#### § 630.1 Purpose.

The purpose of this part is to prescribe requirements and procedures necessary for compliance with the National Transit Database Reporting System and Uniform System of Accounts, as mandated by 49 U.S.C. 5335, and to set forth the procedures for addressing a reporting entity's failure to comply with these requirements.

#### § 630.2 Scope.

This part applies to all applicants for, and any person that receives benefits directly from, a grant under 49 U.S.C. 5307 or 5311.

#### § 630.3 Definitions.

(a) Except as otherwise provided, terms defined in 49 U.S.C. 5302 *et seq.* apply to this part.

(b) Except as otherwise provided, terms defined in the current editions of the National Transit Database Reporting Manuals and the NTD Uniform System of Accounts are used in this part as so defined.

(c) For purposes of this part:

*Administrator* means the Federal Transit Administrator or the Administrator's designee.

*Applicant* means an applicant for assistance under 49 U.S.C. 5307 or 5311.

*Assistance* means Federal financial assistance for the planning, acquisition, construction, or operation of public transportation services.

*Beneficiary* means any entity that receives benefits from assistance under 49 U.S.C. 5307 or 5311.

*Current edition of the National Transit Database Reporting Manuals and Uniform System of Accounts* means the most recently issued editions of the reference documents.

*Days* mean calendar days.

*Reference Document(s)* means the current editions of the National Transit Database Reporting Manuals and Uniform System of Accounts. These documents are subject to periodic revision. Beneficiaries and applicants are responsible for using the current editions of the reference documents.

*Reporting entity* means a transit agency, a State Department of Transportation that is a recipient of grants under 49 U.S.C. 5311, or a Federally-recognized Indian Tribe that is a direct recipient of grants under 49 U.S.C. 5311.

*State Department of Transportation* means the Department of Transportation of a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, or the U.S. Virgin Islands.

*Transit agency* means an entity providing public transportation as defined in 49 U.S.C. 5302.

#### § 630.4 Requirements.

(a) *National Transit Database Reporting System.* Each applicant for and beneficiary of Federal financial assistance under 49 U.S.C. 5307 or 5311 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the reference documents. State Departments of Transportation shall provide reports on behalf of their subrecipients of grants under 49 U.S.C. 5311 as specified in the reference documents. Transit agencies that are beneficiaries of grants under both 49 U.S.C. 5307 and 5311 must file an individual report as an urbanized area transit agency. Federally-recognized Indian Tribes that are direct beneficiaries of grants under 49 U.S.C. 5311 must file an individual report. State Departments of Transportation should not report on behalf of transit agencies that have filed individual reports as urbanized area transit agencies nor on behalf of Indian Tribes that are required to file an individual report.

(b) *Copies.* Copies of reference documents are available from the National Transit Database Web site located at <http://www.ntdprogram.gov>. These reference documents are subject to periodic revision. Revisions of reference documents will be posted on the National Transit Database Web site and a notice of any significant changes to the reporting requirements specified in these reference documents will be published in the **Federal Register**.

#### § 630.5 Failure to report data.

Failure to report data in accordance with this part will result in the noncompliant reporting entity being ineligible to receive any Section 5307 or 5311 grants directly or indirectly until such time as a report is filed in accordance with this part.

#### § 630.6 Late and incomplete reports.

(a) *Late reports.* Each reporting entity shall ensure that FTA receives its report by the due dates prescribed in the reference documents. A reporting entity may request a 30 day extension to submit its report. FTA will treat a failure to submit the required report by the due date or the extension date as failure to report data under § 630.5.

(b) *Incomplete reports.* FTA will treat an NTD submission that does not contain all of the required data; or does not contain the required certifications, where applicable; or that is not in substantial conformance with the definitions, procedures, and format requirements set out in the reference documents as a failure to report data under § 630.5, unless the reporting entity has exhausted all possibilities for obtaining this information.

#### § 630.7 Failure to respond to questions.

FTA will review each NTD submission to verify the reasonableness of the data submitted. If any of the data do not appear reasonable, FTA will notify the reporting entity of this fact in writing, and request written justification from the reporting entity to either document the accuracy of the questioned data, or to revise the questioned data with a more accurate submission. Failure of a reporting entity to make a good-faith written response to this request will be treated as a failure to report data under § 630.5.

#### § 630.8 Questionable data items.

FTA may enter a zero, or adjust any questionable data item(s), in any reporting entity's NTD submission that is used in computing the Section 5307 apportionment. These adjustments may be made if any data appears to be inaccurate, have not been collected and

reported in accordance with FTA reference documents, or if there is not adequate documentation and a reliable recordkeeping system.

**§ 630.9 Notice of FTA action.**

Before taking final action under §§ 630.5 or 630.8, FTA will transmit a written request to the reporting entity to provide the necessary information within a specified reasonable period of time. FTA will advise the reporting entity of its final decision.

**§ 630.10 Waiver of reporting requirements.**

Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a written showing that the party seeking the waiver cannot furnish the required data without unreasonable expense and inconvenience. Each waiver will be for a specified period of time.

**§ 630.11 Data adjustments.**

Errors in the data used in making the Section 5307 apportionment may be discovered after any particular year's apportionment is completed. If so, FTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

Issued on: November 29, 2007 at Washington, DC.

**James S. Simpson,**  
Administrator.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 070913514-7517-01]

RIN 0648-AW04

**Pacific Halibut Fisheries; Subsistence Fishing; Correction**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correcting amendment.

**SUMMARY:** This action corrects a spelling error in final regulations (FR Doc. 03-8822) that were published in the

**Federal Register** on April 15, 2003 (68 FR 18145). This action is necessary to correct a typographical error of an organized tribal entity name in regulations that implement Pacific halibut subsistence fishing management measures. This correcting amendment makes minor, non-substantive changes and does not change operating practices in the subsistence fishery or the rights and obligations of subsistence fishermen managed under the subsistence halibut regulations off Alaska.

**DATES:** Effective on May 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Peggy Murphy, NMFS, 907-586-7228 or email at [peggy.murphy@noaa.gov](mailto:peggy.murphy@noaa.gov).

**SUPPLEMENTARY INFORMATION:** A final rule published April 15, 2003, (68 FR 18145) implemented regulations to authorize and manage subsistence fishing of Pacific halibut (*Hippoglossus stenolepis*). These regulations appear at 50 CFR 300.65. This correcting amendment revises the table titled Halibut Regulatory Area 3B at § 300.65(g)(2) by correcting the spelling of "Qagan Toyagungin Tribe of Sand Point Village" under Organized Tribal Entity. The correct spelling is "Qagan Tayagungin Tribe of Sand Point Village".

**Need for Correction**

Current reference to the Organized Tribal Entity Qagan Toyagungin Tribe of Sand Point Village at § 300.65(g)(2) needs to be corrected because the reference is not consistent with the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs published by the Department of Interior (72 FR 13648) on March 22, 2007. This correcting amendment corrects the spelling of the Organized Tribal Entity.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this correcting amendment to the Pacific halibut subsistence fishing regulations. Notice and comment are unnecessary because this action makes only a minor, non-substantive change to correct a typographical error. The amendment does not make any substantive change

in the rights and obligations of subsistence halibut fishermen. No aspect of this action is controversial and no change in operating practices in the subsistence fishery is required. Because this action makes only the minor, non-substantive change to § 300.65(g)(2) described above, it is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

**List of Subjects in 50 CFR Part 300**

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

Dated: November 30, 2007.

**Samuel D. Rauch III**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ Accordingly, 50 CFR part 300 is corrected by making the following correcting amendment:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

■ 1. The authority citation for 50 CFR part 300, continues to read as follows:

**Authority:** 16 U.S.C. 773-773k.

■ 2. In § 300.65, paragraph (g)(2), in the table titled "Halibut Regulatory Area 3B" the entry for "Sand Point" is revised to read as follows:

**§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

**HALIBUT REGULATORY AREA 3B**

Place with Tribal Headquarters	Organized Tribal Entity
* * * * *	
Sand Point	Pauloff Harbor Village Native Village of Unga Qagan Tayagungin Tribe of Sand Point Village

\* \* \* \* \*

[FR Doc. E7-23695 Filed 12-5-07; 8:45 am]

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