

days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision.

(c) FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition.

(d) If FTA fails to post a response to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted until and unless FTA states otherwise.

#### § 601.47 Review Procedures.

(a) FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision.

(b) FTA decision letters, either granting or denying a petition, shall be posted in the appropriate Emergency Relief Docket and shall reference the document number of the petition to which it relates.

## PART 602—EMERGENCY RELIEF

Sec.

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

SOURCE: 78 FR 19144, Mar. 29, 2013, unless otherwise noted.

#### § 602.1 Purpose.

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

#### § 602.3 Applicability.

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

#### § 602.5 Definitions.

The following definitions apply to this part:

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

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

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

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

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

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

*Emergency operations.* The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: evacuations; rescue operations; bus or ferry service to replace inoperable rail service or to detour

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around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

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

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

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

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

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

(ii) Emergency communications;

(iii) Security forces;

(iv) Sandbagging;

(v) Bracing/shoring damaged structures;

(vi) Debris removal;

(vii) Dewatering; and

(viii) Removal of health and safety hazards.

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

(1) Minimizing the extent of the damage, or

(2) Restoring service.

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

*Heavy maintenance.* Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, debris removal from seasonal thunderstorms, or heavy repairs necessitated by excessive deferred maintenance. This may in-

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clude work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's routine maintenance, emergency or contingency program.

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

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

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

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

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

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

*Serious damage.* Heavy, major or unusual damage to a public transportation facility which severely impairs

the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

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

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

#### § 602.7 Policy.

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

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

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

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

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

#### § 602.9 Federal share.

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

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

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

#### § 602.11 Pre-award authority.

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

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

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

(d) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).

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

(f) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional

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Administrator must make in order to approve a project.

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

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

### § 602.13 Eligible activities.

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

(b) Eligible uses of Emergency Relief funds include:

- (1) Emergency operations;
- (2) Emergency protective measures;
- (3) Emergency repairs;
- (4) Permanent repairs;
- (5) Actual engineering and construction costs on approved projects; and
- (6) Resiliency projects.

(c) Ineligible uses of Emergency Relief funds include:

- (1) Heavy maintenance;
- (2) Project costs for which the recipient has received funding from another Federal agency;
- (3) Project costs for which the recipient has received funding through payments from insurance policies;
- (4) Projects that change the function of the original infrastructure;
- (5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;
- (6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster.
- (7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation.
- (8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

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### § 602.15 Grant requirements.

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

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

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

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

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

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

(d) In accordance with Executive Order 11988, Floodplain Management, recipients shall not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent,

as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain.

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

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

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

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

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

#### § 602.17 Application procedures.

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

(1) The affected recipient shall prepare a damage assessment report. The purpose of the damage assessment report is to provide a factual basis for

the FTA Regional Administrator's finding that serious damage to one or more public transportation systems has been caused by a natural disaster over a wide area, or a catastrophic failure. As appropriate, the damage assessment report should include by political subdivision or other generally recognized administrative or geographic boundaries—

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

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

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

(iv) Potential environmental and historic impacts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Applicants are responsible for preparing and submitting a grant application. The FTA regional office may provide technical assistance to the applicant in preparation of a program of projects. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent repairs the applicant will undertake. Program data should be

kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility of proposed work. If the appropriate FTA Regional Administrator determines the damage assessment report is of sufficient detail to meet these criteria, additional program support data need not be submitted.

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

## PART 604—CHARTER SERVICE

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