

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration**

[Docket No. FTA-06-24143]

**Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1)): Notice of Public Meetings, Proposed Grant Program Provisions****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice and request for comment; Announcement of public meetings.

**SUMMARY:** This notice does several things. First, it summarizes comments FTA received in response to information about a new program for Public Transportation on Indian Reservations Program (hereafter referred to as the Tribal Transit Program) included in an earlier **Federal Register** notice dated November 30, 2005 (70 FR 71950), "FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users," and details FTA's response to those comments. Second, it announces the process FTA proposes to use to allocate available funds starting in FY 2006 and the grant program provisions that FTA proposes to apply to the program. Third, the notice seeks further comment on the proposed process and grant program provisions. Finally, the notice announces two (2) public meetings sponsored by FTA to provide direct outreach to tribal governments about the Tribal Transit Program and allow for discussion of this notice.

**DATES:** Comments should be submitted by April 21, 2006. Late-filed comments will be considered to the extent practicable.

**Public Meeting Dates:** FTA will host two public meetings in April 2006 intended to provide direct outreach to tribal governments as part of the FTA's rollout of the Tribal Transit Program. The first meeting will be held on April 4, 2006 in Denver, Colorado and the second meeting will be held on April 7, 2006 in Kansas City, Missouri.

**ADDRESSES:** You may submit comments identified by the docket number [Docket No. FTA-06-24143] by any of the following methods:

1. Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
2. Fax: 202-493-2251.
3. Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

4. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** You must include the agency name (Federal Transit Administration) and Docket number (FTA-06-24143) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided and will be available to internet users. Please see the Privacy Act section of this document.

**Docket:** For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Public Meeting Addresses:** The meeting in Denver will be held at the Holiday Inn Denver International Airport, 15500 East 40th Avenue, Denver, Colorado 80239. The second meeting in Kansas City, Missouri will be held at the Westin Crown Center, 1 Pershing Road, Kansas City, Missouri 64108. Anyone interested in attending one of these April meetings should register on-line at <http://tmap.colostate.edu/ParticipantRegistration.cfm>.

**FOR FURTHER INFORMATION CONTACT:** Jamie Durham or Lorna Wilson, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590, phone: (202) 366-2053, fax: (202) 366-7951 or e-mail questions to [fta.tribalprogram@fta.dot.gov](mailto:fta.tribalprogram@fta.dot.gov).

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**I. Overview**

On November 30, 2005, FTA published a notice (70 FR 71950, 71965-66) in the **Federal Register**, which broadly described new program changes to or extensions of existing programs contained in its new reauthorization legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Among other things, FTA solicited comments relating to the newly created program entitled "Public Transportation on Indian Reservations" (hereafter referred to as the Tribal Transit Program) in SAFETEA-LU that authorizes \$45 million from the Nonurbanized Area Formula Grants Program (49 U.S.C. 5311) for FY 2006-2009 to be apportioned for grants directly to Indian tribes (49 U.S.C. 5311(c)(1)). Under the Tribal Transit Program, Indian tribes are eligible direct recipients. The funds are to be apportioned for grants to Indian tribes for any purpose eligible under the Nonurbanized Area Formula Program (section 5311). More than 20 tribes and several State Departments of Transportation (DOTs) submitted comments. These comments and our responses are described later in this notice.

FTA is hosting two public meetings with tribal governments to discuss the Tribal Transit Program. FTA encourages public participation at these meetings; however, in order for FTA to properly consider any comments, they must be submitted in writing to the docket for this notice. (See "Instructions" under the **ADDRESSES** section of this notice.) FTA will further consider comments it receives in response to this notice and at its public meetings as it finalizes the grant program provisions and develops its FY 2006 Notice of Funding Availability for the Tribal Transit Program.

**II. Comments and Responses**

FTA specifically requested comments in the November 30th **Federal Register** notice on what criteria should be considered in selecting Indian tribes to receive funding and what factors should be used in allocating available funds among successful applicants. FTA also sought comment about appropriate terms and conditions for the program, especially from Indian tribes that previously received FTA funding. The comments are grouped by topic in this notice as follows: (A) Basis for formula apportionment; (B) eligibility; (C) eligible activities; (D) terms and

conditions; (E) Indian self-determination and self-governance; and, (F) other. The following paragraphs summarize the comments and our responses. FTA's responses reflect the agency's analysis to date. Since we are continuing to seek comment on aspects of the program, it is possible that additional data could be provided which results in FTA amending our position before it is finalized in the FY 2006 Notice of Funding Availability.

#### A. Basis for Formula Apportionment

In its November 30, 2005 **Federal Register** notice, FTA stated that SAFETEA-LU does not specify a basis for formula apportionment. The following comments were received regarding the basis for allocating the available funds.

*Comment:* Multiple commenters suggested FTA use a competitive grant process for allocating the available funds.

*Response:* FTA agrees with this comment. FTA determined that applying the Nonurbanized Area Formula Grants Program (section 5311) formula to this apportionment and allocating funds to all eligible Indian tribes would only provide a small amount of money to each tribe and not all tribes may be interested or able to implement transit projects. Instead, FTA proposes using an annual competitive selection process to allocate funds among eligible applicants. This process is described in section III of this notice.

*Comment:* Multiple commenters suggested that instead of awarding funds to those with the planning process complete or tribal transit service in existence, FTA should offer a 60 or 120 day period for accepting any applications and award funds based on identified transit needs or planning activities designed to identify transit needs as reflected in either of the following: Indian tribe's long range plan, planning documents from other tribal government services or programs, or tribally established community assessments.

*Response:* FTA agrees with this comment in part. FTA intends to evaluate how a project addresses the identified transit needs and the extent of planning in the eligibility determination and evaluation criteria, but FTA will limit eligibility in the first year to those that have completed the planning process or have tribal transit service in existence (see FTA response to comments in section on eligible activities). FTA agrees with the suggestion to offer a 60-day period for accepting proposals.

*Comment:* Multiple commenters encouraged FTA to establish minimum and maximum grant awards to ensure that grant funding is large enough to aid Indian tribes significantly and to ensure that as large a number of tribes as possible are able to receive the benefits of this program.

*Response:* FTA agrees with this comment in principle. Since this is a new program, however, FTA does not intend to establish minimum and maximum grant awards in the first year of the program in order to determine the level of tribal interest. Proposals must identify a specific project and include a detailed project budget to be considered. The amount allocated to each successful applicant will be based in part on the total amount of funding requested by all applicants and the appropriateness of the amount requested for the activities proposed by the applicant.

*Comment:* One commenter suggested allocating one-third of available funds evenly among eligible applicants, one-third on a percentage based upon resident population to be served, and one-third using a competitive method among eligible applicants who can leverage funds to best accomplish major milestones that align with the overall program intent.

*Response:* FTA agrees with this comment in part. FTA does not agree in allocating the funds in percentages; but, for reasons noted above proposes allocating the entire apportionment to competitively selected projects by evaluating the benefits of the project, which include evaluating the ratio of estimated daily ridership to total service area, the tribal population of the transit service area, and the ratio of unduplicated users to tribal population. FTA also proposes evaluating applicant's financial commitment and the extent of coordination, including the applicants' ability to leverage additional funding.

*Comment:* One commenter suggested using a scaled weighting factor for pre-existing tribal programs, tribal transportation improvement plans, planning documents from other tribal government services or programs.

*Response:* FTA agrees with this comment in part. FTA does not intend to use a scaled weighting factor, but propose evaluating the adequacy of project planning as one of the selection criteria.

*Comment:* One commenter suggested using a rating system that included criteria such as: higher consideration for funding to Indian tribes currently providing transportation services, Indian tribes providing transportation services for participants who are 60- and

older, or Indian tribes providing transportation services for handicapped participants.

*Response:* FTA agrees with this comment in principle. Higher consideration will not necessarily be given to tribes currently funding transit service, or tribes providing these specific transit services, but proposals may receive higher scores based on how the proposed project addresses the needs demonstrated, on whether the human service transportation needs were considered, and on how well the project coordinates with other programs, such as transportation services for participants who are 60 years and older and transportation services for handicapped participants.

*Comment:* One commenter suggested the emphasis should be placed on new and expanded services, discouraging supplanting of funds currently used to support public transportation.

*Response:* FTA agrees with this comment. In the first year of the program, applications will be accepted for both new (with planning complete) and expanded services. In addition to funding under the Tribal Transit Program, States must continue to include the tribes in the equitable distribution of the section 5311 funds apportioned to the States.

#### B. Eligibility

In its November 30, 2005 **Federal Register** notice, FTA stated that because planning is not an eligible activity under this program, it was considering limiting participation to Indian tribes that already have transit options or that have already conducted planning and are prepared to implement new transit service. The following paragraphs summarize the comments and responses received in response to this approach.

*Comments:* Comments received showed both support and disfavor of this approach; those showing disfavor were concerned that this approach would leave a substantial amount of money unobligated because there are too few tribal transit programs in existence. Additionally, commenters were concerned that this was not Congress' intent for the program and urged FTA to reconsider planning as an eligible activity (discussed in more detail in the next section).

*Response:* FTA recognizes these concerns, but is bound by the authority in the statute that states the funds are eligible for any purpose under section 5311. These purposes include capital and operating expenses for rural transit and rural intercity bus service. Planning is not eligible under section 5311 except pursuant to 5311(e), which is limited to

15 percent of the funds. Since planning for transit service is not directly eligible under the Tribal Transit Program, FTA will limit the eligibility in the first year of the program to tribes that have completed the planning process and are ready to implement new transit service or projects that expand or enhance existing transit services. If there are remaining funds available at the completion of the award process, the funds will remain in the Tribal Transit Program and will be available for allocation in FY 2007.

*Comment:* One commenter encouraged FTA to define eligible recipients as Federally recognized Indian tribes only.

*Response:* FTA agrees with this comment. FTA accepts this recommendation as consistent with the statute and with other DOT programs for tribes. For the duration of the program, FTA will consider eligible direct recipients for this program to be the Federally recognized Indian tribes as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior. As of March 2006, there are 561 federally-recognized Indian tribes. Non-federally-recognized Indian tribes are eligible for section 5311 funds apportioned to the States, but not as eligible direct recipients, and not under the Tribal Transit Program.

### C. Eligible Activities

FTA did not solicit public comment on eligible activities, but we received many comments encouraging FTA to define planning as an eligible activity under the Tribal Transit Program. Section 3013 in SAFETEA-LU amended 49 U.S.C. 5311(c) by authorizing funding for the Tribal Transit Program "for any purpose eligible under this section". The term "section" in this provision refers to 49 U.S.C. 5311. Eligible purposes under section 5311 include capital projects, operating costs of equipment and facilities, and the acquisition of public transportation services for rural transit and rural intercity bus service. Planning activities are not eligible costs for funding in section 5311, except pursuant to section 5311(e), limited to 15 percent of the funds apportioned to the State, and 5311(f) for intercity bus service. Congress may enact a technical correction to allow the use of Tribal Transit Program funds for planning purposes in future years. Until this legislation is enacted, FTA recommends the use of other resources, such as Indian Reservation Roads Program funds, or section 5311 funds allotted from a State's administrative funds for planning proposed new tribal transit

service. Additional comments received were about the language in sections 5311(e) and 5311(f); those comments and responses are described below.

*Comment:* Many commenters expressed confusion regarding the language in the statute about the 15 percent permissible for States to spend on administration, planning, and technical assistance.

*Response:* FTA agrees that this section can be confusing. Section 5311(e) provides that a State may use not more than 15 percent of its annual apportionment for administration, planning and technical assistance. The State may allocate funds from the 15 percent for use for these purposes by subrecipients, including tribes. If the State allocates funds from this source to a tribe, the funds can be awarded to the tribe by the State or directly from FTA. There is no statutory authority for using funds from the Tribal Transit Program for administration, planning and technical assistance.

*Comment:* A few commenters also expressed confusion with regards to the requirement in section 5311(f) that requires each State to spend 15 percent of its annual section 5311 apportionment "to carry out a program to develop and support intercity bus transportation," unless the Governor certifies that "the intercity bus service needs of the State are being met." The confusion surrounds the eligibility of "planning and marketing for intercity bus transportation" as described in 5311(f).

*Response:* FTA agrees that this section can be confusing. The intent of section 5311(f) is to support the connection between nonurbanized (rural and small urban) areas and the larger regional or national system of intercity bus service. Another objective is to support services to meet the intercity travel needs of residents in nonurbanized areas. Support of intercity bus service is an eligible expense under section 5311; therefore funds may be used for planning and marketing specifically for that service. FTA does not intend to require tribes to spend 15 percent of the funds allotted to them under the Tribal Transit Program for intercity bus service because the requirement to spend 15 percent for intercity bus service only applies to the Section 5311 funds apportioned to the States.

### D. Terms and Conditions

FTA solicited comments about appropriate terms and conditions for the program and requirements we should consider waiving for this program, especially from Indian tribes that previously received FTA funding. The

comments and FTA's responses are below.

*Comment:* One commenter suggested that requirements and procedures be commensurate with the funds available.

*Response:* FTA agrees with this comment. FTA is undertaking a thorough and complete review of its statutory, regulatory, and program requirements to determine the appropriate substantive and programmatic requirements that will apply to the Tribal Transit Program. FTA is seeking comment on the proposed requirements described in section III of this notice.

*Comment:* One commenter suggested that FTA's "open door" requirement of section 5311, which stipulates services must be available to the general public, should not be waived.

*Response:* FTA agrees with this comment. Section 5311(c)(1) does not permit FTA to waive the requirement that eligible projects under the Tribal Transit Program be open to the general public. Transit service funded under this program must be available to the general public in the service area; services funded by this program cannot purposefully exclude other members of the general public, nor can they purposefully exclude persons who are not members of the applicant tribe.

*Comment:* One commenter suggested that the tribal program should be subject to similar comprehensive planning requirements to ensure maximum utilization of limited funds and to avoid duplication of service.

*Response:* FTA agrees with this comment. Planning is included in the eligibility determination and adequacy of planning is included in the proposed evaluation criteria for selecting projects as described in section III of this notice.

*Comment:* One commenter suggested that tribes be active participants in the locally-developed, coordinated public transit-human services transportation planning process.

*Response:* FTA agrees with this comment in principle. A locally-developed, coordinated public transit-human services transportation plan is not an explicit requirement of 49 U.S.C. 5311; however, in areas seeking funds under the Job Access Reverse Commute Program (49 U.S.C. 5316), the New Freedom Program (49 U.S.C. 5317), or the Special Needs of Elderly Individuals and Individuals with Disabilities Program (49 U.S.C. 5310), tribal transit agencies are encouraged to participate in the development of the plan.

*Comment:* One commenter suggested that tribes demonstrate financial stability and agree to data and financial reporting requirements.

*Response:* FTA agrees with this comment. Demonstration of financial capacity and financial reporting are necessary requirements. Demonstration of financial commitment is included in the proposed evaluation criteria.

*Comment:* One commenter representing multiple tribal clients suggested that tribes not be required to comply with State-administered Disadvantaged Business Enterprise (DBE) certification programs as a condition of receiving tribal transit grants.

*Response:* FTA agrees with this comment. FTA does not intend to apply 49 CFR part 26 to tribes under this program; this includes the requirement of complying with State-administered DBE certification programs.

*Comment:* One commenter suggested that Americans with Disabilities Act of 1990 (ADA) standards be kept in place.

*Response:* FTA agrees with this comment. Since service funded under the Tribal Transit Program is limited to public transportation as defined in 49 U.S.C. 5302(a)(10), FTA believes it is in the national interest to ensure accessible transportation for persons with disabilities as required by the Americans with Disabilities Act of 1990.

*Comment:* Several commenters encouraged FTA to consider providing 80 percent Federal share for operating assistance and anywhere from 80–100 percent Federal share for capital projects.

*Response:* FTA agrees with this comment in part. FTA recognizes the particular challenges tribes may have providing the local match, but to ensure that participants in this program have a vested interest we propose requiring some local match. To encourage participation in this program FTA is proposing two alternatives for lower local match requirements than typically required under other FTA programs. The proposals are described in detail in section III of this notice and FTA welcomes comments on which proposal we should apply under this program.

*Comment:* Several commenters said that tribes should not have to provide local match for the first two years of grant award.

*Response:* FTA agrees with this comment in part. FTA is proposing to use our existing procedures to allow eligible recipients to request deferral of the local share, as needed, as long as the commitment to provide local match before project completion exists. FTA disagrees with allowing local share to be waived entirely in the first two years of grant award; some local match will be required from the Indian tribes and the

source of these funds must be identified in proposals.

#### *E. Indian Self-Determination and Self-Governance*

FTA did not solicit comment on this subject, but many commenters encouraged FTA to develop a program that supports tribal sovereignty and self-determination. Commenters recommended that FTA develop grant-funding agreements which are consistent with the self-determination and self-governance procedures and suggested that the DOT was authorized in SAFETEA-LU to enter into Indian Self Determination and Education Assistance Act (ISDEAA) contracts and agreements with tribal governments.

*Response:* FTA agrees that the program should be developed in a way that recognizes tribal sovereignty, but disagrees with specific suggestions to use the ISDEAA contracts and agreements. Section 1119 in SAFETEA-LU amended section 202(d) in Chapter 2 of Title 23 (Highways) by authorizing funds for Indian tribal governments to be disbursed by contracts or agreements in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*). This statutory authorization is limited to Federal-aid highway funding provisions in Chapter 2 of Title 23 (Highways) of the U.S. Code. The Tribal Transit Program is authorized in SAFETEA-LU by an amendment to 49 U.S.C. 5311. Section 5311 is codified in Chapter 53 (Public Transportation) of Title 49 of the United States Code. Therefore, FTA does not have the statutory authority to use contracts and agreements under the Indian Self-Determination and Education Assistance Act for projects funded under the Tribal Transit Program.

#### *F. Other*

Many commenters encouraged FTA to work with Indian tribes on a government-to-government basis, to follow-up the previous comment period with additional consultation meetings, and to further coordinate our SAFETEA-LU implementation efforts with the Indian Reservation Roads (IRR) Program Coordinating Committee to develop mutually agreeable tribal transit procedures. Further, commenters requested that these procedures be coordinated with the Deputy Assistant Secretary for Tribal Government Affairs within DOT and encouraged FTA to document best practices, resources, and up-to-date information through Web sites such as Community Transportation Association of America (CTAA), American Public Transportation

Association (APTA), National Rural Technical Assistance Program (RTAP), Multi-State Technical Assistance Program (MTAP), Tribal Technical Assistance Program (TTAP), Project Action and others.

*Response:* FTA is committed to operating within a government-to-government relationship with Indian tribes consistent with the DOT's Order on Program, Policies, and Procedures affecting American Indians, Alaska Natives, and Indian tribes (DOT 5301.1, November 16, 1999). FTA looks forward to providing up-to-date resources through our Web site and others, where possible. FTA has consulted with the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) since the legislation was signed on various aspects of this program. FTA is currently working with the regional Tribal Technical Assistance Program (TTAP) Centers on tribal transportation matters and will continue to work with them as we implement the program. To the maximum extent possible, we will continue to coordinate with other agencies and departments as this program is developed. In addition, FTA has scheduled two outreach meetings to provide face-to-face opportunities for interested Indian tribes to meet with FTA staff and discuss the program.

### **III. Proposed Grant Program Provisions**

FTA initially considered using an interim measure to allocate FY 2006 funds based on letters of interest. Rather than establishing an interim process for allocating the funds, however, we now propose establishing the allocation methodology and program requirements for the life of the program. Using the comments received in the first public comment period and the restrictions of the statute, we describe below our proposal for the allocation methodology and program requirements of the Tribal Transit Program. The paragraphs are grouped by topic: (A) Basis for allocating funds; (B) eligibility; (C) eligible activities; (D) terms and conditions; (E) local share. We invite comments on the methodology and program requirements proposed for the Tribal Transit Program described in the following paragraphs.

#### *A. Basis for Allocating Funds*

Rather than establishing a new process for allocating available funds each year, we propose using an annual competitive selection process to evaluate, score, and rank proposals to receive funding. We propose using the following criteria to competitively select projects for funding:

- Demonstration of need.

- Benefits of project.
- Adequacy of project planning.
- Financial commitment.
- Coordination.

FTA will also consider the reasonableness of the amount requested compared to the scope of the proposed project. If the total available funds in a given year are not awarded, they will remain in the program for allocation in the following year. We intend to solicit the proposals through publishing a Notice of Funding Availability ("NOFA"). The NOFA will contain all necessary program information including: (1) Funding opportunity description; (2) award information; (3) eligibility information; (4) application and submission information; (5) application review information; and (6) award administration information, including requirements associated with an FTA grant.

#### B. Eligibility

Eligible direct recipients include Federally-recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the BIA in the U.S. Department of the Interior. Unless the statute is amended to include planning as an eligible activity, eligible applicants will be limited to tribes that have completed the planning process and are ready to implement transit service and tribes with existing transit services. To be eligible applicants, tribes must have the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

#### C. Eligible Activities

Tribal Transit Program funds may be used for any purpose authorized under section 5311(b)(1). This means that grants can be awarded to recipients located in rural and small urban areas (populations under 50,000) for public transportation capital projects, operating costs of equipment and facilities for use in public transportation, and the acquisition of public transportation services, including service agreements with private providers of public transportation services.

Service funded under this program must be designed to maximize use by members of the general public who have disabilities. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but which is not restricted from carrying other members of the public, is considered available to the general public if it is marketed as public transportation.

#### D. Terms and Conditions

Section 3013 of SAFETEA-LU amends 49 U.S.C. 5311(c) by authorizing funds for the Tribal Transit Program "under such terms and conditions as may be established by the Secretary." The term "Secretary" in this provision refers to the Secretary of Transportation. The Secretary of Transportation possesses the authority to limit the applicability of certain substantive and procedural requirements that are set forth in Title 49 (Transportation) of the United States Code. This includes the Federal transit assistance provisions in Chapter 53 (Public Transportation) of Title 49, which are administered by FTA. As previously stated in this notice, FTA is in the process of reviewing the appropriate Department of Transportation and FTA requirements that should apply to grants awarded under the Tribal Transit Program. The Secretary of Transportation, however, does not possess the authority to limit the applicability of government-wide grant requirements (commonly referred to as cross-cutting requirements) that apply to all Federal grants. Recipients of Federal assistance are subject to many requirements regardless of the source of funds, for example restrictions on lobbying. Recipients under the Tribal Transit Program are subject to these government-wide grant requirements, which are not all named in this document. In addition, some Federal requirements are applicable regardless of whether Federal assistance is provided. For example, the requirement for drivers of vehicles over a certain size is to hold a Commercial Drivers License.

FTA believes the following specific statutory or regulatory requirements must or should be applied to grants awarded under this program:

1. Common Grant Rule (49 CFR part 18), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." (Federally recognized Indian tribes are included in the definition of "Government" in 49 CFR part 18.)

2. Civil Rights Act of 1964. Compliance with civil rights statutes will be required, including compliance with equity in service and general Equal Employment Opportunity (EEO) principles. FTA proposes, however, that grantees under this program not be required to comply with the FTA program-specific guidance for Title VI and Title VII.

3. Section 504 and ADA requirements in 49 CFR parts 27, 37 and 38. Part 27 is the regulation for nondiscrimination

on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. Part 37 is the DOT's regulation that implements the Americans with Disabilities Act. Part 38 is the regulation that specifies the accessibility specifications for transportation vehicles.

4. Drug and Alcohol Testing requirements. 49 CFR part 655 is an FTA regulation that addresses a national safety issue for operators of public transit.

5. Planning requirements. The FTA/FHWA joint planning regulations within 23 CFR part 450 are not applicable since tribal governments are neither States nor metropolitan areas. However, we propose to require that all Indian tribes participating in the Tribal Transit Program include projects within their transportation plans (*i.e.* Tribal Transportation Improvement Plan (TTIP) or Long Range Transportation Plan (LRTP)) and attach their plan to the Statewide Transportation Improvement Program (STIP). Proposals will be accepted for rating so long as the project exists in a TTIP or the tribe's LRTP. However, FTA will not award a grant until the approved project is attached or included in the STIP.

6. National Environmental Policy Act (NEPA) requirement. This requirement, similar to the Department's ADA regulation, is an environmental requirement that applies government-wide to projects funded with Federal financial assistance, and although Federal departments might have issued their own regulations, such as DOT's regulation in part 771, this requirement is considered a cross-cutting requirement.

7. School Bus and Charter Service. The regulatory implementation requirements regarding school bus and charter service must apply because the Tribal Transit Program is "for purposes eligible under 5311" and the definition of public transportation does not include school bus and charter service. Section 5323(d) places limits on the charter services, which may be provided by federally funded public transportation operators (49 CFR part 604). Section 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public.

8. National Transit Database (NTD) Reporting Requirement. 49 U.S.C 5335 requires NTD reporting for all direct recipients of section 5311 funds. FTA has not yet identified the specific data

elements that tribes will be required to report or the reporting mechanism, but will seek to minimize the reporting burden while collecting basic information about tribal transit systems for inclusion in assessments of the effectiveness of FTA programs on a national basis. Specific reporting instructions will be provided in subsequent years.

Given the precedent established in executive memorandums, executive orders, and our own DOT order to streamline processes and requirements for programs that affect Indian tribes, we are proposing not to apply the DOT and FTA requirements listed below. FTA solicits comments on the requirements we propose not to apply.

1. Labor Protections (49 U.S.C. 5333(b)). The labor protection requirements of section 5333(b) are applied to the section 5311 program through a standard warranty agreed to in writing by each subrecipient of the States to which funds are apportioned. The State, as FTA's direct grantee, certifies to the Department of Labor that each subrecipient has agreed to the warranty. Because the tribes will be direct recipients of FTA under this program, not subrecipients of the States, the existing warranty arrangements are irrelevant. Further, the potential impact of grants under this program on organized labor is insignificant, so FTA does not consider it necessary to require alternative labor protective arrangements.

2. Buy America (49 CFR part 661). Currently Buy America requirements apply only to procurements over \$100,000. Given the small size of the program relative to other FTA programs to which Buy America applies, FTA believes the benefits of imposing this requirement would be insignificant relative to the potential increased administrative burden to the tribes not receiving assistance under any other FTA program.

3. Pre-award and post-delivery audits (49 CFR part 633). These requirements are substantially related to the Buy America requirements described above which we are proposing not to apply.

4. Bus Testing (49 CFR part 665). FTA is proposing not to apply this requirement to simplify vehicle procurements by tribes funded only under the Tribal Transit Program. Since the vast majority of vehicle models that are subject to the requirement will have been tested before purchase by other FTA grantees, the purposes of the regulation can be met without imposing additional administrative burdens on the tribes.

5. FTA specific civil rights program requirements, including Title VI, and Equal Employment Opportunity (EEO) program specific requirements. FTA believes that requiring compliance with the underlying civil rights statutes is sufficient. Grantees will be required to certify annually to providing equity in service and EEO compliance. The FTA specific requirements described in FTA Circulars 4702.1 and 4704.1 are currently in the process of being updated. Given the smaller size of the program relative to other FTA programs to which the FTA specific Title VI and EEO guidance applies, FTA believes the benefits of imposing these requirements would be insignificant relative to the potential increased administrative burden to the tribes not receiving assistance under any other FTA program.

6. Disadvantaged Business Enterprise (DBE) (49 CFR part 26). FTA has determined that it is not necessary to apply the DBE requirements to this program, because the administrative burdens of compliance with the regulation by the tribes may be disproportionate to the incremental benefits. The cross-cutting nondiscrimination requirements that are applied to the Tribal Transit Program will satisfy the nondiscrimination aspects of the DBE rule. Under the regulation, DBE goals and plans are required only for contracting opportunities, exceeding \$250,000, not including vehicle procurements, which may not apply to many grantees under this program. Tribes can be expected to use DBEs, including tribally-owned businesses when there are contracting opportunities whether or not the rule is applied. Transit vehicle manufacturers have a direct compliance obligation under the regulation.

When the terms and conditions for the program are finalized they will be incorporated into certifications and assurances and grant agreements that all successful applicants must sign in order to receive Tribal Transit Program funds. These terms and conditions will be included in the Notice of Funding Availability for this program. Please note that tribes receiving grants under other FTA programs are subject to the standard grant provisions for those programs. The authority of the Secretary to determine the terms and conditions applies only to the Tribal Transit Program.

#### *E. Local Share*

In response to comments that the requirement for a local share is a barrier to participation in the program while still ensuring that the tribe has an

investment in the project, FTA proposes two local share alternatives and invites comments on which the tribes find more beneficial. The final Notice of Funding Availability will include only one of these alternatives:

a. FTA proposes a Federal share of 80 percent and a local share of 20 percent for both capital and operating assistance projects. This reduces the local share required for operating assistance compared to the standard FTA 50/50 match and maintains the standard 80/20 match for capital assistance. Under this proposal the Federal share available to a tribe under the Tribal Transit Program could be lower than the Federal share for a similar project funded from a State's section 5311 apportionment should that State apply the higher federal share ("sliding scale") allowed under section 5311, which ranges for States described in section 120(b) of title 23 from 81.3 percent to 94.89 percent, in accordance with the formula under that section for States with a large amount of federal lands; or

b. FTA proposes for the tribal program the highest Federal share ("sliding scale") allowed under section 5311 for States described in section 120(b) of title 23 in accordance with the formula under that section for States with a large amount of federal lands. Since tribes are not States and some tribes are located in more than one State, FTA will allow tribes the highest sliding scale Federal share allowed for any State under section 120(b)(1): 95 percent (rounded up from 94.89) for capital and 60 percent (rounded up from 59.31) for operating assistance. This proposal provides a higher Federal share for capital projects and a slightly higher Federal share for operating assistance than the standard 80/20 and 50/50 match and reduces the overall local share required for most tribal transit projects.

To encourage coordination among Federal agencies that provide transportation services, matching funds may be provided from Federal agencies other than the Department of Transportation. Federal Lands Highway program funds, administered by the Federal Highway Administration, may also be used as matching funds as can Indian Reservation Roads (IRR) Program funds.

FTA solicits comments on the requirements presented above that we propose to apply under this program.

#### **IV. Public Outreach Meetings**

FTA is holding one-day outreach meetings in Denver, Colorado on Tuesday, April 4, 2006 and Kansas City, Missouri on Friday, April 7, 2006 as

part of the implementation of the Tribal Transit Program created by SAFETEA-LU. The meetings will be a combination of general sessions and break-out sessions and will last from 8 a.m. until 4 p.m. The meetings will allow FTA to provide a program update and receive input from interested parties on the information presented in this notice. While we encourage free dialogue during the public meetings, comments must be submitted in writing to the docket in order to be considered by FTA. All participants must pre-register for the meeting of their choice by registering online at <http://ttap.colostate.edu/ParticipantRegistration.cfm>. Registration is also available by fax; please send an e-mail to [fta.tribalprogram@fta.dot.gov](mailto:fta.tribalprogram@fta.dot.gov) if registration forms are needed or if you have any questions regarding these meetings. Registration for the meetings was scheduled to end Thursday, March 16, 2006. However, due to the late publication of this notice, we will accept registration through March 23, 2006.

Issued in Washington, DC, this 16th day of March, 2006.

**Sandra K. Bushue,**  
*Deputy Administrator.*

#### Appendix—FTA Regional Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093, Tel. 617 494-2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Letitia Thompson, Regional Administrator, Region 2—New York, One Bowling Green, Room 429 New York, NY 10004-1415, Tel. No. 212 668-2170.

States served: New Jersey, New York, and the Virgin Islands.

Susan Borinsky, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, Tel. 215 656-7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, Atlanta Federal Center, Suite 17T50, 61 Forsyth Street SW, Atlanta, GA 30303, Tel. 404 562-3500.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee.

Don Gismondi, Deputy Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312 353-2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817 978-0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816 329-3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Lee O. Waddleton, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228-2583, Tel. 720-963-3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105-1926, Tel. 415 744-3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174-1002, Tel. 206 220-7954.

States served: Alaska, Idaho, Oregon, and Washington.

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