

(d) *Reporting of Violations.* Violations of this section should be reported to the Captain of the Port, Savannah, at (912) 652-4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the security zone contrary to the provisions of this section.

Dated: October 27, 2006.

**D.W. Murk,**

*Commander, U.S. Coast Guard, Captain of the Port.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 601

[Docket FTA-2006-22428]

RIN 2132-AA89

#### Emergency Procedures for Public Transportation Systems

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

**ACTION:** Final rule

**SUMMARY:** This rulemaking establishes a new subpart in 601 of Title 49 of the Code of Federal Regulations, to establish emergency relief procedures for granting relief from Federal transit policy statements, circulars, guidance documents, and regulations in times of national or regional emergencies.

**DATES:** *Effective Date:* The effective date of this rule is February 8, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Availability of the Final Rule**

You may download this rule from the Department's Docket Management System (<http://dms.dot.gov>) by entering docket number 22428 in the search field or from the Government Printing Office's Federal Register Main Page at <http://www.gpoaccess.gov/fr/index.html>. Users may also download an electronic copy of this document using a modem and suitable communications software from the GPO Electronic Bulletin Board Service at (202) 512-1661.

### I. Background

On August 8, 2006, the Federal Transit Administration (FTA) published a notice of proposed rulemaking (NPRM) to establish an "Emergency Relief Docket" for granting relief from Federal transit policy statements, circulars, and guidance documents, in times of national or regional emergency (71 FR 44957). The NPRM was in response to the aftermath of Hurricanes Katrina and Rita, during which FTA received numerous requests for relief from policy statements, circulars, guidance documents, and regulations, from grantees and subgrantees in the immediate disaster zone as well as from grantees and subgrantees in areas receiving evacuees.

The NPRM comment period remained open until October 10, 2006. FTA received 14 comments to the docket. FTA reviewed and considered all comments submitted. Commenters included the City of Lincoln, NE; the Metro Regional Transit Authority of Akron, OH; the Portage Area Regional Transportation Authority (OH); Congressman Tim Ryan (OH); Earthquake Solutions (CA); the Akron Metropolitan Area Transportation Study (OH); Omnitrans (CA); the Licking County Transit Board (OH); the Washington Metropolitan Area Transit Authority (DC); Laketrans (OH); the Alaska Department of Transportation; the American Public Transportation Association (APTA); the California Department of Transportation; and one individual. In addition, Senator DeWine (OH) wrote to FTA's Administrator, James S. Simpson, to bring to his attention the comments made by the Akron Metro Regional Transit Authority. FTA posted Senator DeWine's letter and Administrator Simpson's response in the docket.

### II. Discussion of Comments

Two commenters urged FTA not to employ emergency relief dockets. The commenters stated that relief from administrative requirements can be granted with or without a formal request and with or without public consultation. Several commenters stated a concern that requiring grantees and subgrantees to request relief through emergency relief dockets would slow response to emergencies. Others stated they should be permitted to use their federally-funded equipment in times of emergency and notify FTA of the issue as soon as possible but not later than 30 days after the event.

In response, we agree with commenters that grantees and subgrantees should have maximum

flexibility to assist local responders during an emergency. We want to emphasize that an Emergency Relief Docket will most likely be utilized in the *aftermath* of an emergency that has regional or national implications. There is no question that a toxic chemical spill, a levee break, or other imminent life-threatening situation requiring immediate evacuation of a local area requires fast action by first responders, including local transit agencies. In cases such as these, the grantee or subgrantee would not request relief through the emergency relief docket; it would simply work with local authorities to evacuate people as quickly as possible, consistent with local emergency plans. However, if a toxic chemical spill or a major flood or other event required *ongoing* relief efforts over several days or weeks, or the emergency impacted a large geographical area, one or more grantees and subgrantees might need to request relief from policies, circulars, guidance or regulations, and in such cases the Emergency Relief Docket would be used.

Three commenters asked how they would notify FTA of the need for relief if there was no electricity or phone service. The NPRM contemplated the inability to access the electronic docket by providing that grantees and subgrantees could contact any FTA regional office, and ask the regional office to submit their request for relief to the docket. While acknowledging that in extreme situations it may be several days before a grantee or subgrantee could contact FTA to request relief from administrative requirements, we believe the option of contacting any regional office or FTA headquarters by telephone or mail, is sufficient if the electricity is not working. And again, FTA notes the purpose of the Emergency Relief Docket is to provide relief in the aftermath of regional or national emergencies, not during imminent life-threatening situations.

In the NPRM, FTA proposed that the emergency relief procedures would be triggered by a Presidential declaration of national or regional emergency. We sought comment on whether the proposed emergency procedures should also be triggered by a State Governor's declaration of emergency. Eight commenters supported the trigger of relief procedures for emergency declarations made by Governors, and one commenter expressed that a Mayoral declaration of emergency in the District of Columbia should trigger the relief procedures, as the Mayor is the highest ranking public official in the jurisdiction. Two commenters stated that an appropriate trigger for relief

would be a local declaration of emergency.

In response, FTA believes that a declaration of emergency by a State Governor or the Mayor of the District of Columbia should trigger emergency relief procedures, in addition to a federal declaration of emergency by the President, and we have included this in the final rule. We decline to extend the relief procedures to local declarations of emergency, as the frequency of such events would be unmanageable by FTA. Grantees and subgrantees experiencing local emergencies should work with their FTA regional office if they need relief from administrative requirements in the aftermath of such emergencies.

In the NPRM, FTA requested comments on whether we should proactively extend relief from certain policies, circulars, guidance documents and regulations to the geographical area(s) most impacted by an emergency, rather than waiting for grantees and subgrantees to request relief. Eight commenters were supportive of this idea. Two commenters suggested that FTA create "menus of relief" most likely needed in disaster situations, and grant the entire menu of relief sua sponte where the need is obvious. One commenter also expressed that FTA should clearly identify those issues for which relief is not expected to be granted; for example, civil rights and non-discrimination.

In response to the support for proactive relief, we are including two additional elements in this final rule. First, FTA will establish, by January 31 of each year, an Emergency Relief Docket for that calendar year. We will publish a notice in the **Federal Register** indicating the establishment of the Emergency Relief Docket and the docket number. Second, FTA may, at the discretion of the Administrator, proactively grant relief from certain administrative requirements upon a State or Federal declaration of emergency, or in anticipation of such declaration. If FTA makes the decision to proactively grant relief, we will post this information in the Emergency Relief Docket.

As for the "menus of relief" suggested by two commenters, FTA will consider this idea further outside of the rulemaking process. Any such "menus of relief" would be likely to change over time and with different types of emergencies, so flexibility is required. FTA agrees that civil rights and non-discrimination protections, such as Title VI, the Americans with Disabilities Act, and Environmental Justice, all of which ensure access to mobility for transit-dependent populations, require special

consideration. We note that we do not have authority to waive statutory provisions, only regulatory provisions. FTA will work closely with grantees and subgrantees, the U.S. DOT, and others, as appropriate, if there is a request for relief from administrative requirements relating to civil rights and non-discrimination provisions.

In the NPRM, FTA proposed that requests for relief would be conditionally granted for three business days, and sought comment on whether three business days was a sufficient amount of time to provide comments on petitions for relief. Two commenters stated that relief from administrative requirements does not constitute a binding obligation that would require a public comment period of any length. One commenter felt that three days would allow the transit agency to address immediate needs, but expressed concern that continuing relief efforts should not be delayed while waiting for final approval. Others expressed concern that the three business day conditional approval may not be sufficient, and that limiting the conditional approval to three days created uncertainty. One commenter suggested a provision be added to the rule that would allow the transit agency to continue its efforts until FTA has made a decision.

In response, while public consultation on relief from administrative procedures may not be required, FTA believes it is in the interest of the public to have a process that is open and transparent. FTA is confident that it can and will respond to requests for relief within three business days; however, to address commenters' concerns, a provision has been added to the final rule, stating that 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. This allows the grantee or subgrantee to continue its efforts until FTA has made a final decision. In all cases, FTA shall post a response to the docket, so there is no uncertainty as to FTA's decision on the request for relief.

FTA proposed that any member of the public could request a hearing on any petition, and that FTA could reopen any docket and reconsider any decision made. Two commenters stated that there should be no provision for public hearings, and suggested that FTA should not "second-guess" decisions made. One commenter stated that the only review process should be an appeal of a denied request for relief. One commenter suggested that if a docket is reopened, FTA should notify the grantee

or subgrantee that submitted the request for relief. Finally, one commenter stated that a grantee's or subgrantee's judgment and actions in times of emergency should be considered reasonable unless proven otherwise.

In response, we have removed the public hearing provision. FTA may, however, in its discretion, 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. FTA has retained the provision that allows us to reconsider any decision made. We have added language to this section stating that one reason for reconsidering our decision would be at the request of a grantee or subgrantee upon denial of a request for relief. In addition, we have added language stating that we will notify a grantee or subgrantee if we are going to reconsider a decision.

FTA proposed that a petition for relief must contain certain information, including the policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief. One commenter stated that petitions for relief should not follow any prescribed format. The commenter stated that it would be unduly burdensome to identify specific regulatory and guidance provisions during or in immediate anticipation of an emergency. In response, FTA notes the "required information" provision for a request for relief requires grantees and subgrantees to submit only the minimum information necessary to assist FTA in making a decision. Further, we note that in order to request relief from a specific administrative requirement, the grantee or subgrantee should know the requirement from which they are requesting relief. A description of the requirement such that an FTA employee would be able to accurately determine the requested relief would be sufficient; it is preferred, but not required, that a grantee or subgrantee also include the circular number and/or regulatory citation.

In the NPRM, FTA requested comments on private sector involvement in emergency relief, and whether the procedures contained in the NPRM would provide the necessary relief while also allowing the private sector to participate in transit relief efforts. A number of commenters provided input on this issue. Two commenters stated that charter regulations should not be elevated to a higher importance than other regulatory provisions. Some commenters objected to the proposed requirement that grantees and subgrantees would have to

call not only their local charter companies, but also notify the charter associations of their intent to provide service that might be considered charter service. Some felt this would create significant delay in responding to evacuation needs. One commenter pointed out that any interested transportation provider could contact the local Emergency Management Agency in advance to notify them of their availability to respond.

In response, FTA has removed the provision requiring grantees and subgrantees to make good faith efforts to contact private charter or school bus operators to determine whether those entities are willing to provide the service. FTA notes that a current charter rulemaking is underway that would exempt emergency services from the charter provisions. Members of the public interested in that rulemaking may wish to review the docket by going to <http://dms.dot.gov> and entering docket number 22657.

In the NPRM, FTA stated that we do not have the independent authority to grant relief from U.S. DOT regulations, such as the Americans with Disabilities Act (49 CFR Part 37) or the Common Grant Rule (49 CFR Part 18). We proposed that if a grantee or subgrantee needed relief from a U.S. DOT regulation, the grantee or subgrantee would submit a request for relief to FTA's Emergency Relief Docket in the same manner it would request relief from FTA regulations. FTA would then work with DOT to process the petition for relief, including a request for a hearing, if any. Two commenters recommended that waivers of U.S. DOT regulations should be incorporated into FTA's emergency procedures through delegation of waiver authority to FTA.

In response, we note that the Secretary of Transportation has not delegated waiver authority of U.S. DOT regulations to FTA. FTA, however, works very closely in consultation with U.S. DOT in emergency situations; the consultation process will be invisible to grantees or subgrantees requesting relief and will not delay FTA's response to a request for relief.

Finally, two commenters asserted that the NPRM appeared to be in conflict with Executive Order 13132, Federalism, specifically citing section 3(c) which states, "[w]ith respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable." The commenters also cited section 5(b) which states,

"[a]gencies shall not submit to the Congress legislation that would: (b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant[.]"

In response, FTA notes that the purpose of the rulemaking is to grant relief from FTA administrative requirements. The emergency relief docket will not change any regulatory requirements, therefore it will not have a substantial 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. We also note that this rulemaking is not legislation submitted to Congress; it is a rulemaking. Further, the rulemaking does not attach conditions to the grants that are not reasonably related to the purpose of the grant.

### III. Rulemaking Analysis And Notices

#### *Executive Order 12866*

This final rule is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Practices. The final rule will establish emergency procedures and requests for relief from Federal transit regulations.

#### *Federalism Assessment*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). FTA believes this rule will not impose any requirements that would have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

#### *Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### *Regulatory Flexibility Act and Executive Order 13272*

Section 603 of the Regulatory Flexibility Act (RFA) requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553 to publish a general notice of proposed rulemaking for any proposed rule. Section 605 of

the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. FTA has determined that the impact on entities affected by this rule will not be significant. The effect of this rule is to relieve entities of administrative requirements in times of regional or national emergency. Accordingly, the Administrator of FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$128.1 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

#### *Paperwork Reduction Act*

There are no new information collection requirements in this final rule.

#### *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

#### *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, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

#### **List of Subjects in 49 CFR Part 601**

Administrative practice and procedures; Organization, functions and procedures.

■ For the reasons set forth in the preamble, amend part 601 of title 49 of the Code of Regulations as follows:

#### **PART 601—[AMENDED]**

■ Add subpart D, consisting of §§ 601.40 through 601.47, to read as follows:

**Subpart D—Emergency Procedures for Public Transportation Systems**

Sec.

- 601.40 Applicability.
- 601.41 Petitions for relief.
- 601.42 Emergency relief docket.
- 601.43 Opening the docket.
- 601.44 Posting to the docket.
- 601.45 Required information.
- 601.46 Processing of petitions.
- 601.47 Review procedures.

**Authority:** 49 U.S.C. 5141 and 5334; 49 CFR 1.51.

**Subpart D—Emergency Procedures for Public Transportation Systems****§ 601.40 Applicability.**

This part prescribes procedures that apply to FTA grantees and subgrantees when the President has declared a national or regional emergency, when a State Governor has declared a state of emergency, when the Mayor of the District of Columbia has declared a state of emergency, or in anticipation of such declarations.

**§ 601.41 Petitions for relief.**

In the case of a national or regional emergency or disaster, or in anticipation of such a disaster, any FTA grantee or subgrantee may petition the Administrator for temporary relief from the provisions of any policy statement, circular, guidance document or rule.

**§ 601.42 Emergency relief docket.**

(a) By January 31st of each year, FTA shall establish an Emergency Relief Docket in the publicly accessible DOT Docket Management System (DMS) (<http://dms.dot.gov>).

(b) FTA shall publish a notice in the **Federal Register** identifying, by docket number, the Emergency Relief Docket for that calendar year. A notice shall also be published in the previous year's Emergency Relief Docket identifying the new docket number.

(c) If the Administrator, or his/her designee, determines that an emergency event has occurred, or in anticipation of such an event, FTA shall place a message on its web page (<http://www.fta.dot.gov>) indicating the Emergency Relief Docket has been opened and including the docket number.

**§ 601.43 Opening the docket.**

(a) The Emergency Relief Docket shall be opened within two business days of an emergency or disaster declaration in which it appears FTA grantees or subgrantees are or will be impacted.

(b) In cases in which emergencies can be anticipated, such as hurricanes, FTA shall open the docket and place the message on the FTA web page in advance of the event.

(c) In the event a grantee or subgrantee believes the Emergency Relief Docket should be opened and it has not been opened, that grantee or subgrantee may submit a petition in duplicate to the Administrator, via U.S. mail, to: Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590; via telephone, at: (202) 366-4043; or via fax, at (202) 366-3472, requesting opening of the Docket for that emergency and including the information in § 601.45. The Administrator in his/her sole discretion shall determine the need for opening the Emergency Relief Docket.

**§ 601.44 Posting to the docket.**

(a) All petitions for relief must be posted in the docket in order to receive consideration by FTA.

(b) The docket is publicly accessible and can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at <http://dms.dot.gov>. Petitions may also be submitted by U.S. mail or by hand delivery to the DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590.

(c) In the event a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on their behalf.

(d) Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and that calendar year's docket number. Grantees and subgrantees making submissions by mail or hand delivery should submit two copies.

**§ 601.45 Required information.**

A petition for relief under this section shall:

- (a) Identify the grantee or subgrantee and its geographic location;
- (b) Specifically address how an FTA requirement in a policy statement, circular, or agency guidance will limit a grantee's or subgrantee's ability to respond to an emergency or disaster;
- (c) Identify the policy statement, circular, guidance document and/or rule

from which the grantee or subgrantee seeks relief; and

(d) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

**§ 601.46 Processing of petitions.**

(a) A petition for relief will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket.

(b) FTA will review the petition after the expiration of the three business 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.

Issued in Washington, DC, this 4th day of January 2007.

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

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