

to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: September 25, 2015.

**T.F. Scott Darling, III,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Emergency Relief Program Guidance

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of availability of final guidance for FTA's Emergency Relief Program.

**SUMMARY:** The Federal Transit Administration (FTA) has published final guidance on FTA's Emergency Relief (ER) Program for states and transit agencies that may be affected by a declared emergency or disaster and that may seek Federal funding under FTA's ER Program. The guidance is contained in the newly revised *Reference Manual for States & Transit Agencies on Response and Recovery from Declared Disasters and FTA's Emergency Relief Program*, which replaces *Response and Recovery from Declared Emergencies and Disasters: A Reference for Transit Agencies*, last updated in June 2013. This final guidance addresses one public comment received in response to the proposed guidance published on February 4, 2015. In addition to guidance on the ER Program, this document provides information on other disaster relief resources available through FTA and from the Federal Emergency Management Agency (FEMA). This guidance is now available on FTA's Web site at [www.fta.dot.gov/emergencyrelief](http://www.fta.dot.gov/emergencyrelief).

**FOR FURTHER INFORMATION CONTACT:** For questions about the ER Program, contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave. SE., Washington, DC 20590, phone: (202) 366-0778, or email, [adam.schildge@dot.gov](mailto:adam.schildge@dot.gov). For legal questions regarding the final program regulations, contact Bonnie Graves, Office of Chief Counsel, 1200 New Jersey Ave. SE., Washington, DC 20590, phone: (202) 366-0944, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:** The FTA has published final guidance on FTA's ER Program for states and transit agencies that may be affected by a declared emergency or disaster and that

may seek Federal disaster assistance for emergency related expenses. This guidance document, *Reference Manual for States & Transit Agencies on Response and Recovery from Declared Disasters and FTA's Emergency Relief Program*, includes information on disaster relief resources available for transit systems from both FTA and FEMA, in addition to detailed program guidance and application instructions for FTA's Emergency Relief Program. This manual has been produced in coordination with FEMA, and incorporates current guidance on FEMA disaster relief programs. It also includes guidance for transit agencies on the appropriate circumstances under which to apply to FTA or FEMA for disaster relief assistance.

This reference manual includes background information on other sources of Federal disaster relief assistance, in addition to recommended practices for states and transit agencies for disaster preparation and response previously included in "Response and Recovery from Declared Emergencies and Disasters: A Reference for Transit Agencies." This information has been updated and is contained in Chapters 1, 2 and 3 of this reference manual.

Guidance specific to FTA's ER Program is contained in Chapter 4 of this reference manual.

This includes an overview of eligible recipients, eligible projects, application procedures, and other key program policies and requirements. The guidance in this manual is based on final program regulations published on October 7, 2014 at 49 C.F.R part 602 (79 FR 60349), which were developed through a public notice and comment process. The guidance document includes previously issued policy statements and information from **Federal Register** notices that FTA published subsequent to Hurricane Sandy.

The final Emergency Relief program guidance incorporates several clarifications in response to the one consolidated public comment received on the proposed guidance published February 4, 2015. Specific comments and responses are explained below:

#### Chapter 1: Introduction

Comment 1: The commenter suggests that FTA avoid using the term "should" in the context of recommended practices, because local circumstances may make certain disaster relief preparation recommendations inappropriate or insufficient.

FTA response: The final guidance retains the use of "should" where appropriate. The term "should" is not

intended to impose a requirement, but is used where the recommendation is clear and consistent for the majority of potentially affected transit agencies.

#### Chapter 2: Disaster Preparation Considerations for Transit Agencies

Comment 2: Given the wide range of governmental structures and variation across regions with regard to the mandate and/or capacity of Metropolitan Planning Organizations (MPOs), Emergency Operations Centers (EOCs), transit agencies, and local governments, the commenter suggests that the section on coordinating and pre-planning evacuations should be revised to lay out the critical activities involved in coordinating an evacuation, without assigning responsibilities.

FTA Response: This manual is directed specifically to transit agencies and related entities, and contains recommendations on the types of coordination, in which a transit agency should be involved. Such recommendations do not override local arrangements where a transit agency is a subordinate party to such a coordinated emergency plan.

In response, this section has been revised to emphasize cooperation with other responsible organizations and levels of government.

Comment 3: Regarding the manual's recommendation that transit agencies develop policies for suspending fare collection during an emergency, the commenter noted that the decision to suspend fares is likely to depend on particular circumstances of the emergency and that transit agencies should have flexibility to make this decision on a case-by-case basis.

FTA response: The section has been clarified to emphasize that this recommendation pertains not only to the development of policies on when and how such a decision might be made, but also to the development of operational plans for implementing such a policy.

Comment 4: With regard to contracting requirements, the commenter recommends that FTA add a discussion regarding the recommended use of federal provisions in emergency response and recovery contracts and to clarify the timeline and potential for waivers of Federal contracting requirements.

FTA response: The FTA has added language to clarify that although contracting provisions and requirements may be waived, recipients should not assume that FTA will waive requirements; therefore it is advisable to follow Federal procurement requirements for any emergency relief

contracts where Federal funding may be sought. The FTA has made further clarifications regarding the timeline and process for requesting and receiving waivers of Federal requirements for emergency relief projects.

Comment 5: The commenter suggested that FTA revise a footnote about cost effectiveness methodologies and recommended that FTA point out that cost effectiveness can be measured by evaluating the criticality of the asset to the transit system, the vulnerability of asset given different threats, and the replacement cost.

FTA response: The footnote refers to an analytical tool used by FTA to evaluate projects for competitively selected resilience funding, but FTA does not require the use of that tool by transit agencies investing in resilience improvements. Nonetheless, the factors cited by the commenter are insufficient to determine the cost effectiveness of a resilience project, which must also include the probability of various damage scenarios and differing degrees of damage and disruption posed by each scenario and mitigated by the proposed projects. The FTA notes that it is developing a simplified tool that will make this type of analysis more available for transit agencies to use as a tool for decision-making.

### Chapter 3: Overview of Disaster Response and Recovery Funding and Resources

Comment 6: The commenter recommends that FTA expand the discussion of FTA-ER appropriations to state that in the absence of FTA funding, transit agencies should follow both FTA and FEMA procedures until it is clear whether Congress will provide Federal funding for the FTA ER Program. The commenter also requests that FTA further clarify how FTA and FEMA will coordinate on Federal emergency relief capabilities, including the damage assessment process.

FTA Response: Although this manual already makes this recommendation and discusses FTA-FEMA coordination in depth, additional language has been added to further address this topic.

Comment 7: The commenter suggests that FTA discuss the differences between FEMA and FTA procurement guidelines to clarify that FEMA allows local procedures to be followed for the duration of recovery, while the FTA ER program requires agencies to follow all federal procedures after an initial waiver period. Reiterating this difference could help grantees maximize their ability to recover costs from federal sources.

FTA Response: The manual addresses coordination between FTA and FEMA in the aftermath of a disaster, but is not intended to provide specific guidance on FEMA procurement requirements.

Comment 8: Funds for emergency transportation services under FTA's ER Program. The commenter recommended that the flow chart be revised to include the disaster declaration process and a decision point regarding the need for congressional action to provide FTA ER funding.

FTA Response: The FTA intends to keep in the flow chart a level of detail appropriate for users to quickly understand the general procedures and milestones in FTA's ER Program. Detailed discussion on the criteria for each box is better suited for the chapter narratives.

### Chapter 4: Federal Transit Administration Emergency Relief Program Policies and Requirements

Comment 9: The commenter recommended that FTA delete the statement that FTA may "establish additional requirements for recipients of ER funding," or at a minimum acknowledge that all efforts will be made to adhere to published ER program requirements. The commenter stated that the proposed open-ended statement will hinder agencies' ability to ensure compliance, particularly since the waiver period may be over before FTA issues new requirements. The commenter also suggested that FTA revise the proposed manual to include a time frame for waiver approval and also make it very clear that waiver approvals should not be assumed. This will help agencies plan repair projects following the waiver period.

FTA Response: The FTA has made revisions to further clarify that waivers of Federal requirements might not be granted. Furthermore, FTA retains the discretion to establish additional requirements as necessary for recipients of ER funding. In response to the comment, FTA has revised this section to clarify various types of additional requirements that may be necessary, and to state that FTA will advise recipients as early as possible regarding any additional requirements for recipients of ER funding.

Comment 10: The commenter states that interim measures, such as emergency repairs, should be included as part of a disaster damage assessment, particularly in instances where the damage assessment report is used to inform Congress on the need for a special appropriation.

FTA Response: The FTA concurs with emergency repairs and other interim

measures generally will be eligible for emergency relief funding, and has revised this section to recommend that emergency repairs be included in the post-disaster damage assessment report.

Comment 11: The commenter requested that FTA allow for local entities to determine what may be considered a capital expense versus an operating expense, with regard to eligibility for funding under the ER Program.

FTA Response: Standard FTA definitions for capital and operating expenses will continue to apply under the ER program. This manual explains how these definitions apply to emergency response and rebuilding activities.

Comment 12: The commenter recommends that increased maintenance and inspections be added to the category of emergency repairs and explicitly be identified as eligible expenses. The commenter further recommends that these costs not be specifically designated as "capital" or "operating".

FTA Response: The FTA does not agree that increased maintenance and inspections should be considered emergency repairs. Such costs should be considered either as part of an emergency or permanent repair, or should be budgeted as an ongoing preventive maintenance expense.

Comment 13: The commenter suggests that FTA state that emergency operations "include, but are not limited to" the listed activities.

FTA Response: The FTA has revised this section as requested. This revision is consistent with program regulations, which do not define an exclusive list of eligible emergency operations activities.

Comment 14: The commenter does not agree that force account plans should be required for emergency repairs. In the normal course of business, force account plans are required when an agency uses in-house labor rather than a third party contractor to implement a project, and the use of in-house labor for access and protection does not trigger the need for a force account plan.

FTA Response: The FTA concurs that force account plans will not be required for emergency repairs, and has updated this section accordingly. Force account plans will continue to be required for permanent repairs, in accordance with FTA Circular 5010: Grant Management Requirements.

Comment 15: The commenter strongly supports FTA's proposal that transit agencies be allowed to replace damaged assets with new assets that incorporate current design standards, replace

obsolete equipment, and bring assets to a state of good repair as part of its recovery effort. We request that FTA clarify that “current design standards” may include standards developed by the transit agency or industry as well as state, local, or federal codes or standards.

FTA Response: This section has been revised to clarify that current design standards also includes the industry’s or an agency’s own current operational specifications.

Comment 16: The commenter states that to be consistent with FEMA and the Federal Highway Administration’s (FHWA’s) emergency relief programs, heavy maintenance should be an eligible expense for declared disasters. However, FTA should not adopt FHWA’s approach of utilizing a dollar threshold to define heavy maintenance, since transit agency size, utilization, regional costs and other factors impact the cost of work. Instead, we suggest that the heavy maintenance definition be based on each agency’s annual maintenance budget, including its budget for emergency contingency.

FTA Response: The FTA has added language to clarify that the threshold for heavy maintenance will be determined on a case-by-case basis and that damages in excess of heavy maintenance to an asset or system will mean that all otherwise eligible disaster-related repair and emergency response costs may be eligible for reimbursement. Further, FTA does not propose to establish a dollar value threshold, either absolute or relative to agencies’ annual budgets, for defining heavy maintenance.

Comment 17: The commenter requests that if a State or local building code requires a higher minimum elevation than FEMA requires, that higher elevation should apply. In cases where the transit agency has its own documented standards, those should be allowable as well.

FTA Response: This section has been revised to allow a transit agency’s documented flood elevation standards to apply for emergency relief projects, provided that they are higher than FEMA’s elevations and comply with State and local building codes.

Comment 18: The commenter expressed appreciation for the detailed discussion of different insurance settlement scenarios since policy structures vary widely across agencies. In this section or elsewhere in the proposed manual, FTA should address the scenario where the cost to repair damages exceeds the total of insurance proceeds plus FTA ER funding.

FTA Response: The FTA has added language addressing this potential scenario. In some cases, multiple similar or closely related comments have been summarized in this discussion of comments and responses.

The final guidance document is available on FTA’s Web site at: [www.fta.dot.gov/emergencyrelief](http://www.fta.dot.gov/emergencyrelief).

**Therese W. McMillan,**  
*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket Nos. FTA–2014–0024, FTA–2014–0003, FTA–2012–0045]

#### Americans With Disabilities Act: Final Circular

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

**ACTION:** Notice of availability of final circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance in the form of a Circular to assist grantees in complying with the Americans with Disabilities Act (ADA). The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance necessary to carry out the U.S. Department of Transportation’s ADA regulations.

**DATES:** *Effective Date:* The final Circular becomes effective November 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E54–306, Washington, DC 20590, phone: (202) 366–4018, or email, [dawn.sweet@dot.gov](mailto:dawn.sweet@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56–306, phone: (202) 366–4011, fax: (202) 366–3809, or email, [bonnie.graves@dot.gov](mailto:bonnie.graves@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Availability of Final Circular

This notice provides a summary of the final changes to the ADA Circular and responses to comments. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA’s Web site, at [www.fta.dot.gov](http://www.fta.dot.gov), and in the docket, at [www.regulations.gov](http://www.regulations.gov). Paper copies of the final Circular may be obtained by contacting FTA’s Administrative Services Help Desk, at (202) 366–4865.

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### I. Overview

FTA is publishing Circular C 4710.1, regarding the Americans with Disabilities Act (ADA), to provide recipients of FTA financial assistance with information regarding their ADA obligations under the regulations, and to provide additional optional good practices and suggestions to local transit agencies.

The proposed Circular was submitted to the public for notice and comment in three phases. FTA issued a notice of availability of the proposed first phase, entitled “Americans with Disabilities Act: Proposed Circular Chapter, Vehicle Acquisition,” in the **Federal Register** on October 2, 2012 (77 FR 60170). The comment period closed December 3, 2012. FTA issued a notice of availability of the second phase, entitled “Americans with Disabilities Act: Proposed Circular Amendment 1,” in the **Federal Register** on February 19, 2014 (79 FR 9585). The comment period closed April 21, 2014. Amendment 1 introduced the following chapters: Chapter 1 (Introduction and Applicability); Chapter 2 (General Requirements); Chapter 5 (Equivalent Facilitation); and Chapter 8 (Complementary Paratransit Service). FTA issued a notice of availability of the third phase, entitled “Americans with Disabilities Act: Proposed Circular Amendment 2,” in the **Federal Register** on November 12, 2014 (79 FR 67234). The comment period was scheduled to close on January 12, 2015, but at the request of commenters, FTA extended the comment period until February 11, 2015. Amendment 2 introduced the following chapters: Chapter 3 (Transportation Facilities); Chapter 6 (Fixed Route Service); Chapter 7 (Demand Responsive Service); Chapter 9 (ADA Paratransit Eligibility); Chapter 10 (Passenger Vessels); Chapter 11 (Other Modes); and Chapter 12 (Oversight,