

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****[Docket No. FTA-2006-25365]****Formula Grants for Other Than Urbanized Areas Program (49 U.S.C. 5311): Notice of Program Guidance****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed program guidance and request for comments.

SUMMARY: This Notice proposes guidance in the form of a revised program circular for the Federal Transit Administration's Formula Grants for Other Than Urbanized Areas Program (Section 5311) and seeks comments on the proposed circular. It also addresses comments FTA received with regard to its Section 5311 program in response to a **Federal Register** Notice entitled, "FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (70 FR 71950, November 30, 2005), in addition to comments received during several public listening sessions. The proposed circular will be available in Docket Number: FTA-2006-25365 at <http://dms.dot.gov>.

DATES: Comments should be submitted by September 29, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [FTA-2006-25365] 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 the Docket number (FTA-2006-25365) 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. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>. 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.

FOR FURTHER INFORMATION CONTACT:

Lorna Wilson, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9114, Washington, DC 20590, phone: (202) 366-2053, fax: (202) 366-7951, or e-mail, lorna.wilson@dot.gov. Legal questions may be addressed to Richard L. Wong, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, Richard.Wong@dot.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Overview
- II. Chapter-by-Chapter Analysis
 - A. Chapter I—Introduction and Background
 - B. Chapter II—Program Overview
 - C. Chapter III—General Program Information
 - D. Chapter IV—Program Development
 - E. Chapter V—Locally Developed, Coordinated Public Transit—Human Services Transportation Plan
 - F. Chapter VI—Program Management and Administrative Requirements
 - G. Chapter VII—State Management Plan
 - H. Chapter VIII—Intercity Bus
 - I. Chapter IX—Rural Transportation Assistance Program
 - J. Chapter X—Other Provisions
 - K. Appendices

I. Overview

This proposed circular revises the existing FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," dated 10-01-98.

On November 30, 2005, FTA published a **Federal Register** Notice, "Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (70 FR 71950, November 30, 2005), which described new programs and 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). In addition, FTA held public listening sessions in five locations around the country, a conference call with State administering agencies, and a meeting with representatives of the intercity bus industry.

In its November 30th **Federal Register** Notice, FTA requested public comment on several specific issues such as whether the State-based rural data module should serve as the basis for the new mandatory reporting requirements. Another issue was whether the per State minimum distribution of Rural Transportation Assistance Program (RTAP) funds (floor) should again be raised and whether the low density portion of the Section 5311 formula should be used as a basis for Section 5311 RTAP formula apportionments. FTA also sought comments on use of the national RTAP resource.

This Notice acknowledges comments received by FTA from the November 30th Notice and additional comments received during FTA's public outreach efforts. The Notice also seeks comments on the proposed revisions to the existing circular. The text of the proposed circular is available in its entirety in the docket.

Although the proposed circular addressed by this Notice contains summaries of cross-cutting provisions such as Charter Bus, Buy America, Title VI, and Equal Employment Opportunity (EEO) requirements, those subjects are addressed by separate dockets, therefore, the public should not submit comments on those topics to the docket for this circular. Persons seeking to view and provide comments to those dockets can do so through the Department of Transportation's Docket Management System (<http://dms.dot.gov>). Docket numbers for some of those cross-cutting proposals are as follows:

Charter Bus	Docket #22657
Buy America	Docket #23082
Title VI	Docket #23227
EEO	Docket #23227

FTA reserves the right to make changes to this circular in the future to update references to requirements contained in other revised or new guidance and regulations without further notice and comment on this circular.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

This chapter is a general introduction to FTA that is proposed to be included in all new and revised program circulars for the orientation of readers new to the FTA programs. Chapter I also includes definitions.

B. Chapter II—Program Overview

This chapter replaces the former Chapter I, "General Overview," in Circular 9040.1E. It provides an overview of the Section 5311 program in terms of its statutory authority and program goals. It defines the role of States and FTA, and explains the program's relationship to other FTA-funded programs, as well as its coordination with other Federal programs. It contains the same information as the existing circular, with minor updates.

C. Chapter III—General Program Information

This chapter consolidates the former Chapters II "Apportionments" and III "Eligibility" in Circular 9040.1E. This revised chapter sets forth the basis for the apportionment of Section 5311 funds including, the availability of those funds and the transfer of funds. It also identifies eligible recipients and expenses, and the Federal-State matching ratio. The discussion of use of other Federal funds as match was expanded to clarify that Section 5310 funds used to purchase service from a Section 5311 subrecipient cannot be used to match Section 5311 program funds. Although this revised chapter retains much of the content of the original two chapters, it includes several changes required by SAFETEA-LU: A sliding scale that permits a higher Federal share for capital and operating costs for several States based on a formula used by the Federal Highway Administration; an expanded list of eligible capital expenses for crime prevention and security; and the eligibility of Mobility Management as a capital expense.

One commenter asked that FTA broaden project eligibility to include capital items eligible under Section 5309, such as park and ride lots, in order to respond to the varying needs of the States and the areas to be served by the Section 5311 program.

FTA agrees with this recommendation, and proposes to clarify that the definition of eligible capital activities in 49 U.S.C. 5302(a)(1) applies to the Section 5311 program, which would include park and ride lots.

The proposed circular provides additional guidance on some aspects of capital eligibility, and it details eligibility requirements specific to the program.

Other commenters asked whether Federal funds received from other than U.S. Department Of Transportation (DOT) sources (e.g., USDA) can be used as the local matching share. Another commenter noted that a 50% match is hard for small operators, and that a sliding scale should permit 80% for operating expenses under Section 5311.

Consistent with SAFETEA-LU's coordination goals, funds from other than U.S. DOT governmental sources (including other Federal funds) can be used provided that those funds are eligible to be used for transportation purposes. Federal lands funds (including Indian Reservation Roads funds) provided by the Federal Highway Administration (FHWA) are not included in the prohibition on the use of U.S. DOT funds as the local matching share. The statute does not allow for an 80% Federal share for operating assistance. The maximum share for operating assistance is 62.5% of the Federal share allowed to a State for capital assistance under the sliding scale approved by FHWA. Thus the sliding scale share for operating assistance ranges from 50.81% to 59.31%.

In addition to changes required by SAFETEA-LU, we propose to require compliance with FTA's, "Capital Leases" regulations, 49 CFR Part 639, for capital leases financed under the Section 5311 program. When FTA Circular 9040.1E was published in October 1, 1998, FTA's Capital Leases regulations had not been promulgated, but FTA's enabling legislation enacted in 1998 expanded cost evaluation regulations to be promulgated by FTA to all FTA assisted capital leases. Thus, FTA could only advise States to treat FTA Capital Leases regulations as "useful guidelines." By December 10, 1998, FTA did promulgate its Capital Lease regulations covering all FTA programs. Consequently, we propose requiring compliance with those regulations. However, we are seeking comments about the implications of doing so and are interested in how those regulations would affect State leasing practices.

D. Chapter IV—Program Development

This chapter renames the former Chapter IV "Program Management and Administrative Requirements," which is now the title of Chapter VI of the proposed circular. It makes minor updates to Chapter IV of the current

Circular 9040.1E, and adds a requirement that designated State agencies provide annual Certifications and Assurances to FTA, which was always assumed under the former circular but is now made explicit under the proposed circular.

One Native American tribe asked that FTA ensure a fair distribution of funds within a State that is inclusive of Indian communities. FTA agrees. The revised circular notes that SAFETEA-LU created a separate supplemental Tribal Transportation Program, but that language retained in SAFETEA-LU requires that States must continue to include tribes in the fair distribution of funds apportioned to States.

E. Chapter V—Locally Developed, Coordinated Public Transit—Human Services Transportation Plan

This chapter replaces the former Chapter V "Application Instructions," which is attached as Appendix A to the proposed circular. The new Chapter V describes the Locally Developed Coordinated Public Transit-Human Services Transportation Plan required for three other FTA programs and addresses the relationship to that planning process for Section 5311 subrecipients. Although Section 5311 projects are not specifically required by SAFETEA-LU to be derived from a local coordinated plan, FTA states in Chapter V the expectation that Section 5311 and 5307 recipients would be included as essential partners or participants in any coordinated planning activities.

One non-profit organization recommended that the planning requirement for the three related coordinated formula programs be integrated into and consistent with the metropolitan and State planning processes. It requested clarification on how the coordinated plan will be used to identify and integrate capital and operating needs funded through the Sections 5307, 5309, and 5311 programs, including flexible FHWA funding and fund transfers.

The proposed circulars for Sections 5310 (Elderly and Individuals with Disabilities), 5316 (Job Access and Reverse Commute—JARC), and 5317 (New Freedom) programs will include detailed guidance on the Locally Developed Coordinated Public Transit-Human Service Transportation Plan and its relationship to the metropolitan and State planning processes. Chapter V of this proposed circular states that rural transit providers are expected to be participants in the local planning process, and encourages the inclusion of rural intercity mobility needs and

intercity bus operators in the planning process in rural areas.

F. Chapter VI—Program Management and Administrative Requirements

This chapter retains the requirements that were in Chapter VI of Circular 9040.1E, but adds a National Transit Database (NTD) reporting requirement mandated by SAFETEA-LU.

One State commenter noted that the addition of the NTD requirement for Section 5311 sub-recipients will facilitate data capture and reporting for this program. Another agreed with FTA's stated intent to keep the NTD requirements for Section 5311 similar to the pilot voluntary State-based rural data module previously developed in cooperation with various State DOTs.

One non-profit organization representing private operators suggested that FTA convene a team of NTD consultants, rural public and private operators, and human service providers to design a practical and useful NTD questionnaire to meet the new reporting requirements. One State DOT noted that the data requested in the current NTD Rural General Public Transit Service form (RU-20) exceeds the data required in SAFETEA-LU.

Another non-profit organization representing public transit operators recognized that FTA now has several years of experience in collecting data from the volunteer pilot program and suggested that these data should form the base for any adjustments, noting the need for additional precision in the definitions of the data that are reported.

That same non-profit organization also suggested that FTA permit direct reporting of data from rural recipients of Section 5311 funds to the NTD, similar to the approach taken for urbanized and rural operators in reporting drug and alcohol regulation compliance data. The organization also suggested that the data be reported quarterly, recognizing the on-going differences in Federal, State and local fiscal years and to make the date consistent with whatever reporting period is necessary. Finally, the organization noted that some operators receive separate funding to serve both rural and urbanized areas, and that the NTD must recognize those situations so that the benefits of both funding sources are recognized.

FTA's revised program circular merely states the statutory requirement and defers to annual NTD reporting instructions for specific data required in a given year. Annual reporting instructions can be found on the NTD Website (<http://www.ntdprogram.com>)

For FY 2006, FTA will use the existing rural data module for the NTD

reporting requirement. FTA will consider implementing a Web-based data collection that mirrors other management information systems which could allow States to import data from their subrecipients into the existing NTD. However, due to timing and funding availability, FTA will not be able to implement such a change in 2006.

To ease the burden of gathering the information for 2006 reporting, FTA will send out a spreadsheet (in the format of the RU-20) so that subrecipients can fill in the data and submit the information electronically to the State. After the 2006 reports have been entered into the NTD, this information will be automatically uploaded in subsequent years. Another factor that will assist States in NTD reporting is information for the RU-30 will be automatically populated by data entered into the RU-20. Small urbanized transit agencies, that receive both Section 5307 and 5311 funds, will continue to report the 5307 service data as previously established and report the rural service data to the State DOT for entry into the NTD rural module. FTA will ensure that their service is not double counted. FTA will establish a workgroup that includes selected State DOTs to assist in the review of existing definitions to the reporting criteria to avoid confusion in entering data. Administrative procedures already exist for adjusting reporting deadlines, as requested by some States to accommodate situations where local subrecipient fiscal years are not the same as the State fiscal year.

With regard to the categories of data, FTA believes that the seven data elements listed in SAFETEA-LU are illustrative and but not exhaustive. However, when the rural module was developed in 2002, one of the SAFETEA-LU data elements, fleet type, was not included. The existing rural module will be updated to include fleet type data elements at a later date. For FY 2006, all existing data elements included on the NTD rural module must be reported by the State for each individual subrecipient.

One State DOT requested that FTA simplify its Disadvantaged Business Enterprise (DBE) reporting requirements. The State DOT also recommended the elimination of the \$250,000 program participation threshold to reduce the paperwork burden on small rural operators. The request for simplification is beyond the scope of this circular. The \$250,000 threshold is not an FTA requirement, but instead was established by the U.S.

DOT in its DBE regulation at 49 CFR part 26.

G. Chapter VII—State Management Plan

This chapter consists of Circular 9040.1E's Chapter XI, which has been moved upward in the table of contents to be consistent with the general format for FTA's revised circulars. This chapter contains no significant revisions from the existing circular, except to require documentation of any consultation process for intercity bus (see below).

H. Chapter VIII—Intercity Bus

This chapter retains the same information from Chapter VII of Circular 9040.1E and adds an enhanced consultative process requirement, as mandated by SAFETEA-LU. While consultation between a State and intercity bus operators regarding the adequacy of intercity bus service within the State was encouraged under the previous Circular, SAFETEA-LU now makes consultation mandatory for any State certifying that intercity bus needs are adequately met.

Several commenters, including State DOTs and organizations representing private bus operators, asked that the revised circular establish specific guidelines that would define "meaningful consultation" and establish a clear process to determine "unmet needs" regarding the participation of local private operators in intercity bus programs funded under Section 5311(f).

The proposed circular adopts the definition of "consultation" contained in the FTA/FHWA Joint Planning Regulations (49 CFR part 613/23 CFR part 450) and establishes four minimum elements of the consultation process. The circular also provides guidance to States for designing effective processes. The proposed circular also requires that any State certifying that needs are adequately met must have conducted a Statewide assessment of intercity bus needs no more than four years prior to the certification.

One organization representing private bus operators noted that SAFETEA-LU did not define the term "intercity bus service," and requested that FTA (1) establish a proper working definition of that term so that private operators understand what intercity bus service may not be provided by a federally-funded transit agency; and (2) what rural service, accessibility and capital projects may be properly funded by FTA.

In its 9040.1E Circular, FTA defined intercity bus service as regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or

more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available. The circular also provided additional guidance regarding eligible activities and services. This definition and guidance are retained in the proposed circular.

With regard to the request that the revised circular clarify and define eligible rural and capital intercity bus activities, consistent with 49 U.S.C. 5311(f), the revised circular retains the language from Circular 9040.1E that specifies eligible intercity bus activities to include "planning and marketing for intercity bus transportation, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small transit operations and intercity bus carriers." FTA notes that consistent with the statutory heading of Section 5311, financial assistance under Section 5311(f) must be used to support intercity bus service in rural and small urban areas. Charter service is not eligible for FTA assistance.

I. Chapter IX—Rural Transportation Assistance Program (RTAP)

This chapter contains the renumbered Chapter VIII from Circular 9040.1E. Although it makes no significant substantive changes, it reflects the new funding source for the RTAP program as defined by SAFETEA-LU. Prior to SAFETEA-LU, the RTAP was funded from FTA's research budget. Under SAFETEA-LU, the RTAP is now funded by a 2% takedown from the Section 5311 program, with 85% going to the States for local projects, and 15% for national projects to supplement State projects, such as the maintenance of a national RTAP resource center. This funding method ensures a predictable source of annual funding on a year-to-year basis.

In their responses to the November 30th Apportionments Notice, a handful of DOTs from less-populated western States supported raising the per State minimum distribution of RTAP funds (floor), while a DOT from a heavily-populated western State prefers no change be made to the existing RTAP funding floor because ample funding provided by the new low-density tier will provide for the needs of such low density (and population) States. That State suggested retaining the \$65,000 floor for each State (\$10,000 for

territories), with the balance allocated based on the non-urbanized population in the 2000 Census.

An organization representing rural transit agencies noted that training in completing rural data reporting should be a priority for the RTAP, and made available at annual and bi-annual professional meetings. The organization also recommended that the minimum apportionment per state be increased for States such as North Dakota which serve many rural operators, over States like Alaska, Hawaii and Rhode Island which, according to the Community Transportation Association of America (CTAA) database, serve only 1 to 3 operators. In addition, one commenter asked that FTA to direct some RTAP funds to a Tribal Transportation Assistance Program.

For FY 2006 RTAP allocations, FTA used the existing administrative formula with a floor of \$65,000 (\$10,000 for territories) and the balance allocated based on the nonurbanized population in the 2000 Census. Given the lack of substantial support for raising the floor in the comments to the November 30 Notice, in the revised circular, FTA is not currently proposing to change the formula for allocating State RTAP funds.

Uses for national RTAP program funds are determined by FTA in consultation with a national RTAP program review board composed of State RTAP program managers and rural transit providers. Training to support data collection and support for tribal transit are among the priorities FTA is considering, outside the scope of this circular revision.

J. Chapter X—Other Provisions

This chapter combines Circular 9040.1E's Chapter IX "Civil Rights Requirements" and Chapter X "Other Provisions." While it incorporates the same text from those two existing chapters, albeit renumbered and reorganized, the revised chapter expands the public hearing and involvement requirement for capital project planning to conform with SAFETEA-LU. It adds standardized language on Real Property Acquisition and Relocation Assistance and it relieves the pre-award and post-deliver audit review requirement for procurements of 20 vehicles or less. It amends the Buy America provisions to reflect SAFETEA-LU changes regarding post-award requests and the right of an adversely affected party to seek FTA review, and adds a new section on safety and security.

Several State DOTs asked that the revised circular provide better guidance regarding FTA's policy on charter

service, particularly for Section 5311 subrecipients that provide rural demand-responsive service. They noted particular difficulties in interpreting and applying the charter service prohibition to demand-responsive providers, since all of their service is in response to specific customer requests, and therefore can easily resemble charter service. It is also difficult for demand response operators to provide an annual event "route" as part of their public transportation services because they do not publish route schedules.

FTA believes that it would be improper to provide additional charter service guidance at this time. Consistent with Section 3032(d) of SAFETEA-LU, FTA has initiated a negotiated rulemaking seeking comment on FTA's Charter Bus regulation. FTA sponsored Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) meetings beginning in May 2006, and the CBNRAC will develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding the prohibition of FTA grant recipients from providing charter bus service. The CBNRAC will prepare a report, consisting of consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. Interested parties may comment on the Charter Service NPRM once it is published in the **Federal Register**.

K. Appendices

Exhibits A–G of Circular 9040.1E have been relabeled and reorganized as Appendices A–H of the revised circular. The new Appendix A contains revised application instructions that were formerly contained in Chapter V of Circular 9040.1E. Appendix B retains the Sample Selection of Projects that was formerly Exhibit A, but it has been amended to recognize the transfer of funds from the Section 5310, 5316, and 5317 programs. Appendix C retains Section 5311 budget information from the former Exhibit B, adding new codes for the Section 5310, 5316, and 5317 programs. Appendix D is new, reflecting the use of flexible funds under SAFETEA-LU. The next three appendices have been retained without significant change: Appendix E retains the sample intercity bus certification from the former Exhibit E with the addition of evidence of consultation; Appendix F reserves the Section 5333(b) labor protection warranty from the former Exhibit F; and Appendix G

retains the Capital Cost of Contracting percentage breakdowns from the former Exhibit G. The revised circular adds a new Appendix H, listing contact information for FTA's Regional Offices.

Issued in Washington, DC, this 24th day of July, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. E6-12137 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA-2005-23227]

Notice of Correction

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice correcting the comment period on FTA's Proposed Title VI Circular.

SUMMARY: On July 14, 2006, the Federal Transit Administration (FTA) published a notice of proposed Circular in the **Federal Register** (See FR Volume 71, No 135., pp. 40178 to 40187). This notice erroneously stated that comments must be received by August 14, 2006. FTA intends to establish a 60-day comment period. Therefore, comments should be submitted by September 14, 2006. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FTA-05-23227 by any of the following methods: Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site; Fax: 202-493-2251; Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001; 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 the docket number (FTA-05-23227). 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 the Department's Docket Management System (DMS) Web site located at <http://dms.dot.gov>. This means that if

your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT:

David Schneider, Office of Civil Rights, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4018 or at David.Schneider@fta.dot.gov.

Issued on: July 24, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc.E6-12165 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 100)]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 1 in STB Finance Docket No. 33388 (Sub-No. 100); Notice of Filing of Petition for Clarification or in the Alternative for Supplemental Order; and Issuance of Procedural Schedule.

SUMMARY: On January 20, 2006, Bridgewater Resources, Inc. (BRI) and ECDC Environmental, L.L.C. (ECDC), referred to collectively as the petitioners, filed with the Surface Transportation Board (Board) a joint petition for clarification (petition) as to the limits of the North Jersey Shared Assets Area (NJSAA), established as part of the Conrail control transaction, approved by the Board in *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Decision No. 89*).¹ In particular, petitioners seek a determination that BRI's waste transfer facility (BRI facility) is within the NJSAA and/or can be switched by Conrail under the agreements pertaining to the NJSAA. If the Board finds that the BRI facility is not located within the

¹ In *Decision No. 89*, the Board approved the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (Conrail), and the division of that carrier's assets by (1) CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT) (collectively CSX), and (2) Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS). Control of Conrail was effected by CSX and NS on August 22, 1998.

NJSAA, petitioners seek in the alternative a supplemental order that would enable Conrail to provide switching service, which NS currently provides, between the BRI facility and CSXT's Manville Yard.

By separate motions filed on February 9, 2006, NS seeks dismissal of the petition, and a protective order to quash discovery, or in the alternative, to stay all discovery pending a decision by the Board on NS's motion to dismiss. Also on February 9, 2006, Conrail requested that all discovery related to this matter be quashed, or in the alternative, stayed pending a decision by the Board on NS's motion to dismiss. On March 1, 2006, petitioners filed replies to both of NS's procedural motions. For the reasons discussed below, NS's motion to dismiss BRI's petition for clarification is denied and a schedule to allow BRI to pursue limited discovery regarding the parties' intent involving the boundaries of the NJSAA is established. BRI's alternative request for a supplemental order is denied.

DATES: The effective date of this decision is July 31, 2006. Petitioners have until August 30, 2006 to complete discovery, as prescribed by this decision. Upon completion of discovery, petitioners have until September 29, 2006 to supplement the petition based on additional information provided by NS and Conrail in response to petitioners' discovery request, unless the Board provides otherwise in connection with any motions to compel. Any person who wishes to file comments respecting this petition as supplemented must do so by October 19, 2006. Petitioners will have until October 30, 2006 to reply to those comments.

Any motions to compel that may be necessary regarding discovery requests must be filed by August 21, 2006. Replies to motions to compel will be due 3 business days later.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's Web site at <http://www.stb.dot.gov> at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent