

Alternative Transportation in Parks and Public Lands Program

Requirements for Recipients of FY 2006 Funding

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Table of Contents

I. Overview.....	1
II. Program Requirements.....	1
A. Background.....	1
B. Government-wide Federal Requirements	2
C. Requirements Contained Within Section 5320.....	6
D. Requirements Contained Within Section 5307.....	10
E. Other Requirements Referenced by Section 5307.....	13
F. Reporting Requirements	18
III. Incorporation of Requirements into Awards.....	20
IV. Proposed Oversight Requirements	20
Appendix.....	21

I. Overview

This document provides program and oversight requirements for projects funded in Fiscal Year (FY) 2006 under the Alternative Transportation in Parks and Public Lands (ATPPL) program. Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (49 U.S.C. § 5320) established the ATPPL Program to provide for alternative transportation in the national parks and other Federal lands. The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) administers the program in partnership with the U.S. Department of the Interior and the U.S. Department of Agriculture.

The purpose of the program is to enhance the protection of Federal parks and public lands, and increase the enjoyment of those visiting these Federal lands. The program funds capital and planning expenses for alternative transportation systems in, and in the vicinity of, federally managed parks and public lands. Federal Land Management Agencies and State, tribal and local governments acting with the consent of a Federal Land Management Agency are eligible to participate (i.e., are "qualified participants" or financial assistance "recipients") in the program.

II. Program Requirements

A. Background

In the sections below, FTA provides specific statutory or regulatory requirements that will apply to projects awarded under this program in FY 2006. As there are two types of recipients under the program – 1) Federal Land Management Agencies, and 2) State, local and tribal government entities – projects will be supported by two types of funding agreements, as follows:

- Funds awarded to Federal Land Management Agencies will be made through interagency agreements between FTA and the land management agency; and,
- Funds awarded to State, local and tribal entities will be made through grants directly with FTA.

All inter-agency and grant agreements issued for ATPPL projects selected in FY 2006 will list the requirements noted as applicable in the sections below.

The ATPPL program is codified in 49 U.S.C. Section 5320. Section 5320 contains a number of specific requirements for recipients of program funds. In addition to the requirements spelled out within Section 5320, Section 5320(i) provides that qualified participants “shall be subject to the requirements of [49 U.S.C.] Sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.” Also, qualified participants are “subject to any other requirements that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.” 49 U.S.C. § 5320(i)(2). The term “Secretary” in these provisions refers to the Secretary of Transportation.

This document explains the requirements for recipients of ATPPL funding for FY 2006 in the following order:

- (1) Government-wide Federal requirements that are most notable for this program;
- (2) Requirements contained within Section 5320;
- (3) Requirements contained within Section 5307;
- (4) Other Requirements referenced by Section 5307; and,
- (5) Reporting requirements in lieu of the FTA’s National Transit Database reporting requirements.

Additionally, the full language on each provision noted below is included in an appendix to this document.

B. Government-wide Federal Requirements

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. 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 which agency administers the grant. In addition, some Federal requirements are applicable regardless of whether an entity receives Federal assistance; for example, drivers of vehicles over a certain

size must hold a Commercial Drivers License. All Federal government-wide requirements will apply to recipients of ATPPL funding.

To ease the administrative burden of implementing these government-wide provisions in FY 2006, for those requirements that apply across the Federal government, Federal Land Management Agencies may use their own established rules to comply with the requirement. State, local, and tribal entities will be required to follow FTA rules regarding such cross-cutting Federal requirements. This eases administration as it allows Federal Land Management Agencies to follow the implementation of Federal requirements with which they are most familiar. Additionally, it allows State, local and tribal government entities that are already FTA grantees to follow the same requirements they follow when they receive other FTA funds. In this way, requirements are the same or similar for both types of recipients under the program, while administration is simplified.

The following government-wide Federal requirements are most notable:

1. The Common Grant Rule. Each Federal agency has adopted the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” and “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations” (Common Grant Rule). DOT’s rules are codified in 49 parts 18 and 19; DOI’s rules are codified in 43 CFR part 12, subparts C and F; and the U.S. Department of Agriculture’s (USDA) rules are codified in 7 CFR parts 3016 and 3019. Because Federal land management agencies are not expected to award grants directly, their common grant rules will generally not be applicable. FTA grantees and subgrantees would follow DOT’s rules in 49 CFR parts 18 and 19. If, however, a Federal land management agency does award a Federal grant directly, its department’s rule will apply.
2. Civil Rights Act of 1964 (42 U.S.C. 2000d and 2000e). Compliance with civil rights statutes will be required, including nondiscrimination on basis of race, color, or national origin and equity in service (Title VI) and general Equal Employment Opportunity (EEO) (Title VII) provisions. Federal Land Management Agencies must follow their own guidance for compliance with the Civil Rights Act of 1964. State, local, and tribal government entities must comply with the DOT nondiscrimination regulation found in 49 C.F.R part 21 and the FTA program-specific guidance found in FTA Circular 4702.1.

3. The Americans with Disabilities Act (ADA). Title 49 CFR part 37 is DOT's regulation implementing the ADA, and part 38 provides minimum guidelines and requirements for accessibility of transportation vehicles. All recipients must comply with DOT's minimum guidelines and requirements for accessibility of transportation vehicles found in Title 49 CFR parts 37 and 38.
4. Section 504 of the Rehabilitation Act of 1973, as amended. 49 CFR Part 27 is the DOT regulation for nondiscrimination on the basis of disability in programs and activities receiving or benefiting from Federal financial assistance, implementing Section 504 of the Rehabilitation Act of 1973. Federal Land Management Agencies must comply with their own rules implementing Section 504 of the Rehabilitation Act of 1973 while State, local, and tribal entities must comply with DOT's rules in 49 CFR part 27.
5. National Environmental Policy Act (NEPA) requirement. This requirement applies government-wide to projects funded with Federal financial assistance. Each Federal department has its own regulations addressing National Environmental Policy Act (NEPA). In general, a Federal agency that receives funding under the ATPPL program may comply with NEPA using its own regulations.¹ Under that scenario, FTA, in its discretion, would normally be a cooperating agency to facilitate FTA's adoption of the other agency's NEPA review.²
State, local, and tribal government entities that receive funding under the ATPPL program will be required to comply with the joint Federal Transit Administration/Federal Highway Administration NEPA regulations located at 23 CFR 771. In these cases, FTA must be a lead or co-lead agency in the environmental reviews required under NEPA review.
6. Disadvantaged Business Enterprise (DBE). Federal Land Management Agencies should follow the Small Disadvantaged Business Participation provisions of the Federal Acquisition Regulation (FAR), codified in 48 CFR Subpart 1, which govern the procurement activities undertaken by all Federal agencies. State, local, and tribal government entities must follow DOT's DBE regulations found in 49 CFR part 26. The

¹ FTA may require compliance with the joint FTA/FHWA NEPA regulations in certain limited circumstances such as when a large, capital-intensive project were funded under ATPPL.

² If the Federal Land Management Agency has already completed its NEPA review, making it too late for FTA to be a cooperating agency, FTA might choose to adopt the NEPA document through a procedure called "recirculation".

- requirements for a DBE program, however, apply only to participants that award third party contracts (excluding vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.
7. Buy American. Vehicles acquired by Federal Land Management Agencies through the General Services Administration are subject to Buy American requirements found in the FAR. State, local and tribal government entities are subject to DOT's Buy America regulations found in 49 CFR part 661.
 8. Drug and Alcohol Testing. Every person who operates a commercial motor vehicle in interstate, foreign, or intrastate commerce is subject to the Federal Motor Carrier Safety Administration's (FMCSA) rules governing commercial driver's licenses and drug and alcohol testing (49 CFR parts 382 and 383). A commercial motor vehicle includes vehicles designed to transport 16 or more passengers, including the driver. FMCSA's Controlled Substances and Alcohol Use and Testing regulation (49 CFR part 382) does not apply to employers and their drivers that are required to comply with the alcohol and/or controlled substances testing requirements of FTA's alcohol and controlled substances testing regulations, at 49 CFR part 655. Therefore, Federal Land Management Agencies may follow either FMCSA's or FTA's alcohol and controlled substances testing requirements. State, local and tribal entities will follow FTA's regulations. Volunteer drivers are subject to FTA alcohol and controlled substance regulations if they are required to hold a commercial driver's license to operate the vehicle, or they receive compensation for their services in excess of their actual expenses incurred while engaging in the volunteer activity.
 9. Drug-Free Workplace. In conducting direct procurements, all Federal agencies must require their direct procurement contractors to comply with Federal Drug Free Workplace laws, 41 U.S.C. §§ 701 *et seq.*, and implementing FAR regulations to the extent applicable. State, local, and tribal government entities must comply with U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32, to the extent applicable.

C. Requirements Contained Within Section 5320

Section 5320 identifies specific requirements for recipients of funding under the ATPPL program. These items are highlighted below:

- 1) Consultation with Federal Land Management Agencies. If the participant is a State, local, or tribal government entity, subsection 5320(b)(4)(B) requires that the participant must act with the consent of the Federal Land Management Agency affected by the project.

- 2) Project Management Plan. Subsection 5320(i)(3) provides that if a project is \$25 million or more, the qualified project “shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement . . . ; and the qualified participant shall prepare a project management plan in accordance with subsection 5327(a).” As SAFETEA-LU authorizes a total of \$98 million in funding for the ATPPL program for fiscal years 2006 through 2009, and no one project may use more than 25% of the available funding in any given year (49 U.S.C. § 5320(d)(3)), it is unlikely that this program requirement will apply during the SAFETEA-LU authorization period. Therefore, FTA does not propose any requirements to address this provision.

- 3) Planning Requirements. Section 5320 specifically outlines the planning provisions required by State and local government entities and requires the Secretary to identify planning provisions for Federal Land Management Agencies as follows:
 - a. State and Local Government Entities: Subsection 5320(e)(2) states that when the recipient of ATPPL funds is a State or local governmental authority, the qualified participant must comply with the planning and public participation requirements of 49 U.S.C. §§ 5303, 5304 and 5307(d). (Notably, section 5320 does not specify planning requirements for Tribal governments that are qualified participants.)
 - b. Federal Land Management Agencies: Section 5320(e)(1) states that when the recipient is a Federal Land Management Agency, the Secretary of Transportation, in cooperation with the Secretary of the Interior, is required to develop transportation planning procedures that are consistent with the metropolitan

planning provisions of 49 U.S.C. § 5303; the statewide planning provisions of § 5304; and the public participation requirements of 49 U.S.C. § 5307(d). In response, FTA will require adherence with the following planning principles and procedures for Federal Land Management Agencies during FY 2006.

Planning Principles for Federal Land Management Agencies:

- i. Public Involvement and Consultation - there must be full disclosure and involvement of the public, stakeholders, and other decision-makers whose activities are either affected by, or affect, transportation;
- ii. Financial Feasibility - proposed transportation investments must be consistent with reasonable expectations of financial resources to build, operate, and maintain the project, along with other infrastructure and services for which they are responsible;
- iii. Safeguard Environmental Quality - all efforts must be or have been made to preserve, maintain, mitigate, and/or prevent impacts to human and natural environment associated with the proposed project have been made; and,
- iv. Consistent with National Scope of Transportation Decision-making - the proposed project, as well as the underlying decision-making process, must take into consideration, to the extent appropriate, the eight factors identified in SAFETEA-LU as a context-setting scope of the decision-making process.

Each of the four above principles is discussed below.

Principle 1: Public Involvement and Consultation - Federal lands planners should make provisions for information dissemination and involvement in decision-making by interested parties, consistent with the public participation requirements of metropolitan and statewide transportation planning (See 49 U.S.C. § 5303(i)(5), 49 U.S.C. § 5304(f)(3), and 49 U.S.C. § 5304(g)(3). Those laws identify interested parties as citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, and representatives of individuals with disabilities. Additional stakeholder groups to be considered in ATPPL development

should include, as appropriate, State, local, and Tribal agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation activities on Federal lands. Specifically, FTA encourages recipients to develop ATPPL projects in full consideration of stakeholder and citizen comment before, during, and after project implementation. That is, project planners should make a continuous, on-going, good-faith effort to solicit input from the general public and stakeholder groups during ATPPL planning and project development. This calls for the involvement of representatives of neighboring localities, as well as visitors. FTA recommends that public involvement initiatives document feedback from service providers and organized stakeholder groups such as the local transit operator and environmental advocates.

Public involvement is important at both the early "systems planning" and subsequent "project planning" stages. Systems planning involves needs identification at the corridor-level – before decisions are made on the improvements that may be needed – and concludes with general determination of design concept and scope. Project-level planning begins at this point – after the decision to make an improvement – and involves project design and operational characteristics. This would typically be where detailed environmental reviews in accordance with the NEPA process would take place. After the project has been implemented, public involvement consists of ongoing monitoring of the performance of the entire system for the purpose of identifying emerging new areas of need.

The extensiveness of the public involvement process should be commensurate with the scope of the project. For example, an appropriate public involvement process for the replacement of a bus may be an announcement in the local media on how to provide public comment. An appropriate public involvement strategy for a new bus system, operating several routes in a public land, may involve speaking to civic groups, neighborhood associations, and tourist bureaus about their mobility needs and engaging them in the study of alternative services approaches to address their needs. This could involve publication of plans in the local media and conducting informational workshops to solicit feedback.

Principle 2: Financial Feasibility – To be considered for funding, recipients should ensure that the projects they propose are financially feasible with consideration of existing and expected funding sources. That is, funding to build, operate, and maintain ATPPL projects should be available, or reasonably expected to be available. In addition, consideration should be made that adequate funding is, or will be, on hand to operate and maintain all existing facilities and services, as well as the proposed new or expanded components, in both the near and long term. Ensuring that ATPPL projects are fiscally realistic and consistent with financial resources expected to be available to operate and maintain all facilities under the project sponsor's control is intended to ensure the continued safe operation and function over the useful life of the project and the system as a whole. Projects sponsored by the Federal Land Management Agencies are encouraged but not required to be listed in the transportation plans and programs of metropolitan areas and States. However, inclusion of projects in those documents for information purposes will inform the public and transportation decision-makers in State and local government, enabling the latter to ensure that their plans support and do not conflict with projects proposed by Federal Land Management Agencies. Simple documentation should be provided indicating the availability of uncommitted funding to build, operate, and maintain the proposed improvement, while operating and maintaining the entire system.

Principle 3: Safeguard Environmental Quality - Environmental considerations are especially pertinent to ATPPL projects. The abundance of wildlife and vegetation indigenous to the lands of the Federal Land Management Agencies makes environmental planning a top priority for all ATPPL projects. Each Federal department has its own regulations addressing National Environmental Policy Act (NEPA). In general, if another Federal agency is the recipient of funding under the ATPPL program, that agency may comply with NEPA using its own regulations.³ Under that scenario, FTA, in its

discretion, would normally be a cooperating agency to facilitate FTA's adoption of the other agency's NEPA review.⁴

Principle 4: Consistent with National Scope of Transportation Decision-making - SAFETEA-LU identifies eight (8) core factors that transportation decision-makers should consider, to the extent applicable, in developing their plans and programs. These factors frame the scope of topics that both influence and are influenced by transportation investments of all types. These "planning factors" should be considered by Federal Land Management Agencies, as appropriate, in their transportation investment decisions.

- (1) Support the economic vitality of the United States, the States, metropolitan areas, and non-metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
- (2) Increase the safety of the transportation system for all motorized and non-motorized users;
- (3) Increase the ability of the transportation system to support homeland security and to safeguard the personal security of all motorized and non-motorized users;
- (4) Increase accessibility and mobility of people and freight;
- (5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- (6) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;
- (7) Promote efficient system management and operation; and
- (8) Emphasize the preservation of the existing transportation system, as consistent with Federal land management agency policy.

D. Requirements Contained Within Section 5307

As noted above, subsection 5320(i)(1) specifies that recipients are subject to the requirements of Section 5307, to the extent the Secretary determines to be appropriate. Many of those

⁴ If the Federal Land Management Agency has already completed its NEPA review, making it too late for FTA to be a cooperating agency, FTA might choose to adopt the NEPA document through a procedure called "recirculation".

requirements are set forth in subsection 5307(d) “Grant Recipient Requirements” lists several requirements. Below, FTA lists the subsection letters and explanations for those 5307(d) requirements that will and will not apply for FY 2006. In sum, all but Section 5307(d)(1)(D), (G), and (K) will apply to FY 2006 funding recipients. The text of all requirements listed is compiled in the appendix to this document.

- 5307(d)(1)(A) requires that the recipient have the legal, financial and technical capacity to carry out the program. This provision will apply.
- 5307(d)(1)(B) requires that the recipient have satisfactory continuing control over the use of equipment and facilities. This provision will apply. Satisfactory continuing control means that the recipient maintains control over federally funded property, ensures that it is used for the intended purpose, and disposes of it in accordance with Federal requirements. FTA requirements are for adequate property control as shown, for example, through an inventory system; for proper use and disposition of property as shown, for example, by conforming with FTA procedures described in the grants management circular (FTA C 5010.1C) for disposing of property; and for safeguards against loss, theft, or damage. If the recipient leases FTA funded property to another party, the lease must provide the recipient with satisfactory continuing control over the use of that property.
- 5307(d)(1)(C) requires that the recipient maintain equipment and facilities. This provision will apply.
- 5307(d)(1)(D) requires that recipients of FTA funds charge elderly customers and customers with disabilities during off peak hours no more than 50 percent of the peak period fare. For FTA’s typical recipients this means that elderly customers and customers with disabilities receive a significantly discounted fare except during the morning and evening rush hours when systems are operating at highest usage. Parks and public lands have very different peak periods than FTA’s typical grantees. As such, this requirement will not apply. Instead, the recipient will follow the policies of the park or public land being served by the project. Many parks and public lands have a policy of charging discounted user fees for elderly visitors and visitors with disabilities. As noted later in this document, subsection 5323(c), which is referenced by Section 5307, states

that fares are not required (but may be charged) to elderly individuals and individuals with disabilities.

- 5307(d)(1)(E) requires that in carrying out a procurement, the recipient will use competitive procurement, will not use a procurement that uses exclusionary or discriminatory specifications, will comply with applicable Buy America laws (see above under government-wide requirements), and will comply with Sections 5323 and 5325 (see below). This provision will apply.
- 5307(d)(1)(F) requires compliance with subsection 5307(c) public participation requirements. This is addressed under the planning requirements part of this notice. In sum, State and local governmental authorities must comply with this provision and Federal Land Management Agencies must follow the provisions set forth in the Planning section above.
- 5307(d)(1)(G) requires that the recipient has available and will provide the local matching funds required under Section 5307. This provision will not apply since subsection 5320(f) authorizes the Secretary of Transportation to determine the amount of local share for an ATPPL project.
- 5307(d)(1)(H) requires compliance with subsection 5301(a) and (d) (Policies, findings, and purposes) which contain general policy statements that apply to all FTA programs. This provision of the subsection will apply. 5307(d)(1)(H) also requires compliance with Sections 5303 through 5306 regarding planning requirements. The planning requirements that will apply to ATPPL are described above under the planning requirements portion of this document.
- 5307(d)(1)(I) requires a recipient to have a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation. This provision will apply.
- 5307(d)(1)(J) requires a recipient to certify that it will either spend one percent of funds on security projects (such as lighting or camera surveillance) or determine that the expenditure is not necessary. This provision will not apply in FY 2006 but may apply in FY 2007.
- 5307(d)(1)(K) requires a recipient to spend one percent of funds on transit enhancements. This provision will not apply.

In addition to the bulk of the Section 5307 requirements found in Section 5307(d), other subsections of Section 5307 also contain requirements. Summarized below are the other subsections of Section 5307. Each subsection states FTA requirements for FY 2006 funding recipients.

- 5307(a) contains definitions that are not relevant to the ATPPL program and therefore will not apply.
- 5307(b) contains the general authority for FTA to make grants under FTA's Urbanized Area Formula program and thus will not apply.
- 5307(c) is covered above under the planning requirements portion of this notice located in II.C.
- 5307(d) is covered above.
- 5307(e) contains local matching requirements and will not apply, as section 5320(f) provides that the ATPPL share of the net project cost is determined by the Secretary.
- 5307(f) regarding statewide operating assistance will not apply.
- 5307(g) regarding undertaking projects in advance of receiving program funds will not apply as Section 5320 has its own subsection on this topic, 5320(h), which permits recipients to undertake projects in advance of receiving program funds under certain circumstances.
- 5307(h) specifying reviews, audits, and evaluations will not apply as FTA has proposed an oversight program tailored to the ATPPL program and described below under IV of this notice.
- 5307(i) allows a recipient to request that the Secretary approve its procurement system. Nearly all of FTA's State and local governmental grantees have certified procurement systems through this mechanism, which eases oversight. This subsection applies to State, local, and tribal government entities but does not apply to other Federal agencies.
- 5307(j) only applies to ferries funded under Section 5336 and thus will not apply.
- 5307(k), which references other sections, is discussed below.

E. Other Requirements Referenced by Section 5307

In addition to those requirements that are described within Section 5307, the section also references other sections of Federal public transportation law and requires those requirements to

be met. Subsection 5307(k) provides that sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333, and 5335 apply to any grant made under section 5307. As noted previously, Section 5307 requirements apply to the extent the Secretary of Transportation determines to be appropriate. FTA will require the following provisions to apply for FY 2006 ATPPL funding recipients:

- Section 5301 contains general policy statements applicable to all FTA programs, including ATPPL. This provision will apply.
- Section 5302 contains definitions applicable to FTA programs, including ATPPL. It applies with the exception that part of the definition of “capital project” is superseded by language in Section 5320. Specifically, in defining a “qualified project,” Section 5320 (b)(5)(a) references only subsection (A) of the definition of “capital project” in subsection 5302 (a)(1), in addition to eligible capital investments as defined under subsection 5309(b) and eligible planning activities described under Sections 5303, 5304, and 5306. For a full description of “qualified projects,” see FTA’s ATPPL eligibility guidance.
- Sections 5303 and 5304 deal with metropolitan and statewide planning processes, respectively. Applicability of these sections is addressed above under “Planning Requirements.”
- Section 5306 encourages the participation of private entities in the planning process and will apply.
- Section 5315 regarding the National Transit Institute will not apply.
- Section 5318, requiring that new bus models be tested at a central facility, will apply.
- Section 5319, allowing a lower local match for construction of bicycle facilities will not apply as ATPPL gives the Secretary discretion to set local match requirements which may be lower than that specified in Section 5319.
- Section 5323 sets forth general provisions on assistance.

FTA proposes that most of the provisions of this section will apply. Whether or not certain lettered subsections apply is explained below:

- (a) Interests in property. This provision will apply but is unlikely to come into play as it relates to public acquisitions of private transit operations.

- (b) Notice and public hearing. This provision will apply. It requires notice and a public hearing for those capital projects that will substantially affect a community.
- (c) Fares not required. This provision will apply. It states that fares are not required (but may be charged) for elderly individuals and individuals with disabilities.
- (d) Charter bus limitation. FTA regulations maintain a separation between public transit services and chartered services, whereby recipients of federal transit funding cannot use these funds for the purposes of providing chartered service. FTA proposes the rules in 49 CFR part 604, Charter Services, will apply to the ATPPL program. “Alternative Transportation” in the ATPPL Program is defined, in relevant part, as, “transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.” 49 U.S.C. § 5320(b)(3). “Sightseeing” is distinct from “charter” in that passengers using vehicles or activities funded by ATPPL are unlikely to purchase sightseeing service “under a single contract, at a fixed charge for the vehicle or service, ... [or] acquire the exclusive use of the vehicle or service ...” [49 CFR 604.5, from the definition of Charter Service]. Passengers may follow a fixed sightseeing route, but the routes will be at fixed times according to a posted schedule, similar to fixed route service, and the route will be chosen by the public land, not by the passengers on the bus. In the event all the passengers happen to be from the same group, they will still not be considered a charter trip, as the hours and route are set by the public land. In the event the recipient wishes to provide charter service as it is defined in 49 CFR part 604, it would be required to follow the requirements of 49 CFR part 604.
- (e) Bond proceeds eligible for local share. This provision will apply. It allows recipients to use bond proceeds as part of local matching funds.
- (f) School bus transportation limitation. This provision will apply. Vehicles funded through the ATPPL program may not provide school bus transportation except as permitted in 49 CFR part 605.
- (g) Buying buses under other laws. This provision will not apply as it relates to purchases under Title 23, United States Code.

- (h) Grant and loan prohibitions. This provision will apply. It prohibits FTA funds from being used to pay for non-project operating expenses or to support a procurement that uses an exclusionary or discriminatory specification.
- (i) Government 90% share for ADA and Clean Air Act. This provision will not apply as Section 5320 gives the Secretary authority to determine the local match on a project by project basis, which may be lower than that specified in 5323(i).
- (j) Buy America. This provision will apply to State, local, and tribal government entities, while the Buy American Act requirements will apply to Federal land management agencies. See above under the government-wide Federal requirements section.
- (k) Participation of governmental agencies and nonprofit organizations receiving funding for transportation services. This provision will apply. It requires recipients of non-DOT federal funds, to the extent feasible, to participate and coordinate with recipients of FTA assistance in the design and delivery of transportation services. It also requires them to be included in planning for those services, to the extent feasible.
- (l) Authority to terminate assistance. This provision will apply. It allows FTA to terminate funding if it determines that a recipient has made false or fraudulent statements in connection with a Federal transit program.
- (m) Pre-award and post-delivery review of rolling stock purchases. This requirement for recipients to undergo a pre-award and post-delivery review of rolling stock purchases will apply, as specified in 49 C.F.R Part 633, only when the thresholds have been met as defined in SAFETEA-LU. The threshold is 20 vehicles for other than urbanized areas and urbanized areas with populations of 200,000 or fewer (as defined by the census bureau). The threshold is 10 vehicles for urbanized areas with populations above 200,000.
- (n) Certifications required. Much of this provision applies primarily to Sections 5307 and 5309 projects. However, recipients will be required to provide the certifications and assurances for those requirements that are applicable to ATPPL, as explained in this document.
- (o) Grant requirements (chapter 6 funds). This provision only applies to State and local governments if the project also receives funding under 23 U.S.C. chapter 6

(Infrastructure Finance and State Infrastructure Bank Authority). This does not apply to Federal agencies or tribal governments.

(p) Alternative fueling facilities. This provision will apply. It allows recipients to allow other entities to use Federally-funded alternative fueling facilities under certain circumstances.

- Section 5325 lays out contract requirements. State, local, and tribal government entities must follow the Section 5325 contract requirements. Federal Land Management Agencies may follow their own agency's established implementation of the Federal Acquisition Regulation (FAR). In all cases, the Secretary of Transportation and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which an award is made under the ATPPL program.
- Section 5327 Project Management Oversight.

FTA proposes that only two provisions of this section will apply:

- Subsection 5327(c)(1)(F) which allocates 0.5% of ATPPL program funding to carry out oversight activities; and
- Subsection 5327(d), which requires recipients of assistance to allow the U.S. DOT and its contractors access to construction sites and records.

The following provisions will not apply:

- Subsection 5327(a) (project management plan requirements) and Section 5327(b) (plan approval) will only apply in the unlikely circumstance that the \$25 million project threshold is met. Subsection 5320(i)(3) states that any project that receives \$25 million or more in ATPPL funding must prepare a project management plan in accordance with subsection 5327(a). However, since subsection 5320(d)(3) states that no single project can receive more than 25 percent of funds made available under the program in any given fiscal year, and the authorized program funding level is less than \$100 million, this threshold will not be met.
- Subsection 5327(e) requires DOT to issue regulations on project management oversight. This provision is not applicable, as it is internal direction to DOT.
- Subsection 5327(f) requires an annual financial plan for projects with total costs of over \$1 billion. This provision will not apply.

- Section 5329 gives the Secretary of Transportation the authority to conduct investigations into safety hazards and security risks and withhold financial assistance until a corrective plan is approved or carried out. This provision will apply.
- Section 5330 (State Safety Oversight). This requires States to establish and carry out a safety program if they have or are designing a rail fixed guideway system that is not regulated by the Federal Railroad Administration. This provision will only apply to the ATPPL program in the case that a State has or is designing, using ATPPL funds, a rail fixed guideway system that is not regulated by the Federal Railroad Administration.
- Section 5331 (Alcohol and controlled substances testing) will apply. See above under the government-wide Federal requirements section.
- Section 5332 (Non-discrimination) will apply. This section prohibits discrimination on the basis of race, color, creed, national origin, sex, and age.
- Section 5333 (Labor standards). Specific language in Section 5320 under Section 5320(i) states that recipients are subject to the requirements of subsection 5333(a) (Prevailing wages) to the extent the Secretary of Transportation deems appropriate. FTA proposes that recipients comply with subsection 5333(a), requiring that laborers and mechanics employed to carry out projects be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor. Subsection 5333(b) (Employee protective arrangements) does not apply as the ATPPL program is not cited as covered by this provision.
- Section 5335 (National Transit Database). This provision requires most recipients of FTA funds to report through the National Transit Database. This provision will not apply. Instead, FTA requests recipients meet the reporting requirements stated below.

F. Reporting Requirements

FTA seeks data from funding recipients in order to provide oversight of program activities as well as to report on program performance. FTA will implement these reporting requirements for FY 2006 funding recipients.

FTA monitors grant activities to ensure proper stewardship of Federal funds and compliance with the laws and regulations that govern its grant programs. The information that FTA needs for its oversight responsibilities is furnished through quarterly narrative milestone/progress

reports submitted by funding recipients. As a condition of receiving FY 2006 ATPPL funds, all recipients must submit quarterly reports to FTA containing the following information:

- (1) narrative description of project(s); and,
- (2) discussion of all budget and schedule changes.

State and local government entities should submit this information through FTA’s TEAM grants management system.

The headquarters office for each federal land management agency should collect a quarterly report for each of the projects delineated in the interagency agreement and then send these reports (preferably by email) to Henrika Buchanan-Smith, FTA Office of Transit Programs, Henrika.Buchanan-Smith@dot.gov; 202-366-2053; 400 7th St, SW; Room 9315; Washington, DC 20590. Examples can be found on the program website at <http://www.fta.dot.gov/atppl>.

The quarterly reports are due to FTA on the dates noted below:

Quarter	Covering	Due Date
1 st Quarter Report	October 1 – December 31	January 31
2 nd Quarter Report	January 1 – March 31	April 30
3 rd Quarter Report	April 1 – June 30	July 31
4 th Quarter Report	July 1 – September 31	October 31

In order to allow FTA to compute aggregate program performance measures as required by the President’s Management Agenda, FTA requests that all recipients of funding for capital projects under the ATPPL program submit the following information annually:

- annual visitation to the land unit;
- annual number of persons who use the alternative transportation system (ridership/usage);
- an estimate of the number of vehicle trips mitigated based on alternative transportation system usage and the typical number of passengers per vehicle;
- cost per passenger; and,
- a note of any special services offered for those systems with higher costs per passenger but more amenities.

State and local government entities should submit this information as part of their fourth quarter report through FTA’s TEAM grants management system.

Federal land management agencies should also send this information as part of their fourth quarter report (preferably by email), to Henrika Buchanan-Smith, FTA, Henrika.Buchanan-Smith@dot.gov; 202-366-5080; 400 7th St, SW; Room 9315; Washington, DC 20590. Examples can be found on the program website at <http://www.fta.dot.gov/atppl>.

III. Incorporation of Requirements into Awards

FTA will incorporate the requirements noted above into grant agreements between FTA and its grantees and into interagency agreements between FTA and Federal Land Management Agencies for projects funded with FY 2006 ATPPL funds. Recipients that contract with other entities to carry out the projects should develop agreements with that entity to ensure the requirements are met.

IV. Oversight Requirements

Certification and review. Recipients of FY 2006 ATPPL funds will be required to certify that they will comply with all applicable Federal and FTA programmatic requirements. Federal Land Management Agency recipients will complete the certification by signing the inter-agency agreement. FTA direct grantees will complete this certification as part of the annual Certification and Assurances package. This certification is the basis for oversight reviews conducted by FTA.

The Secretary of Transportation and FTA have elected not to apply the triennial review requirements of 49 U.S.C. § 5307(h)(2) to ATPPL recipients that are not direct FTA grantees. Instead, working with the existing oversight systems at the Federal Land Management Agencies, FTA will perform periodic reviews of specific projects funded by the ATPPL program as authorized by 49 U.S.C. § 5327. These reviews will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by this notice and the certification. To the extent possible, these reviews will be coordinated with other reviews of the project. FTA direct grantees awarded ATPPL funds (State, local and tribal government entities) will be subject to all applicable triennial, State management, Civil Rights, and other reviews.

Appendix

Please find below web links to statutes, regulations, and guidance referenced in this document.

Federal Transit Law, 49 U.S.C. Chapter 53 (including Sections 5320, 5307, and other sections referenced above)

http://www.apta.com/government_affairs/safetea_lu/documents/safetea_lu_clean.pdf

DOT Common Rule, 49 CFR parts 18 and 19

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr18_01.html and

http://www.access.gpo.gov/nara/cfr/waisidx_03/49cfr19_03.html

DOI Common Rule, 43 CFR part 12

http://www.access.gpo.gov/nara/cfr/waisidx_03/43cfr12_03.html

USDA Common Rule, 7 CFR part 3016

http://www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3016_01.html

ADA, 49 CFR parts 27, 37, and 38

http://www.access.gpo.gov/nara/cfr/waisidx_00/49cfr27_00.html and

http://www.access.gpo.gov/nara/cfr/waisidx_03/49cfr37_03.html and

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr38_01.html

DOT NEPA requirements, 23 CFR part 771

http://www.access.gpo.gov/nara/cfr/waisidx_02/23cfr771_02.html

FTA DBE requirements, 49 CFR part 26

http://www.access.gpo.gov/nara/cfr/waisidx_02/49cfr26_02.html

Charter Bus rule, 49 CFR part 604

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr604_01.html

School Transportation rule, 49 CFR part 605

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr605_01.html

DOT Buy America rule, 49 CFR part 661

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr661_01.html

Pre-award and post-delivery review rule, 49 CFR part 633

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr633_01.html

Alcohol and controlled substances testing rule, 49 CFR part 655

http://www.access.gpo.gov/nara/cfr/waisidx_01/49cfr655_01.html

FTA Guidance Circulars can be found at:

http://www.fta.dot.gov/publications/publications_circulars_guidance.html