

requirements that FTA grantees are held to in addition to the program-specific requirements and guidance provided in the circular. We revised this chapter to alphabetize the provisions, and we moved the Presidential Coin Act to this chapter.

Two commenters asked FTA to clarify whether the public hearing requirements described in the section, "Public Hearing Requirements" apply to projects that are categorical exclusions under NEPA. The circular states that NEPA public hearing requirements are sufficient to meet the requirements of 49 U.S.C. 5323(b), which requires public involvement for any capital project that will "substantially affect a community or the public transportation services of a community." Therefore, whether or not NEPA public hearing requirements apply, the provisions of 49 U.S.C. 5323(b) require public involvement for most capital projects. In response to comments, we have edited this section to clarify the requirements.

We have revised the section, "Environmental Reviews," since each chapter contains specific information about environmental requirements that apply to specific types of projects, and an extensive discussion in this chapter is repetitive and unnecessary. One commenter suggested that in the section, "Clean Air Act," we include as an appendix the list of exempt transit projects in the EPA regulation that do not require any analysis. We decline to include this list, but we have included the direct regulatory citation for this information.

We have updated the section, "Charter Bus Services" to reflect the new regulation on charter service. (73 FR 2326, Jan. 14, 2008).

G. Appendices

The appendices are intended as tools for developing a grant application. Appendix A specifically addresses steps and instructions for preparing a grant application, including pre-application and application stages. Appendix A also includes an application checklist and information for registering with the Electronic Clearing House Operation's (ECHO's) electronic payment system. One commenter suggested we include information as to where one can find the TEAM User Guide; we have included the hyperlink to the Web site for this information. One commenter suggested that FTA request planning justification information in the "project description" section of TEAM. While this information is not required in the project description, we note that recipients must include the date and page number of the most recently

approved Statewide Transportation Improvement Plan (STIP) for the projects listed in the application.

Appendix B provides budget information, including several sample budgets. Appendix C contains samples of an Authorizing Resolution, a Fleet Status Report, Like-Kind Transaction for Mid-life Sale of a Transit Bus, an Opinion of Counsel, a Project Milestone Schedule, and Proceeds from the Sale of Assets. Appendix D contains contact information for all of FTA's regional and metropolitan offices, and a new Appendix E contains a listing of all legal citations found in the circular.

With the substantive exceptions noted in the chapter-by-chapter analysis above, as well as non-substantive and clarifying edits, FTA adopts the final circular as proposed.

Issued in Washington, DC, this 22nd day of September, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8-22840 Filed 9-29-08; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2007-29122]

Grant Management Guidance

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 (<http://www.fta.dot.gov>) guidance in the form of Circular 5010.1D, Grant Management Requirements, which circular replaces FTA's prior Grant Management Circular 5010.1C. Circular 5010.1D includes information pertaining to new and existing FTA programs; incorporates provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); discusses the circumstances under which a grantee may request budget revisions and grant amendments; identifies useful life standards for trolleys, ferry boats, and facilities; and increases the threshold that determines whether FTA must approve a real estate appraisal.

DATES: The effective date of the circular is November 1, 2008.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact MaryAnne Polkiewicz at 202-366-0203 or maryanne.polkiewicz@dot.gov. For

legal questions, please contact Jayme L. Blakesley at 202-366-0304 or jayme.blakesley@dot.gov.

SUPPLEMENTARY INFORMATION:

Availability of Final Circular

The final circular is not included with this document. You may download an electronic copy of the circular from FTA's Web site at <http://www.fta.dot.gov>. From the home page, click on "Legislation, Regulations and Guidance" and on that page click on "Circulars." Circulars are listed in numerical order; the Grant Management Circular is number 5010.1D. Paper copies of the circular may be obtained by calling FTA's Administrative Services Help Desk at 202-366-4865.

You may retrieve the circular and comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>. Enter docket number 29122 in the search field. Instructions on using FDMS can be found under the help section of the Web site.

Table of Contents

- I. Overview
- II. Chapter-by-Chapter Analysis
 - A. Chapter I—Introduction and Background
 - B. Chapter II—Circular Overview
 - C. Chapter III—Grant Administration
 - D. Chapter IV—Project Management
 - E. Chapter V—Oversight
 - F. Chapter VI—Financial Management
 - G. Appendices

I. Overview

This notice provides a summary of changes to FTA's Grant Management Circular. The prior Grant Management Circular was numbered C 5010.1C. This new Grant Management Circular is numbered C 5010.1D. This final Circular 5010.1D supersedes Circular 5010.1C.

This notice addresses comments received in response to the September 28, 2007, **Federal Register** notice (72 FR 55629, Notice of Proposed Guidance and Request for Comment on the Federal Transit Administration's Grant Management Requirements FTA Circular 5010.1D). FTA received comments from nine parties, including an industry association, transit agencies, and State departments of transportation (State DOTs).

FTA has adopted most of the proposed formatting changes published in the proposed circular. For example, we changed the format to make this circular consistent with the style of other circulars FTA is updating while maintaining some consistency with the previous document. Substantive changes in content and comments to the

proposed circular are discussed in the Chapter-by-Chapter Analysis heading.

One commenter noted that in the September 28, 2007, **Federal Register** notice FTA titled proposed Circular 5010.1D “Grant Management Requirements.” This commenter asked FTA to change the title to “Grant Management Guidelines.” FTA disagrees with this change. The requirements in the circular are based on existing regulation.

The cover page to Circular 5010.1D includes a statement at Section (6) that “FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment without further notice and comment on this circular.” One commenter objected to this statement, arguing that all changes should be subject to notice and comment. FTA disagrees. When the revision of a circular or regulation includes an opportunity for notice and comment, there is no need to duplicate that effort for each circular affected by such revision.

One commenter lauded FTA, noting that the expanded narrative and examples are positive improvements. This commenter and one other stated that FTA could improve Circular 5010.1D by adding more references or Web addresses. FTA agrees with this commenter and will include Web addresses in the electronic version of Circular 5010.1D.

Three commenters asked FTA to clarify the difference between the terms grantee, recipient, and subrecipient. FTA has added language to Circular 5010.1D stating that it uses the terms grantee and recipient interchangeably, and clarifying its pass-thru policies.

II. Chapter-by-Chapter Analysis

As a preliminary matter, some commenters had non-substantive comments, such as formatting suggestions, a suggestion to remove references to old **Federal Register** notices, to include specific terms in the index, and to do a thorough review of the draft for typos, cross-referencing errors, and the like. We have removed the old **Federal Register** references, made some, but not all, of the suggested formatting changes, added terms to the index, and we have thoroughly reviewed the document in an effort to remove the errors noted by commenters. Furthermore, we have reordered the sections of some of the chapters to provide the material in a more organized fashion. Some comments were outside the scope of the proposed circular, and we have not addressed

those comments in either the circular or this **Federal Register** notice.

A. Chapter I—Introduction and Background

Chapter I introduces the Federal Transit Administration (FTA) and its authorizing legislation (49 U.S.C. Chapter 53). It also instructs readers on how to contact FTA and how to find out about competitive grant opportunities using Grants.gov. Finally, Chapter I defines all terms-of-art used in Circular 5010.1D.

One commenter asked FTA to change its definition of “real property” to conform to certain State provisions that define real property to include machinery and equipment that are fixtures. After careful consideration, FTA has decided against changing its definition of real property.

The same commenter asked FTA to revise its definitions of “equipment” and “supplies” so that the dollar value thresholds are comparable. This commenter asked FTA to raise the ceiling for supplies to \$25,000. FTA declines to revise its definitions of “equipment” and “supplies.” These definitions are based on the definitions and requirements at 49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the Common Grant Rule).

One commenter noted that by defining a budget revision to include the addition or deletion of an activity line item (ALI) in FTA’s Transportation Electronic Award and Management (TEAM) system, the proposed circular appeared to contradict prior FTA guidance. FTA notes that this change is intentional and in the instance of any such contradictions, Circular 5010.1D supersedes prior versions of the circular.

One commenter recommended that the proposed definition for discretionary funding should be revised to read “grant funds distributed at the discretion of the agency, or Congress, as distinct from formula funding.” Except for “or Congress,” FTA has incorporated this language into the final version of Circular 5010.1D.

Another commenter suggested that FTA revise its definition of straight line depreciation. FTA has modified its definition accordingly.

Another commenter asked FTA to define ECHO. FTA has added a definition of ECHO-Electronic Clearing House Operation.

One commenter noted discrepancies in FTA’s use of the term “force account.” This same commenter asked FTA to add information about the

Catalog of Federal Domestic Assistance (CFDA). The definition of force account has been revised and Catalog of Federal Domestic Assistance has been added to the definition section.

Another commenter asked FTA to clarify whether a Native American tribe is considered a local government authority. FTA has edited the introduction section to include federally recognized Indian tribes and a definition of Tribal Government from 43 U.S.C. 1601.

One commenter asked FTA to state that the Common Rule (49 CFR part 18) applies to all FTA grantees. FTA has added language making clear the applicability of the Common Rule.

B. Chapter II—Circular Overview

Chapter II provides an overview of Circular 5010.1D, including applicable program descriptions, grant management responsibilities, and Federal civil rights requirements.

One commenter suggested that the applicable program descriptions should include fewer details. FTA disagrees. FTA is using the same program descriptions in all of its circulars to reduce the need for ad hoc revisions to each circular whenever programs change.

The same commenter asked FTA to consider adding under its role that FTA may utilize a Project Management Oversight Consultant to aid in its management of grants. FTA declines to make this revision, noting that this is explained in Chapter V, Oversight.

One commenter said it was redundant for FTA to provide an introduction under the heading “Responsibilities of Grant Management” and to add another list of specifications. FTA disagrees. These sections are similar but not identical.

Another commenter asked FTA to review the list of Civil Rights requirements to ensure that it includes the proper thresholds. FTA has updated Circular 5010.1D accordingly.

C. Chapter III—Grant Administration

Chapter III discusses the mechanics and requirements for grant administration, including the grant application process, reporting requirements, and grant modifications (including budget revisions).

One commenter noted that FTA’s TEAM system requires FTA approval on all budget revisions. As noted, TEAM does not recognize the difference between budget revisions that do and do not require FTA approval. Accordingly, grantees may continue to make certain budget revisions without prior FTA approval.

This same commenter asked FTA to add descriptions of size and physical characteristics to Subsection 4.a(3)(e). FTA declines to add more detail to this subsection, for any change in size or physical characteristic would require FTA approval. Even the smallest change in the size or physical characteristic, such as the difference between surface or structured parking, could affect FTA and grantee responsibilities under the National Environmental Policy Act or other Federal requirements.

One commenter urged FTA to enlarge the universe of changes that may be made without pre-approval. FTA disagrees with this commenter. Circular 5010.1D strikes a balance between flexibility and good stewardship. To allow greater flexibility would risk the misuse of Federal funds.

With respect to spare vehicles, another commenter suggested that as long as the spare ratio requirements are maintained and funds are available within the rolling stock scope or other scopes, FTA should permit grantees to make revisions regarding fleet number without prior FTA approval. FTA disagrees with this commenter. Prior FTA approval must be obtained for revenue rolling stock, whenever the budget revision changes the number of vehicles to be purchased by more than two units (for grants with fewer than 10 vehicles) or more than 20 percent from the quantity identified in the original grant. The grantee must continue to meet FTA bus spare ratio requirements for any change in the number of revenue rolling stock. If the change in the number of revenue rolling stock exceeds 20 percent, the budget revision must be supported by a Rolling Stock Status Report.

Another commenter noted that the addition or deletion of ALIs represents significant changes to the purpose of a grant and asked FTA to clarify the difference between revisions and amendments. This same commenter asked FTA to establish time limits for processing budget revisions and to advise grantees whenever administrative amendments are anticipated. FTA appreciates these suggestions. With respect to the difference between budget revisions and grant amendments, FTA has included language in Circular 5010 distinguishing between budget revisions, administrative amendments, and grant amendments.

A budget revision is any change within the scope that impacts budget allocations of the original grant. A budget revision may be a transfer of funds within a project scope or between existing ALIs within an approved grant.

It could also include the addition or deletion of an ALI.

An administrative amendment is a minor change in a grant agreement normally initiated by FTA to modify or clarify certain terms, conditions, or provisions of a grant. A grant amendment is the modification of a grant that includes a change in scope and/or a change in Federal funds. With respect to establishing time limits for processing budget revisions and grant amendments, FTA agrees with the commenter but believes that such timeframes are best made through internal standard operating procedures (SOPs) and not through this circular.

FTA proposed requiring prior approval for budget revisions for all grants with a Federal share of more than \$100,000 and if the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent. One commenter asked FTA to rethink the \$100,000 threshold. This commenter suggests applying the 20 percent rule to all grants, regardless of whether the Federal share exceeds \$100,000. The \$100,000 threshold is based on the Common Grant Rule requirements at 49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

One commenter asked FTA to inform the grantee when FTA is about to take any unilateral action with respect to a grant, especially if that action relates to closing out a grant. FTA agrees. Although it is common practice to inform the grantee of such actions, FTA will reemphasize the need to contact grantees before taking unilateral action to close out a grant.

This same commenter asked FTA to explain why the “details” section in TEAM limits text to 60 characters. FTA instructs its grantees to use the attachment feature if 60 characters are insufficient.

One commenter pointed out that, contrary to its statement in the **Federal Register**, FTA did not indicate in proposed Circular 5010.1D how it has changed its use of the term “scope.” FTA agrees with this commenter and clarified the definitions of scope and activity line items (ALIs).

Milestone/progress reporting for all Section 5309 grant recipients, regardless of location and population area, has been revised to reflect the requirement to submit quarterly reports in TEAM when grants include construction of a facility.

In the records retention section of its proposed guidance, FTA noted that photocopies are acceptable. One

commenter asked FTA to expand this policy to include other formats such as microfiche or digitally scanned documents. FTA has examined this comment and added language to Circular 5010.1D that allows for other formats.

D. Chapter IV—Project Management

Real property, equipment and supplies, rolling stock, and facilities purchased or constructed for project purposes must be managed, used, and disposed of in accordance with applicable laws and regulations. Chapter IV provides guidance on the management, use, and disposition of FTA funded real property, equipment, supplies, rolling stock, and facilities.

One commenter asked why FTA decided to include real property in its Grant Management Circular and not in its Procurement Circular. FTA notes that it may need to include a section on real property in its Procurement Circular, but declines to remove it from Circular 5010.1D.

Another commenter applauded FTA’s proposal to raise the threshold for appraisal concurrence from \$100,000 to \$500,000, but asked FTA to consider increasing the threshold to \$1,000,000. While FTA appreciates this comment, it is still common for FTA to discover incorrect appraisals. For this reason, FTA will not increase the threshold to \$1,000,000.

One commenter asked FTA to better explain the conditions that may warrant the use of a grantee’s own labor forces, commonly referred to as force account. FTA has added the following conditions to Circular 5010.1D: (1) Cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement.

A commenter stated that FTA should require its grantees to notify FTA of excess land as soon as it becomes excess, and asked that such notification include a disposition proposal and schedule for disposition. FTA does not agree with this commenter. Grantees must notify FTA when property is removed from the service originally intended. The notification must include the anticipated disposition or action proposed.

Previously, FTA would rely upon a grantee’s expertise when determining the useful life for assets other than rolling stock. One commenter asked FTA to continue this practice instead of fixing a useful life for all assets. FTA disagrees with this commenter. By establishing a useful life for facilities, FTA ensures consistency across projects and regions. Where a useful life policy has not been defined by FTA, the

grantee, in consultation with the FTA regional or metropolitan office shall "make the case" by identifying a useful life period for all equipment and facilities with an acquisition value greater than \$5,000 to be procured with Federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with Federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the Federal interest for the disposition of the project property in later years. Acceptable methods to determine useful life include but are not limited to:

- (a) Generally accepted accounting principles.
- (b) Independent evaluation.
- (c) Manufacturer's estimated useful life.
- (d) Internal Revenue Service guidelines.
- (e) Industry standards.
- (f) Grantee experience.
- (g) The grantee's independent auditor who needs to concur that the useful life is reasonable for depreciation purposes.
- (h) Proven useful life developed at a Federal test facility.

Useful Life of a fixed guideway electric trolley-bus with rubber tires obtaining traction from overhead catenary has been revised to be 15 years from previously proposed 18 years.

One commenter stated that FTA's proposal concerning vehicles removed from service because of fire, collision, or natural disaster inappropriately shifts risk to its grantees, noting that the existing circular looks to the post-event value of the vehicle to measure the remaining Federal interest while the proposed circular would refer to the pre-event value. This commenter urged FTA to maintain the existing policy. FTA disagrees. The policy articulated in Circular 5010.1D is consistent with FTA's Master Agreement and current FTA practice. Similar to Circular 5010.1D, Section 19.h(b)(1) of FTA's Master Agreement states that the fair market value of project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

One commenter asked FTA to consider adopting the practice of communicating directly with the grantee receiving a new grant award, perhaps by modifying TEAM to include a facility for automatically advising grantee contacts by e-mail when FTA revises the grant's status or inputs comments. FTA is looking at improving TEAM accordingly. In the meantime, FTA's regional offices will make every effort to contact grantees when modifying a grant application or award.

Several parties offered comments on the reporting requirements articulated in proposed Circular 5010.1D. Please note that FTA has made its best effort to avoid duplicative reporting requirements. Moreover, FTA notes that the reporting requirements may vary depending on the size of the grantee, the type of funding, or the amount of funding a grantee receives. Please contact the regional or metropolitan office with questions regarding the applicability of the reporting requirements of Chapter III. With respect to requiring grantees to state the useful life of an asset in its grant application, FTA is ensuring that it can verify the use and disposition of that asset throughout its useful life.

Another commenter identified several misnumbered sections in this chapter. FTA has corrected these errors.

A State DOT asked FTA to clarify language regarding its Equal Employment Opportunity programs to apply to more than just transit agencies. FTA has modified Chapter III accordingly.

The same commenter noted that the National Transit Database Safety and Security Reporting requirement is exclusive to urban areas. FTA agrees and has clarified this point.

Another State DOT asked FTA to note that there is no minimum vehicle threshold for reporting in the nonurbanized program. FTA agrees and has modified Circular 5010.1D accordingly.

One commenter stated its understanding that 49 U.S.C. 5334(h)(1)–(3) applies to transferring property that has not met useful life standards, and suggested that FTA amend the circular text to include this statement. FTA agrees and has modified Circular 5010.1D accordingly.

The same commenter noted that insurance proceeds set the current fair market value of an asset and that the Federal share is based upon this number. FTA refers this commenter to the following language from FTA's Master Agreement: In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the

fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

One commenter identified several inadvertent omissions from the section on real property. FTA has updated this section in accordance with the Department's Uniform Relocation Act regulations.

Two parties asked FTA to distinguish between rebuilding and overhauling a vehicle or system. Accordingly, FTA has updated Circular 5010.1D to distinguish between overhaul and rebuild. Overhaul is performed as a planned or concentrated preventative maintenance activity and is intended to enable the rolling stock to perform to the end of its original useful life. Rebuild is a capital expense incurred at or near the end of the useful life of rolling stock that results in a new useful life for the rolling stock that is consistent with the extent of the rebuilding.

One commenter asked FTA to clarify when a grantee or recipient must return insurance money that it receives from a subrecipient. FTA's Master Agreement in Section 19, Subsection i states that if the recipient receives insurance proceeds as a result of damage or destruction to the project property, the recipient agrees to: (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or (2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

Another commenter asked FTA to clarify when a grantee should submit a Project Management Plan (PMP) to FTA as a prerequisite to grant approval. According to FTA's Project Management Oversight rule, 49 CFR part 633, for all major capital projects, the grantee must submit a PMP as part of its grant application.

Several commenters expressed concern that FTA proposes to include useful life determination in grant agreements and that the minimum threshold for such determinations is \$5,000. FTA disagrees with these commenters. According to the Common Grant Rule, every asset over \$5,000 must be accounted for. Indirectly, this means that every asset over \$5,000 must have a useful life.

E. Chapter V—Oversight

Chapter V discusses FTA oversight. FTA evaluates grantee adherence to program and administrative requirements through a comprehensive

oversight program. FTA's Master Agreement specifies these requirements. FTA determines compliance through self-certification, oversight review and audits, and site visits. FTA annually completes an individual Grantee Oversight Assessment Questionnaire, which serves as baseline information for each grantee's capacity to comply, and the degree of the risk the grantee's program may represent for the Federal program. Based on this information, FTA makes decisions about which grantees will receive oversight reviews during the coming year. Regional staff uses the information to develop regional oversight plans and to allocate oversight resources within the region for the upcoming fiscal year, which may include oversight reviews, regional meetings, and/or regional site visits.

One commenter asked FTA to add its Job Access Reverse Commute (JARC) and New Freedom Programs to the list of programs covered by State Management Reviews. FTA only listed programs for which it is authorized to withhold a percentage for oversight activities. FTA retains the right to review any of its programs through State Management Reviews.

F. Chapter VI—Financial Management

Chapter VI discusses the proper use and management of Federal funds FTA expects from its grantees. Financial management is one of the most important practices in the management of Federal funds.

One commenter asked FTA to define the Cash Basis of Accounting and its permissible use. Definitions have been added.

Another commenter asked FTA to clarify whether a specific form is required for documenting internal controls. FTA notes that the form checklist provided in Circular 5010.1D is not mandatory. FTA has provided it to those transit properties that do not currently do their own testing. FTA has modified Circular 5010.1D to make clear that this form is a tool, not a requirement.

G. Appendices

One commenter noted that Appendix C, Guide for Preparing an Appraisal Scope of Work, is excellent guidance and asked FTA to include a review appraisal scope of work. FTA agrees with this comment and has indicated that the Guide for Preparing an Appraisal Scope of work can also be used for a review appraisal.

Appendix D, Fleet Status Report, has been renamed and revised so as to not be confused with the Fleet Status Report screen in TEAM. The new name is

Rolling Stock Status Report. The use of this report is limited to disposing of a vehicle that has met minimum useful life and fair market value is greater than \$5,000, disposing of a vehicle before it reaches minimum useful life, or requesting a budget revision affecting vehicles.

Issued in Washington, DC, this 22nd day of September, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8-22891 Filed 9-29-08; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2007-29125]

Third Party Contracting Guidance: Notice of Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Circular.

SUMMARY: The Federal Transit Administration (FTA) has issued FTA Circular 4220.1F, "Third Party Contracting Guidance" to provide comprehensive guidance to grantees and recipients of cooperative agreements (recipients) to implement third party contracting requirements that apply to FTA assisted procurements.

DATES: *Effective Date:* The effective date of this circular is November 1, 2008.

ADDRESSES: A copy of this circular and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA-2007-29125 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the circular and comments online through the Federal Document Management System (FDMS) at Web site: <http://regulations.gov>. Enter the docket number FTA-2007-29125 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

This notice does not include the final circular. An electronic version of the circular may be found on the docket: <http://regulations.gov>, docket number

FTA-2007-29125, or on the FTA Web site: <http://www.fta.dot.gov>. Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at 202-366-4865.

FOR FURTHER INFORMATION CONTACT:

James Harper, Director, Office of Procurement, Office of Administration, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, Room E42-332, Washington, DC 20590, phone: 202-366-1127, fax: 202-366-3808, or e-mail James.Harper@dot.gov for issues regarding third party contracting procedures and practices; or Kerry L. Miller, Assistant Chief Counsel for General Law, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, Room E56-314, Washington, DC 20590, phone: 202-366-1936, fax: 202-366-3809, or e-mail, Kerry.Miller@dot.gov, for legal issues.

Table of Contents

- I. Background
- II. Overview
- III. Chapter-by-Chapter Analysis
 - A. Chapter I—Introduction and Role of the Federal Transit Administration
 - B. Chapter II—Applicability
 - C. Chapter III—The Recipient's Responsibilities
 - D. Chapter IV—The Recipient's Property and Services Needs and Federal Requirements Affecting Those Needs
 - E. Chapter V—Sources
 - F. Chapter VI—Procedural Guidance for Open Market Procurements
 - G. Chapter VII—Protests, Changes and Modifications, Disputes, Claims, Litigation, and Settlements
 - 1. Appendix A—References
 - 2. Appendix B—FTA Regional and Metropolitan Contact Information
 - 3. Appendix C—Third Party Contracting Checklists
 - 4. Appendix D—Matrices of Third Party Contract Provisions

I. Background

This notice provides a summary of FTA's Third Party Contracting Guidance final circular, and addresses comments received in response to the FTA's September 28, 2007, **Federal Register** notice (72 FR 55630). FTA's most recent enabling legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Public Law 110-244, June 6, 2008, added new third party contracting requirements for FTA recipients. Other Federal laws and regulations have also amended certain Federal requirements or added new Federal requirements affecting third party procurements