



# Federal Register

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## Part III

# Department of Transportation

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## Federal Transit Administration

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**Capital Investment Program: Proposed Circular; Notice**

**Program Guidance for Metropolitan Planning Program and State Planning and Research Program Grants (49 U.S.C. 5305); Notice of Program Guidance**  
**Notice of Proposed Guidance and Request for Comment on the Federal Transit Administration's Grant Management Requirements (FTA Circular 5010.1D); Notice**

**Third Party Contracting Guidance; Notice of Proposed Program Guidance; Proposed Circular; Notice**

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****[Docket No. FTA-2007-29123]****Capital Investment Program: Proposed Circular****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of availability of proposed circular and request for comments.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a circular to assist grantees in implementing the Capital Investment Program. The Capital Investment Program includes projects such as bus and bus facilities, new fixed guideway systems, and fixed guideway modernization, as authorized by 49 U.S.C. 5309. By this notice, FTA invites public comment on the proposed circular for this program.

**DATES:** Comments must be submitted by November 27, 2007. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the docket number [FTA-2007-29123] by any of the following methods:

1. *Web site:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments on the U.S. Government electronic docket site. [**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments. All electronic submissions must be made to the U.S. Government electronic docket site at [www.regulations.gov](http://www.regulations.gov). For mailed and hand-delivered comments, commenters should follow the directions below.]

2. *Fax:* 202-493-2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, West Building Ground Floor, Room W12-140, Washington, DC 20590 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 Docket number (FTA-2007-29123) 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 [www.regulations.gov](http://www.regulations.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).

*Docket:* For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Sledge, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fourth Floor, Washington, DC 20590, phone: 202-366-2053, fax: 202-366-7951, or e-mail, [Kimberly.Sledge@dot.gov](mailto:Kimberly.Sledge@dot.gov); or Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fifth Floor, Washington, DC 20590, phone: 202-366-0944, fax: 202-366-3809, or e-mail, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

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**I. Overview**

This notice provides a summary of proposed changes to FTA Circular 9300.1A, Capital Program: Grant Application Instructions. This program was affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59), signed into law August 10, 2005. FTA is updating the existing circular, developed in 1998, to reflect changes in the law. The final circular, when adopted, will supersede the existing circular.

This document does not include the proposed circular; an electronic version may be found on FTA's Web site, at

<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. FTA seeks comment on the proposed circular.

Readers familiar with the existing FTA Circular 9300.1A will notice a number of changes to the proposed circular. For example, we have changed the name of the circular to "Capital Investment Program" to reflect a focus on the capital investment nature of eligible activities in 49 U.S.C. 5309 ("Section 5309"), as amended by SAFETEA-LU. In addition, we changed the format to make this circular consistent with the style of other circulars FTA is updating. At the same time, we have tried to maintain some consistency with the previous document; for example, information about the Bus program is still in Chapter III, Fixed Guideway Modernization continues to be in Chapter IV, with New Starts/Small Starts information in Chapter V. Substantive changes in content are discussed in the chapter-by-chapter analysis.

**II. Chapter-by-Chapter Analysis***A. Chapter I—Introduction and Background*

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and our contact information, briefly reviews the authorizing legislation for the Capital Investment Program (a.k.a. "Section 5309 Program"), provides information about Grants.gov, includes definitions applicable to the program, and provides a brief program history. The Definitions section is new to this circular, and includes definitions related to the Section 5309 program, as well as the Section 5308, Clean Fuels Grant program. Where applicable, we have used the same definitions found in rulemakings or other circulars to ensure consistency. In the existing circular, eligible projects are included in Chapter I. Eligible projects have been moved to Chapter II in the proposed circular, and will be discussed further there.

*B. Chapter II—Program Overview*

Chapter II of the existing circular is titled, "How to Use This Circular." The content of this chapter has been eliminated or moved to other chapters. Chapter II of the proposed circular provides more detail about the Capital Investment program. This chapter starts with the statutory authority for the Capital Investment program, followed by the goals of the program, and a list of eligible projects. Also included in the

proposed Chapter II is information on apportionment, funds availability, Federal/local matching requirements, relationship to other FTA programs, and the requirements to ensure a recipient has the legal, financial, and technical capacity to carry out a Capital Investment project.

As stated previously, eligible projects have been moved to the proposed Chapter II. There were significant changes to eligible projects under 49 U.S.C. 5309 with the enactment of SATETEA-LU. Under the previous statute (The Transportation Equity Act for the 21st Century (TEA-21)), there were eight categories of eligible projects in 49 U.S.C. 5309. These included bus and bus facilities, new fixed guideways, fixed guideway modernization, development of corridors to support fixed guideway systems, projects designed to meet the needs of elderly and disabled passengers, projects to introduce new technology, the capital costs of coordinating public transportation with other transportation, and capital projects needed for an efficient and coordinated public transportation system. Under SATETEA-LU, there are only four categories of eligible projects in 49 U.S.C. 5309: bus and bus facilities, new fixed guideways, fixed guideway modernization, and corridor improvements. Therefore, the list of eligible projects in the proposed circular has changed, as well. We have defined the four categories of eligible projects as "capital investment projects" and listed them in this proposed chapter as "assets for which FTA provides assistance." In addition to these "capital investment projects," however, we have included a list of projects that, "when integral to a capital investment project," would be eligible for Section 5309 funding. This includes the introduction of new technology, previously eligible under TEA-21. While not specifically listed as an eligible project, bus purchases to meet the needs of elderly persons and persons with disabilities would be eligible, since bus purchases generally are eligible. We note that the purpose of the Section 5310 Program is to purchase buses to meet the special transportation needs of these populations, and Section 5310 funding is available to private non-profit organizations where public transportation is unavailable, insufficient, or inappropriate.

In keeping with the purpose of Section 5309 as a capital "investment" program, we propose removing two previously eligible projects from the proposed circular: The capital cost of contracting and preventive maintenance for the bus program. Both of these

capital expenditures are eligible for funding under other FTA programs, including the Urbanized Area Formula program (Section 5307) and the Nonurbanized Area Formula program (Section 5311). The capital cost of contracting allows recipients to fund the capital portion of contracts, thus acquiring the use of capital assets for the short-term. The purpose of the Section 5309 program is long-term investment, and the purchase of assets for short-term use is not consistent with the program's purpose. "Capital projects" are defined in 49 U.S.C. 5302, and preventive maintenance is included in that definition. Sections 5307 and 5311 broadly permit the Secretary to make grants for capital projects (e.g., "the Secretary may make grants for capital projects"). Under Section 5309, however, capital projects are more narrowly defined, and in the bus program, the Secretary is permitted to make grants for "capital projects to replace, rehabilitate, and purchase buses and related equipment." In light of Congress' generally limiting the list of Section 5309 eligible projects to those with an "investment" purpose, FTA proposes similarly limiting the bus program to projects that provide an investment in future transportation, and removing preventive maintenance since it does not fall within the statutory eligibility of "capital projects to replace, rehabilitate, and purchase buses." Bus-related equipment remains an eligible project. FTA seeks comment on the proposed list of eligible projects.

The Federal/local matching requirements, found in Chapter I of the existing circular and Chapter II of the proposed circular, are consistent with 49 U.S.C. Chapter 53; namely, the Federal share is 80 percent of an eligible project unless the applicant requests a lower percentage. Exceptions include Clean Air Act (CAA), Americans with Disabilities Act (ADA), and bicycle projects, all of which have a 90 percent Federal share.

In 1992, under the provision allowing the Secretary "to determine through practicable administrative procedures, the costs attributable to compliance with those Acts," FTA computed an 83 percent composite Federal match for bus or van related equipment, which reflects a blend of 80 percent for the bus or van and 90 percent for the incremental cost of equipment added to the bus or van and associated with CAA and ADA compliance. For all other vehicles, including rail vehicles, a detailed accounting of the incremental cost required for CAA and ADA compliance must be provided in the

grant application to determine the Federal share.

Beginning with Fiscal Year 2006, recipients may apply for a 90 percent share of the actual incremental costs of vehicle-related facility improvements related to ADA or CAA compliance. FTA is requesting that recipients provide documentation supporting these requests. The 83 percent Federal share does not apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed on a case-by-case basis as part of the grant application process. FTA seeks comment on this proposal.

Finally, the proposed Chapter II includes information on how a recipient demonstrates that it has the legal, financial, and technical capacity required to carry out a Capital Investment project. This information is found in Chapter VI of the existing circular, and FTA did not substantively change the language of this section.

### *C. Chapter III—Buses and Related Acquisitions*

Chapter III addresses buses and related acquisitions, commonly known as "the bus program." The information in the proposed circular compares to information found in Chapter III of the existing circular, and the proposed Chapter III has been completely reworked, while retaining much of the information in the existing circular. The proposed circular contains information on how funds are allocated, examples of eligible projects, environmental considerations, requirements related to vehicles, equipment, and facilities, and the Clean Fuels Grant program. Information in the existing circular that was not retained in the proposed circular includes the following: information about other programs available for funding buses and bus-related facilities (some of this information is retained in the proposed Chapter II—Relationship to Other FTA Programs); the lead time needed for purchasing new buses; and an expected time frame for a bus facilities project. FTA removed the lead time and time frame as they were at best speculative in nature. Further, individuals or agencies seeking Section 5309 funds generally understand the lead time and time frames involved in these projects, and FTA regional office staff can assist interested parties in determining how long a particular project will take.

Language from the existing Chapter III that was retained in the proposed Chapter III remains largely unchanged, with some exceptions to bring the circular up to date with changes in the

law. For example, 49 U.S.C. 5323(m) was amended so rolling stock procurements of 20 vehicles or fewer for use in areas under 200,000 population are not required to have an inspector on-site; this is reflected in paragraph 6(c)(3) in the proposed circular. Paragraph 6(a)(2) states the current status of the charter rule, and notes that the paragraph may change if a final charter rule is published before the final FTA Circular 9300 is issued. In addition, paragraph 6(d) reflects passage of the Presidential Coin Act of 2005, requiring that as of January 1, 2008, all transit systems that receive Federal funding shall be capable of accepting and dispensing \$1 coins.

Since Section 5309 bus funds may be used to purchase buses that use clean fuels, the proposed Chapter III contains a paragraph on the Section 5308 Clean Fuels Grant program. This section of the chapter describes the purpose of the program, and, in the event Congress appropriates funds under Section 5308, describes eligible recipients, eligible projects, funds availability, and Federal share. We note also that FTA has promulgated a final rule for the Clean Fuels Grant program at 49 CFR part 624 (72 FR 15049, March 30, 2007).

#### *D. Chapter IV—Fixed Guideway Modernization*

Chapter IV addresses fixed guideway modernization. The information in the proposed circular compares to information found in Chapter IV of the existing circular, with only minor changes. For example, paragraph 6(c) Clean Air Act Compliance has been updated. Further, as in the bus chapter, the change in 49 U.S.C. 5323(m) to forgo on-site inspections for rolling stock procurements of 20 vehicles or fewer for use in areas under 200,000 population is reflected in paragraph 6(e). The Buy America requirement was updated in paragraph 6(g), as was the Major Capital Project paragraph 6(h).

#### *E. Chapter V—New Starts*

The proposed Chapter V addresses New Starts, and compares to information found in Chapter V of the existing circular. In addition to the information found in Chapter V of the proposed circular, FTA maintains a New Starts Web page, at [http://www.fta.dot.gov/planning/planning\\_environment\\_5221.html](http://www.fta.dot.gov/planning/planning_environment_5221.html) that contains the most up-to-date guidance for this program. In addition, there is a New Starts rule, found at 49 CFR part 611, and FTA published a notice of proposed rulemaking in the **Federal Register** (72 FR 43328, Aug. 3, 2007), which proposes a number of changes to

the current rule. Interested readers are encouraged to review the proposed rule at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-14285.pdf>.

The format of the proposed Chapter V remains similar to that of the existing circular, and FTA proposes several changes to this chapter, largely due to changes in the law. For example, FTA draws a distinction between a “New Start”—a project that has a total cost of \$250 million or more, or for which the project sponsor is requesting more than \$75 million in Federal funds; and a “Small Start”—a project that has a total cost of less than \$250 million that requests less than \$75 million in Federal funds. The various requirements for both projects are described throughout the chapter. There is a new phase in the project development process—alternatives analysis—which is described at length.

The sections on Environmental Protection, Clean Air Act Compliance, Available Funding, Project Management Plan, and Value Engineering Requirements contain only minor edits. The section titled, “FTA Rating System” has been enhanced for greater clarification of how FTA rates projects. Readers are encouraged also to review FTA’s recently published, “Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts,” available on the FTA Web site at [http://www.fta.dot.gov/documents/NPRM\\_Policy\\_Guidance\\_7-18-07\\_v\\_3.doc](http://www.fta.dot.gov/documents/NPRM_Policy_Guidance_7-18-07_v_3.doc). A **Federal Register** notice (72 FR 43378, Aug. 3, 2007) accompanied publication of the proposed policy guidance.

#### *F. Chapter VI—Other Provisions*

This chapter is similar to the “Other Provisions” chapters in other FTA circulars, and summarizes a number of FTA-specific and other Federal requirements that FTA grantees are held to, in addition to the program-specific requirements and guidance provided in the circular. The proposed chapter compares to the information found in the existing Chapter VI, “Requirements Common to All Capital Program Grant Applications.” Much of the information has been retained and reorganized. As mentioned, the sections on legal, financial, and technical capacity in the existing Chapter VI have been moved to the proposed Chapter II. In addition, the “Relationship to Other Programs” sections in the existing Chapter VI have been moved to the proposed Chapter II. Recipients should use this chapter in conjunction with FTA’s “Master Agreement” and the current fiscal year

“Certifications and Assurances” to assure that they have met all requirements. Recipients may contact FTA Regional Counsel for additional information about these requirements.

#### *G. Appendices*

The proposed 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. This information is comparable to Chapter VII, Grant Application Contents, in the existing circular, although it has been updated and reorganized. Appendix A also includes an application checklist and information for registering with the Electronic Clearing House Operation (ECHO) payment system. Proposed Appendix B provides budget information, including a sample budget, and compares with the information found in Chapter VIII, Instructions for Preparing a Project Budget, in the existing circular. Proposed Appendix C, which compares with Chapter IX, Examples, in the existing circular, contains samples of an Authorizing Resolution, a Transaction for Mid-life Sale of a Transit Bus, an Opinion of Counsel, a Project Milestone Schedule, and Proceeds from the Sale of Assets. Proposed Appendix D contains contact information for all of FTA’s regional and metropolitan offices, and is new information for this circular.

We propose removing the existing Appendix A, Relationship Between Capital Program Grants and the Metropolitan and Statewide Planning Process; Appendix B, Joint Development Projects; and Appendix C, Annual Certifications and Assurances. Readers will find information on planning requirements throughout the proposed circular, and the information on Certifications and Assurances has been consolidated into one paragraph in Chapter VI. Historically, FTA has included guidance on Joint Development in three circulars: 5010.1, Grants Management; 9030.1, Formula Capital Grants; and 9300.1, Major Capital Investments. However, FTA issued separate Joint Development guidance in a **Federal Register** notice (72 FR 5788, Feb. 7, 2007) and, as FTA stated in that notice, we have decided to consolidate the appendices in FTA Circulars 5010.1, 9030.1, and 9300.1 into one circular on the eligibility of joint development improvements. This circular is scheduled for publication in 2008, but until it is published, readers should refer to the **Federal Register**

notice for guidance on joint development projects.

Issued in Washington, DC, this 24th day of September, 2007.

**James S. Simpson,**  
Administrator.

[FR Doc. E7-19111 Filed 9-27-07; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2007-29126]

#### Program Guidance for Metropolitan Planning Program and State Planning and Research Program Grants (49 U.S.C. 5305): Notice of Program Guidance

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

**ACTION:** Availability 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 (FTA) planning programs. The proposed circular revises and combines into one document the contents of existing Circulars 8100.1B for the Metropolitan Planning Program (MPP) and 8200.1 the Statewide Planning and Research Program (SPRP). The proposed circular also provides information on the Consolidated Planning Grant Program between the FTA and the Federal Highway Administration (FHWA).

**DATES:** Comments should be submitted by October 29, 2007. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure your comments are not entered more than once into the docket, submit comments identified by the docket number [FTA-2007-29126] by only one of the following methods:

1. *Web site:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments on the U.S. Government electronic docket site. [NOTE: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments. All electronic submissions must be made to the U.S. Government electronic docket site at [www.regulations.gov](http://www.regulations.gov). Commenters should follow the directions below for mailed and hand-delivered comments.]

2. *Fax:* 202-493-2251.

3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12-140, Washington, DC 20590-0001.

4. *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

See the **SUPPLEMENTARY INFORMATION** section for detailed instructions on how to submit comments and access docket information.

#### FOR FURTHER INFORMATION CONTACT:

Victor Austin, Office of Planning and Environment (TPE), Federal Transit Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, phone: 202-366-2996, or e-mail, [victor.austin@dot.gov](mailto:victor.austin@dot.gov). Legal questions may be addressed to Christopher Van Wyk, Office of Chief Counsel (TCC), Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, phone: 202-366-1733, or e-mail [christopher.vanwyk@dot.gov](mailto:christopher.vanwyk@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comment Instructions and Docket Access Information

*Instructions:* You must include the agency name (Federal Transit Administration) and Docket number (FTA-2007-29126) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be available to Internet users and will be posted without change to [www.regulations.gov](http://www.regulations.gov). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, April 11, 2000).

*Docket:* For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

This proposed circular revises existing Circular 8100.1B, "Program

Guidance and Application Instructions for Metropolitan Planning Program Grants," dated October 25, 1996. FTA proposes to revoke Circular 8200.1, "Program Guidance and Application Instructions for State Planning and Research Program Grants," dated December 27, 2001, and place the updated content from this document, along with the updated content from the Metropolitan Planning Program (MPP), into the revised Proposed Circular 8100.1C, which will be renamed as "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."

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#### I. Overview

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, August 10, 2005) updated Chapter 53 of Title 49 of the United States Code incorporating new requirements for metropolitan and statewide transportation planning (49 U.S.C. 5303 and 5304). On February 14, 2007, FTA and the Federal Highway Administration (FHWA) published a **Federal Register** notice announcing a final rule, "Statewide Transportation Planning; Metropolitan Transportation Planning," (72 FR 7224, February 14, 2007) which updated 23 CFR parts 450 and 500 and 49 CFR part 613 to include new provisions required by SAFETEA-LU.

Over the past two years, FTA and FHWA worked cooperatively to prepare a new joint regulation on Metropolitan Transportation Planning and Statewide Transportation Planning which governs the work performed under the Metropolitan Planning Program (MPP) at 23 CFR part 450 and the State Planning and Research Program (SPRP) at 23 CFR part 420 (adopted by FTA at 49 CFR part 613). The final rule was published in the **Federal Register** February 14, 2007, and provides the procedural basis for fully implementing the planning provisions set forth in legislation and makes the Metropolitan Transportation Planning and Statewide Transportation Planning regulations