



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA- 2013-0010]

Urbanized Area Formula 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 website, proposed guidance, in the form of a circular, to assist recipients in their implementation of the section 5307 Urbanized Area Formula Program. The purpose of this proposed circular is to provide recipients of FTA financial assistance with instructions and guidance on program administration and the grant application process. The proposed revisions to the existing circular are a result of changes made to the Urbanized Area Formula Program by the Moving Ahead for Progress in the 21st Century Act. By this notice, FTA invites public comment on the proposed circular.

DATE: Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number FTA-2013-0010 by any of the following methods:

- Federal eRulemaking Portal: Submit electronic comments and other data to

<http://www.regulations.gov>.

- U.S. Mail: Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building, Ground Floor, at 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493-2251.

Instructions: The agency name (Federal Transit Administration) and Docket Number (FTA-2013-0010) must be included at the beginning of each submission. If sent by mail, please submit two copies. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties mailing comments should consider using an express mail firm to ensure their prompt filing. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may review USDOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000, at 65 FR 19477-8 or <http://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For program matters, Adam Schildge, Office of Project Management, (202) 366-0778 or Adam.Schildge@dot.gov. For legal matters, Rita Maristch, Office of Chief Counsel, (215) 656-7249 or Rita.Maristch@dot.gov. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Overview

This notice provides a summary of proposed changes to FTA Circular 9030.1D, Urbanized Area Formula Program: Program Guidance and Application Instructions. The section 5307 Urbanized Area Formula Program authorizes Federal financial assistance for public transportation in urbanized areas for capital and planning projects, job access and reverse commute projects, and, in some cases, operating assistance. This program was affected by the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141), signed into law on July 6, 2012. FTA is updating the existing circular, 9030. 1D, published on May 10, 2010, to reflect changes in the law.

MAP-21 made several significant changes to Federal transit laws that are applicable across all of FTA’s financial assistance programs and reflected in the proposed circular. These changes further several important goals of the Department of Transportation (DOT). Most

notably, MAP-21 grants FTA significant new authority to oversee and regulate the safety of public transportation systems throughout the United States. The Act also puts new emphasis on restoring and replacing the Nation's aging public transportation infrastructure by establishing a new State of Good Repair formula program and new asset management requirements. In addition, it aligns Federal funding with key performance goals and tracks recipients' progress towards these goals. Finally, MAP-21 improves the efficiency of program administration through program consolidation and streamlining.

In addition to MAP-21 updates addressed above, and outlined below, the proposed circular updates the organization and wording of the existing circular to improve clarity and to achieve consistency with FTA's other guidance circulars and to reflect other changes made by MAP-21, specifically to the 5307 program. When adopted, the final circular will supersede the existing circular.

This document does not include the proposed circular for which FTA seeks comment; however, an electronic version is available on FTA's website, at www.fta.dot.gov. Paper copies may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865.

Following, is a chapter-by-chapter analysis of the substantive changes to the existing circular's content.

II. Chapter-by-Chapter Analysis

A. Chapter I – Introduction and Background

Chapter I of the circular is an introductory chapter that covers general information about FTA, provides a brief history of the 5307 program, and defines terms applicable across all FTA programs.

(1) Definitions

The proposed circular updates the definitions section to include changes and additions made by MAP-21. The following statutory definitions were amended by MAP-21:

- Associated transit improvements (previously “transit enhancements”)
- Bus rapid transit (BRT) system
- Commuter highway vehicle or vanpool vehicle
- Disability
- Fixed guideway
- Job access and reverse commute project
- Low income individual
- Private provider of public transportation by vanpool
- Public transportation
- Regional transportation planning organization
- Senior

Definitions have also been added to this section for terms that are unclear or currently undefined. Where applicable, we have used the same definitions found in rulemakings or other circulars to ensure consistency.

(2) Program History

This section provides an overview of each piece of legislation that has authorized the 5307 Program. This section has been revised to incorporate a summary of changes made by MAP-21.

B. Chapter II – Program Overview

Chapter II covers general information about the 5307 Program.

(1) Statutory Authority

This section updates the exiting circular to include references to MAP-21. MAP-21 authorized the award of 5307 program funds for certain new and redefined activities including, job access reverse commute projects, operating costs, and associated transit improvements, each of which is discussed further, below.

(2) Census Designation of Urbanized Areas (UZA)

The proposed circular adds this new section which describes the designation of UZAs based on the 2010 Census. Beginning this fiscal year (FY), FY 2013, FTA incorporated the results of the 2010 Census into its formula apportionments. The 2010 Census data shows that the number of UZAs increased from 465 in 2000 to 497 in 2010, and the total population residing in UZAs increased from 195 to 223 million, an increase of approximately 12 percent. As a result, some UZAs have crossed statutorily-mandated population thresholds resulting in changes to the amount of formula funds that those areas can receive, and possibly resulting in changes to eligible uses of those funds.

(3) FTA Role in Program Administration

This section clarifies that funds are apportioned to States and Designated Recipients (DR), only - States for small UZAs (areas between 50,000 and 200,000 in population), and DRs for large UZAs (areas over 200,000 in population) . This section also discusses the requirement that large UZA's ensure that the annual Program of Projects complies with the requirements that a portion of apportioned funds be spent on security and associated transit improvement projects. FTA believes that its previous interpretation of these requirements was inaccurate, and now interprets each provision to require their application at the UZA level. In other words, each 1 percent set aside will apply to the 5307 apportionment to the UZA, and not to each 5307 DR. This is because the UZA, and not the designated recipient, is required to certify that 1 percent of

the apportionment is set aside for each of these two purposes. Once the DR receives the apportionment, it will allocate the 1 percent requirement among the direct recipients (transit agencies).

(4) Direct Recipient and Sub-recipient Eligibility

This new section clarifies the process for selecting and establishing a Designated Recipient (DR), and clarifies the process for allocating funds to direct recipients and for sub-awarding funds to subrecipients. Direct recipients must be a public entity that is legally eligible to apply for FTA funding. If certain requirements are met, a public agency may apply for some or all of a UZA's apportionment.

(5) Subrecipient Arrangements

Because Congress has repealed the former section 5316 JARC program and included job access reverse commute projects within the list of eligible 5307 activities, FTA believes that Congress intended for entities eligible under the former JARC program to be eligible to use MAP-21 5307 program funds for job access reverse commute projects; this would include private non-profit operators of job access reverse commute projects as subrecipients.

(6) Transportation Management Areas (TMAs)

TMAs are not synonymous with large UZAs, which is how the term is currently used in the existing circular. This circular explains that TMAs apply only to the planning requirements.

(7) Relationship to Other Programs

This section adds a discussion on both repealed SAFETEA-LU programs for which funds may still be available, and new MAP-21 programs. The discussion on FHWA flexible funds in the existing circular has been moved to chapter V.

(a) Repealed SAFETEA-LU Programs

This section discusses the relationship between programs repealed by MAP-21 and the 5307 program as amended by MAP-12. Funds previously authorized for programs that were repealed by MAP-21 may remain available for their originally authorized purposes until the statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated.

The following programs were repealed by MAP-21:

- Clean Fuels Grant Program (former section 5308)
- Bus and Bus Facilities Discretionary Program (former section 5309)b(3)
- Job Access and Reverse Commute Program (former section 5316)
- Paul S. Sarbanes Transit in the Parks Program (former section 5320)
- New Freedom Program (former section 5317)
- Alternatives Analysis Program (former section 5339)

(b) New MAP-21 Programs

This section discusses the relationship between the 5307 program, as amended by MAP-21, and the following programs that are either completely new or were significantly modified by MAP-21.

- Fixed Guideway Capital Investment Program (5309, New and Small Starts, and Core Capacity Improvements)
- Bus and Bus Facilities Formula Program (5339)
- State of Good Repair Formula Program (5337)
- Rural Area Formula Program (5311)
- Transit Oriented Development Pilot Program (section 20005(b) of MAP-21)
- Transportation Alternatives Program (23 U.S.C. 213(b))

- Federal Lands Access Program (23 U.S.C. 204).

C. Chapter III – General Program Information.

This chapter discusses in more detail the apportionments for the 5307 program. It also discusses the Federal share of projects costs, local share, other sources of financing, and the new Passenger Ferry Discretionary Grant Program. Discussion of eligible projects was moved from chapter III in the existing to chapter IV in the proposed circular.

(1) Apportionment of Program Funds

In the proposed circular, this section includes the revised apportionment calculations, including the new set-asides and formula calculations established by MAP-21. Section 5336(h) now provides that 3.07 % of section 5307 funds available for apportionment are allocated on the basis of low-income persons residing in urbanized areas, with 25 percent of these funds allocated to areas below 200,000 in population and the remaining 75 percent allocated to areas 200,000 and over in population. MAP-21 also increased the percentage of funds allocated on the basis of Small Transit Intensive Cities (STIC) factors from 1 to 1.5 percent. Finally, MAP-21 established a new 0.5 percent takedown from the 5307 program for the State Safety Oversight Grant Program and a \$30 million takedown for the new Passenger Ferry Discretionary Grant Program.

(2) Funds Availability

Generally, MAP-21 extended the number of years that apportioned funds remain available for obligation from 3 to 5 additional years from the year in which the funds were apportioned. As a result, most funds are now available for a total of 6 years including the year of apportionment.

(3) Passenger Ferry Grants Discretionary Program

This section of the proposed circular adds a brief introduction of the new Passenger Ferry Discretionary Grant Program. Each fiscal year, a total of \$30 million is authorized to be set aside from the 5307 program to support passenger ferry projects that will be selected on a competitive basis.

(4) Federal Share of Project Costs for Certain Projects – Americans With Disabilities Act, Clean Air Act

As a result of MAP-21, the Federal share of project costs is 85 percent for certain projects related to the Americans with Disabilities Act (ADA) and the Clean Air Act (CAA).

(5) Local Share of Project Costs

Generally, and consistent with MAP-21, the proposed circular does not change the local match requirements – there is a 20 percent local match requirement for capital assistance and a 50 percent requirement for operating assistance. However, MAP-21 expanded the category of funds that can be used as local match. In addition to those sources of local match previously authorized under SAFETEA-LU, local match may also be derived from the following newly authorized sources:

- Amounts appropriated or otherwise made available to a department or agency of the Government (other than DOT), such as Community Development Block Grant Funds administered by the Department of Housing and Urban Development.
- Any amount expended by providers of public transportation by vanpool for the acquisition of rolling stock to be used in the recipient's service area, excluding any amounts the provider may have received in Federal, State or local government assistance for such acquisition. The provider is required to have a binding agreement with the public transportation agency to provide service in the relevant UZA.

(6) Alternative Financing-Transportation Infrastructure Financing and Innovation Act
(TIFIA)

This section of the proposed circular updates the eligibility criteria for capital projects seeking TIFIA financing, pursuant to section 2002 of MAP-21 (23 U.S.C. 601 *et seq*). Eligible projects include any transit capital project which is anticipated to meet the statutory threshold size.

Chapter IV – Eligible Projects and Requirements

In the proposed circular, project eligibility and requirements was moved from chapter III into a new chapter IV. This chapter discusses the types of projects and activities that may be funded under the 5307 program.

(1) Joint Development Projects

This section has been revised to update the statutory citation, include a definition of joint development, and express the relationship between joint development and private sector participation.

(2) Clean Air Act (CAA) Projects

Vehicles powered by biodiesel fuel or clean fuel are no longer eligible CAA projects.

(3) Public Transportation Safety Certification Training

MAP-21 requires FTA to establish a Public Transportation Safety Certification Training Program. Once established, a recipient may use up to half of 1 percent of their 5307 apportionment towards safety certification training under 49 U.S.C. 5329(c).

(4) Operating Assistance

Recipients in urbanized areas under 200,000 in population may use 5307 program funds for operating assistance at a 50 percent Federal share. There is no cap to the amount that can be

used in these areas for operating assistance. Unless specifically authorized, recipients in urbanized areas of 200,000 or more in population are not permitted to use program funds for operating assistance.

Under MAP-21, a special rule allows recipients in urbanized areas with populations of 200,000 or above and that operate 100 or fewer buses in fixed route service during peak hours, to receive a grant for operating assistance subject to a maximum amount per system, subject to the following:

- Public transportation systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak service hours may receive operating assistance in an amount not to exceed 50 percent of the share of the apportionment that is attributable to such systems within the urbanized area, as measured by vehicle revenue hours.
- Public transportation systems that operate 75 or fewer buses in fixed route service during peak service hours may receive operating assistance in an amount not to exceed 75 percent of the share of the apportionment that is attributable to such systems within the urbanized area, as measured by vehicle revenue hours.

(5) Design and Art in Public Buildings

Under MAP-21, “public art” is no longer an eligible associated transit improvement (formerly “transit enhancement”). However, incorporation of design and artistic considerations into public transportation projects may still be an allowable cost, so long as it is an integral part of the project. For example, an artist may be employed as part of the construction design team, or art can be incorporated into functional elements such as walls, seating, lighting, or railings.

(6) Job Access Reverse Commute Projects

The SAFETEA-LU Job Access and Reverse Commute (JARC) Program, (former section 5316), was repealed by MAP-21; however, job access and reverse commute projects are now eligible under the 5307 program. A job access reverse commute project is a “transportation project to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations - 49 U.S.C. 5302(9).”

Each potential project must be for the “development” or “maintenance” of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related activities and also must be otherwise eligible under the 5307 Program. FTA defines “development of transportation services” to mean new projects that were not in service on October 1, 2012. Job access reverse commute projects eligible for funds under section 5307, as amended by MAP-21, must be designed for the target population. New job access and reverse commute projects may include the expansion or extension of an existing service, so long as the new service was designed to support the target populations; however, such projects are not required to be designed for the sole use of the target populations.

This section also proposes new policy that would eliminate from the list of eligible activities/expenses, the car loan program and expenses related to the voucher programs.

Although job access and reverse commute projects are not required to be developed through a coordinated planning process, the project must be identified by the MPO and DR as a job access and reverse commute project in the DR’s annual Program of Projects, which must be

developed in consultation with interested parties, published with the opportunity for comments, and subject to a public hearing.

The unobligated carryover balances of pre-MAP-21 JARC program funds may be obligated through the period of availability, but must follow the SAFETEA-LU requirements. For example, section 5316 JARC projects must still be derived from a human service public transportation coordinated plan and must also be selected by the DR through an area-wide or statewide competitive selection process. Although not required by law, FTA encourages recipients to continue to use the coordinated planning process to identify and develop job access and reverse commute projects for funding under Section 5307, as amended by MAP-21.

(7) Interest and Debt Financing-Debt Service Reserve

The proposed circular removes the section on Debt Service Reserve because MAP-21 repealed the 5307 debt service reserve pilot program at 49 U.S.C. 5323(e)(4)(A), as amended by SAFETEA-LU.

D. Chapter V – Planning and Program Development

This proposed new chapter would replace chapter V in the existing circular titled “Coordinated Planning.” Under SAFETEA-LU, certain eligible projects were required to be developed under a locally developed, coordinated planning process. Under MAP-21, coordinated planning is only a requirement of eligibility under the section 5310 program.

(1) Transportation Management Areas

This section of the proposed circular revises the discussion of TMAs for planning purposes. The proposed circular references the statutory definition of a TMA, which is a UZA with a population of over 200,000 individuals. There is also reference to the joint FTA/FHWA

transportation planning regulations at 23 C.F.R. part 40, which include guidelines on determining the boundaries of a of a Metropolitan Planning Area (MPA).

(2) Performance Based Standards

This new section of the proposed circular discusses the requirements of MAP-21's new broad performance management program which supports the seven national performance goals. The performance management framework attempts to improve project decision-making through performance-based planning and programming and through fostering a transparent and accountable decision-making process for MPOs, States, and providers of public transportation.

(3) Coordinated Planning

This section of the proposed circular updates the language on coordinated planning, which is no longer required for projects funded with 5307 Program funds. However, 5307 recipients who will apply for section 5310 funds are still required to participate in the local planning process for coordinated public transit-human services. Moreover, FTA strongly encourages 5307 recipients to engage in a coordinated planning process.

(4) Availability of FHWA "Flexible Funds" for Transit Projects

This section of the proposed circular clarifies the availability of FHWA funds for eligible transit projects. FHWA flexible funds may be available to FTA recipients for planning and capital projects, and operating expenses. This section also clarifies the requirements for transfer of Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds. Generally, funds appropriated for the 5307 program in in FY 2013 and beyond, are no longer authorized to be transferred to FHWA.

(5) Associated Transit Improvements

MAP-21 changed the term “transit enhancements” to “associated transit improvements.” An associated transit improvement is a project “designed to enhance public transportation service or use and that [is] physically or functionally related to transit facilities.” This section of the proposed circular discusses the requirements to expend a percentage of a urbanized area’s 5307 program funds on associated transit improvements and also discusses eligible projects.

As previously stated, public art and transit connections to parks within the recipient’s transit service area are no longer eligible projects. While Federal transit funds are no longer available to support public art in transit facilities, art can be incorporated into facility design, landscaping, and historic preservation.

(6) Public Transportation Security Projects

This section discusses the public transportation security project certification requirement. The proposed circular limits the list of eligible security projects to those explicitly referenced in MAP-21.

(7) Environmental

This section in the proposed circular has been revised to clarify that recipients should consult with FTA regarding the proper level of environmental review, prior to expending funds for a project.

(8) Undertaking Projects in Advance

The proposed circular revises this section to explain the different authorities that allow a recipient to incur costs on a project before grant approval, while still retaining their eligibility for reimbursement for eligibility after grant approval. The three types of authorities are Pre-award authority, letters of no prejudice (LONP), and advanced construction authority (ACA). This

section discusses the distinction among these three authorities and the terms and conditions that apply equally to all three.

E. Chapter VI- Program Management and Administrative Requirements

(1) Certifications Required by 49 U.S.C. 5307

The proposed circular updates this section to add the requirement that recipients certify compliance with 49 U.S.C. 5329(d), which requires recipients and States to develop and implement a Public Transportation Agency Safety Plan, and 49 U.S.C. 5326, which requires each recipient and subrecipient to develop a Transit Asset Management Plan.

(2) Expenditures on Public Transportation Security

This section discusses the public transportation security projects certification requirement. The security requirement applies to the DR on the UZA apportionment, and not to individual recipients. Therefore, the DR must complete this certification.

(3) FTA Electronic Grants Management System

In this section of the proposed circular, references to FTA's electronic grants management system –TEAM, have been removed in consideration of a new system, currently under development.

(4) Federal Funding Accountability and Transparency Act (FFATA) Requirement

The proposed circular adds this new section which discusses the statutory requirement that a recipient report information about each first tier sub-award over \$25,000 by the end of the month following the month the direct recipient makes any sub-award or obligation.

(5) National Transit Database (NTD) Reporting - Waivers

There are no longer any waivers; however, there is a reduced reporting requirement for small systems.

F. Chapter VII – Other Provisions

(1) State Safety Oversight

This section of the proposed circular clarifies the affect that MAP-21 has had on the State Safety Oversight (SSO) Program and the requirements of 49 C.F.R. 659. Section 5330, which authorizes the SSO Program, will be repealed three years from the effective date of the new regulations implementing the new section 5329 safety requirements. Until then, the current requirements of 49 C.F.R. 659 will continue to apply.

G. Tables, Graphs, and Illustrations

There are no proposed changes to the tables, graphs, and illustrations.

H. Appendices

There are no proposed changes to existing appendices.

Issued in Washington, DC, this __15th__ day of ____April_____, 2013.

Peter Rogoff
Administrator

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