



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2024-0004]

Rural Areas Formula Grant Programs Guidance Proposed Circular

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of proposed circular updates 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 an updated circular, to assist recipients in their implementation of the Rural Areas Formula Program and the rural component of the Buses and Bus Facilities Program. The purpose of these proposed updates is to provide recipients of FTA financial assistance with updated guidance on program administration. The proposed revisions to these circulars are a result of changes in the law since the last updates to both the Rural Areas and Buses and Bus Facilities circulars. By this notice, FTA invites public comment on the proposed circular.

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

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA-2024-0004. All electronic submissions must be made to the U.S. Government electronic site at <https://www.regulations.gov/>.

- 1) Federal eRulemaking Portal: Go to <https://www.regulations.gov/> and follow the online instructions for submitting comments.

- 2) Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- 3) Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- 4) Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2024-0004) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to <https://www.regulations.gov/> including any personal information provided and will be available to internet users. For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents and comments received, go to <https://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. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Jay Lindsey, Office of Program Management, phone, (202) 366-6299 or e-mail, Jay.Lindsey@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, phone, (202) 366-0944, or e-mail, Bonnie.Graves@dot.gov.

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I. Overview

The Federal Transit Administration’s (FTA) proposed circular, “Rural Areas Formula Grant Programs Guidance,” C 9040.1H, is a consolidation of guidance for the administration and preparation of grant applications for the Rural Areas Formula Grants Program under 49 U.S.C. 5311 (FTA circular 9040.1) and the rural area component of the Grants for Buses and Bus Facilities Program under 49 U.S.C. 5339(a) (FTA circular 5100.1). Additionally, this updated circular incorporates provisions of the FAST Act (Pub. L. 114–94), the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), and other changes in law, and includes program-specific guidance for these formula programs. Additional requirements for all grant programs are identified in FTA’s Award Management Requirements circular 5010.1. The availability of the

proposed 5010 circular and request for public comment was published in the Federal Register (89 FR 11334, Feb. 14, 2024) and is posted on <https://www.regulations.gov> in Docket FTA–2024–0003.

The proposed update to circular 9040.1 consolidates and summarizes programmatic information, streamlines pre-existing guidance from the two program circulars, and reduces duplication of information provided between the Rural Areas Formula Program circular and FTA’s other topic-specific circulars, including by moving certain text applicable to most or all of FTA’s grant programs to FTA’s Award Management Requirements circular 5010.1. Furthermore, the proposed circular incorporates statutory changes and clarifies a number of policy issues as interpreted and applied by FTA. Statutory changes for section 5311 include additional sources of local share; in-kind match for intercity bus service; and fund allocations for tribes. Statutory changes for section 5339(a) include the application of section 5311 requirements to section 5339 grants in rural areas; additional source for local share; additional eligible entities; and use of procurement tools authorized under section 3019 of the FAST Act. Policy clarifications address topics in the existing program circulars, including consolidation of grants to insular areas; eligible projects and activities for each formula program; operating assistance limitations and exceptions; capital cost of contracting; the role of transportation network companies in providing public transportation services; and period of availability to obligate funds flexed to FTA formula programs from the Federal Highway Administration (FHWA).

In addition to statutory and policy updates, the Office of Management and Budget (OMB) issued 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, also known as the Uniform Guidance, in December 2013, which superseded the Common Grant Rule, formerly codified at 49 CFR parts 18 and 19. Due to the timing of the last circular update and the effective date of the Uniform Guidance, FTA

circular 9040.1G continued to reference 49 CFR parts 18 and 19. FTA has updated these references, including definitions, in proposed circular 9040.1H.

This notice provides a summary of proposed changes to the current circular 9040.1G, “Formula Grants for Rural Areas: Program Guidance and Grant Application Instructions.” FTA invites public comment on the substance and format of the proposed circular.

A. Chapter I – Introduction and Background

Due to the consolidation of the two program circulars, definitions and program descriptions were compared and revised for consistency with proposed updates to circular 5010.1E “Award Management Requirements,” circular 9030.1E “Formula Grants for Urbanized Areas,” and circular 9070.1G “Enhanced Mobility of Seniors and Individuals with Disabilities.” FTA proposes to amend the definitions section for consistency, clarification, and to reflect changes in statutes and other authorities. For example, FTA has updated the following terms: “Capital Asset” is modified for consistency with Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB), Financial Accounting Standards Board (FASB), and FTA’s Uniform System of Accounts. “Clean Fuel Bus” recognizes low or no emissions technologies other than full electric and hybrid electric buses. “Rehabilitate” is expanded to include applicability to bus facilities and amended to clarify that not all rehabilitative activities must be a restoration to original condition, to more accurately reflect the term’s broad usage in 49 U.S.C. 5339. “Urbanized Area” is updated to reflect changes in designation by the U.S. Census Bureau, which no longer utilizes “Urbanized Area” (UZA) but instead uses “Urban Area,” as defined by the Secretary of Commerce. “Useful Life” now applies to real property and other capital assets. Because useful life depends on depreciation and estimated time in use, consideration of useful life varies according to the type of asset in question.

B. Chapter II—Program Overview

Chapter II of the proposed circular contains information related to program goals, State and FTA roles in program administration, and relationship of the section 5311 program to other programs. These sections are in the current 9040.1G circular and the language is generally unchanged, with updates where appropriate. Consistent with the consolidation of section 5339 program requirements into the new circular, the updated chapter contains information related to section 5339 as well as section 5311. FTA proposes to add a section on program measures with broad measures for both section 5311 and section 5339. In addition, FTA proposes a new section on program oversight.

C. Chapter III – General Program Information

FTA proposes substantially reorganizing the material found in Chapters III-V of circular 9040.1G, consistent with the reorganization of the Urbanized Area Program circular. Material in Chapters III-V of circular 9040.1G not moved to circular 5010.1 generally is in Chapters III-VI of the proposed circular. For example, some of the information contained in Chapter III of the current circular remains in this chapter, and other information moves to Chapter IV. Eligible recipients, apportionment of funds, and local share of project costs remain in Chapter III, but in a different order. FTA has clarified in the updated circular that local share is waived for insular areas. FTA proposes moving eligible activities, including discussions related to job access/reverse commute, operating, administrative, and capital expenses, to Chapter IV. A new section in Chapter III discusses the eligibility of rural funds for use in urbanized areas. In addition, we have included a section on taxis and transportation network companies, and when these entities may be subrecipients or contractors. This section has been in FTA's 9070.1 circular for many years and is slightly modified for the section 5311 program. FTA has historically treated transportation network companies (TNCs) the same as taxis, given they both provide on-demand, exclusive ride service, primarily in automobiles. Where taxis and TNCs provide shared ride service, they may be subrecipients. Exclusive-ride companies may be contractors for job access reverse commute (JARC) service under section 5311, as eligible JARC

activities include service that does not meet the definition of “public transportation” in 49 U.S.C. 5302(15).

D. Chapter IV – Eligible Projects and Requirements

Chapter IV in circular 9040.1G is titled “Program Development.” As stated above, FTA proposes moving some of the information found in Chapter III of the existing circular to Chapter IV. In addition, we propose moving much of the information found in Chapter IV of circular 9040.1G to Chapter V of circular 9040.1H. Chapter IV in the updated circular includes information related to eligible projects. Given the consolidation of the Rural Areas and Buses and Bus Facilities circulars, this chapter specifies which activities are eligible under each of the programs. Capital leases to replace vehicles are eligible, and in the event a contractor is used to provide service, the actual costs of a capital lease can be removed from the operating contract and funded at an 80 percent federal share, or the recipient can utilize capital cost of contracting. FTA proposes two new sections: employee training expenses, and interest and debt financing as an eligible cost. FTA proposes moving information related to certifications and assurances, pre-award authority and grant award and project approval to FTA circular 5010.1.

E. Chapter V – Planning and Program Development

The proposed circular moves much of the information found in Chapter V of circular 9040.1G, to FTA’s circular 5010.1, Award Management Requirements, including information on procurement, financial management, data universal numbering system (DUNS), system for awards management (SAM), electronic clearinghouse operation (ECHO), and other topics that apply to all FTA grant programs. Most of the information not moved to circular 5010.1 is moved to Chapter VI of the proposed circular 9040.1H, including satisfactory continuing control, state financial records, reporting requirements and the state management plan.

FTA proposes moving much of the information in Chapter IV of circular 9040.1G, including fair and equitable distribution of funds, planning requirements, performance-based

planning, intercity bus consultation, program of projects, to proposed Chapter V of circular 9040.1H. Chapter V includes a reference to pre-award authority, but the full discussion is included in FTA Circular 5010.1. The proposed Chapter V also includes information related to coordinated planning, availability of FHWA funds flexed to transit projects, transit asset management requirements, public transit safety requirements, and environmental considerations. As with other chapters, FTA has updated this chapter to include references to section 5339 as appropriate. The chapter contains updates and clarifications to the program of projects and coordinated planning requirements. FTA proposes updating the section describing flex funding from FHWA and includes a period of availability for funds that are transferred. FTA proposes moving sections on transit asset management and safety from Chapter XI of circular 9040.1G to this chapter and has updated the text consistent with changes in law and with the transit asset management and safety regulations issued after the last circular update.

F. Chapter VI – Program Management and Administrative Requirements

Chapter VI of circular 9040.1G is the state management plan; FTA proposes moving this to Chapter VII. The new Chapter VI contains information on satisfactory continuing control and responsibility, state financial records, construction management and oversight, reporting requirements, state management plan, and FTA state management plan review. FTA proposes adding references to section 5339 as appropriate; the substance of these sections is substantially similar to these sections in the current circulars.

G. Chapter VII – State Management Plan

Proposed Chapter VII is substantially similar to Chapter VI of circular 9040.1G, except it adds references to section 5339 and removes the section on State Management Plan Reviews, which is moved to Chapter VI. Thus, Chapter VII includes general information, a statement regarding the purpose of state management plans, the contents of state management plans, and making state management plan revisions.

H. Chapter VIII – Appalachian Development Public Transportation Assistance Program (ADTAP)

Proposed Chapter VIII is substantially similar to Chapter VII of circular 9040.1G. FTA proposes removing text related to eligible projects, local share, and planning requirements, and instead includes the statement that all requirements and eligibilities for section 5311 apply to ADTAP funds.

I. Chapter IX – Intercity Bus

Proposed Chapter IX is substantially similar to Chapter VIII in the current FTA circular 9040.1G, with the exceptions stated here. FTA has updated the section on in-kind match to reflect a change in the law. Intercity bus projects that include both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, may use all operating and capital costs of unsubsidized segments, whether or not offset by revenue from such service, as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under section 5311(f). This section provides an example of how to calculate this in-kind match. In the section describing eligible services and service areas, FTA clarifies long-standing policy that a service is considered “commuter service” (and therefore does not meet the 15 percent intercity bus requirement of section 5311(f)) if at least 50 percent of passengers make a return trip on the same day across all service runs for one year. Finally, FTA has added text stating that private operators providing intercity service using vehicles other than over-the-road-buses are subject to the U.S. DOT Americans with Disabilities Act (ADA) regulations governing fixed route or demand responsive service by private entities.

J. Chapter X – Rural Transportation Assistance Program (RTAP)

Proposed Chapter X is substantially similar to Chapter IX in circular 9040.1G, except the section on the national program is enhanced to include more specific elements.

K. Chapter XI – Public Transportation on Indian Reservations

FTA proposes moving most of the content of Chapter XI (“Other Provisions”) in circular 9040.1G to circular 5010.1, as the cross-cutting requirements summarized in that chapter apply to most or all of FTA’s grant programs. Proposed Chapter XI is substantially similar to Chapter X in circular 9040.1G, with the exceptions stated here. There is a new paragraph on tribal self-governance, and how funds provided to a tribe with a self-governance compact between the tribe and U.S. DOT will be administered. In the section on eligible services and service areas, FTA clarifies that funds provided to tribes must be used to serve the general population in rural areas, and not just tribal members. In the section on matching requirements, the requirement has changed from an automatic 10 percent local match requirement for competitive funds to a variance depending on the allocation year. Local match requirements will be stated in notices of funding opportunity. Finally, FTA has updated the section related to indirect cost rate.

L. Appendices

FTA proposes to move most of the appendices currently found in circular 9040.1G to FTA circular 5010.1. The remaining appendices include Appendix A, Procedures Related to Flexible Funding, and Appendix B, Sample Intercity Bus Certification. Appendix A is updated consistent with changes in the law and adding a period of availability to funds flexed from FHWA. Appendix B is substantially unchanged from the intercity bus certification appendix in circular 9040.1G.

FTA invites public comment on the structure and content of proposed circular 9040.1H.

After a review and consideration of the comments provided on this proposed circular, FTA will publish the updated circular on its website and will announce the availability of the updated circular and the response to comments in the *Federal Register*.

Note that on October 5, 2023, the Office of Management and Budget (OMB) published a notice of proposed rulemaking in the *Federal Register* to revise 2 CFR part 200 and other OMB guidance for grants and agreements (88 FR 69390). FTA intends to incorporate any changes in 2 CFR part 200 to the extent OMB issues the final rule before FTA publishes the final updated circular.

Veronica Vanterpool,
Acting Administrator.

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