

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## 49 CFR Part 639

[Docket No. FTA-98-4407]

RIN 2132-AA65

## Capital Leases

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule

**SUMMARY:** This final rule implements the Transportation Equity Act for the 21st Century, Public Law 105-178 (TEA-21), which allows all Federal Transit Administration (FTA) capital grant funds to be used for leasing facilities and equipment if a lease is more cost effective than purchase or construction. Before the enactment of TEA-21, recipients were permitted to lease assets only with funds received under 49 U.S.C. 5307. This rule amends FTA's leasing regulation to extend this option to all FTA funds, to the extent a recipient meets all other regulatory requirements.

**EFFECTIVE DATE:** This rule is effective January 11, 1999.

## SUPPLEMENTARY INFORMATION:

## A. Background

Under 49 U.S.C. 5307, Federal funds are provided to urbanized areas on the basis of a statutory formula. These funds are available for the acquisition or construction of mass transportation facilities and equipment ("capital assistance grants"), as well as, beginning in fiscal year 1999, for the payment of a portion of the net operating cost of mass transportation facilities and equipment ("operating assistance grants") in areas of less than 200,000 in population.

Historically, few Federal Transit Administration (FTA) grantees leased capital assets, because under Office of Management and Budget cost principles (OMB Circular A-87, "Cost Principles for Grants to State and Local Governments") a significant portion of lease costs (as much as forty percent) representing imputed interest was ineligible for reimbursement.

In 1987, section 308 of the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100-17 (STURAA), expressly authorized the use of section 5307 capital assistance funds to acquire facilities and equipment by lease where leasing is more cost effective than purchase or construction. As explained in the accompanying Senate Report, section 308

Permits grantees to use [section 5307] grant funds to lease major capital cost items such as computers, maintenance of way and other heavy equipment, maintenance of effort rail equipment, radio equipment, bus garages, property or structures for park and ride, and other buildings or facilities used for mass transit purposes. The Committee recognizes that it is often more cost effective for grantees to lease rather than purchase major capital items. Leasing arrangements can also provide transit authorities with flexibility that is needed, for example, to maintain their communications and computing equipment or to adapt buildings and other facilities to changing needs. By including this section, the Committee intends to help grantees better manage their operations and conduct long-term and short-term planning. S. Rep. No. 3, 100th Cong., 1st Sess. 6 (1987).

On October 15, 1991, FTA issued 49 CFR Part 639 (56 F.R. 51786), which implements section 308. The rule sets out the factors for determining whether leasing is more cost effective than purchase or construction of such items. In accordance with section 308, sections 639.1, 639.3, 639.5, and 639.13(a) of the regulation limit eligibility for the award of capital leasing funds to requests for assistance under section 5307.

## B. Section 3003 of TEA-21

Section 3003 of the Transportation Equity Act for the 21st Century, Public Law 105-178 (TEA-21), amends 49 U.S.C. 5302(a)(1) by adding, *inter alia*, the following subsection to the definition of "capital project":

(F) Leasing equipment or a facility for use in mass transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost effective than purchase or construction.

Section 3003 therefore makes all leasing arrangements for mass transit projects that meet FTA's cost-effectiveness criteria eligible for capital funding. Moreover, section 3003 does not limit eligibility for capital lease funding to requests for assistance under section 5307, but allows all categories of FTA funds to be used for leasing purposes, to the extent that they meet the regulatory requirements. FTA is thus amending 49 CFR Part 639 to reflect this expansion of its capital leasing authority.

## C. FTA's Final Action

In keeping with section 3003 of TEA-21, FTA is amending 49 CFR 639.1, 639.3, 639.5 and 639.13(a) to recognize that all categories of FTA funds, and not merely section 5307 block grant formula funds, may be used to acquire equipment and facilities under leases that meet FTA's cost-effectiveness criteria.

## Regulatory Impacts

## A. Regulatory Analyses and Notices

FTA has determined that this action is not significant under Executive Order 12866 or the Department of Transportation regulatory policies and procedures. Because this rule merely expands the categories of FTA grant funds eligible for capital leasing and does not make substantive changes in evaluation criteria, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

## B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96-354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because it gives section 5311 recipients an option not currently extended to them, which is to lease mass transit equipment or facilities when it is more cost effective than purchasing them.

## C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

## List of Subjects in 49 CFR Part 639

Government contracts, Grant programs—transportation, Mass transportation. Accordingly, for the reasons described in the Preamble of this document, FTA is proposing to amend Title 49, Code of Federal Regulations, Part 639 as follows:

## PART 639—[AMENDED]

1. The authority citation of Part 639 is revised to read as follows:

**Authority:** 49 U.S.C. 5302; 49 CFR 1.51.

2. Section 639.1 is revised to read as follows:

## § 639.1 General overview of this part.

This part contains the requirements to qualify for capital assistance when leasing facilities or equipment under the Federal transit laws. This part is set out in four subparts, with subpart A containing general information on scope and definitions. Subpart B contains the principal requirements of this part, including eligibility requirements, the self-certification system used, and identification of the various forms of leases and grants that are eligible under

the program. Subpart B also contains a section on other Federal requirements that may apply. Subpart C includes the actual calculations that each recipient should undertake before certifying that a lease is cost-effective. Finally, subpart D contains requirements on early lease termination and project management in general.

3. Section 639.3 is revised to read as follows:

**§ 639.3 Purpose of this part.**

This rule implements section 3003 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178). Section 3003 amended section 5302 of Chapter

53 of Title 49 of the United States Code to allow a recipient to use capital funds to finance the leasing of facilities and equipment on the condition that the leasing arrangements are more cost effective than purchase or construction.

4. Section 639.5 is revised to read as follows:

**§ 639.5 Scope of this part.**

This part applies to all requests for capital assistance under Chapter 53 of Title 49 of the United States Code where the proposed method of obtaining a capital asset is by lease rather than purchase or construction.

5. Section 639.13(a) is revised to read as follows:

**§ 639.13 Eligible types of leases.**

(a) General. Any leasing arrangement, the terms of which provide for the recipient's use of a capital asset, potentially is eligible as a capital project under Chapter 53 of Title 49 of the United States Code, regardless of the classification of the leasing arrangement for tax purposes.

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Issued on: December 7, 1998.

**Gordon J. Linton,**  
*Administrator.*

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