

**§ 633.27**

(j) Criteria and procedures to be used for testing the operational system or its major components;

**§ 633.27 Implementation of a project management plan.**

(a) Upon approval of a project management plan by the Administrator the recipient shall begin implementing the plan.

(b) If a recipient must modify an approved project management plan, the recipient shall submit the proposed changes to the Administrator along with an explanation of the need for the changes.

(c) A recipient shall submit periodic updates of the project management plan to the Administrator. Such updates shall include, but not be limited to:

- (1) Project budget;
- (2) Project schedule;
- (3) Financing, both capital and operating;
- (4) Ridership estimates, including operating plan; and

(5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.

(d) A recipient shall submit current data on a major capital project's budget and schedule to the Administrator on a monthly basis.

**§ 633.29 PMP waivers.**

A waiver will be considered upon initiation by the grantee or by the agency itself. The Administrator may, on a case-by-case basis, waive:

(a) Any of the PMP elements in § 633.25 of this part if the Administrator determines the element is not necessary for a particular plan; or

(b) The requirement of having a new project management plan submitted for a major capital project if a recipient seeks to manage the major capital project under a previously-approved project management plan.

**PART 639—CAPITAL LEASES**

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AUTHORITY: 49 U.S.C. 5302; 49 CFR 1.51.

SOURCE: 56 FR 51794, Oct. 15, 1991, unless otherwise noted.

**Subpart A—General**

**§ 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.

[63 FR 68366, Dec. 10, 1998]

**§ 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.

[63 FR 68367, Dec. 10, 1998]

#### § 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.

[63 FR 68367, Dec. 10, 1998]

#### § 639.7 Definitions.

In this part:

*Applicant* is included in the term “recipient”.

*Capital asset* means facilities or equipment with a useful life of at least one year, which are eligible for capital assistance.

*Capital assistance* means Federal financial assistance for capital projects under section 9 of the FT Act.

*Capital lease* means any transaction whereby the recipient acquires the right to use a capital asset without obtaining full ownership regardless of the tax status of the transaction.

*Equipment* means non-expendable personal property.

*Facilities* means real property, including land, improvements and fixtures.

*Interest rate* means the most advantageous interest rate actually available to the recipient in the market.

*Present value* means the value at the time of calculation of a future payment, or series of future payments discounted by the time value of money as represented by an interest rate or similar cost of funds.

*Recipient* means an entity that receives Federal financial assistance from FTA, including an entity that receives Federal financial assistance from FTA through a State or other public body. In this part, a recipient includes an applicant for Federal financial assistance.

*FT Act* means the Federal Mass Transit Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

*FTA* means the Federal Transit Administration.

### Subpart B—Requirements

#### § 639.11 Lease qualification requirements.

(a) A lease may qualify for capital assistance if it meets the following criteria:

(1) The capital asset to be acquired by lease is otherwise eligible for capital assistance;

(2) There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect unless as determined pursuant to § 639.13(b); and

(3) Lease of the capital asset is more cost-effective than purchase or construction of the asset, as determined under subpart C of this part.

(b) Once a lease has been qualified for capital assistance, it need not be re-qualified absent an affirmative act or omission by the recipient that vitiates the cost-effectiveness determination.

#### § 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.

(b) *Special circumstances.* A recipient may request FTA to determine the eligibility of a certain financial arrangement if the recipient believes it might not meet the requirements of this part.

(c) *Lump sum lease.* A recipient that wishes to enter into a lease which requires the draw down of a single lump sum payment at the inception of the lease (or payments in advance of the incurrence of costs) rather than periodic payments during the life of the lease must notify FTA prior to execution of the lease concerning how it will ensure satisfactory continuing control of the asset for the duration of the lease. FTA has the right to disapprove any arrangements where it has not been demonstrated that the recipient will have control over the asset. FTA may require the recipient to submit its cost-effectiveness comparison for review.

(d) *Pre-existing lease.* A lease entered into before grant approval, or before