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 November 14, 1991 may be eligible for capital assistance for costs incurred after approval of such a lease by FTA under this part, if

(1) The lease is otherwise eligible under this part;
(2) The recipient can demonstrate that the lease, when entered into, was more cost effective than purchase or construction; and
(3) The procurement of the asset by lease was in accordance with Federal requirements that applied at the time the procurement tool place.

§ 639.17 Eligible lease costs.

(a) All costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance, including, but not limited to—

(1) Finance charges, including interest;
(2) Ancillary costs such as delivery and installation charges; and
(3) Maintenance costs.
(b) Any asset leased under this part must be eligible for capital assistance under a traditional purchase or construction grant.

§ 639.19 Other Federal requirements.

(a) A recipient of capital assistance for a capital lease is subject to the same statutory and administrative requirements as a recipient who purchases or constructs a capital asset.

(b) A lessor of a capital lease is subject to the same statutory and administrative requirements as a direct seller of the same capital asset would be when the lessor—

(1) Purchases or constructs a capital asset in contemplation of leasing it to a recipient; or
(2) Modifies an existing capital asset in contemplation of leasing it to a recipient.

Subpart C—Cost-Effectiveness

§ 639.21 Determination of cost-effectiveness.

(a) To qualify a lease for capital assistance, a recipient must—

(1) Make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it; and
(2) Certify to FTA before entering into the lease or before receiving a capital grant for the asset, whichever is later, that obtaining the asset by lease is more cost-effective than purchase or construction of such asset.

(b) For purposes of this part, obtaining the asset by lease is more cost-effective than purchase or construction when the lease cost calculated under § 639.23 of this part is less than the purchase cost calculated under § 639.23 of this part.

(c) If a recipient is unable to perform the prescribed cost-effectiveness comparison as described in this subpart, it may ask FTA to approve an alternate form of cost-effectiveness evaluation.

§ 639.23 Calculation of purchase or construction cost.

(a) For purposes of this subpart, the purchase or construction cost of a capital asset is—

(1) The estimated cost to purchase or construct the asset; plus
§ 639.31 Early lease termination or modification.

(a) Except as provided in paragraph (c) of this section, if a capital lease under this part is terminated or its terms substantially modified before the end of the period used in the cost-effectiveness evaluation, or if the recipient by an affirmative act or omission vitiates the cost-effectiveness determination of the lease, future lease costs will no longer qualify as eligible capital expenses. In addition, the recipient must reimburse the project—

(1) Any Federal funds paid for the portion of the lease term eliminated by early termination; and

(2) The Federal share of the excess, if any, of the present value of lease costs, which exceeds the purchase costs as calculated under subpart C of this part for the period of the lease up to the point of termination.

(b) Penalties resulting from early termination of a capital lease under this part are not eligible for Federal financial assistance.

(c) Paragraph (a) of this section does not apply if a lessor defaults on or otherwise does not meet its obligations under the capital lease and the recipient takes appropriate action to ensure...