

(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 quarterly basis for the purpose of reviewing compliance with the project management plan, except that the Administrator may require submission more frequently than on a quarterly basis if the recipient fails to meet the requirements of the project management plan and the project is at risk of materially exceeding its budget or falling behind schedule. Budget and schedule changes will be analyzed on a case-by-case basis, but FTA generally will consider any cost increase or schedule delay exceeding five percent as a material change. Oversight of projects monitored more frequently than quarterly will revert to quarterly oversight once the recipient has demonstrated compliance with the project management plan and the project is no longer at risk of materially exceeding its budget or falling behind schedule.

§ 633.29 [Reserved]

PART 639 [RESERVED]

PART 640—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

AUTHORITY: Secs. 1501 *et seq.*, Pub. L. 105-178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181-189 and 315; 49 CFR 1.51.

§ 640.1 Cross-reference to credit assistance.

The regulations in 49 CFR part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105-178, 112 Stat. 107, 241.

[64 FR 29753, June 2, 1999]

PART 650—PRIVATE INVESTMENT PROJECT PROCEDURES

Subpart A—General Provisions

- Sec.
650.1 Purpose.
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- 650.31 Application process.

AUTHORITY: Sec. 20013(b)(5), Pub. L. 112-141, 126 Stat 405; 49 CFR 1.91.

SOURCE: 83 FR 24677, May 30, 2018, unless otherwise noted.

Subpart A—General Provisions

§ 650.1 Purpose.

This part establishes private investment project procedures that seek to identify and address Federal Transit Administration requirements that are impediments to the greater use of public-private partnerships and private investment in public transportation capital projects, while protecting the public interest and any public investment in such projects.

§ 650.3 Applicability.

This part applies to any recipient subject to 49 U.S.C. chapter 53 that funds a public transportation capital project with Federal financial assistance under 49 U.S.C. chapter 53, the Transportation Infrastructure Finance and Innovation Act (TIFIA) (23 U.S.C. 181-189, 601-609), the Railroad Rehabilitation and Improvement Financing (RRIF) program (45 U.S.C. 821-823), or with any other Federal financial assistance.

§ 650.5

§ 650.5 Definitions.

All terms defined in 49 U.S.C. chapter 53 are applicable to this part. The following definitions also apply to this part:

Administrator means the Administrator of the Federal Transit Administration.

Application means the formal documentation of an applicant's request to modify FTA requirements for an eligible project.

Eligible project means any surface transportation capital project that is subject to 49 U.S.C. chapter 53, included in the statewide long-range transportation plan or the metropolitan transportation plan, as those terms are defined in 23 CFR part 450, and that will be implemented as a public-private partnership, a joint development, or with other private sector investment.

FTA means the Federal Transit Administration.

FTA requirements means, for purposes of this part, existing FTA regulations and mandatory provisions of practices, procedures or guidance documents, including circulars.

Joint development has the meaning ascribed to it in FTA Circular 7050.1 "Federal Transit Administration Guidance on Joint Development" and, for purposes of this part, includes private sector contributions, whether in the form of cash investment, capital construction contributed at the private sector's cost or other contribution determined by the Administrator to qualify.

Other private sector investment means a financial or capital contribution to an eligible project from a private sector investor that is not provided through a public-private partnership or joint development.

Private investment project procedures means the procedures by which applicants may propose, and the Administrator may agree, subject to the requirements of this part, to modify or waive existing FTA requirements for an eligible project.

Private sector investor means the private sector entity that proposes to contribute funding to an eligible project.

Public-private partnership (P3) means a contractual agreement formed between a public agency and a private

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sector entity that is characterized by private sector investment and risk-sharing in the delivery, financing and operation of a project.

Recipient means an entity that proposes to receive Federal financial assistance for an eligible project under 49 U.S.C. chapter 53, RRIF, TIFIA or other Federal financial assistance program.

Subpart B—Private Investment Project Procedures

§ 650.11 Private investment project procedures.

(a) A recipient may, subject to the requirements of this part, submit applications to modify or waive existing FTA requirements for an eligible project. For projects with multiple recipients, recipients may, but are not required to, submit an application for a project jointly; however, only one application per phase of a project may be submitted. Applications may contain requests for modification or waiver of more than one FTA requirement. All applications shall comply with the requirements of § 650.31.

(b) Subject to § 650.13, the Administrator may modify or waive FTA requirements if the Administrator determines the recipient has demonstrated that—

(1) The FTA requirement proposed for modification discourages the use of a public-private partnership, a joint development, or other private sector investment in a federally assisted public transportation capital project,

(2) The proposed modification or waiver of the FTA requirements is likely to have the effect of encouraging a public-private partnership, a joint development, or other private sector investment in a Federally-assisted public transportation capital project,

(3) The amount of private sector participation or risk transfer proposed is sufficient to warrant modification or waiver of FTA requirements, and

(4) Modification or waiver of the FTA requirements can be accomplished while protecting the public interest and any public investment in the proposed federally assisted public transportation capital project.

§ 650.13 Limitation.

(a) Nothing in this part may be construed to allow the Administrator to modify or waive any requirement under—

- (1) 49 U.S.C. 5333;
- (2) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*); or
- (3) Any other provision of Federal statute.

(b) The Administrator's approval of an application under this part does not commit Federal-aid funding for the project.

Subpart C—Reporting**§ 650.21 Lessons learned report.**

For a project for which the Administrator has modified or waived any FTA requirement pursuant to this part, not later than one year after completion of construction, and not later than two years after a project that includes private entity involvement in operations or maintenance activities has entered revenue operations, the recipient shall submit to FTA a report that evaluates the effects of the modification or waiver of Federal requirements on the delivery of the project. The report shall describe the modification or waiver applied to the project; evaluate the success or failure of the modification or waiver; evaluate the extent to which the modification or waiver addressed impediments to greater use of public-private partnerships and private investment in public transportation capital projects; and may include any recommended statutory, regulatory or other changes with an explanation of how the changes would encourage greater use of public-private partnerships and private investment in public transportation capital projects.

Subpart D—Applications**§ 650.31 Application process.**

(a) Applications must be submitted to the FTA Private Sector Liaison at FTA Headquarters and provide a copy to the FTA Regional Administrator for the region in which the project is located. Addresses for FTA Headquarters

and Regions are available at www.transit.dot.gov.

(b) To be considered, an application submitted under this part must—

(1) Describe the proposed project with respect to anticipated scope, cost, schedule, and anticipated source and amount of Federal financial assistance,

(2) Identify whether the project is to be delivered as a public-private partnership, as a joint development or with other private sector investment,

(3) Describe in detail the role of the private sector investor, if any, in delivering the project,

(4) Identify the specific FTA requirement(s) that the recipient requests to have modified or waived and a proposal as to how the requirement(s) should be modified,

(5) Provide a justification for the modification(s) or waiver(s), including an explanation of how the FTA requirement(s) presents an impediment to a public-private partnership, joint development, or other private sector investment,

(6) Explain how the public interest and public investment in the project will be protected and how FTA can ensure the appropriate level of public oversight and control, as determined by the Administrator, is undertaken if the modification(s) or waiver(s) is allowed,

(7) Provide other recipients' concurrence with submission of the application and waiver of the right to submit a separate application for the same project, where a project has more than one recipient at the time of application,

(8) Provide a financial plan identifying sources and uses of funds proposed or committed to the project, and

(9) Explain the expected benefits that the modification or waiver of FTA requirements would provide to address impediments to the greater use of public-private partnerships and private investment in the project.

(c) The Administrator shall notify the recipient in writing if the application fails to meet the requirements of paragraph (b) of this section. If the recipient does not supplement an incomplete application within thirty days of

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the date of the Administrator's notification, the application will be considered withdrawn without prejudice. The Administrator will not consider an application until the application is complete. The Administrator reserves the right to request additional information beyond the requirements in paragraph (b) upon determining that more information is needed to evaluate an application.

(d) For applications that have been deemed complete, the Administrator will notify the recipient in writing as to whether the request for modification or waiver is approved or denied. Any approval may be given in whole or in part and may be conditioned or contingent upon the recipient satisfying the conditions identified in the approval.

(e) FTA will publish on its public website information related to waivers the FTA Administrator has granted. This may include a copy of the waiver application and any supporting documents, with proprietary information redacted.

Under authority delegated in 49 CFR 1.91.

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Subpart A—General

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- 655.1 Purpose.
- 655.2 Overview.
- 655.3 Applicability.
- 655.4 Definitions.
- 655.5 Stand-down waivers for drug testing.
- 655.6 Preemption of state and local laws.
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Subpart B—Program Requirements

- 655.11 Requirement to establish an anti-drug use and alcohol misuse program.
- 655.12 Required elements of an anti-drug use and alcohol misuse program.
- 655.13 [Reserved]
- 655.14 Education and training programs.
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- 655.16 Requirement to disseminate policy.
- 655.17 Notice requirement.
- 655.18–655.20 [Reserved]

Subpart C—Prohibited Drug Use

- 655.21 Drug testing.

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655.22–655.30 [Reserved]

Subpart D—Prohibited Alcohol Use

- 655.31 Alcohol testing.
- 655.32 On duty use.
- 655.33 Pre-duty use.
- 655.34 Use following an accident.
- 655.35 Other alcohol-related conduct.
- 655.36–655.40 [Reserved]

Subpart E—Types of Testing

- 655.41 Pre-employment drug testing.
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- 655.44 Post-accident testing.
- 655.45 Random testing.
- 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.
- 655.47 Follow-up testing after returning to duty.
- 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.
- 655.49 Refusal to submit to a drug or alcohol test.
- 655.50 [Reserved]

Subpart F—Drug and Alcohol Testing Procedures

- 655.51 Compliance with testing procedures requirements.
- 655.52 Substance abuse professional (SAP).
- 655.53 Supervisor acting as collection site personnel.
- 655.54–655.60 [Reserved]

Subpart G—Consequences

- 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.
- 655.62 Referral, evaluation, and treatment.
- 655.63–655.70 [Reserved]

Subpart H—Administrative Requirements

- 655.71 Retention of records.
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Subpart I—Certifying Compliance

- 655.81 Grantee oversight responsibility.
- 655.82 Compliance as a condition of financial assistance.
- 655.83 Requirement to certify compliance.

AUTHORITY: 49 U.S.C. 5331 (as amended); 49 CFR 1.91