

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****[Docket No. FTA–2007–29126]****Program Guidance for Metropolitan Planning Program and State Planning and Research Program Grants: Final Circular****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of Availability of Final Circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site final guidance in the form of a circular on Metropolitan Planning and State Planning and Research Program Grants. The final circular revises and combines into one document the contents of previous Circular 8100.1B for the Metropolitan Planning Program (MPP) and previous Circular 8200.1 the State Planning and Research Program (SPRP). The final circular also provides information on Consolidated Planning Grants (CPG) between FTA and the Federal Highway Administration (FHWA).

**DATES:** *Effective Date:* September 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Victor Austin, Office of Planning and Environment (TPE), Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, phone: 202–366–2996, or e-mail [victor.austin@dot.gov](mailto:victor.austin@dot.gov). Legal questions may be addressed to Christopher Van Wyk, Office of Chief Counsel (TCC), Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, phone: 202–366–1733, or e-mail, [christopher.vanwyk@dot.gov](mailto:christopher.vanwyk@dot.gov).

**SUPPLEMENTARY INFORMATION:****Availability of Final Circular**

You may download the circular from the Federal government's electronic docket at <http://www.regulations.gov>. You may also download an electronic copy of the circular from FTA's Web site at <http://www.fta.dot.gov>. Paper copies of the circular may be obtained by calling FTA's Administrative Services Help Desk at 202–366–4865.

**Table of Contents**

- I. Overview
- II. Summary of and Response to Comments
  - A. Chapter I—Introduction and Background
  - B. Chapter II—Metropolitan Planning Program

- C. Chapter III—State Planning and Research Program
- D. Chapter IV—Consolidated Planning Grants (CPG)
- E. Chapter V—Application Instructions
- F. Appendices

**I. Overview**

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005) updated Chapter 53 of Title 49 of the U.S. Code with new requirements for metropolitan and statewide planning (49 U.S.C. 5303, 5304). On February 14, 2007, FTA and FHWA jointly published a final rule, “Statewide Transportation Planning; Metropolitan Transportation Planning,” updating 23 CFR parts 450 and 500 and 49 CFR part 613 to reflect the new provisions enacted by SAFETEA–LU (72 FR 7224, Feb. 14, 2007). The new regulations govern the work performed under the Metropolitan Planning Program (MPP) (23 CFR part 450) and the State Planning and Research Program (SPRP) (23 CFR part 420).

The rulemaking process included extensive public outreach conducted jointly by FTA and FHWA. This involved publication of a Notice of Proposed Rulemaking in the **Federal Register** and a 90-day comment period during which over 150 comments were submitted to the docket. This effort was supported by six public outreach sessions, two national telecasts on the Internet, and a series of informational sessions in conjunction with various transportation stakeholder association events, including the Association of State Highway and Transportation Officials (AASHTO), American Public Transportation Association (APTA), the National Association of Regional Councils (NARC), the Association of Metropolitan Planning Organizations (AMPO) and State DOTs.

Although SAFETEA–LU made several changes to the planning process, the legislation did not make substantive changes to the eligibility for and processes of the MPP. SAFETEA–LU did change the funding eligibility of the SPRP to include only funds from 49 U.S.C. 5305, 5315, and 5322. Thus, funding activities under Sections 5312 and 5317, allowable under the previous legislation for SPRP, are no longer eligible activities.

SAFETEA–LU also unified the MPP and SPRP programs under the same section in 49 U.S.C. 5305. Prior to SAFETEA–LU, program eligibility and criteria for the MPP could be found in 49 U.S.C. 5303(g), but program eligibility and criteria for the SPRP was found in 49 U.S.C. 5313(b). In addition,

SAFETEA–LU restricts the use of planning funds under both the MPP and SPRP to the States, the District of Columbia, and Puerto Rico and places responsibilities for the funds to these entities. The final circular adds information on the Consolidated Planning Grants (CPG), a program administered by FTA and FHWA.

FTA reserves the right to update this circular due to changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular.

**II. Summary of and Response to Comments**

The FTA circulars that previously covered Metropolitan Planning (Circular 8100.1B) and State Planning and Research Programs (Circular 8200.1) were last updated in 1996 and 2001, respectively. Although SAFETEA–LU did not make substantive changes to the eligibilities and procedures for funding under the Metropolitan Planning and State Planning and Research Program, FTA believes it is necessary to update the circulars that apply to the above programs so that they reflect the new and revised planning provisions in law and subsequent regulations.

**A. Chapter I—Introduction and Background**

This introductory chapter is a general overview of what FTA plans to include in all the new and revised program circulars for the orientation of readers new to FTA programs. Chapter I also includes definitions and a history of FTA's planning programs.

One commenter suggested that there be further public notice and comment if FTA amends or updates this circular due to changes in other circulars or regulations that undergo notice and comment. FTA disagrees. When the revision of a circular or regulation requires an opportunity for notice and comment, there is no need to satisfy that requirement again just to update a reference to that revised document in this circular. FTA has clarified that statement, however, in the text of this notice and in the final circular itself.

Another comment stated that FTA should adopt the Bureau of Census abbreviation of Urbanized Area and use the abbreviation “UA” rather than “UZA.” Upon careful consideration, FTA has determined that this change should not be made in order to preserve consistency with references made in other FTA circulars and documents.

### B. Chapter II—Metropolitan Planning Program

This chapter replaces the former Chapter II—“Eligibility,” in previous Circular 8100.1A and consolidates it with Chapter I—“General Overview,” Chapter II—“Eligibility,” Chapter III—“Metropolitan Planning and Assistance: Formula and Notification,” Chapter IV—“Unified Planning Work Program,” Chapter V—“Application Instructions,” Chapter VII—“Grant Agreement,” and Chapter VIII—“State Management,” of the previous Circular 8100.1A, with minor updates. This new consolidated chapter provides an overview of the entire MPP program with regard to its statutory authority and program goals. It defines the role of the individual States, metropolitan planning organizations (MPOs), and FTA, and it explains the program’s relationship to other FTA-funded programs. The chapter also provides information on eligible planning activities, steps required in developing a Unified Planning Work Program (UPWP), the MPP assistance formula and notification, the grant agreement, and the administration of MPP grants.

One commenter asked that the words “engineer” and “design” be eliminated from the Program Overview section where the circular discusses the program and projects available for grant assistance. Because FTA’s use of these terms is taken from statutory language in 49 U.S.C. 5305, it is appropriate for FTA to reference them here. FTA noticed that through an oversight that it removed language from the previous circulars on Project Task Budget, Local Share, and Cost Allocation Plan/Indirect Costs. FTA has added this language back into the final circular.

One comment asked that the circular address the relationship of the MPO and transit operators when there are several designated recipients (DRs). Because the focus of this circular is on the MPP and SPRP funding programs, only brief mention is made of the role of the DR under FTA’s Section 5307 program relative to the role of the MPO in preparing the Transportation Improvement Program (TIP). More detailed discussion of the roles and responsibilities of DRs under the Section 5307 program is more appropriately provided in FTA Circular 9030.1C, which focuses on the Section 5307 program. FTA Circular 9030.1C is undergoing review, and FTA will consider the above comment in that effort.

Another comment suggested that FTA clarify that UZAs with a population over 200,000 are designated as

Transportation Management Areas (TMAs) in the section “Relationship to Other DOT Programs under Urbanized Area Formula Program.” FTA agrees with this comment and will add the abbreviation “TMAs” in the above referenced section.

One commenter suggested that there should be a system in place to better define which MPO or agency has responsibility for a particular metropolitan planning area (MPA) in situations where geographic boundaries of MPAs cross State lines. FTA notes the planning regulations already address this issue at 23 CFR 450.312 (“Metropolitan planning area boundaries”). Thus, there is no need to provide resolution of this issue in the circular.

One commenter stated that MPOs should not be responsible for conducting any of the system planning and corridor-level alternative analyses for specific transit projects. FTA has addressed this issue by regulation at 23 CFR 450.318. That regulatory section allows, but does not require, MPOs, States, or public transportation operators to undertake a multimodal, system-level corridor or subarea planning study as part of the metropolitan transportation planning process. Planning within an MPA is a collaborative, coordinated process. Determinations of individual agency responsibilities in conducting systems planning and alternative analysis studies are local decisions within the bounds of the statutory and regulatory provisions on planning.

One commenter stated that MPOs should not be directly responsible for safety, security, and emergency transportation and evacuation planning. This comment is outside the scope of this circular, which only makes these types of planning activities eligible for Federal financial assistance, rather than setting forth the MPOs’ responsibilities in these areas. FTA has delineated the role of MPOs in safety and security planning in FTA’s planning regulations at 23 CFR part 450. Pursuant to those regulations, MPOs are required to address safety and security through the metropolitan transportation planning process.

One commenter stated that the information required for a UPWP and Simplified Statement of Work (SOW) should be consistent and should contain some detailed information about costs, timeframes, and objectives of the proposed projects. The requirements for the UPWP for TMAs and optional SOWs in non-TMAs are already described in the regulations at 23 CFR Part 450, but for purposes of clarity, FTA has

expanded the description in the circular to incorporate language taken directly from the regulations.

To lessen reporting the burden, one commenter stated that the sentence, “Additionally, the UPWP should list the accomplishments from the previous fiscal year,” should be deleted from the UPWP section of the circular. FTA supports the suggestion and has deleted that sentence because progress reports already are required under terms of the grant agreement for receiving MPP funds, per FTA Circular 5010.1C, as referenced in Section 7, Administration of MPP Grants.

FTA received six comments on MPP Assistance Formula and Notification. In general, three of the comments asked for more information and clarification on the formula allocation for MPP assistance. In response, FTA refers these three commenters to FTA’s annual **Federal Register** notice, “Apportionments and Allocations,” which reports the apportionment of both basic and supplemental MPP funding among the States. FTA’s most recent notice, “FTA Fiscal Year 2008 Apportionments and Allocations and Program Information; Notice” (73 FR 4958, Jan. 28, 2008) describes Fiscal Year 2008 funding. The apportionment formula is further addressed by 49 U.S.C. 5305. FTA will add the following clarification to the section in the circular on supplemental MPP assistance: “FTA has determined that only States that have one or more UZAs with a population greater than one million in each are eligible to receive supplemental MPP assistance.” The responsibility for sub-allocating the entire amount of MPP funds is placed at the local level. Section 5305(d)(2) of Title 49, U.S. Code states that each State must allocate its MPP assistance consistent with the formula developed by the State in cooperation with its MPOs and approved by FTA. More information may be obtained from the State representatives in the State(s) of interest.

The fourth comment on the MPP asked that the sentence in the section on MPP “Authorization” be expanded to add the phrase: “and 17.28 percent for statewide planning” to include the formula for the SPRP in the same section as the as the MPP. To this, the commenter is referred to the statutory formula mentioned in Chapter III on SPRP. The focus of Chapter III is on the SPRP, and it appropriately addresses the formula allocation (17.28 percent) for this program; Chapter II focuses primarily on the MPP.

The fifth comment on the MPP asked that the circular clarify that the State is

the grantee and that the MPO is the subrecipient. FTA agrees, and the language has been revised to refer to the State as both DR and grantee for the MPP and SPRP.

The sixth comment on the MPP stated that a sentence in the section on third party contracts was unclear. FTA agrees with the commenter and, in response, has rewritten the sentence in question exactly as suggested by the commenter: "In the case of the MPP, the procurement, execution, audit and closing of third party contracts are both MPO and State responsibilities."

One comment on the administration of MPP grants stated that the planning grants should not be closed out solely due to the amount of time a project is inactive, but rather should also consider factors that may have stalled progress. FTA does not agree that the current process for closing out planning grants is based solely on the amount of time a project is inactive. The guidelines established by FTA for grant close-out does provide flexibility for the MPO to complete the planning work elements and activities in a reasonable timeframe. The final circular continues this flexibility by allowing the State and MPO to specify a reasonable amount of time to complete planning work elements and activities.

Finally, as a result of continuing internal staff review and discussion that took place during the comment period, FTA has decided to include an explicit provision enacted in SAFETEA-LU that requires States to allocate MPP "Basic Assistance" to MPOs within 30 days of apportionment. The statutory language has been included verbatim.

#### C. Chapter III—Statewide Planning and Research Program (SPRP)

This chapter replaces Chapter III—"Metropolitan Planning and Assistance: Formula and Notification," in previous Circular 8100.1A. This new chapter consists of information found in Chapter II—"State Planning and Research: Formula and Notification," Chapter IV—"State Planning," Chapter V—"Training Activities," and Chapter VII—"Human Resource Activities" of previous Circular 8200.1, with some minor updates. The new chapter provides an overview of the SPRP program in terms of its statutory authority and program goals, and it explains the program's relationship to and coordination with other FTA-funded programs. The chapter also defines the role of the individual States and FTA, and provides information on eligible grant activities, SPRP assistance formula and notification, and State planning activities.

One commenter stated that it is unclear whether a change in the Governor of a State would also result in the change of the State recipient of SPRP funds. The final circular keeps the same language from the previous circular, which states, "The Governor of each State must designate a State recipient for its SPRP funds." FTA believes the above language is clear and that the authority of the Governor to designate a State recipient carries forward to newly installed Governors when they take office.

One comment suggested that FTA add a definition for "youth" in the section "Relationship to the Locally Developed Coordinated Public Transit Human Services Transportation Plan." FTA has slightly revised this section to more closely track the applicable statutory provisions; as a result, the word "youth" is no longer used in this section.

#### D. Chapter IV—Consolidated Planning Grants (CPG)

This new chapter, which provides information on the CPG, a program administered by FTA and FHWA, replaces the former Chapter IV—"Unified Planning Work Program," in previous Circular 8100.1B. The CPG program allows FTA and FHWA funding that supports metropolitan and statewide transportation planning to be combined into a single consolidated grant. This program fosters a cooperative effort between the Federal agencies and the participating States to streamline the delivery of their planning programs by providing the flexibility to transfer the planning funds to either FTA or FHWA for processing. States electing to use the CPG programs must consolidate grants for administration under either FTA or FHWA.

There was one comment that stated that the consolidation process of the CPG program might be infeasible and difficult to manage for transit or highway-only UPWP tasks. The comment also requested further clarification on the CPG process. FTA notices that the CPG has been offered for the past 11 years to States and MPOs as an optional program for combining FTA and FHWA planning funds. Since 1996, the CPG Program has been listed in the **Federal Register** notice, "Apportionments and Allocations and Program Information" (73 FR 4958, Jan. 28, 2008). The FHWA's July 19, 2007, Memorandum, "Information: Fund Transfers to Other Agencies and Among Title 23 Programs," available at <http://www.fhwa.dot.gov/legsregs/directives/policy/fundtrans20070719.htm>, outlines provisions to consolidate processes and

procedures for transfers between FHWA and FTA.

One comment sought clarification on the length of time required for participation in the CPG program. FTA's response is that there is no required timeframe for participation in the CPG program.

Another comment asked whether all MPOs in a State must participate in the CPG program and whether MPOs can go back to separate grants at a later time. FTA wants to clarify that participation by MPOs in the CPG program is voluntary. Furthermore, MPOs can go back to a separate grant system if they later decide that they no longer want to participate in the CPG program.

One comment asked for clarification on what activities are eligible and whether transit projects are eligible if FTA funds are consolidated in FHWA. To clarify, any project eligible under the UPWP would remain eligible if funds are consolidated in FHWA, including any transit projects listed in the UPWP.

Another comment asked whether FHWA would administer the entire CPG program and asked what role FTA would play. The CPG program is a cooperative effort between FTA and FHWA to streamline the delivery of their planning programs' resources. The intent is not to have FHWA or FTA as the sole manager of the CPG program. The designated "lead agency" will have day-to-day responsibility for grant administration (e.g., work program changes, allowable cost determination, and audit processing), but the lead agency will coordinate with and solicit input from the other agency on all matters of policy and program significance, such as work program approval, progress reporting, and satisfaction of work commitments for grant closeout.

One commenter stated that the benefits of the CPG program are unclear. The commenter wanted to know who makes the decision to consolidate planning funds. The benefits and explanation of the CPG program are detailed in Chapter IV—"Benefits of the CPG to States and MPOs." States and MPOs decide together whether planning funds will be consolidated and administered either by FTA or FHWA.

One comment on the CPG program stated that no matter which agency the funds are consolidated under, there should be no restrictions on the use of the consolidated funds as long as they are applied toward projects in the UPWP. FTA does not support including a blanket prohibition against restrictions on the use of the consolidated planning funds. Importantly, the multimodal context and project eligibilities

associated with FTA's MPP and SPRP programs and FHWA's metropolitan planning (PL) and statewide planning and research (SPR) programs do not change when those funds are combined under a CPG. Another comment stated that the benefits of the CPG program would streamline the planning process for certain tasks and added that neither transit nor highway projects should be granted preferential treatment when being considered for funding and that all analyses be conducted on equal terms. FTA agrees with this comment and further notes that the metropolitan and statewide planning work programs developed through a cooperative planning process will be accepted as the grant application for both FTA and FHWA planning funds under the CPG program.

FTA received one comment on the inequity that might occur given the long lead time and extra scrutiny that occur when funds are flexed to transit agencies. This commenter appears to be referring to the flexible funding programs Surface Transportation Program and Congestion Mitigation and Air Quality Improvement Program, which are separate programs from the CPG and have their own particular requirements. The CPG program allows the States and MPOs to combine FTA metropolitan or statewide planning funds with FHWA planning funds. Comments on the flexible funding programs are outside the scope of this circular.

#### *E. Chapter V—Application Instructions*

This chapter updates Chapter V—“Application Instructions,” and Chapter VI—“Certifications and Assurances,” in previous Circular 8100.1A and merges them into one chapter. While providing minor updates to information on the MPP program, this chapter also incorporates information, with minor updates, from Chapter III—“Application Instructions,” of previous Circular 8200.1. This section details the application process of MPOs and States that apply for and receive funds from MPP and SPRP grants. This section also discusses the certifications and assurances and their location within the FTA's Transportation Electronic Award and Management (TEAM) system, a streamlined electronic interface between grant applicants, recipients, and FTA that allows complete electronic grant

application submission, review, approval, and management.

FTA received one comment on the inconsistency in submitting an application through TEAM and the requirement for original signatures. FTA agrees with this comment and has revised this section to reflect the electronic submittal of applications, deleting the requirement for original signatures.

One comment stated that certifications pursuant to 49 U.S.C. Section 5333(b) (commonly referred to as Section 13(c)) are not required for planning grants and that discussion of the Department of Labor certifications and participation should be deleted. FTA agrees with this comment and has deleted the reference to Section 13(c) certifications and DOL participation.

#### *F. Appendices*

Appendices A through C of Circular 8100.1A have been relabeled and reorganized. FTA is also adding an index of common terms used throughout the circular following Appendix D. The new Appendix A contains an outline of a UPWP document and replaces the former “Definitions” section, which has been moved to Chapter I. Appendix B is a revised “MPP Sample Project Budget,” which was formerly located in Appendix B of previous Circular 8100.1B, as well as a revised “SPRP Sample Project Budget,” which was formerly located in Appendix B of previous Circular 8200.1. Appendix C contains references to other sources that are relevant to the planning programs. Appendix D contains FTA regional and metropolitan contact information.

Issued in Washington, DC, this 17th day of July, 2008.

**James S. Simpson,**

*Administrator.*

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**BILLING CODE 4910-57-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

#### **Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Modification of Special Permit.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix “M” denote a modification request. Their applications have been separated from the new application for special permits to facilitate processing.

**DATES:** Comments must be received on or before August 7, 2008.

*Address Comments to:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue SE., Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 10, 2008.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

**Modification Special Permits**