

Annual Report on Leasing Arrangements

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1. Summary

This report responds to the requirements in the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94), Section 3019 - Innovative Procurement, subsection (c) entitled, "Leasing Arrangements". The statute requires the Secretary of Transportation to prepare and make public an annual report that includes the following information from this subsection: 1) Inventory of rolling stock and related equipment under grantee lease agreements, 2) Detailed description of the new leasing arrangements program activities, and 3) Evaluation of the leasing arrangements program including grantee data, benefit-cost analysis, and comparison of expected short- and long-term maintenance costs. In 2016, the Federal Transit Administration (FTA) began implementing the new requirements under Section 3019(c); and, all activities completed to date are incorporated in this report. The report also includes FTA's plan to fully implement all requirements of the leasing arrangements program in 2017. This report is available to the public at: <https://www.transit.dot.gov>.

2. Introduction

The FAST Act includes a new Section 3019, Innovative Procurement, that outlines requirements for Cooperative Procurement (subsection 3019(b)) and Leasing Arrangements (subsection 3019(c)). This report is only responding to the requirements outlined under subsection 3019(c).

Specifically, subsection 3019(c)(5) outlines reporting requirements where:

"The Secretary shall make publicly available an annual report on this subsection for each fiscal year, not later than December 31 of the calendar year in which that fiscal year ends. The report shall include a detailed description of the activities carried out under this subsection, and evaluation of the program including the evaluation of the data reported in paragraph (4)".

Paragraph (4) under subsection 3019(c) outlines reporting requirements for grantees such that:

"Not later than 3 years after the date on which a grantee enters into a capital lease under this subsection, the grantee shall submit to the Secretary a report that contains—

(A) an evaluation of the overall costs and benefits of leasing rolling stock; and

(B) a comparison of the expected short-term and long term maintenance costs of leasing versus buying rolling stock."

In addition, subsection 3019(c) of the FAST Act made various changes to the requirements of the leasing program for rolling stock and related equipment, including outlining the authority, listing new grantee requirements and prescribing a list of eligible lease costs.

This first report will discuss the changes to the capital leasing program resulting from the FAST Act; present current leasing data; summarize FTA actions to date to implement subsection 3019(c) and present a plan of activities to be completed in 2017.

3. Background

As noted below, the terminology for ‘capital project’, including the conditions in which capital leases are permitted under 49 U.S.C. 5302 (definitions), has been amended as follows:

3.1 TEA-21 Definition of Capital Project

In June 1998, the Transportation Equity Act for the 21st Century (TEA-21, Pub.L.105–178), Section 3003, amended 49 U.S.C. 5302 (definitions) as shown below:

“(1) CAPITAL PROJECT.—The term ‘capital project’ means a project for—

.... (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;”¹

3.2 FAST Act Definition of Capital Project

Under the FAST Act, Section 5302 (definitions) is amended to repeal the regulatory requirement that limited leasing arrangements to only those that are more cost effective than purchase or construction. Therefore, 5302(3)(F), defines a capital project as:

“(3) Capital project.—The term “capital project” means a project for—

.... (F) leasing equipment or a facility for use in public transportation;”

3.3 TEA-21 and FAST Act Comparison

The following table provides a side-by-side analysis of the main components of TEA-21/49 CFR 639 and the FAST Act subsection 3019(c).

¹ On December 10, 1998, FTA issued 49 CFR Part 639 (Capital Leases) to implement TEA-21.

	TEA-21/49 CFR 639 Capital Leases	FAST Act 3019 (c) Leasing Arrangements
Authority	TEA-21 Section 3003 amended 49 USC 5302 to define capital project as a project for leasing equipment or a facility for use in public transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction.	FAST Act amended 49 U.S.C. 5302 5302(3)(F) to remove the limitation of leases to those that are more cost effective than purchase or construction. FAST Act, Section 3019 (c) defines a capital lease to include rolling stock and related equipment only and other requirements for grantees.
Definitions	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. Capital asset means facilities or equipment with a useful life of at least one year, which is eligible for capital assistance.	Capital lease means any agreement under which a grantee acquires the right to use rolling stock or related equipment for a specified period of time, in exchange for a periodic payment. Maintenance - A capital lease may require that the lessor provide maintenance of the rolling stock or related equipment covered by the lease.
Grantee Requirements	Lease of the capital asset is more cost-effective than purchase or construction of the asset, as determined under subpart C of this part. The agencies were to validate the certification of cost effectiveness as a prerequisite with the grant application.	REPORTING REQUIREMENT. —Not later than 3 years after the date on which a grantee enters into a capital lease under this subsection, the grantee shall submit to the Secretary a report that contains— (A) an evaluation of the overall costs and benefits of leasing rolling stock; and (B) a comparison of the expected short-term and long term maintenance costs of leasing versus buying rolling stock.
	Each recipient must maintain an inventory of capital assets acquired by standard FTA project management guidelines.	(i) Maintain an inventory of the rolling stock or related equipment acquired under the lease; and (ii) maintain on the accounting records of the grantee the liability of the grantee under the lease.

	TEA-21/49 CFR 639 Capital Leases	FAST Act 3019 (c) Leasing Arrangements
FTA Requirements	FTA to develop regulations (49 CFR 639) that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction.	REPORT.—The Secretary shall make publicly available an annual report on this subsection for each fiscal year, not later than December 31 of the calendar year in which that fiscal year ends. The report shall include a detailed description of the activities carried out under this subsection, and evaluation of the program including the evaluation of the data reported by grantees.
Eligible 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.	(i) the cost of the rolling stock or related equipment; (ii) associated financing costs, including interest, legal fees, and financial advisor fees; (iii) ancillary costs such as delivery and installation charges; and (iv) maintenance costs.
Other	All capital asset components treated the same.	Includes specific language on leasing of certain zero emission vehicle components, with separate considerations from rolling stock.

The table above demonstrates three significant differences between the FAST Act and TEA-21. First, under the FAST Act, a capital *asset* is defined as “rolling stock and related equipment” and there are also distinctions in the definition of “capital leases”. Second, the removal of the prerequisite that leases be cost effective before the grant is awarded is now replaced by the submission of a post-award report on the costs and benefits of leasing versus purchase, and a comparison of the short-term and long-term maintenance costs for lease versus a purchase. Third, FTA is now required to evaluate grantee leasing data and provide a program evaluation of Section 3019(c) each year.

4. New Capital Leasing Arrangements Program Implementation

As this is a new requirement, FTA did not receive any reports in 2016 from grantees that include an evaluation of the overall costs and benefits of leasing rolling stock or a comparison of the expected short-term and long term maintenance costs of lease versus purchase. However, grantees have up to three years from when they enter into a lease agreement to submit this report to FTA. Therefore, in 2017, FTA will establish the electronic platform for grantees to submit these reports. In addition, FTA will provide technical

assistance and written guidance to help grantees estimate the costs and benefits of capital leasing arrangements.

FTA has undertaken several actions to implement the program. First, the new requirements of FAST Act Section 3019(c) are included in the proposed Awards Management Requirements Circular 5010.1E. The Circular is for post-award administration and management activities for all applicable FTA federal assistance programs and incorporates provisions of the FAST Act programs. Second, FTA analyzed existing data on leasing capital assets in its grants and reporting systems. The section below discusses this data and provides information on the current practice of leasing rolling stock.

4.1 Current Data on Leasing

FTA currently collects capital lease data in two separate systems, the National Transit Database (NTD) and the Transit Awards Management System (TrAMS). The data from these two sources is discussed below.

4.1.1 National Transit Database

Transit agencies submit to the NTD information on facilities and vehicles, identifying whether they are leased or purchased. Using a subset of this data for revenue vehicles FTA will know the level of leasing activity for rolling stock. This data includes all vehicles, irrespective of the source of funding (federal or local). The NTD categorizes revenue vehicle leases into five types of lease arrangements listed below.

- a) Lease under Lease Purchase Agreement by a Private Entity (LPPE)*
Vehicles leased under a closed end agreement whereby the lessee acquires the capital appreciation of the vehicles as lease payments are made. At the end of the lease, the lessee owns the vehicles. The lessee is a private entity.
- b) Lease under Lease Purchase Agreement by a Public Agency (LPPA)*
Vehicles leased under a closed end agreement whereby the lessee acquires the capital appreciation of the vehicles as lease payments are made. At the end of the lease, the lessee owns the vehicles. The lessee is a public agency.
- c) Leased or Borrowed from Related Parties by a Private Entity (LRPE)*
Vehicles leased or borrowed from a related party. For example, a state may purchase all vehicles (hold title) and distribute the vehicles to private providers.
- d) Leased or Borrowed from Related Parties by a Public Agency (LRPA)*
Vehicles leased or borrowed through a public entity as the result of legal or governmental agreements or restrictions. For example, a state may purchase all vehicles (hold title) and distribute the vehicles to transit agencies; or vehicles may be

owned by a county government and leased to a public transit authority that is legally prohibited from owning the vehicles.

e) Leases and Rentals (512)

The payments for the use of capital assets not owned by the transit agency. True leases are those in which the lessor and lessee are:

- Not related parties
- The total lease payments cover the lessor's cost of the property for the period of the lease plus interest
- The ownership of the property remains with the lessor upon expiration of the lease
- For the true lease, this object class includes the lease payments on true lease property

In 2014, a total of 174,422 revenue vehicles were reported to the NTD, of these only 12,234 revenue vehicles were leased, as classified above. This would account for about 7 percent of the revenue vehicle fleet.

4.1.2 Transit Awards Management System (TrAMS)

According to TrAMS fiscal year (FY) 2016 data, FTA awarded 35 grants for a sum total of \$47,193,050 for rolling stock leases. These awards included leases for 40 ft. buses, 35 ft. buses, intercity buses, and commuter buses. Furthermore, the majority of the line items in these grants are categorized as "Lease-Replacement". There were no federally funded leases for rail rolling stock. In FY 2016, FTA awards totaled nearly \$11 billion. Grant awards for rolling stock leases accounted for less than half a percent of the total awards made FY2016.

5. Conclusion

FTA will continue to perform activities needed to implement the new requirements of FAST Act Section 3019(c) and is working to accomplish these requirements in a straightforward and non-complicated manner. To that end, FTA plans to provide technical assistance through its website to all impacted grantees. FTA will also develop written guidance to assist grantees with the new requirements of the capital leasing arrangements program. This guidance will include standard definitions, directions for estimating costs and benefits, and evaluation criteria. FTA will also develop a reporting template for grantee capital leasing data collection, as well as an electronic submission platform or portal. FTA will include its accomplishments in implementing the new lease arrangements provisions and the resulting grantee data in next year's report.