

Materials, Cargo Tank Inspection and other Bulk Packaging Inspection;

- 20 years' experience as an FMCSA, National Training Center (NTC) North American Standard (NAS) Inspection Part B and HM Instructor;
- 5 years' experience as an FMCSA, NTC Master Instructor for NAS Inspection Part A and B, General HM, Cargo Tank Inspection, and other Bulk Packaging Inspection;
- 14 years' experience as an FMCSA, NTC Instructor Development Coach;
- 9 years' experience conducting compliance reviews, specializing in HM carriers and shippers;
- 5 years' experience conducting Cargo Tank facility reviews;
- Member and subject matter expert for several FMCSA, NTC course development and update working groups;
- Previous Region III COHMED Chairman;
- Previous COHMED International Chairman;
- Former Lead MCSAP Trainer, Training Coordinator and Training Lieutenant for the Kansas Highway Patrol Troop 1;
- Certified civilian CVSA Hazardous Materials Instructor (HMIT).

#### V. Public Comments

On July 8, 2022, FMCSA published notice of the Rex Railsback application and requested public comment [87 FR 40876]. The Agency received eight comments. Six individual respondents submitted comments favoring the exemption application, while the Owner-Operator Independent Drivers Association (OOIDA) and one other individual commenter filed in opposition to the request.

Those individuals who filed in support cite Mr. Railsback's numerous years as a recognized industry expert in the field of HM training, including his previous employment with the Kansas Highway Patrol, his time as an active member of the CVSA and the Pipeline and Hazardous Materials Administration, and the Cooperative Hazardous Materials Enforcement Development (COHMED) programs. One individual commenter, Nick Wright, who filed in support of the exemption request, stated:

While Mr. Railsback does not possess a CDL as required by the ELDT regulations, he is not requesting to teach new CDL applicants how to operate commercial vehicles. Instead, he is intending to instruct the classroom portion (*i.e.*, "theory") about the safe and legal transportation of HM/dangerous goods aboard commercial motor vehicles. Mr. Railsback's application and list of qualifications he provided with his

application is only a drop in the bucket of his actual qualifications and knowledge. Mr. Railsback served as a state trooper for the Kansas Highway Patrol, during which the majority of his career was spent as a commercial vehicle inspector and instructor. Mr. Railsback has instructed, led, and mentored countless inspectors and instructors across the United States throughout his career. Mr. Railsback is well known nationwide as an authority on commercial vehicle regulations, with a strong emphasis and specialty on HM regulations. I have never met another person with the level of knowledge and experience with the HM regulations, both the classroom instruction portion and real-world hands-on experience in the field applying the regulations, as Mr. Railsback. During Mr. Railsback's career I considered him THE authority on hazardous materials regulations.

Five other individual commenters filed comments echoing support of the exemption request, for similar reasons.

OOIDA commented in opposition citing several reasons, including OOIDA's participation as a primary industry stakeholder on the ELDTAC when the "framework" of the ELDT rule was agreed upon. OOIDA noted its support for the provision in the final ELDT rule that required CDL experience for training instructors, stating that "we feel there is no substitute for an experienced behind-the-wheel trainer and employing these instructors will help achieve the objectives of the ELDT rulemaking." One other individual commenter opposed the exemption request, stating that while Mr. Railsback is a "well-qualified HM instructor," he is not a qualified theory instructor under Part 380 because he has never held a CDL.

#### VI. FMCSA Response to Comments and Decision

FMCSA has evaluated Rex Railsback's application for exemption and the filed public comments and has independently verified Mr. Railsback's credentials. FMCSA grants the exemption. While OOIDA commented in opposition regarding the experience requirements in the ELDT regulations for training instructors, it bears note that for a theory instructor for HM training, there is no BTW training involved, as there is no skills test for an HM endorsement. Mr. Railsback has extensive experience teaching HM-related subjects and is a widely acknowledged subject matter expert in the transportation of hazardous materials by CMV. Further, because the theory instruction curriculum for the H endorsement does not include any BTW training, the Agency believes that the exemption will likely achieve a level of safety that is equivalent to, or greater

than, the level that would be achieved absent such exemption, in accordance with § 381.305(a).

#### Extent of the Exemption

This exemption is granted to Mr. Rex Railsback as the owner of Railsback HMSP. The exemption from the requirement in 49 CFR 380.713(a) that training instructors must utilize theory instructors meeting the qualification requirements set forth in the definition of "theory instructor" in 49 CFR 380.605, will allow Mr. Railsback, through Railsback HMSP, to provide ELDT theory instruction for the H endorsement curriculum in Appendix E of Part 380 without meeting these requirements. The exemption is effective January 12, 2023 through January 12, 2028.

**Robin Hutcheson,**  
Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2022-0035]

#### Guidance on Development and Implementation of Railroad Capital Projects

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of final guidance.

**SUMMARY:** FRA is publishing final guidance on the development and implementation of railroad capital projects that may be funded, in whole or in part, by FRA ("final guidance"). This final guidance follows publication of the proposed guidance ("proposed guidance") on June 28, 2022.

**ADDRESSES:** The final guidance is available at <https://regulations.gov> under docket number FRA-2022-0035.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Mr. David Valenstein, Office of Railroad Development, at [david.valenstein@dot.gov](mailto:david.valenstein@dot.gov) or 202-493-6368; or Mr. Michael Longley, Office of Rail Program Development, at [michael.longley@dot.gov](mailto:michael.longley@dot.gov) or 202-493-6377.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

Over the next five years, the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the "Bipartisan Infrastructure Law") will provide unprecedented Federal funding

for rail improvement projects in America. As a result, FRA has identified the need to establish clear practices and procedures for the development and implementation of railroad capital projects through the issuance of agency guidance. FRA published a notice of proposed guidance titled *Guidance on Development and Implementation of Railroad Capital Projects* (87 FR 38451, June 28, 2022) seeking stakeholder feedback on the content and applicability of the proposed guidance. FRA's consideration of comments and associated revisions to the guidance are described in Section II. FRA is now publishing the final guidance.

The final guidance will assist project sponsors in developing effective capital projects and enhance the management of capital projects. The audience of the final guidance includes project sponsors and partners, as well as the wide range of professionals who contribute to the planning, development, and implementation of railroad capital projects. The final guidance: (1) defines the stages in the railroad capital project lifecycle and project development process from inception to operation; (2) describes the project management tools, processes, and documentation that FRA requires when providing grants that fund the development or implementation of a railroad capital project; (3) differentiates between Non-Major projects and Major projects by defining a "Major Project" as a railroad capital project with a Capital Cost Estimate equal to or greater than \$500 million and with at least \$100 million in total Federal assistance.

FRA strongly encourages project sponsors to follow the final guidance when developing, implementing, and managing railroad capital projects. FRA may use the final guidance to inform its grant application reviews and decisions in accordance with a process described in a notice of funding opportunity for the relevant grant program and may require compliance with the guidance as part of grant agreements funding railroad capital projects in accordance with 2 CFR parts 200 and 1201. The practices contained in the guidance draw from FRA's experience and from established programs of other DOT operating administrations that have enhanced the delivery of major highway and transit projects.

FRA is adopting the guidance largely as it was proposed, with changes to the guidance text as discussed in Section II.

## II. Discussion of Public Comments

FRA received a total of nine comments on the proposed guidance: eight generally supported the proposed

guidance and provided feedback, and one was considered outside of the scope of the proposed guidance. FRA received comments from the following respondents: American Association of State Highway and Transportation Officials (AASHTO); American Public Transportation Association (APTA); National Railroad Passenger Corporation (Amtrak); Association for Innovative Passenger Rail Operations (AIPRO); Brotherhood of Maintenance of Way Employees Division/International Brotherhood of Teamsters (BMWED/IBT); California High-Speed Rail Authority (CHSRA); Front Range Passenger Rail District (comments were intended for Docket #FRA-2022-0031 and are not addressed here); Metropolitan Transportation Authority (MTA); and New Jersey Transit (NJT).

### A. Definitions

Several commenters provided feedback on the definitions established in Section II of the proposed guidance, as summarized below.

1. Major Project, Section II(a). The proposed guidance defined "major project" as a railroad capital project with an estimated total project cost equal to, or greater than, \$300 million, and receiving at least \$100 million in Federal assistance. CHSRA, Amtrak, and APTA suggested a change from the \$300 million total project cost threshold to \$500 million for consistency with the Federal Highway Administration (FHWA) definition and the USDOT Mega grant program.<sup>1</sup> Amtrak also suggested amending the cutoff in Federal assistance from \$100 million to \$250 million for Major Projects. FRA agrees there is value in creating consistency with FHWA and Mega program definitions and therefore changed the major project definition threshold from \$300 million to \$500 million in the final guidance. However, the final guidance retains the secondary threshold of \$100 million in Federal assistance as it more closely aligns with the Federal threshold share used by the Federal Transit Administration (FTA).

2. Project Sponsor, Section II(c). APTA recommended that FRA revise the definition of Project Sponsor to allow for joint or multiple sponsors. BMWED recommended adding compliance with FRA grant labor requirements to the definition of project sponsor. FRA made no changes to the

<sup>1</sup> The Mega program supports large, complex projects that are difficult to fund by other means and are likely to generate national or regional economic, mobility, or safety benefits. More information on the Mega program can be found at <https://www.transportation.gov/grants/mega-grant-program>.

definition of project sponsor in the final guidance. The proposed definition is broad enough to accommodate multiple project sponsors and the labor requirements described in BMWED's comment are imposed through existing laws and authorities as well as through the terms and conditions of individual grant agreements.

3. Capital Cost Estimate, Section II(f). APTA recommended including operations and maintenance costs in the capital cost estimate. FRA made no changes to the final guidance in response to this comment. The capital cost estimate is for delivery of the capital project, which typically does not include operations and maintenance costs. However, those costs are accounted for elsewhere in the guidance. For example, the project development stage includes analysis of benefits and costs that would include operations and maintenance costs for the project. In addition, maintenance costs are separately addressed in the project management plan and the financial plan.

4. Financial Plan, Section II(g). The definition of financial plan in the proposed guidance stated that for projects involving debt-based financing, the financial plan identifies the up-front capital for the project. MTA asked for clarification that the financial plan identifies all project funds rather than the up-front capital. In response, FRA revised the language in the definition in the final guidance to clarify that the financial plan identifies all project funds for the project.

### B. Application of the Guidance

APTA, MTA, and CHSRA sought clarification that project sponsors should be able to self-certify compliance with the guidance (for example, self-certify that stages have been completed, documentation prepared, or program requirements have been met). FRA made no changes to the proposed guidance in response to this comment. The final guidance states that FRA will address application of the guidance in grant agreements, including when FRA will permit self-certification. CHSRA also suggested the guidance clarify that it would not apply retroactively to projects that are already in development or subject to a grant agreement. FRA did not make changes the final guidance in response to this comment, since Section I(b) of the guidance states FRA may require compliance with the guidance as part of grant agreements or notice of funding opportunity.

### C. Comments on Project Lifecycle

Several commenters provided feedback on the Project Lifecycle Stages in Sections III and IV of the guidance, as summarized below.

1. Lifecycle Stages, Section III. APTA, Amtrak and CHSRA asked for flexibility in combining stages and for clarity about when procurement happens.

Amtrak and CHSRA also asked about how innovative delivery methods flow through and change the stages. In response, FRA revised the final guidance to clarify that procurement may be initiated in the project development stage of the lifecycle and specify that Project Sponsors may use innovative contracting and delivery methods.

2. Project Planning, Section IV(b). Amtrak asked to change the language about design in planning and project development to align with their grant process. FRA made clarifying edits to the final guidance in this section but did not make all changes requested, because FRA will continue to work to align all grants, including those to Amtrak, with this guidance.

3. Final Design, Section IV(d). Amtrak suggested including final design as part of the development stages in the project lifecycle rather than as part of the implementation stages. FRA did not change the final guidance in response to this suggestion. The final guidance is consistent with FRA's approach regarding final design and construction as implementation stages in its grant programs.

4. Operations, Section IV(f). APTA suggested changing the name of the final stage from "Operation" to "Operation and Maintenance." In response, FRA added a reference to maintenance in the description of the operation stage in the final guidance.

### D. Comments on Lifecycle Completion Measures

Several commenters provided feedback on the Project Lifecycle Completion Measures in Section IV of the guidance. NJT proposed that the guidance include "commissioning" as a part of construction completion. FRA agrees and revised Section IV(e) of the final guidance to include commissioning as part of construction completion.

Amtrak and CHSRA commented that criteria or processes for determining completion of each lifecycle stage should be added to the guidance. FRA did not add prescriptive criteria or processes that determine the completion of each lifecycle stages in order to provide flexibility for a range of projects.

### E. Comments on Project Management Tools

Several commenters provided feedback on the Project Management Tools in Section V of the guidance.

1. Project Management Plan (PMP), Section V(b). Several commenters suggested that the PMP should allow for flexibility to define project budgets. FRA finds that no change is necessary because the final guidance does not specify how Project Sponsors structure budgets, providing the appropriate flexibility. BMWED asked that that statutorily mandated employee protections be recognized in the PMP. FRA recognizes the importance of these statutorily mandated employee protections but believes they are more appropriately addressed in the context of the grant agreement and are thus outside of the scope of the guidance. However, FRA added a workforce sub-plan element to the PMP for major projects to address railroad labor forces required to implement the project, if applicable.

2. Capital Cost Estimate, Section V(d). NJT, APTA, and MTA commented that the capital cost estimate should use a midpoint of construction instead of year-of-expenditure. FRA agrees and revised the text accordingly. MTA suggested the final guidance specify that the independent party conducting major project risk reviews may be Project Sponsor internal staff independent from the project team. FRA did not incorporate the suggestion to allow Project Sponsor staff to conduct the risk review into the final guidance; FHWA and FTA practice is for independent parties to conduct the risk review for Federally funded projects and the guidance is consistent with this approach. MTA also suggested that FRA oversight of risk review be limited to FRA participation in a workshop led by the Project Sponsor. This approach would also be inconsistent with FHWA and FTA practice of direct Federal agency involvement or leadership of the entire risk review for Federally funded projects. Therefore, FRA did not modify the final guidance in response to this comment.

3. Financial Plan, Section V(e). APTA and MTA sought certainty that documenting the "availability of funding" in the Initial Financial Plan means that all required approvals for funding from governing bodies have been secured, such as an approved capital plan. FRA determined the suggested edits are unnecessary because the guidance addresses availability of funding and associated documentation in Section V(e)(ii)(A)(4), which provides

as examples official board resolution or an adopted budget committing the funds to the project, or evidence that the project and funding amounts are included in the sponsor's adopted multi-year capital program. APTA and MTA also suggested adding internal project sponsor review of the Initial Financial Plan and annual updates that the project sponsor self-certifies. FRA did not modify the final guidance in response to this comment because self-certification measures, if appropriate, would be addressed in the grant agreement.

### F. Comments on Project Delivery and Public Private Partnerships

Several commenters provided feedback on the lifecycle progression of project delivery planning and implementation. CHSRA, APTA, and Amtrak sought clarification on when procurement happens and how innovative delivery is recognized in the lifecycle stages. FRA made edits to Section III.a. to recognize sponsor flexibilities, early procurements, and early works.

BMWED commented that the guidance should specify railroad labor organizations as stakeholders in project planning and consider labor from initial construction to established maintenance. FRA made edits to Section V.b by modifying the PMP contents to address labor agreements at Section V.b. BMWED also proposed that the guidance require Project Sponsors to be Railroad Labor Act (RLA) at 45 U.S.C. 151 *et seq.*, Railroad Retirement Act (RRA) at 45 U.S.C. 231 *et seq.*, and Railroad Unemployment Insurance Act (RUIA) 45 U.S.C. 351 *et seq.* compliant and employ railroad employee protections. FRA finds that no change to the guidance is necessary because grant programs address statutory railroad labor requirements.

### G. Other Comments

FRA received several miscellaneous comments to enhance the guidance.

1. Amtrak suggested broadening the guidance to address technology integration and other project types. In response, FRA amended the construction stage definition at Section IV(e) and the PMP language at Section V(b).

2. APTA commented that the guidance should address climate resilience. FRA responded by adding resilience consideration to the project planning and project development at Sections IV(b) and (c), respectively.

3. AIPRO, NJT, and APTA commented that effective maintenance should be recognized in early analyses and the

operations stage. FRA made several changes to the final guidance to incorporate maintenance. FRA amended the description of the Project Development stage in Section IV(c)(ii)(c) to state that the PMP should include maintenance agreements and made related revisions to the PMP content language at Section V(b)(i). FRA also amended the description of the operations stage to clarify that maintenance of assets is part of operations in Section IV.f.

4. BMWED commented that capital projects that are fully covered by RLA, RRA, and RUIA should be prioritized. FRA finds that no change is necessary because grant programs address statutory labor requirements.

Issued in Washington, DC.

**Paul Nissenbaum,**

*Associate Administrator, Office of Railroad Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[FTA-2021-0010]

#### Notice of Availability of Final Initial Updated Policy Guidance for the Capital Investment Grants Program

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of availability of final initial updated Capital Investment Grants program policy guidance.

**SUMMARY:** The Federal Transit Administration (FTA) is making available, on its website and in the docket, final initial updates to the Capital Investment Grants (CIG) program policy guidance. These revisions amend FTA's CIG Final Interim Policy Guidance last published in June 2016 to reflect changes made to the program by the Infrastructure Investment and Jobs Act (IIJA), also known as the "Bipartisan Infrastructure Law". In March 2022, FTA published initial guidance proposals for implementing changes made to the CIG program by the IIJA for public comment. FTA appreciates the thoughtful comments received and has incorporated some of the suggestions into the initial updated CIG program policy guidance. FTA is placing formal responses to the comments received in the docket. This policy guidance continues to complement FTA's regulations that govern the CIG program.

**DATES:** This final initial guidance is effective January 12, 2023.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Day, FTA Office of Planning and Environment, telephone (202) 366-5159 or [Elizabeth.Day@dot.gov](mailto:Elizabeth.Day@dot.gov).

**SUPPLEMENTARY INFORMATION:** This final initial guidance document contains binding obligations, which 49 U.S.C. 5334(k) defines as "a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy." Under 49 U.S.C. 5334(k), FTA may issue binding obligations if it follows notice and comment rulemaking procedures under 5 U.S.C. 553. Prior to making the amendments announced today, FTA followed such procedures. The policy guidance that FTA periodically issues for the CIG program complements the FTA regulations that govern the CIG program, codified at 49 CFR part 611. The regulations set forth the process that grant applicants must follow to be considered for discretionary funding under the CIG program, and the procedures and criteria FTA uses to rate and evaluate projects to determine their eligibility for discretionary CIG program funding. The policy guidance provides a greater level of detail about the methods FTA uses and the sequential steps a sponsor must follow in developing a project.

In March 2022, FTA sought comment on three initial proposed changes to FTA's CIG Final Interim Policy Guidance last issued in June 2016 (87 FR 14612). The three proposals were related to changes made by the IIJA to 49 U.S.C. 5309 and included: eligibility as a Core Capacity project; how FTA will determine that a CIG project sponsor has demonstrated progress on meeting Transit Asset Management and State of Good Repair targets; and how bundles of CIG projects can enter the Project Development phase of the program. The initial updated CIG program policy guidance is being made available today on the agency's public website at <https://www.transit.dot.gov/funding/grant-programs/capital-investments/capital-investment-grants-program-regulations-guidance>, and in the docket at <https://www.regulations.gov/docket/FTA-2021-0010/>. Additionally, FTA's response to the comments received on the initial proposed changes are available in the docket. No other changes are being made to the CIG program policy guidance at this time. FTA intends to propose a more comprehensive update

of the CIG program policy guidance for notice and comment in the future. That proposed update will incorporate feedback FTA received in response to its Request for Information published in the **Federal Register** in July 2021 (86 FR 37402). The three topics covered in the final initial updated CIG program policy guidance are intended to assist FTA in managing the CIG program in the near term while the more comprehensive CIG program policy guidance changes are developed and proposed.

**Nuria I. Fernandez,**

*Administrator.*

[FR Doc. 2023-00533 Filed 1-11-23; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket FTA-2023-0001]

#### Notice of Establishment of Emergency Relief Docket for Calendar Year 2023

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** By this notice, the Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2023, so grantees and subgrantees affected by a national or regional emergency or disaster may request temporary relief from FTA administrative and statutory requirements.

**FOR FURTHER INFORMATION CONTACT:** Bonnie L. Graves, Attorney-Advisor, Office of Chief Counsel, Federal Transit Administration, 90 Seventh Street, Ste. 15-300, San Francisco, CA 94103; phone: (202) 366-0944, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to 49 CFR 601.42, FTA is establishing the Emergency Relief Docket for calendar year 2023. In the case of a national or regional emergency or disaster, or in anticipation of such an event, when FTA requirements impede a grantee or subgrantee's ability to respond to the emergency or disaster, a grantee or subgrantee may submit a request for relief from specific FTA requirements.

If FTA determines that a national or regional emergency or disaster has occurred, or in anticipation of such an event, FTA will place a message on its web page (<http://www.transit.dot.gov>) indicating that the Emergency Relief Docket has been opened and including the docket number.