

project implementation. It would also restrict the flexibility of the sites to quickly change project partners and cost share, which is important in research programs to respond to unforeseen problems.

Therefore, FTA feels there is no risk that this research program will contribute to the transfer of market leadership from a U.S. to a foreign entity in the national market for hydrogen infrastructure.

In regard to IP, FTA fully appreciates the importance of IP in highly competitive industries. FTA has no interest in facilitating the transfer of IP from U.S. firms to foreign entities. FTA assures all concerned that, within the Fuel Cell Bus Program, all IP developed or retained by U.S. interests will remain under the control of those interests. There is no additional risk that IP belonging to U.S. interests will be unwittingly transferred to outside entities. Foreign companies participating in the National Fuel Cell Bus Program are required to agree to standardized data collection. Objective evaluations of the bus demonstration programs are a major component of the program and will provide U.S. companies non-proprietary performance data and analysis of all fueling infrastructure used in the program.

FTA recognizes that U.S. companies have significant experience developing and operating hydrogen fueling stations. However, though hydrogen production has advanced further than fuel cell technology, FTA determines it is still beneficial to examine all available and developing technologies. In cases where infrastructure funding is a major component of the project, it is focused on novel applications, not on replicating or competing with efforts where U.S. companies have already proven to be capable leaders.

In conclusion, FTA's review of the selection process and industry comments relating to the Fuel Cell Bus Program support our judgment that the transit industry and American public at large will best be served by a fuel cell bus research program not bound by Buy America requirements.

#### Waiver

Therefore, after carefully considering all comments, and for the reasons stated in its justification above, FTA hereby waives its Buy America requirements for all projects funded through its Fuel Cell Bus Program. Quick and successful deployment of fuel cell bus technology and infrastructure is in the public interest. Fuel cell technology will benefit the environment by lessening carbon emissions and decreasing the use

of petroleum and other fossil fuels. Allowing foreign technologies will allow the project teams to focus on commercial viability instead of having to make fundamental advances independent of existing technology. Ultimately, this will lead to increased domestic demand for fuel cell bus technology and infrastructure, resulting in a sustainable U.S. market.

Issued this 31st day of July, 2008.

**Severn E.S. Miller,**  
*Chief Counsel.*

[FR Doc. E8-18313 Filed 8-7-08; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket Number: FTA-2008-0020]

#### Final Guidance on New Starts/Small Starts Policies and Procedures

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

**ACTION:** Notice of Availability of Final Guidance on New Starts/Small Starts Policies and Procedures.

**SUMMARY:** This notice conveys the Federal Transit Administration's (FTA) Final Guidance on New Starts/Small Starts Policies and Procedures.

**DATES:** Effective Date: These policies and procedures will take effect on August 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ron Fisher, Office of Planning and Environment, telephone (202) 366-4033, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, Washington, DC 20590 or [Ronald.Fisher@dot.gov](mailto:Ronald.Fisher@dot.gov).

#### Availability of Comments Considered in the Development of This Guidance

A copy of the notice of availability of the proposed Guidance, issued on April 18, 2008, and comments and material received from the public as a part of its review of the proposed Guidance, are part of docket FTA-2008-0020 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may retrieve the comments online at: <http://www.regulations.gov>. Enter docket number FTA-2008-0020 in the search field. In the "Narrow Results" section on the left side of the screen, click on

"Rules." The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

#### Response to Comments and New and Small Starts Program Changes

The purpose of this notice is to convey the Final Guidance on New Starts/Small Starts Policies and Procedures, reflecting the changes implemented as a result of comments received on the April 18, 2008 Notice of Availability (73 FR 21170). FTA finds that there is good cause to make this guidance effective upon publication of this notice in order to assist grantees to enter or complete development of proposed projects.

##### 1. Initiation Package

FTA adopts as final its proposal to require that project sponsors beginning an alternatives analysis prepare and provide to FTA a package of information on: (1) The problems that motivate consideration of major transit alternatives in a corridor; (2) the alternatives that have been identified for consideration; and (3) the information that will be prepared to support decisions on the alternatives along with the identification of the general approach to development of that information.

Preparing the package at the beginning of an alternative analysis allows FTA and other stakeholders to better understand the key considerations for an alternatives analysis. We anticipate that this will result in a more streamlined process.

**Comments:** A significant number of respondents supported this measure as a way to discuss potential road blocks that may occur in the project development process. Several commenters opposed this proposal indicating the scope of the proposal is best suited for a rulemaking process and is beyond the level of change appropriate for annual policy guidance.

**Response:** The proposal is a small change in FTA requirements that is properly implemented through policy guidance.

*Comments:* A few commenters suggested that the proposal should not require approval or delay an alternatives analysis study and that FTA should provide guidance on the initiation package to aid the project sponsor in the planning process.

*Response:* FTA does not intend to formally approve these documents, but will instead comment on them. If FTA expresses significant concerns with the description of problems in the study corridor, the nature of the alternatives, or the methodology, this could delay study progress. Because FTA must eventually agree to both the alternatives studied and the methodological approach as it affects development of information used for FTA evaluation, addressing these issues early in a study with possible delays means that technical work will not have to be redone later, which would likely result in more significant study delays. FTA has encouraged study sponsors to produce this kind of document for several years and provides guidance for what the document should contain on its Web site ([http://www.fta.dot.gov/planning/newstarts/planning\\_environment\\_2589.html](http://www.fta.dot.gov/planning/newstarts/planning_environment_2589.html)).

*Comments:* A few other respondents requested that care be taken so that the Federal perspective will not hamper the local project development process.

*Response:* We agree. FTA's responsibility is to ensure that a reasonable range of alternatives is considered to fulfill its responsibilities under the National Environmental Policy Act (NEPA) and the alternatives analysis requirement in 49 U.S.C. 5309. It is also FTA's responsibility to ensure that the information developed for its evaluations is consistent with good planning practice and FTA guidance. FTA does not dictate what kind of information should be developed to serve local decision-making needs.

*Comment:* One commenter stated that FTA should be aware that even with the most thorough planning efforts, new alternatives may arise after the initiation package is complete due to circumstances beyond the project sponsor's control.

*Response:* It is FTA's aspiration to minimize changes to alternatives being studied by vetting them early with all interested parties. FTA understands that new alternatives could arise later in the study as a result of study findings.

## 2. Small Starts Eligibility

a. FTA adopts as final the modification of the Small Starts eligibility requirements for proposed projects that do not include an actual fixed guideway but meet the definition

of being a corridor-based bus project. FTA eliminates the requirement that all four project elements (low-floor buses, traffic signal priority/pre-emption, significant stations, and branding) must be part of the project, and instead allows a project to be eligible if it includes at least three of the four elements.

Heretofore, non-fixed guideway projects were not eligible for Small Starts funding if any of the four elements listed above already existed in the corridor. Our experience has shown that minor improvements already made in a corridor, such as the existence of one of the elements, prevents worthy projects from being eligible for Small Starts funding. Our intent for the Small Starts program has been to differentiate the Small Starts program from the Section 5309 Bus Program by funding significant corridor improvements. By revising the policy to allow projects in corridors with one of the existing elements to apply for Small Starts funding, FTA has attempted to strike a balance between being too restrictive so that many worthy projects are excluded from eligibility, and being too flexible thus allowing eligibility for projects that are not significant corridor improvements but rather incremental improvements better funded under another program.

*Comments:* A few commenters opposed the measure, stating that no project should be eligible for funding under 49 U.S.C. 5309 unless it is an actual fixed guideway that includes rails or the exclusive use of right-of-way.

*Response:* The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) amended 49 U.S.C. 5309 to make non-fixed guideway projects eligible for Small Starts funding.

*Comments:* A significant number of respondents supported the elimination of the low-floor bus requirement for Small Starts projects.

A few commenters supported and expanded on the measure by stating that if one or more Small Starts elements are already present in a corridor that they should not preclude a project from Small Starts funds.

One respondent encouraged FTA to allow some level of existing BRT components, but suggested that FTA clarify that it will not fund installation or replacement of existing components. One commenter suggested that FTA allow a project to qualify if it contains four of the following six elements: (1) Low floor buses/level boarding; (2) significant stations; (3) high frequency service; (4) branding; (5) traffic signal priority/pre-emption; and (6) real-time customer information. One respondent

supported the use of a minimum threshold for Small Starts projects.

*Response:* While the proposal was to eliminate only the low-floor requirement, we have modified that in response to comments asking for more flexibility. FTA has tried to be more flexible in its eligibility requirements while still ensuring that the improvements are substantial enough to differentiate the Small Starts program from the Section 5309 Bus Program. In order to keep the program as simple as possible, we have not required a large number of elements, instead settling on a few that we think are necessary for premium transit services that will result in significant improvements in service. Should a proposed corridor already include one of the four required elements and request that, as part of the proposed project, this element be replaced or upgraded, FTA considers these an eligible capital expense in the Small Starts Program. In addition, FTA considers installation an eligible capital expense. Should, however, a project involve repair to an existing element, this item would need to be considered on a case-by-case basis. As for a minimum threshold, FTA assumes that this is a reference to a minimum project cost or Federal funding threshold. FTA declines to adopt a minimum threshold, however, as any such threshold could discourage low-cost transit solutions.

b. FTA adopts as final the removal of the current prohibition of dividing a Small Starts project envisioned for a corridor into multiple Very Small Starts projects.

The intent is to allow smaller projects to qualify as Very Small Starts, since the eligibility provisions for Very Small Starts guarantee that the projects will have acceptable ratings for project justification regardless of whether they will eventually be part of a larger project or not.

*Comments:* In the same comment, several respondents both supported the proposal to divide Small Starts into Very Small Starts projects and also noted that the Very Small Starts program is not authorized in SAFETEA-LU. In addition, these respondents stated that the project requirements for Very Small Starts are inherently mode-biased.

*Response:* The Federal Transit Administrator may impose any terms and conditions on a grant award under 49 U.S.C. 5309 as he "determines to be necessary or appropriate" to carry out the purposes of the Section 5309 capital programs FTA is mindful, of course, that in enacting SAFETEA-LU, the Congress expected the agency to develop criteria and procedures for

certain types of projects that would be simpler, and quicker, than those applicable to New Starts, to meet travel demands in discrete corridors that are growing, but do not yet necessitate the cost or careful development of a traditional New Starts fixed guideway. The Very Small Starts program is an exercise of the Administrator's inherent, discretionary authorities to make grants under Section 5309 and to meet the growing demand across the Nation for projects that do not require the time or expense of larger Small Starts projects—which, in many instances, resemble those of traditional New Starts projects.

Any project seeking funding, regardless of mode, must have an acceptable project justification rating. The eligibility requirements for Very Small Starts were set to guarantee that a project has an acceptable project justification rating. To meet an acceptable cost effectiveness rating, the costs for eligibility were constrained so that the user benefits resulting from the travel time and non-travel time benefits assure an acceptable cost effectiveness rating.

Due to the generally higher cost and other variables of a fixed guideway, it is not possible to automatically assure that such a project can be cost-effective unless it meets the requirements put in place for Very Small Start projects.

*Comments:* A few commenters opposed the proposal to allow for the subdivision of Small Starts projects into Very Small Starts projects because the project sponsor may potentially circumvent cost effectiveness, the National Environmental Policy Act (NEPA) process, and public input.

*Response:* The eligibility requirements for Very Small Starts ensure that a project will have an acceptable cost effectiveness rating. There is nothing in the Very Small Starts program that allows a project to either circumvent NEPA or avoid public input.

*Comments:* A few respondents opposed the measure, arguing that Very Small Starts projects do not guarantee a high quality transit project that is permanent enough to help a region move to a sustainable transportation system.

*Response:* The Very Small Starts eligibility requirements were developed to ensure that premium transit service is provided. FTA requires in its grant agreements that the federally funded assets stay in public transportation service for their entire useful lives, otherwise FTA must be reimbursed its share of the fair market value of the assets. This provision gives some

permanence to Very Small Start projects.

*Comments:* Several respondents also encouraged FTA to allow New Starts projects to be subdivided into Small Starts projects.

*Response:* FTA does not allow New Starts projects to be subdivided into multiple Small Starts projects because we believe it violates the intent of the Small Starts program, eliminates the need for the more intense scrutiny required for larger projects, and stretches FTA oversight resources too far. The Small Starts program is authorized at only \$200 million per year, which would be used up very quickly were FTA to allow New Starts projects to be divided into multiple Small Starts projects.

*Comments:* A few commenters responded to the category of Small Starts eligibility by suggesting that if FTA notices an increase in the number of Small Starts project development applications, FTA should request a greater amount of funding for this program.

*Response:* The President's annual budget request of Congress is based on an evaluation of the many competing priorities for public transportation across the Nation, not simply the demand for funding for Small Starts projects.

### 3. Documentation of Uncertainties in Predictions of Capital Cost and Ridership

FTA adopts as final its proposal to require that predictions of capital costs and project ridership for the locally preferred alternative (LPA) be expressed as ranges with accompanying explanations of the contributing sources of uncertainty that bracket the range. This requirement would apply to predictions submitted to FTA in support of requests to advance the LPA into preliminary engineering or, for Small Starts projects, project development, to all subsequent environmental documents, and to requests for entry into final design. The requirement does not apply to Very Small Starts. The requirement will go into effect six months after FTA issues separate guidance concerning this provision, expected before the end of calendar year 2008. Three months after guidance is issued, project sponsors are required to consult with FTA on the approach for the analysis to ensure that it meets FTA expectations.

The intent of this requirement is to comply with a number of SAFETEA-LU provisions that relate to project uncertainties. An analysis of project uncertainties provides the

underpinnings for the reasonability of key information that FTA must confirm to assure that its evaluations and ratings are sufficient for Federal funding decisions. As a result, the time required for FTA technical reviews will be shortened because uncertainties will be disclosed, reducing FTA questions and requests for follow-up analysis and the attendant impacts on review times.

The requirement will support more effective FTA compliance with SAFETEA-LU provisions relating to reliability of forecasting methods, the Before and After Study, the Contractor Performance Incentive Report, incentive awards when forecasts of costs and ridership are close to those achieved, and grantee consideration of the Contractor Performance Assessment Report (all found on <http://www.fta.dot.gov>). This is because FTA will be able to better understand the context of forecasts when comparing outcomes to forecasts, in contrast to having single estimate forecasts with no explanation of variances as a result of other causal factors.

*Comments:* A significant number of respondents stated that the measure would add to the burden of the New and Small Starts project development process by delaying planning and increasing costs for very little additional information. Several respondents opposed the measure noting that expressing forecasts in terms of a range is unreasonable and does not add to the utility of the project's forecast.

*Response:* FTA believes that any additional overall level of effort and time impacts for documentation of cost and ridership uncertainties will be modest if good planning practices are followed. For costs, the documentation of scope-related uncertainties relies on information that is surfaced in the routine course of the development of alternatives. The representation of these uncertainties can be captured in the existing spreadsheet framework of FTA's standard cost categories (SCCs). For ridership, the basis of the analysis is easily generated by rerunning models with minor changes in the inputs, thus significantly reducing the level of analysis necessary to understand the reasonableness of forecasts.

FTA believes that expressing forecasts in terms of ranges acknowledges the uncertainties that are endemic to any profession that makes forecasts of the future. That the actual capital costs and ridership of major transit projects have varied significantly from previous forecasts is evidence of the uncertainties that exist in forecasts for transit projects.

*Comments:* Several commenters stated that this measure is more

appropriately considered in a rulemaking process, not an annual policy guidance document. A few commenters suggested that if FTA were to accept this proposal as final that FTA should conduct research to establish the efficacy of the methodology and subject the research to a formal rulemaking process.

*Response:* FTA finds that this policy addresses good practice for planning and project development at a level of detail not usually addressed in rulemaking, which is intended for establishing the framework for project eligibility and evaluation. FTA intends to use the results of the uncertainty analysis in its research related to "before and after" studies.

*Comments:* A few commenters expressed concern that FTA is seeking to impose this requirement three months after publishing guidance without consideration for project status and without providing training to project sponsors.

*Response:* FTA has extended the time for the requirement to go into effect from three months in the proposal to six months after FTA publishes guidance on the uncertainty analysis, which should provide ample time for project sponsors to develop the analysis. Projects already approved into final design prior to the eventual effective date of this requirement will not be subject to this requirement.

*Comments:* A few respondents stated that the project development process is intended to reduce uncertainty and develop a more accurate cost as the project progresses toward final design; not to provide a detailed assessment.

*Response:* We agree that current practice reduces the uncertainty in the capital cost estimate as project development progresses, but an analysis of those uncertainties is not usually described in public documents. Travel forecasts are rarely refined in project development, so that analysis of uncertainties would not be expected to change significantly.

*Comments:* A few respondents stated that FTA has not given existing improvements to its process that are already in place enough time to work and that this requirement would add extra work to an already cumbersome process.

*Response:* We believe that the improvements already in place should facilitate the analysis of uncertainties and reporting of ranges, which, at this time, are rarely described for the LPA and in environmental documents.

*Comments:* A few commenters stated that changing input variables would not indicate the accuracy of the travel

model, but would only demonstrate sensitivity which is already documented in the methodology and demonstrated to be accurate based on actual behavior and the model calibration process.

*Response:* Changing input variables provides the sensitivity of ridership to those variables. Having a sense of the reliability of those variables, and interpreting how the forecasts are affected, provides insights into the uncertainties of the travel forecasts, rather than mechanically producing results as implied in the comment.

*Comments:* One respondent said that this measure would present a conflict to other FTA processes, noting that FTA's Office of Program Management requests the risk assessment process to begin when Preliminary Engineering is 20–50% complete.

*Response:* The uncertainty analysis should draw upon the best available information at the time the estimates of cost and ridership are developed.

*Comment:* One respondent stated that project sponsors depending on a Metropolitan Planning Organization (MPO) with a large number of member agencies will have great difficulty coming to a consensus on a high and low set of forecasts.

*Response:* It is not clear that they will have responsibility for facilitating a consensus on a range of forecasts, but if they do, one of the key missions of MPOs is to facilitate decisions on transportation issues.

*Comment:* One respondent stated that it was unfair to impose this requirement on New Starts and Small Starts projects when other Federally funded transit projects are not subject to the same scrutiny.

*Response:* The New and Small Starts programs have a number of special requirements spelled out in 49 U.S.C. 5309 that do not apply to other federally funded transit projects, for reasons of policy enunciated by the statute; we note, moreover, the New and Small Starts programs are discretionary, whereas most other program funding under 49 U.S.C. Chapter 53 is distributed by formulae.

*Comment:* One respondent noted that while qualitative concerns such as political or financial conditions may be described in text, the respondent questioned the value of using staff or consultant time to attempt to value such components.

*Response:* It is the responsibility of the project sponsor to decide which factors are important in performing the uncertainty analysis and how they should be interpreted.

*Comments:* A few commenters suggested that the best way to improve

models is to encourage existing activities such as peer reviews, surveys, research, calibration, best practices, and before and after studies.

*Response:* FTA agrees that these actions can reduce the uncertainty inherent in forecasts.

*Comments:* A few commenters suggested FTA place greater emphasis on reducing trips and trip lengths by rewarding density in project corridors and at stations, rather than retaining a focus on travel time.

*Response:* This proposal addressed reporting of uncertainties, not evaluation of land use. FTA currently gives credit for transit-oriented development and densities in its ratings for the land use criterion.

*Comments:* A few respondents suggested that FTA identify uncertainties and allow project sponsors to respond with a short explanatory document that acknowledges the uncertainties that may affect the project's capital costs or ridership.

*Response:* Prior to this proposal, FTA has collaborated with project sponsors to refine ridership forecasts and estimates for capital costs. We expect that collaboration will be useful in the determination of the uncertainty analysis. The results of any analysis of uncertainties must be summarized in submittals to FTA in support of requests to advance the LPA into preliminary engineering or, for larger Small Starts projects, project development, in all subsequent environmental documents, and in requests for entry into final design.

*Comments:* A few respondents stated that this proposal should only be applied to those elements that are a direct component of a Section 5309 funded project, and not to "concurrent non-project activities" that are beyond the control of the project sponsor.

*Response:* It is FTA's intent to focus the uncertainty analysis on those project elements that relate to the transit project.

*Comment:* One comment suggested FTA reduce this requirement to allow project sponsors to report every other year or only at key milestones. In addition, the commenter noted that this requirement should not apply to Very Small Starts projects as it would make the simplified process too cumbersome.

*Response:* The requirement applies to key milestones only and does not apply to Very Small Starts.

*Comments:* Several respondents asked how cost effectiveness would be determined if cost and ridership are reported using ranges.

*Response:* FTA will use the best estimate of costs and ridership to

quantify the evaluation measures related to mobility impacts and cost effectiveness. The project sponsor, in collaboration with FTA, will determine what constitutes the best estimate.

*Comment:* One commenter stated that FTA has not clearly stated how the production of this information will result in an improved project.

*Response:* The reporting of uncertainties will help FTA in determining project merit. In addition, proper reporting of uncertainties could reduce review times by FTA, which in turn should result in shorter project development times and reduced costs.

*Comment:* One respondent requested clarification on what was meant by “\* \* \* FTA will give credit, perhaps approaching full credit for useful presentations of forecasts.”

*Response:* The quoted language means that during project development FTA would take into consideration an insightful uncertainty analysis when establishing the reliability rating discussed under item 4 of this paper. FTA would also use the uncertainty analysis when preparing the Before and After Study Report and the Contractor Performance Assessment Report. FTA would take into consideration an insightful uncertainty analysis if the predicted or actual costs and ridership varied from the best estimate and the reasons for the variance were discussed in the uncertainty analysis as possibilities. In contrast, if the predicted or actual costs and ridership varied in the same way from the best estimate and the uncertainty analysis provided no insights into the reasons for the actual variance, FTA would view the outcomes more negatively in its assessments.

*Comment:* One commenter sought clarification on the following questions: (1) To what extent will FTA hold up a project's advancement in relation to this requirement; (2) will FTA question the breadth of this range; and (3) what happens if a project sponsor submits a best estimate that is closer to the low end than the high end?

*Response:* FTA will treat this requirement consistent with how it treats other evaluation and rating requirements. Under rare circumstances, FTA may hold up a project's advancement if FTA believes there are good reasons for doing so. As stated in the proposal, FTA will work with project sponsors to establish the best estimate and allow project sponsors to establish the high and low ends of range. The choice of the range is made by the project sponsor. If the project sponsor thinks the best estimate is closer to the low end of the range for the ridership forecasts or cost estimate than

the high end, the sponsor's accompanying explanation would describe why there is a low probability that actual ridership or cost would reach the higher end of the range.

#### 4. Reliability Rating

FTA adopts as final the proposal to develop ratings of the reliability of capital cost estimates and ridership forecasts beginning in January 2009, and to consider these ratings in the determination of the project justification rating for proposed projects beginning in August 2009. The rating will be included under “Other Factors” for project justification. This requirement would apply to ratings made for requests to advance the LPA into preliminary engineering or, for larger Small Starts projects, project development, and to requests for entry into final design and prior to an FFGA. This requirement does not apply to Very Small Starts.

FTA is implementing this rating to better differentiate the worthiness of projects for funding recommendations and to minimize the likelihood for project scope reductions when projects have ratings near acceptable breakpoints. Projects seeking New Starts and Small Starts funding vary considerably in the risks inherent in their cost and ridership forecasts as evidenced in the variance between actual results compared to the estimates made during planning and project development. Capturing reliability within FTA's evaluation allows funding to be directed to projects that have the greatest likelihood of achieving their forecasts, which are the source of much of the information used for project ratings. Additionally, incorporating reliability into FTA's ratings will minimize changes to ratings (or project scope to maintain a rating) that can occur after a project advances into preliminary engineering or into final design. This allows FTA to better comply with the 49 U.S.C. 5309 mandate that a proposed New Starts or Small Starts project shall not advance through the project development process unless the Secretary determines that there is a reasonable likelihood that the project will continue to meet the evaluation requirements.

*Comments:* A significant number of respondents opposed this requirement stating that this should have been included in a rulemaking process, not annual policy guidance. Several commenters questioned why FTA singled out this factor versus others listed in SAFETEA-LU that are not currently included in the project justification rating.

*Response:* FTA does not believe adding reliability as an “other factor” rises to the level of rulemaking. In the past we have added several considerations under “other factors” without rulemaking. A number of the “other factors” listed in SAFETEA-LU are either incorporated into existing measures or are so difficult to compute that using them in our evaluations would be cumbersome and not add to the information we have on the merits of the project.

*Comments:* Several respondents stated that the sub-criteria for reliability are subjective. A few commenters said that reliability is already being addressed in FTA's risk assessment process. Other commenters stated that FTA works closely with all grantees to approve their transit demand models, so reliability of forecasting methods should already be accounted for.

*Response:* Assessing reliability of forecasts is largely a subjective process given there are few analytical tools that cover many of the factors that contribute to risk. FTA's risk assessment process deals with much of the assessment of required risk, but omits some of the factors described in the proposed policy guidance. FTA's oversight of travel forecasts results in a reasonable estimate of ridership and user benefits. However, the reliability of model results depends on a number of factors relating to the uncertainty of the input variables and the ability of the models to forecast certain travel markets. These and other factors are captured in FTA's rating of reliability.

*Comments:* A few commenters stated that FTA should identify specific project uncertainties and project sponsors would then respond to FTA's assessment.

*Response:* Prior to this proposal, FTA has collaborated with project sponsors to refine ridership forecasts and estimates for capital costs. We expect that collaboration will be useful in the determination of the reliability rating.

*Comments:* A few respondents recommended FTA implement this requirement with procedures that are consistent with Congressional intent for the Small Starts program (i.e., commensurate with the level of investment). A few respondents encouraged FTA to help project sponsors who are having trouble with the modeling process rather than penalizing them through the application of a subjective rating factor.

*Response:* FTA will continue to provide technical assistance to project sponsors undertaking cost and ridership forecasts and encourage the analysis to

be commensurate with level of investment.

*Comments:* A few commenters suggested that the following be added to the list of uncertainties: change of development patterns due to demographic changes, housing preferences for units close to transit, housing and transportation expense, and the growing concern over greenhouse gases.

*Response:* FTA intends to use the factors listed in the proposal as we believe we can discern reliability from them. Change in development patterns is one of the proposed factors, but the others listed in the comment are not. The other factors cannot easily be used to assess reliability because travel models do not include them; our understanding of the link between them and ridership is very weak; and they are difficult to forecast.

*Comment:* One commenter stated that the experience of the project sponsor or contractor is more appropriately used to determine the extent of the oversight needed.

*Response:* FTA believes that experience of the project sponsor is a key variable in determining the reliability of the estimates. FTA already considers the project sponsor's experience and technical capacity when making a decision to advance a project and when assigning oversight resources.

*Comment:* A few respondents requested clarification on how the reliability assessment will be made and a rating assigned.

*Response:* Given the multitude of factors that contribute to reliability, FTA believes that each project will have a variety of factors that will inform the rating, so a description of a rigid rating framework is not effective. The factors include: completeness of the documentation of uncertainties, the quality of efforts to collect appropriate data and test travel forecasting procedures, actions taken by the project sponsor to minimize uncertainties, FTA findings, the track record of the project sponsor for forecasts of previous projects, the national track record of forecasts for similar projects, and the extent to which the ridership forecasts depend on conditions in the corridor that are substantially different from today. The rating will be considered along with other considerations under "Other factors" and a decision made as to whether the project justification rating should be changed.

#### 5. Local Financial Commitment for Recapitalization of the Existing Transit System

In rating potential New and Small Starts projects for local financial commitment, FTA adopts as final its proposal to give additional scrutiny to the adequacy of the local financial commitment for ongoing recapitalization of the existing transit system.

SAFETEA-LU included provisions that underscore the need for transit systems to first ensure they have sufficient funding for their recapitalization needs before spending additional resources for new projects that could exacerbate funding problems for recapitalization. This policy is intended to assure that transit agencies considering new projects have adequate resources to recapitalize their systems.

*Comments:* Several respondents sought clarification on what was meant by "additional attention will be given to local financial commitment for ongoing recapitalization." A few commenters were not clear on the proposal or how it was different from current practice.

*Response:* FTA intends to review the estimates of recapitalization costs and revenues with greater scrutiny than it has done in the past. While FTA has always included an examination of these needs in its evaluation, project ratings have seldom been impacted. This policy merely describes the greater emphasis FTA will be placing on the recapitalization estimates.

*Comments:* A few commenters supported the proposal, stating that funding for maintenance and recapitalization are appropriate considerations in financial planning and FTA's project ratings. Several respondents stated that it is not clear why a financial plan that includes section 5307 and 5309 fixed guideway modernization funds should be rated less favorably, given that maintaining the existing system is an eligible use of these funds.

*Response:* The proposal stated that FTA would apply extra scrutiny to ensure the recapitalization needs of the existing system were covered with sufficient funds if a project sponsor proposed diverting Section 5307 and Section 5309 fixed guideway funds from recapitalization needs to help fund the capital cost of the New or Small Starts project. If FTA determines that insufficient funds are identified for recapitalization needs or that recapitalization cost estimates are significantly understated in the financial plan, then the financial rating for the "capital cost estimates, planning

assumptions, and financial capacity" subfactor may be downgraded.

*Comments:* A few commenters stated that even if Congress had "the state of good repair" as its intent, that this is not applicable to Small Starts projects that only have to prove "each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project's timeline."

*Response:* Section 5309(c)(1)(B) of Title 49, U.S. Code, requires that the grantee have the "legal, technical, and financial capacity to carry out the project, including safety and security aspects of the project." FTA must have evidence that a transit agency has adequate resources to maintain and recapitalize the system before we can confirm that the project sponsor has the financial capacity to carry out the proposed project.

*Comments:* A few commenters stated that Congress did not intend to impose a state of good repair with this provision, but rather to ensure transit agencies not cut existing service in favor of the New Starts project.

*Response:* The plain language of 49 U.S.C. 5309(d)(4)(A)(iii) requires that "local resources [be] available to recapitalize \* \* \* the overall public transit system. \* \* \*" This language is clearly focused not only on reducing existing service, but rather on the overall system.

*Comments:* A few commenters stated that the triennial and planning certification reviews are more appropriate venues to assess maintenance and recapitalization funding than the New Starts project development process.

*Response:* While the triennial and planning certification reviews may touch on financial capacity and financial planning, FTA feels that the large number of topics addressed in those reviews does not allow for the level of scrutiny necessary to assure that project sponsors will be able to adequately recapitalize their systems.

*Comment:* One respondent stated that FTA should continue to review capital plans for continued maintenance of the base system, but did not support giving the proposed requirement more weight than other aspects of a project's financial plan.

*Response:* The adopted policy does not give more weight to this factor than others when evaluating and rating local financial commitment. The weights for the subfactors for rating local financial commitment are unchanged. Rather, the policy merely puts project sponsors on notice that additional scrutiny will be

applied to their projections of recapitalization costs and revenues.

**Comments:** Several respondents suggested that adjustments to capital costs should be considered for extraordinary cost increases or inflation; cost effectiveness break points should also be adjusted due to these cost escalations.

**Response:** FTA currently allows cost increases related to unforeseen commodities escalation or inflation. Per FTA's April 2005 Dear Colleague letter, the cost-effectiveness breakpoints are adjusted annually using the increase in the Gross National Product deflator.

#### 6. Contractor Review of Information for the Before and After Study

FTA adopts as final its proposal that contractors involved in a project's capital cost estimation and travel forecasting be given an opportunity to review and comment each time the project sponsor is required to submit information for the "before and after" study. The contractor's comments, if any, must be included in the information submitted to FTA.

The intent of this provision is to facilitate communication between project sponsors and contractors on the responsibilities of contractors for variances between forecasts at the three milestones before a project opens and actual results two years after the project opens for revenue service. If this communication does not result in a common understanding that can be documented in the submittal of information from the "before and after" study to FTA, the contractor's comments would have to be included in the submittal by the project sponsor.

**Comments:** There was significant support for and no opposition to this requirement.

Issued in Washington, DC this 4th day of August, 2008.

**James S. Simpson,**  
Administrator.

[FR Doc. E8-18315 Filed 8-7-08; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. Marad 2008 0047]

#### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice of intention to request extension of OMB approval and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before October 7, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Harrelson, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-5737; or e-mail: [tom.harrelson@dot.gov](mailto:tom.harrelson@dot.gov). Copies of this collection also can be obtained from that office.

#### SUPPLEMENTARY INFORMATION:

**Title of Collection:** Monthly Report of Ocean Shipments Moving under Export-Import Bank Financing.

**Type of Request:** Extension of currently approved information collection.

**OMB Control Number:** 2133-0013.

**Form Numbers:** MA-518.

**Expiration Date of Approval:** Three years from date of approval by the Office of Management and Budget.

**Summary of Collection of Information:** 46 App. U.S.C. 1241-1, Public Resolution 17, required MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (EXIMBANK) to foreign borrowers. Public Resolution 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

**Need and Use of the Information:** The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under Public Resolution 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing, and to ensure equitable distribution of shipments between U.S.-flag and foreign ships. MARAD will use this information to report annually to Congress the total shipping activities during the calendar year.

**Description of Respondents:** Shippers subject to Eximbank financing.

**Annual Responses:** 336 responses.

**Annual Burden:** 169 hours.

**Comments:** Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at <http://www.regulations.gov/search/index.jsp>.

[www.regulations.gov/search/index.jsp](http://www.regulations.gov/search/index.jsp). Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://www.regulations.gov/search/index.jsp>.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov/search/index.jsp>.

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator.  
Dated: August 4, 2008.

**Leonard Sutter,**

Secretary, Maritime Administration.

[FR Doc. E8-18378 Filed 8-7-08; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[USCG-2006-24644]

#### TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port License Application; Final Application Public Hearing and Final Environmental Impact Statement

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of availability; notice of public hearing; request for comments.

**SUMMARY:** The Maritime Administration and the U.S. Coast Guard (USCG) announce the availability of the Final Environmental Impact Statement (FEIS) for the TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port license application. The application describes a project that would be located in the Gulf of Mexico, in Main Pass block MP 258, approximately 63 miles south of Mobile Point, Alabama. The Coast Guard and Maritime Administration request public