

and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via <http://www.regulations.gov>. To submit comments via <http://www.regulations.gov>, enter docket number USTR-2009-0021 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The <http://www.regulations.gov> Web site provides the option of making submissions by filling in a "General Comments" field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "General Comments" field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If you use an application other than those two, please identify the application in your submission. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. If you file comments containing business confidential information you must also submit a public version of the comments. The file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If you submit comments that contain no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line

submission is impossible, alternative arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue may be contacted at (202) 395-3475. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (<http://www.ustr.gov>).

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

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**BILLING CODE 3190-W9-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket Number: FTA-2009-0036]

#### Additional Proposed Guidance for New Starts/Small Starts Policies and Procedures and Request for Comments for 2009

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

**ACTION:** Proposed guidance; request for comments.

**SUMMARY:** This notice includes, and requests comments on, additional Proposed Guidance on New Starts/Small Starts Policies and Procedures. This guidance continues FTA's efforts to streamline and simplify the New and Small Starts programs. The notice: (1) Proposes modifications to the evaluation and rating process; (2) clarifies existing policies; and (3) solicits public feedback on potential changes to FTA's internal practices for the New and Small Starts programs. Please note this guidance is in addition to, and distinct from, the guidance on New Starts/Small Starts Policies and Procedures published concurrently in this issue of the **Federal Register**.

**DATES:** Comments on the additional Proposed Guidance on New Starts/Small Starts Policies and Procedures must be received by August 18, 2009.

**ADDRESSES:** You may submit comments—identified by the docket number FTA-2009-0036—by any of the following methods:

*Web site:* <http://regulations.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

*Fax:* 202-493-2251.

*Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590.

*Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** You must include the agency name (Federal Transit Administration) and the docket number (FTA-2009-0036). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the Federal Government Web site located at <http://www.regulations.gov>. This means that if your comment includes any personal identifying information, such information will be made available to users of the Web site.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Day, Office of Planning and Environment, telephone (202) 366-5159 and Christopher Van Wyk, Office of Chief Counsel, telephone (202) 366-1733. FTA is located at 1200 New Jersey Ave., SE., East Building, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** This notice includes, and requests comments on, additional Proposed Guidance on New Starts/Small Starts Policies and Procedures. This guidance continues FTA's efforts to streamline and simplify the New and Small Starts programs. This guidance is in addition to, and distinct from, the Final Guidance on New Starts/Small Starts Policies and Procedures published concurrently in this issue of the **Federal Register**. After reviewing and considering public comment on the guidance proposed below, FTA intends to publish Supplemental Final Guidance on New Starts/Small Starts Policies and Procedures, which will take effect immediately upon publication. Projects approved into final design within 30 days of issuance of the Supplemental Final Guidance or prior to its issuance will not be affected in accordance with the policy established by FTA in 2006 so as to provide more stability for New Starts projects far along in the project development process.

#### Organization

This notice covers three topic areas: (1) Proposed policy changes; (2) clarification of existing policies and procedures; and (3) potential changes to FTA internal practices for managing the New Starts and Small Starts program. This notice fully articulates the

proposed guidance; the guidance will also be made available on the docket at <http://regulations.gov> and on FTA's public Web site at [http://www.fta.dot.gov/planning/planning\\_environment\\_5221.html](http://www.fta.dot.gov/planning/planning_environment_5221.html).

## Proposed Policy Changes

### 1. Local Financial Commitment Rating

FTA proposes to eliminate the policy of considering the degree to which a project employs innovative contractual agreements in the evaluation and rating of the operating financial plan under the local financial commitment criterion.

In 2007, FTA implemented policy guidance stating that when evaluating local financial commitment it would consider the degree to which a project employs innovative contractual agreements. Specifically, FTA stated it would increase the operating financial plan rating (from "medium" to "medium-high" or from "medium-high" to "high") when project sponsors provide evidence that the operations and maintenance of the project will be contracted out or when there is evidence that an opportunity had been given for contracting out but the project sponsor had substantive reasons for not doing so. FTA has determined that the type of contracting arrangement used or considered by a project sponsor is not useful or appropriate in determining the strength of the overall project. Thus, FTA proposes to eliminate consideration of it in evaluating and rating the operating financial plan.

This change would apply to New Starts projects, as well as to any Small Starts or Very Small Starts projects that do not qualify for the streamlined local financial commitment evaluation enumerated in FTA's Updated Interim Guidance on Small Starts.

### 2. New Starts and Small Starts Other Factors Criterion

FTA proposes to be less prescriptive on the items considered under the "Other Factors" criterion so as to better accommodate all of the unique project characteristics or circumstances that may justify special treatment in the evaluation of a project.

Existing FTA policy guidance calls out specific items for consideration and rating as "other" factors (e.g., whether the project is a principal element of a congestion management strategy for the region, "make-the-case" documents, reliability of data). FTA proposes not to emphasize specific items it will consider when determining whether to modify a project's rating based on "other" factors pursuant to 49 U.S.C. 5309(d)(3)(K) and 49 U.S.C.

5309(e)(4)(E). Rather, anything related to the project deemed appropriate by FTA under the discretion granted to it in statute can be considered under "other" factors on a project-by-project basis.

Thus, FTA proposes to no longer call out congestion management strategies with automobile pricing schemes in particular or the contents of a "make-the-case" document as items it will specifically consider or formally rate as "other" factors. Under this proposal, project sponsors would be free to submit information on these items voluntarily to assist FTA in its overall evaluation and rating of the project, but would not be required to submit the information. In addition, FTA proposes to no longer formally and explicitly rate the reliability of information provided on costs and travel forecasts, but will still consider reliability of the data as an "other" factor when determining whether the project justification rating should be changed.

### 3. New Starts Project Planning Horizon Year

FTA proposes to allow New Starts project sponsors to use the adopted planning horizon forecast year of the metropolitan planning organization (MPO) to estimate project ridership, transportation system user benefits, and operations and maintenance costs.

Since 2005, FTA has required project sponsors to submit information on ridership, transportation system user benefits, and operations and maintenance costs based on forecasts representing conditions in 2030. Because many MPOs have now moved to a horizon year of 2035, FTA will allow project sponsors to submit information consistent with the MPO's adopted planning horizon year, whether it is 2030 or 2035. Project sponsors may only use a 2035 planning horizon year if it has been officially adopted by the MPO.

Because of the timing of this guidance relative to the annual review of projects conducted in support of preparing FTA's *Annual Report on Funding Recommendations*, this policy, if adopted, would not go into effect until March 2010.

This proposed change does not impact potential Small Starts or Very Small Starts projects, since they submit information based on the opening year of the project rather than a forecast year.

## Clarification of Existing Policies

### 1. New and Small Starts Documentation of Uncertainties

In August 2008, FTA adopted a policy to require predictions of capital costs

and project ridership for the locally preferred alternative to be expressed as ranges with accompanying explanations of the contributing sources of uncertainty that bracket the range. FTA reminds project sponsors that this policy will not be implemented until six months after FTA issues separate guidance concerning this provision, which has not yet been published. As such, the requirement is not yet in effect.

### 2. Alternate Ridership and Transportation System User Benefits Estimation Methods for New Starts and Small Starts

FTA reminds project sponsors that regional travel forecasting models are not always required for New or Small Starts predictions of ridership and transportation system user benefit estimates.

FTA's evaluation of New Starts and Small Starts projects requires estimates of ridership and user benefits. These estimates are often generated by regional travel demand models, which attempt to represent existing travel patterns and choices in order to predict future travel patterns and choices. Under the right circumstances, quality data paired with straightforward analysis can provide a more direct representation of travel than a regional model.

The following paragraph gives a broad description and example of the "right circumstances" in which data-driven approaches may be preferable to a regional-model-based approach. Approaches outside the broad guidelines presented here may also be appropriate. Project sponsors should contact FTA's Office of Planning and Environment to discuss potential analytical techniques when beginning an alternatives analysis.

Data-driven analytical techniques first require quality data. Further, the corridor should be served by a mature transit system in which existing riders exhibit a variety of behaviors, including travelers choosing transit when a reasonable automobile option is available (so-called "choice riders"). Extensions of existing rail projects typically offer an excellent opportunity to use data-driven, incremental techniques. For example, a two-mile extension of a heavy rail line from the outer-most suburban station. If a large number of transit riders currently travel to the existing outer-most station by bus from the surrounding neighborhood and by car from more distant suburbs, an extension of the rail system would likely represent an incremental improvement to the transit trips in these two well-established travel markets. An

incremental, data-driven approach might well be preferred over a regional model-based approach under these types of circumstances. Several Small Starts projects have already used simplified, data-driven analytical techniques to estimate ridership and user benefits. FTA welcomes New Starts project sponsors to use similar techniques as appropriate.

#### Changes to Internal FTA Practices

FTA invites comment on certain changes the agency is considering to its own internal practices, described below. Any adoption of these changes would not require public notice-and-comment per 5 U.S.C. Section 553(b)(A), but FTA welcomes any opinions or suggestions whether these proposed changes would help improve FTA's management of the New Starts program.

##### *1. Expanded Pre-Award Authority and/or Expanded Use of Letters of No Prejudice*

FTA is considering expanding the activities covered by "automatic" pre-award authority upon completion of the requirements under the National Environmental Policy Act (NEPA) and/or expanding the circumstances under which FTA will issue Letters of No Prejudice (LONPs). Both approaches strive to expedite project delivery by allowing project sponsors to undertake activities covered by the pre-award authority or LONP with non-Federal sources while maintaining eligibility for future Federal reimbursement should an award be forthcoming. Neither pre-award authority nor an LONP is a guarantee of future Federal funding. Thus, project sponsors should understand they undertake the activities at their own risk.

Current FTA practice limits automatic pre-award authority for New and Small Starts projects to the following:

- Upon FTA approval to enter preliminary engineering (PE), FTA extends pre-award authority to incur costs for PE activities;
- Upon FTA approval to enter final design, FTA extends pre-award authority to incur costs for final design activities; and
- Upon completion of the NEPA process, FTA extends pre-award authority to incur costs for the acquisition of real property and real property rights.

FTA is considering expanding the activities covered by automatic pre-award authority at the completion of NEPA to include procurement of items such as vehicles, rails and ties, etc., that are long-lead time items or items for

which market conditions play a significant role in the acquisition price.

FTA reminds the public that local funds expended by the project sponsor pursuant to and after the date of the pre-award authority are eligible for credit toward local match or reimbursement only if FTA later makes a grant or grant amendment for the project. Local funds expended by the project sponsor prior to the date of the pre-award authority are not eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction prior to the completion of the NEPA process would compromise FTA's ability to comply with Federal environmental laws and may render the entire project ineligible for FTA funding.

Letters of No Prejudice (LONP) also allow a project sponsor to incur costs using non-Federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project for funding at a later date.

Currently, before considering an LONP, FTA determines whether a project seeking an LONP is a promising candidate for a Full Funding Grant Agreement (New Starts) or a Project Construction Grant Agreement (Small Starts). Typically, New Starts projects need to be approved into final design to be considered "promising candidates." However, LONP requests have occasionally been approved by FTA for projects prior to entry into final design when the LONP is sufficiently justified based on the cost or schedule impacts of not undertaking the work prior to final design. Currently, approval of LONPs is determined by FTA on a case-by-case basis. FTA is considering expanding the use of LONPs prior to project entry into final design but after completion of NEPA. Decisions on LONPs would still be determined case-by-case based on the justification provided by the project sponsor.

Note that LONPs neither provide Federal funds nor constitute a commitment that Federal funds will be provided in the future. Nonetheless, LONPs are often viewed by project sponsors and/or other stakeholders as a signal of a future Federal commitment because FTA does not generally award them unless it believes the project to be a promising candidate for an FFGA or PCGA. Thus, should FTA move to a practice of awarding LONPs earlier in project development before it has sufficient information to know whether a project is a promising candidate for an

FFGA or PCGA, the public should be aware that LONPs may no longer serve as a signal of a future Federal commitment.

Issued on: July 24, 2009.

**Peter M. Rogoff,**

*Administrator, Federal Transit Administration.*

[FR Doc. E9-18096 Filed 7-24-09; 4:15 pm]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **Advisory Circular 33.87-2, Comparative Endurance Test Method To Show Durability for Parts Manufacturer Approval of Turbine Engine and Auxiliary Power Unit Parts**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 33.87-2, Comparative Endurance Test Method to Show Durability for Parts Manufacturer Approval of Turbine Engine and Auxiliary Power Unit Parts. This AC describes a comparative endurance test method to be used for certain turbine engine or auxiliary power unit parts when manufactured under Parts Manufacturer Approval (PMA). This method may be used when PMA applicants introduce changes that could affect the durability of their proposed designs. It may also be used when an applicant has insufficient comparative data to show that the durability of their proposed PMA part is at least equal to the type design. The applicant can use this method when requesting PMA under test and computation, per part 21 of Title 14 of the Code of Federal Regulations, and using the comparative test and analysis approach detailed in Federal Aviation Administration Order 8110.42, Part Manufacturer Approval Procedures.

**DATES:** The Engine and Propeller Directorate issued AC 33.87-2 on June 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** The Federal Aviation Administration, Attn: Karen M. Grant, Engine and Propeller Standards Staff, ANE-111, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7119; fax: (781) 238-7199; e-mail: [karen.m.grant@faa.gov](mailto:karen.m.grant@faa.gov).

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go