

of No Significant Impact was issued in June 1997. The Monroe Connector study previously addressed improvements in the US 74 corridor from I-485 to US 601 in the City of Monroe, where it ended at the proposed Monroe Bypass. A Draft EIS for this project was approved in November 2003; however, a public hearing was never held. In February 2005, the NCTA adopted the Monroe Connector as a toll candidate facility, and in January 2006, the Notice of Intent for the Monroe Connector EIS was rescinded (**Federal Register** Vol. 71, No. 19, page 4958). Subsequently, NCTA adopted the Monroe Bypass project as a toll candidate facility in October 2006. The Monroe Connector and Monroe Bypass projects have been combined into a single project and will be evaluated in a single EIS.

The EIS for the proposed action will consider alternatives for improvements in the US 74 corridor from I-485 to US 74 in the vicinity of the Town of Marshville. Alternatives, including a "No-Build" Alternative (continuation of the existing condition), improving the existing US 74 corridor, and constructing a new location facility, will be considered. Several alternative corridors for a new location facility will be studied. As part of the EIS, NCTA will study the feasibility and impacts of developing the proposed project, in whole or in part, as a toll road.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. Scoping will occur over a series of meetings with the agencies and citizens informational workshops with the public. Information on the dates, times, and locations of the citizens informational workshops will be advertised in the local news media and newsletters will be mailed to those on the project mailing list. If you wish to be placed on the mailing list, contact Jennifer Harris at the address listed below. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above or directed to: Ms. Jennifer Harris, Staff Engineer, North Carolina Turnpike Authority, 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612. Telephone: (919) 571-3004.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research,

Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

**George Hoops,**

*Major Projects Engineer, Federal Highway Administration, Raleigh, North Carolina.*

[FR Doc. 07-196 Filed 1-18-07; 8:45 am]

**BILLING CODE 4910-22-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

[Docket No: FTA-2006-23697]

**Public-Private Partnership Pilot Program**

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

**ACTION:** Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications.

**SUMMARY:** Section 3011(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") authorizes the U.S. Secretary of Transportation to establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects (the "Pilot Program"). This notice establishes and sets forth the definitive terms of the Pilot Program. By separate notice to be published in the **Federal Register** not later than March 31, 2007, FTA will summarize and respond to comments solicited by FTA by notice published in the **Federal Register** on March 22, 2006, at 71 FR 14568. This notice is not a "binding obligation" as defined at 49 U.S.C. 5334(l)(2). This notice is organized into three sections: (1) "Background;" (2) "Overview of Pilot Program;" and (3) "Definitive Terms."

**DATES:** To be considered in FTA's first quarterly review of applications to the Pilot Program, applications must be received by FTA on or before March 31, 2007. Applications received by FTA between March 31, 2007, and July 1, 2007, will be reviewed in FTA's second quarterly review of applications to the Pilot Program. See "Applications" at section 3(f) of this notice.

**ADDRESSES:** Applications should be submitted by U.S. Post or express mail to the Federal Transit Administration, c/o the Chief Counsel, Office of Chief Counsel, Room 9328, 400 Seventh Street, SW., Washington, DC 20590. Please note that due to security procedures in effect since October 2001 regarding mail deliveries, mail received

through the U.S. Postal Service may be subject to delays. Parties making applications to the Pilot Program should consider using an express mail service to ensure the prompt filing of any applications not filed by express mail.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the Pilot Program should be addressed to David B. Horner, Esq., Chief Counsel, Federal Transit Administration, by e-mail at [David.Horner@dot.gov](mailto:David.Horner@dot.gov) or by telephone at (202) 689-4464. To read materials on the DOT docket responsive to FTA's notice published in the **Federal Register** on March 22, 2006, at 71 FR 14568, please go to <http://dms.dot.gov> at any time or to the Docket Management System.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

(a) *Objective.* The Public-Private Partnership Pilot Program (the "Pilot Program") is intended to demonstrate the advantages and disadvantages of public-private partnerships ("PPPs") for certain new fixed guideway capital projects funded by the Federal Transit Administration ("FTA"). In particular, the Pilot Program is intended to study whether, in comparison to conventional procurements, PPPs better reduce and allocate risks associated with new construction, accelerate project delivery, improve the reliability of projections of project costs and benefits, and enhance project performance. The Pilot Program will accordingly study projects that, among other things, utilize methods of procurement that integrate risk-sharing and streamline project development, engineering, construction,<sup>1</sup> operation, and maintenance.<sup>2</sup> The amount and terms of private investment to be made in such projects will be a significant consideration in selecting projects to participate in the Pilot Program.

(b) *PPPs in General.* As the growth in traditional transportation revenue sources, such as gasoline taxes, continues to decline and transportation operation, maintenance, replacement, and expansion needs and costs increase, transportation agencies are experiencing significant pressure to find ways to

<sup>1</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users H.R. REP. NO. 109-203, at 936-37 (2005), reprinted in 2005 U.S.C.C.A.N. 452.

<sup>2</sup> Section 5309(c)(4)(A), which permits the Secretary to approve an application to the Pilot Program if "State and local laws permit public-private agreements for all phases of project development, construction and operation of the project" (emphasis added) indicates that the Pilot Program is intended to demonstrate the advantages and disadvantages of PPPs for all aspects certain new fixed guideway capital projects, including their operation and maintenance.

manage their costs and find new sources of revenue. One of the most successful methods to control costs and generate revenues employed by other infrastructure sectors is the use of PPPs. This success has led transportation agencies, including several transit agencies, to pursue opportunities for applying PPPs to deliver major capital projects.

PPPs are essentially a form of procurement. Unlike conventional methods of contracting for new construction (e.g., "design-bid-build"), in which discrete functions are divided and procured through separate solicitations, PPPs contemplate a single private entity, typically a consortium of private companies (a "private partner"), being responsible and financially liable for performing all or a significant number of functions in connection with a project. In transferring responsibility and risk for multiple project elements to the private partner, the project sponsor relaxes its control of the procurement, and the private partner receives the opportunity to earn a financial return commensurate with the risks it has assumed.

Structured in multiple forms, PPPs vary generally according to the scope of responsibility and degree of risk assumed by the private partner with respect to the project. In each case, the private partner assumes financial risk in some form—for example, through an equity investment, liability for indebtedness, a fixed priced contract, a long-term warranty or a combination thereof.

In recent years transit agencies have increasingly turned to PPP project delivery approaches in order to procure new or expanded transit services. Agencies have used PPP delivery approaches in an attempt to obtain time savings, cost savings, and more innovative, higher quality projects with reduced risks. The principal forms of project delivery PPPs (and their respective benefits) include the following:

**Design-Build.** Unlike design-bid-build procurements, in which the design and construction of projects is procured under at least two separate contracts with little or no overlap in the respective project work phases,<sup>3</sup> the

design-build ("DB") delivery approach combines the design and construction phases into one, fixed-fee contract. Under a DB contract, the design-builder, not the project sponsor, assumes the risk that the drawings and specifications are free from error. While the design and construction phases are performed under one contract, it is important to note that the design-builder may be one company or a team of companies working together. The DB selection process may be based on a negotiation with one or more contractors or a competitive process based on some combination of price, duration, and qualifications. Increasingly, DB contracts are being awarded on the basis of best value, considering each of these factors. Since the late 1990s, five transit New Starts projects have been procured using a DB approach, including: the Denver RTD Southeast Corridor LRT; the South Florida Commuter Rail Upgrades; the Minneapolis Hiawatha LRT Line; the BART Extension to the San Francisco International Airport; and the WMATA Largo Metrorail Extension. In addition there is one non-New Start transit project built in part with Federal funds that has been delivered using a DB approach: The Portland MAX Airport Extension.

In comparison to traditional design-bid-build delivery, the primary benefits that have been associated with DB delivery approaches (and other PPP delivery approaches that incorporate DB delivery) include:

- **Time savings.** The potential for time savings results from early contractor involvement in the design phase, which increases the constructability of the design plans; the ability to work concurrently on the design and construction phases for portions of the project; and the elimination of the bidding process between the design and construction phases that is required of traditional DBB project delivery.

- **Cost savings.** The potential for cost savings results from continued communication between design, engineering, and construction team members throughout the delivery; reduced inspection requirements by the project sponsor because these activities are the responsibility of the design-builder; reduced change orders due to early involvement of the construction

contractors in the design phase; and shortened project timeline.

- **Shared risks.** Since the potential project risks are shared among the public and private sectors, the risks may be assigned to the party best able to handle them. For example, the private sector may be better equipped to handle the risks associated with design quality, construction costs, and delivery schedule adherence since they are responsible for both the design and construction of the facility; while the public sector may be better able to manage the public risks of environmental clearance, permitting, and right-of-way acquisition.

- **Improved quality.** The potential for improved quality results from the involvement of the design team through project development and opportunities to incorporate project innovations and new technology that may arise based on project needs and contractor capabilities.

It is important to note, however, that design-build project delivery increasingly includes a variety of structures and combinations that results in private participation not only in the design and construction phases but also in operations, maintenance, and project financing. These advancements based on the DB delivery approach (and that incorporate the benefits of the DB approach) include the following:

**Design-Build with a Warranty.** Under the design-build with a warranty approach, the design-builder guarantees to meet material, workmanship, and/or performance measures for a specified period after the project has been delivered. The warranties may last five to twenty years. The potential benefits of the DB with a warranty approach include the assigning of additional risk to the design-builder and reducing the project sponsor's need for inspections and testing during project delivery.

**Construction Manager at Risk.** Construction manager at risk ("CMR") utilizes a separate contract for a construction manager ("CM"). The CM begins work on the project during the design phase to provide constructability, pricing, and sequencing analysis of the design. The project sponsor generally holds a separate contract with the design team through these initial phases of the CM contract. The CM becomes the design-build contractor when a guaranteed maximum price is agreed upon by the project sponsor and CM. The benefits associated with CMR delivery may include the continued advancement of the project during price negotiations and the potential for more optimal teaming because the CM can negotiate

<sup>3</sup>Design-bid-build ("DBB") is the traditional form of project delivery where the design and construction of the facility are awarded separately to private sector engineering and contracting firms. As a result, the DBB process is divided into a two-step delivery process involving separate phases for design and construction. In the design phase, the project sponsor either performs the work in-house or contracts with multiple engineering and design firms to prepare the preliminary engineering plans and environmental clearance, which results in a

project plan, and the final drawings and specifications for the project. Once the design phase is complete, the project sponsor separately contracts with private construction firms through a competitive bidding process. Under a DBB contract, the project sponsor, not the construction contractors, is solely responsible for the financing, operation, and maintenance of the facility and assumes the risk that the drawings and specifications are complete and free from error.

with all firms, rather than having to select from a limited number under DB delivery.

*Design-Build-Operate-Maintain.* Under a design-build-operate-maintain (“DBOM”) delivery approach, the selected contractor is responsible for the design, construction, operation, and maintenance of the facility for a specified time. The contractor must meet all agreed upon performance standards relating to physical condition, capacity, congestion, and/or ride quality. The potential benefits of the DBOM approach are the increased incentives for the delivery of a higher quality plan and project because the design-builder is responsible for the performance of the facility for a specified period of time after construction. Since the late 1990s, three transit projects have been procured as DBOMs: the New Jersey Transit Hudson-Bergen LRT MOS-1 and MOS-2 and the JFK Airtrain.

*Design-Build-Finance-Operate.* The design-build-finance-operate (“DBFO”) delivery approach is a variation of the DBOM approach. The major difference is that in addition to the design, construction, and operation of the project, the contractor is also responsible for all or a major part of the project’s financing. The potential benefits for the DBFO approach are the same as those under the DBOM approach and also include the transfer of the financial risks to the design-builder during the contract period. While the project sponsor retains ownership of the facility, the DBFO approach attracts private financing for the project that can be repaid with revenues generated during the facility’s operation. As of the publication of this notice, BART is expected to solicit proposals to design, build, operate, and finance the Oakland Airport Connector.

*Build-Operate-Transfer.* Build-operate-transfer (“BOT”) is similar to the DBFO approach whereby the contract team is responsible for the design, construction, and operation of the facility for a specified time, after which the ownership and operation of the project are returned to the project sponsor. Under a BOT approach, the project sponsor retains ownership of the facility as well as the operating revenue risk and any surplus operating revenues. The potential benefits of using a BOT approach are similar to the benefits associated with using a DBOM contract: increased incentives for the delivery of a higher quality plan and project because the contractor is responsible for the operation of the facility for a specified time period after construction.

*Build-Own-Operate.* Under a build-own-operate (“BOO”) delivery approach, the design, construction, operation, and maintenance of a facility is the responsibility of the contractor. The major difference between BOO and DBOM, DBFO, or BOT approaches is that ownership of the facility remains with the private contractor. As a result, the potential benefits associated with a BOO approach are that the contractor is assigned all operating revenue risk and any surplus revenues for the life of the facility.

*Full Delivery or Program Management.* With a full delivery or program management (“Full Delivery”) approach, the construction contractor provides a wide variety of services beyond construction to the project sponsor. These services generally begin during the design phase and may continue through the operation and maintenance of the facility. The potential benefit of the Full Delivery approach is that it allows the project sponsor to leverage its resources throughout the design, construction, and operation of the facility.

## 2. Overview of Pilot Program

(a) *Overview of Statutory Framework.* Section 3011(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) authorizes the U.S. Secretary of Transportation (the “Secretary”) to establish and implement the Pilot Program to demonstrate the advantages and disadvantages of PPPs for certain new “fixed guideway capital projects” (each, a “project”). Section 3011(c) sets forth generally the terms and conditions of the Pilot Program.

- Section 3011(c)(2) authorizes the Secretary to select up to three projects to participate in the Pilot Program.
- Section 3011(c)(3) provides that no project is eligible to participate in the Pilot Program unless the project sponsor of a project submits an application that contains, at a minimum: (i) An identification of a project that has not entered into a full funding grant agreement or project construction grant agreement with FTA; (ii) a schedule and finance plan for the construction and operation of the project; and (iii) an analysis of the costs, benefits, and efficiencies of the proposed public-private agreement.

- Section 3011(c)(4) provides that the Secretary may approve the application of a project to participate in the Pilot Program if the Secretary determines that: (i) Applicable State and local laws permit public-private agreements for all phases of development, construction, and operation of the project; (ii) the

recipient is unable to advance the project due to fiscal constraints; and (iii) the plan implementing the public-private partnership is justified.

- Section 3011(c)(5) requires that applications to the Pilot Program be made between the beginning of fiscal year 2006 and the end of fiscal year 2009.

Beyond the terms set forth above, section 3011(c) states no operative criteria for implementation of the Pilot Program and is notably silent on what benefits, if any, participation in the Pilot Program would confer on a project.<sup>4</sup> However, section 3011(c) affords the Secretary broad discretion to devise criteria or approve arrangements between a public entity and its private partner setting forth incentives and obligations within the framework of section 3011(c) that would demonstrate the advantages or disadvantages of PPPs as applied to projects. In the event that a Pilot Project is a candidate for New Starts funding, the Secretary additionally has the authority under 49 U.S.C. 5309 (d)(3)(K) to supplement rating criteria identified specifically by statute with “other factors” that the Secretary determines appropriate to carry out the New Starts program.<sup>5</sup>

(b) *How the Pilot Program Will Work.* FTA will designate as Pilot Projects those projects that exhibit high “demonstration value.” In determining the extent to which a project exhibits demonstration value, FTA will consider, among other things: (i) The number of project elements for which the private partner is responsible, (ii) the quality of

<sup>4</sup> The statute omits other important information and provisions. For example, the statute is silent on whether the Pilot Program, if established, would apply solely to candidates for New Starts funding. FTA routinely funds new fixed guideway capital projects through both its New Starts program and certain formula programs. The statute itself states that the Secretary may establish the Pilot Program to demonstrate the advantages of PPPs for “certain new fixed guideway capital projects” but does not expressly limit such projects to New Starts projects. The first and last sentences of the pertinent section of the Conference Report, which is not legally binding, make reference to New Starts projects but omit words of limitation: “The Conference is seeking to identify cost drivers for critical, complex, and capital intensive transit New Starts projects \* \* \* The Committee expects the Secretary to initiate the pilot program as soon as practical after enactment [of SAFETEA-LU], in order that the benefits of PPPs may be understood and potentially applied to other transit New Starts projects.” See H.R. Rep. No. 109-203, at 937 (2005), reprinted in 2005 U.S.C.C.A.N. 452 (emphasis added). The statute provides no definition of the term “public-private partnership.” No monies have been authorized expressly for the Pilot Program.

<sup>5</sup> 49 U.S.C. 5309(d)(3) provides: “In making the determination \* \* \* for a major capital investment grant, the Secretary shall analyze, evaluate, and consider \* \* \* (K) other factors that the Secretary determines to be appropriate to carry out this subsection.”

risk allocation with respect to the cost and ridership of the project, as set forth in the public-private agreement, (iii) the extent to which equity capital and development proceeds are contributed to the project and the terms on which such capital is contributed, (iv) whether the project is part of a congestion mitigation plan that incorporates system-wide congestion pricing, and (v) the expected effects of the foregoing arrangements on (A) The speed of delivery of the project, (B) the quality of delivery and performance of the project, and (C) the reliability of the projections of costs and benefits associated with the project.

Pilot Projects that are candidates for funding under FTA's New Starts program will be evaluated and rated in accordance with the rating scheme of the New Starts program, as adjusted to account for their "demonstration value." Accordingly, Pilot Projects that receive an overall rating of Medium or higher and a cost-effectiveness rating of Medium or higher, as adjusted for their demonstration value, will be included in the President's Budget to Congress for New Starts funding.

Pilot Projects that propose to use non-New Starts Federal funds may receive certain benefits, such as regulatory relief, as negotiated with FTA on a case-by-case basis, after taking into account the demonstration value of the project. FTA expects to utilize an opening in the Pilot Program for a project receiving non-New Starts Federal funds only if the project presents exceptionally high demonstration value.

FTA budget recommendations and other final approvals with respect to a Pilot Project—together with any procedural or rating benefits received by the project under the Pilot Program prior to a funding recommendation—would be conditioned on the project sponsor and the private partner having entered into a public-private agreement that, in the opinion of FTA, safeguards the "Federal interest."<sup>6</sup> If the parties failed to enter into such an agreement, FTA would rescind the procedural and

substantive benefits received by the Pilot Project and remove the Pilot Project from the Pilot Program.

It follows that the Pilot Program will not focus on innovative finance as such but on innovative procurements of major capital projects in which private capital is invested. The PPPs to be studied in the Pilot Program may be distinguished from other collaborative arrangements between public and private sectors that are not procurements but instead are mechanisms to provide private capital to transit projects. Many transit agencies, for example, are partnering with the private sector in order to promote real estate development in and around transit facilities, which is often referred to as "joint development." These partnerships provide access to additional capital and operating revenues for transit agencies through the receipt of lease payments, access fees, and increased fare revenues, as well as direct private sector funding of capital facilities that promote access between transit and private development. The capital-raising function, however, is but one element of a PPP.

(c) *Rationale for Pilot Program Terms.* FTA is interested in understanding the extent to which the private sector's requirement for a financial return and agreement to assume risk for costs and benefits in major transit system procurements may permit FTA to relax certain requirements or accelerate approvals applicable to major capital projects funded by FTA. In particular, FTA wishes to study the proposition that when risks associated with new construction are appropriately allocated between a project sponsor and its private partner, FTA may rely on the commercial due diligence, financial incentives, and potential liabilities of the private partner to control for such risks, rather than evaluate those risks solely or primarily by means of FTA's own due diligence.

Currently, FTA's New Starts program and certain Federal transit regulations attempt to safeguard the Federal interest in major transit system procurements by means of extensive due diligence. These are designed, among other things, to allow FTA to validate the projections of project costs, benefits, and financing that, in turn, form the basis of FTA's statutorily-required findings of project justification and local commitment. FTA believes, however, that determinations of project justification and financial commitment may not require the independent verification by FTA of estimated project costs, benefits, and financing in all cases. FTA wishes to study whether, in some instances,

such determinations might be reliably based on commercial arrangements negotiated between the project sponsor and private partner that are typical of PPPs. Such arrangements might include "design-build" or "design, build, operate, and maintain" agreements, fixed priced contracts, equity investments by private contractors and other risk-shifting or risk-reducing devices customary in private sector project development transactions. The Pilot Program accordingly offers projects sponsors incentives—in the form of improved ratings, accelerated process and other benefits—to enter into PPPs for project delivery. The benefit to the public generally of relying on third-party commercial validation of project costs, benefits, and local commitment is that, in doing so, FTA may accelerate the review process for New Starts, thereby realizing savings for project sponsors and Federal taxpayers.

Similarly, in the case of projects that intend to use non-New Starts Federal funds, FTA may relax certain regulations that impose additional costs on project sponsors to the extent such regulations are redundant with private sector safeguards, incentives, and obligations that have the effect of protecting the Federal interest.

Accordingly, under the Pilot Program, FTA's decision to recommend funding or to grant certain regulatory relief will not turn primarily on FTA's review of project costs and benefits; it will turn instead on whether the commercial terms between project sponsor and private partner allocate risks and create the incentives and liabilities in a way that safeguards the Federal interest. For this reason, FTA budget recommendations and other final approvals with respect to a Pilot Project—together with any other benefits received by the project under the Pilot Program prior to a funding recommendation or other approval—will be conditioned on the project sponsor and its private partner having entered into a public-private agreement satisfactory to FTA. If the parties fail to enter into a satisfactory agreement, FTA will rescind the benefits received by the Pilot Project and remove the Pilot Project from the Pilot Program.

(d) *Environmental Matters.* On several occasions in years past, FTA has allowed project sponsors to negotiate and award design-build contracts in instances in which the contract did not commit the project sponsor or FTA to final design or construction prior to the completion of compliance with NEPA, and the entities performing the NEPA studies had no financial interest in the outcome of the project under study. For

<sup>6</sup> The term "Federal interest" typically denotes a range of interests of the Federal government in a project, including, for example, the interest of the Federal government in the project's compliance with applicable Federal law. For purposes of the Pilot Program, the term "Federal interest" means, with respect to a Pilot Project, the interest of the Federal government in having the project completed in accordance with the budget, schedule, and public-private agreement on the basis of which (i) in the case of a Pilot Project that is a candidate for New Starts funding, FTA recommends the project in the Annual Report to the U.S. Congress for a Full Funding Grant Agreement and (ii) in the case of any other Pilot Project, FTA permits non-New Starts Federal funding in support of the project. See section 3(b) of this notice.

purposes of the Pilot Program, FTA will observe environmental procedures substantially the same as FTA's existing approach on environmental matters, as set forth in section 3(l) of this notice.

### 3. Definitive Terms

(a) *Public-Private Partnership Pilot Program Established.* The Federal Transit Administration ("FTA"), acting for the Secretary of the U.S. Department of Transportation (the "Secretary") pursuant to section 3011(c)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"),<sup>7</sup> establishes a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects (the "Pilot Program"). The Pilot Program will be administered by FTA in accordance with the terms and conditions set forth in this section 3.

(b) *Certain Definitions.* As used in this section 3,

"Administrator" means the Administrator of FTA.

"Alternatives analysis" has the meaning provided in 49 CFR 611.7(a).

"business improvement district" means an association (i) Organized voluntarily by its members for the purpose of financing a project by means of self-assessments, (ii) managed by its members or by a non-governmental entity under the direction of a board elected by its members, and (iii) whose members are located within a defined geographic area.

"Demonstration value" has the meaning provided in section 3(h) of this notice.

"Department" means the U.S. Department of Transportation.

"development proceeds" means cash contributed by a governmental entity to the project company raised through the sale or lease to a non-governmental for-profit entity of rights to develop, control, occupy, enter, or otherwise use for commercial purposes any real property (or the space above the physical surface of real property) adjacent or proximate to any part of a Pilot Project.

"Equity capital" means the amount equal to the sum of: (i) Cash paid into the project company by a non-governmental entity in exchange for shares of capital stock, membership interest, partnership interest or another interest therein that entitles the holder thereof to (A) Vote on the selection of directors, managers, or general partners

of the project company, as the case may be, and (B) receive distributions of profits of the project company with respect to such interest (an "equity interest"); (ii) the amount represented by a letter of credit made in favor of senior lenders of the project company by the holder of an equity interest in lieu of cash payments for an equity interest; (iii) cash loaned to the project company by the holder of an equity interest in exchange for the unsecured subordinated obligation of the project company to repay indebtedness; and (iv) cash contributed to the project company by a business improvement district (as defined above). For avoidance of doubt, "equity capital" shall not include proceeds raised by tax increment financing.

"Federal transit law" means 49 U.S.C. 5301 *et seq.*

"Federal interest" means, with respect to a Pilot Project, the interest of the Federal government in having the project completed in accordance with the budget, schedule, and public-private agreement on the basis of which (i) in the case of a Pilot Project that is a candidate for New Starts funding, FTA recommends the project in the Annual Report to the U.S. Congress for a full funding grant agreement or project construction grant agreement and (ii) in the case of any other Pilot Project, FTA consents to non-New Starts Federal funding in support of the project.

"Final design" for purposes of section 3(l) of this notice, means any design activities following preliminary design and includes the preparation of final construction plans and detailed specifications for the performance of construction work, and for all other purposes, shall have the meaning provided in 49 CFR 611.7(b).

"Fixed guideway capital project" means a "capital project," as defined at 49 U.S.C. 5302(a)(1), that is a "fixed guideway," as defined at 49 U.S.C. 5302(a)(4).

"NEPA" means the National Environmental Policy Act of 1969, as amended, at 42 U.S.C. 4321 *et seq.*

"New Starts program" means the capital investment programs authorized at 49 U.S.C. 5309(d) and (e).

"Non-New Starts Federal funding" means any grants provided pursuant to 5309(b)(2) or (3) (and, for avoidance of doubt, shall exclude grants provided pursuant to 49 U.S.C. 5309(d) or (e)).

"Pilot Program" has the meaning provided in section 3(a) of this notice.

"Pilot Project" means a project designated by FTA as Pilot Project pursuant to the definitive terms of the Pilot Program.

"Preliminary design" means, for purposes of section 3(l) of this notice only, all design and engineering activities undertaken for the purposes of: (a) Defining the project alternatives and completing the NEPA review process; (b) complying with other related environmental laws and regulations; (c) supporting agency coordination, public involvement, permit applications and development of mitigation plans; or (d) advancing the design development of the preferred alternative when authorized by the lead Federal agency in accordance with 23 U.S.C. 139(f)(4)(D) or as necessitated by 49 U.S.C. 5309. Preliminary design expressly includes, but is not limited to, preliminary engineering and other pre-construction activities such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, and other work that does not materially affect the consideration of alternatives in the NEPA review process. Preliminary design specifically excludes any activity that would constitute an irreversible or irretrievable commitment of resources that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives.

"Preliminary engineering" has the meaning provided in 49 CFR 611.7(b).

"Private partner" means any corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, or other business entity that has entered into a public-private agreement with respect to a Pilot Project.

"Program income" has the meaning provided in 49 CFR 18.25.

"Project" means a new, or extension to an existing, fixed guideway capital project.

"Project company" means the company that will own or lease a Pilot Project pursuant to a public-private agreement.

"Public-private agreement" means a definitive agreement with respect to the development, design, construction, financing, maintenance, or operation of a Pilot Project made by and between the project sponsor of such project and its private partner.

"Project sponsor" means, with respect to any project, the public entity that procures the project.

"RFP" means request for proposal.

"RFQ" means request for qualifications.

"Urban Partnership Program" means the program established by the

<sup>7</sup> Unless stated otherwise, all section references in this section 3 are references to sections of SAFETEA-LU.

Department to demonstrate strategies with a combined track record of effectiveness in reducing traffic congestion, as further described in the Department's notice published in the **Federal Register** on December 8, 2006 (see Applications for Urban Partnership Agreements as Part of Congestion Initiative, 71 FR 71231-36, Dec. 8, 2006).

(c) *No Obligation to Establish Pilot Program or to Designate Pilot Projects.* FTA is under no legal obligation to establish the Pilot Program or to designate Pilot Projects under the Pilot Program once established. The Pilot Program and its terms and conditions (other than the terms and conditions set forth in sections 3011(c)(2), (3), (4) and (5)), are established by FTA in its discretion pursuant to section 3011(c).<sup>8</sup> At any time, FTA may (i) Terminate the Pilot Program or (ii) amend or waive any of its terms or conditions.

(d) *Withdrawal; Removal; Automatic Termination; Completion.*

(i) At any time, by written notice to the Administrator, a project sponsor may withdraw its Pilot Project from the Pilot Program for any reason. In the event that a Pilot Project so withdrawn is a New Starts project, the Pilot Project (A) Shall not be removed from the New Starts program solely because of its withdrawal from the Pilot Program and (B) shall not be eligible to reapply to the Pilot Program.

(ii) At any time, FTA may remove a Pilot Project from the Pilot Program for any reason, including, without limitation, the failure of the project sponsor and its private partner to enter into a public-private agreement satisfactory to FTA.

(iii) The participation of a Pilot Project in the Pilot Program shall

<sup>8</sup> Neither section 3011(c) nor related sections of the conference report directs the Secretary to establish the Pilot Program. (See § 3011(c) of SAFETEA-LU: "The Secretary may establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects." (emphasis added); H.R. Rep. No. 109-203, at 937 (2005), reprinted in 2005 U.S.C.A.N. 452: "The Committee expects the Secretary to initiate the pilot program as soon as practicable after enactment [of SAFETEA-LU], in order that the benefits of PPPs may be understood and potentially applied to other transit New Starts projects." Section 3011(c)(4) clearly implies that the Secretary has broad discretion to devise and apply additional criteria for determining whether a project will be approved as Pilot Project. In particular, by providing that the Secretary "may" approve a project as a Pilot Project if it meets the statutory criteria, the statute implies that the Secretary has the authority to require projects to satisfy additional criteria (beyond what is required by statute) developed on an administrative basis in order to become Pilot Projects. In addition, FTA believes that the research value of the Pilot Program would be compromised if FTA did not develop and apply additional criteria for the selection of Pilot Projects.

terminate automatically and without further action by FTA upon the second anniversary of the project's designation as a Pilot Project unless the Administrator determines otherwise in writing.

(iv) A Pilot Project will have completed its participation in the Pilot Program when its project sponsor and private partner have entered into a public-private agreement that, in the opinion of FTA, provides for the risk allocation, obligations, and incentives necessary to safeguard the Federal interest in the project. Completion of a Pilot Project's participation in the Pilot Program will not open a position in the Pilot Program for another project.

(v) No rights, obligations or benefits afforded a Pilot Project hereunder shall survive its withdrawal, removal, or termination as a Pilot Project in accordance with sections 3(d)(i), (ii), or (iii) of this notice, respectively. FTA will post any written notice of withdrawal, removal, termination, or completion of a Pilot Project on the Department's docket within thirty calendar days after such withdrawal, removal, termination, or completion.

(e) *Number of Pilot Projects; Term of Pilot Program.* At any time during the term of the Pilot Program, no more than three projects will be designated as Pilot Projects.<sup>9</sup> The term of the Pilot Program will begin on the date of publication of this notice in the **Federal Register** and continue for so long as any Pilot Project has not been withdrawn, removed, terminated, or completed as a Pilot Project in accordance with section 3(d) of this notice. FTA will post notice of the designation of a project as a Pilot Project on the Department's docket within thirty calendar days after FTA advises the project sponsor of such designation in writing.

(f) *Applications.*

(i) An application for designation as a Pilot Project must be (A) Signed by the General Manager, Chief Executive Officer, or similar officer of the project sponsor and (B) include information that establishes the eligibility of the project under the criteria set forth in section 3(g) of this notice. An application to the Pilot Program may not exceed twenty pages (excluding appendices, if any). In its application, a project sponsor should (A) Describe the proposed project, (B) the project's demonstration value (as defined in section 3(h) of this notice) and (C) the regulatory relief and procedural and/or

<sup>9</sup> Section 3011(c)(2): "The Secretary may permit the establishment of 3 [sic] public-private partnerships for new fixed guideway capital projects."

rating benefits it is seeking for the project under the Pilot Program, including those benefits listed in section 3(i) of this notice, if any. An application should be submitted by U.S. Post or express mail to the Federal Transit Administration, c/o the Chief Counsel, Office of Chief Counsel, Room 9328, 400 Seventh Street, SW., Washington, DC 20590.

(ii) FTA will review applications to the Pilot Program quarterly on a rolling-basis for so long as at least one position in the Pilot Program is available. The deadline for submission of applications for FTA's first quarterly review of proposals will be March 31, 2007. Applications received by FTA between March 31, 2007 and July 1, 2007 will be reviewed in FTA's second quarterly review of applications to the Pilot Program. No application for designation as a Pilot Project will be approved by FTA after September 30, 2009.<sup>10</sup> The withdrawal, removal, or termination of a Pilot Project in accordance with sections 3(d)(i), (ii), or (iii) of this notice, respectively, will open a position in the Pilot Program for another project. FTA will solicit applications to fill the opening by means of a notice in the **Federal Register**. FTA will evaluate applications for eligible projects on the basis of their absolute merit under the criteria described in section 3(h) of this notice, and not on the basis of their merit in relation to other applications for eligible projects then pending.

(g) *Eligibility.* A project will be eligible to participate in the Pilot Program if:

(i) All or part of the project is a new fixed guideway capital project and, with respect to the project, the project sponsor has not entered into a full funding grant agreement or project construction grant agreement with FTA;<sup>11</sup>

(ii) The project sponsor has developed, and has submitted with its application to the Pilot Program, a schedule and finance plan for the construction and operation of the project;<sup>12</sup>

(iii) The project sponsor has developed, and has submitted to FTA with its application to the Pilot Program, an analysis of the costs, benefits, and efficiencies of the public-private agreement proposed for the project;<sup>13</sup>

<sup>10</sup> Section 3011(c)(5): "Program Term.—The Secretary may approve an application of a recipient for a public-private partnership for fiscal years 2006 through 2009."

<sup>11</sup> Section 3011(c)(3)(A).

<sup>12</sup> Section 3011(c)(3)(B).

<sup>13</sup> Section 3011(c)(3)(C).

(iv) Applicable State and local laws (together with the charter or other organizational document of the project sponsor) permit public-private agreements for all phases of project development, construction, and operation of the project;<sup>14</sup>

(v) The project is not a Pilot Project previously withdrawn, removed, or terminated under the Pilot Program;

(vi) The recipient cannot advance the project due to fiscal constraints;

(vii) An opinion of counsel of the project sponsor, addressed to FTA in form and substance satisfactory to FTA, that each of the conditions set forth in sections 2(g)(i) through (v) of this notice has been satisfied in all material respects; and

(viii) If the project is a candidate for New Starts funding, the project shall have completed alternatives analysis.

(h) *Selection Criteria.* Section 3011(c)(4) provides that the Secretary may approve the application for the designation of a project as a Pilot Project if “(A) State and local laws permit public-private agreements for all phases of project development, construction, and operation of the project; (B) the recipient is unable to advance the project due to fiscal constraints; and (C) the plan implementing the public-private partnership is justified.”

With respect to the condition set forth in subsection (A) of section 3011(c)(4), FTA will rely on the opinion of project sponsor’s counsel submitted with its application to the Pilot Program to determine whether “State and local laws permit public-private agreements for all phases of project development, construction, and operation of the project.”

With respect to the condition set forth in subsection (B) of section 3011(c)(4), FTA will find that “the recipient is unable to advance the project due to fiscal constraints” if its project sponsor submits an application to the Pilot Program for the project.

With respect to the condition set forth in subsection (C) of section 3011(c)(4), projects that exhibit the highest degree of “demonstration value” will be deemed “justified.” In determining the degree of a project’s demonstration value, FTA shall take into account the following, among other factors:

(i) The number and type of project elements for which the private partner is responsible;

(ii) Whether the project utilizes procurements that integrate risk sharing and streamline project development,

engineering, construction, operations, and maintenance;<sup>15</sup>

(iii) The risk allocation with respect to the project’s costs set forth in the public-private agreement;

(iv) The risk allocation with respect to the project’s revenues generated by ridership set forth in the public-private agreement;

(v) The extent to which the risk allocation set forth in the public-private agreement increases the reliability of projections of the project’s capital and operating costs;

(vi) The terms on and extent to which equity capital is contributed to project;

(vii) The terms on and extent to which development proceeds are contributed to the project;

(viii) The sequence in which Federal, State, local, and private funds are contributed to the project;

(ix) The experience of the management of the project sponsor and the private partner in (A) negotiating and overseeing major system procurements and (B) designing, building, operating and maintaining the mode of transportation contemplated for the project;

(x) The extent to which the project is part of a congestion mitigation plan that incorporates system-wide congestion pricing consistent with the Department’s Urban Partnership Program; and

(xi) The expected effects of the foregoing arrangements on (A) the quality of delivery and performance of the project, (B) the speed of delivery of the project, and (C) the reliability of projections of costs and benefits with respect to the project.

(i) *Benefits.*

(i) *New Starts Projects.* A Pilot Project that is a candidate for funding under the New Starts program may receive some or all of the following benefits:

(A) An adjustment in the Pilot Project’s “cost-effectiveness” rating, calculated by excluding from the computation of cost-effectiveness 100% of the costs of the Pilot Project to be paid for by equity capital and/or 50% of the costs of the Pilot Project to be paid for by development proceeds (subject to approval by the U.S. Office of Management and Budget);

(B) An adjustment in the Pilot Project’s “project justification” rating, determined by (x) assigning a weighting of 20% to the status of the project as

Pilot Project (as an “other factor” pursuant to 49 U.S.C. 5309(e)(3)(K)) and (y) assigning weightings of 50% and 30% to cost-effectiveness and land-use ratings, respectively, in the development of the Pilot Project’s project justification rating (subject to approval by the U.S. Office of Management and Budget);

(C) Concurrent approvals of the Pilot Project into Preliminary Engineering and Final Design;

(D) Elimination or limitation of certain risk assessments from the rating process, as negotiated with FTA on a case-by-case basis, including the elimination or limitation of FTA risk assessments conducted during preliminary engineering and prior to entering into a full funding grant agreement;<sup>16</sup>

(E) Elimination or limitation of certain reviews of the projections of transportation user benefits, as negotiated with FTA on a case-by-case basis, including FTA’s accepting, without further review, projections of transportation user benefits on the basis of which cost-effectiveness and mobility measures for the Pilot Project’s rating will be developed, subject to the private partner’s assuming levels of risk with respect to such benefits on terms satisfactory to FTA;

(F) Issuance of a Letter of Intent by FTA setting forth FTA’s intention to obligate a specified amount of New Starts funds for the Pilot Project from future available budget authority specified in law and subject to the availability of appropriations;

(G) Early issuance by FTA of Letters of No Prejudice (or other assurances) to accelerate commencement of pre-construction services and planning;

(H) Flexible uses of program income, as permitted by agreement with FTA pursuant to 49 CFR 18.25(g); and

(I) Certain incentives for the benefit of contractors to enter into public-private agreements or other commitments for construction prior to the award of a full funding grant agreement, as negotiated with FTA on a case-by-case basis, including significant streamlining of the project development process resulting in an earlier Federal funding commitment (subject to the availability of appropriations), and the opportunity to earn higher returns in exchange for assuming the risk associated with achieving the cost estimates and/or ridership projections.

<sup>15</sup> The statutory selection criterion that requires that “State and local laws permit public-private agreements for all phases of project development, construction and operation of the project” indicates that the Pilot Program is intended to study not only study PPPs with respect to the delivery of fixed guideway capital projects but also their operation.

<sup>16</sup> Depending on the degree to which the private sector entity has assumed management, construction, and financial risks, FTA may also alter the scope and content of the Project Management and Financial Management Oversight reviews as appropriate.

<sup>14</sup> Section 3011(c)(4)(A).

Pilot Projects that receive an overall rating of Medium or higher and a cost-effectiveness rating of Medium or higher, as adjusted, will be included in the President's Budget to Congress for New Starts funding.

(ii) *Project Receiving Formula Funds.* Pilot Projects that propose to utilize non-New Starts Federal funding may receive certain procedural and substantive benefits, as negotiated with FTA on a case-by-case basis.

(j) *Public-Private Agreement.* No Pilot Project will be approved for funding by FTA unless the project sponsor and its private partner enter into a binding public-private agreement that, in the opinion of FTA, provides for the risk allocation and incentives necessary to safeguard the Federal interest. In reviewing the public-private agreement proposed by the project sponsor and its private partner, FTA may consider the following, among other factors:

(i) The type of economic interest the private partner will have in the Pilot Project;

(ii) Which party to the agreement will assume responsibility for which elements of the Pilot Project and the timing of the assumption of responsibility for such elements;

(iii) If and the extent to which the private partner is liable for non-performance under the private partner under the agreement;

(iv) If and how the agreement provides for the assignment, subcontracting or other delegation of responsibilities to third parties by the project sponsor and the private partner;

(v) If and how the parties to the agreement will share management of the risks of the Pilot Project;

(vi) If and how the parties to the agreement will share the costs of development of the Pilot Project;

(vii) If and how the parties to the agreement will allocate financial liability for cost overruns;

(viii) If and the extent to which the private partner is subject to liability for non-performance under the agreement;

(ix) If and the extent to which the private partner is incented to perform under the agreement;

(x) Whether the agreement provides for accounting and auditing standards for measuring the progress of the Pilot Project and the quality of such standards; and

(xi) The grounds for termination of the agreement by the project sponsor or the private partner.

(k) *Memorandum of Understanding.* In connection with a project's designation of as a Pilot Project, FTA and the project sponsor will enter into a non-binding memorandum of

understanding that identifies the benefits for the project being sought under the Pilot Program.

(l) *Certain Environmental Matters.*<sup>17</sup> With respect to the design-build elements of a Pilot Project's procurement:

(i) The project sponsor may:

(A) Issue an RFQ prior to the conclusion of the NEPA process as long as the RFQ informs proposers of the general status of NEPA review;

(B) Issue an RFP after the conclusion of the NEPA process;

(C) Issue an RFP prior to the conclusion of the NEPA process as long as the RFP informs proposers of the general status of the NEPA process and that no commitment will be made as to any alternative under evaluation in the NEPA process, including the no-build alternative;

(D) Proceed with the award of a design-build contract prior to the conclusion of the NEPA process;

(E) Issue notice to proceed with preliminary engineering pursuant to a design-build contract that has been awarded prior to the completion of the NEPA process; and

(F) Allow a design-builder to proceed with final design and construction for any projects, or segments thereof, for which the NEPA process has been completed.

(ii) If the project sponsor proceeds to award a design-build contract prior to the conclusion of the NEPA process, then:

(A) The design-build contract must include appropriate provisions preventing the design-builder from proceeding with final design activities and physical construction prior to the completion of the NEPA process (e.g., contract hold points or another method of issuing multi-step approvals must be used);

(B) The design-build contract must include appropriate provisions ensuring

<sup>17</sup> Please note FTA has not adopted a requirement that a proposed New Starts project must receive a rating of "Medium" or better before FTA will execute a final environmental impact statement ("FEIS"), record of decision ("ROD"), or finding of no significant impact ("FONSI"). However, when it is clear that FTA will need to issue a supplemental environmental document in order to accommodate scope changes needed to justify a "medium" or better rating, FTA will not issue a FEIS or ROD until this supplemental document is completed. For projects not perceived as requiring a supplemental document, FTA will include a statement in the FEIS, ROD or FONSI as to how a New Starts rating of less than "medium" may affect the ability of the project to advance to implementation. See "Notice of Availability of Final Guidance on New Starts Policies and Procedures, Updated Reporting Instructions and New Starts Rating and Evaluation Process (May 22, 2006) at: <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/E6-7781.htm>.

that no commitment is made to any alternative being evaluated in the NEPA process and that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated;

(C) The design-build contract must include appropriate provisions ensuring that all environmental and mitigation measures identified in the NEPA document will be implemented;

(D) The design-builder may not prepare the NEPA document or have any decision-making responsibility with respect to the NEPA process;

(E) Any consultants who prepare the NEPA document must be selected by and subject to the exclusive direction and control of the project sponsor, but this shall not preclude a sub-consultant on the design-builder/developer team from preparing the NEPA decision document, provided that such sub-consultant does not have a financial or other interest in the outcome of the project (except as otherwise permitted by FTA in its sole discretion) and provided further that the services of the sub-consultant relating to the preparation of the NEPA decision document shall at all times be subject to the exclusive direction and control of the project sponsor;

(F) The design-builder's work product may be considered in the NEPA analysis and included in the record; and

(G) The design-build contract must include termination provisions in the event that the no-build alternative is selected.

(iii) The project sponsor must receive prior FTA concurrence (A) Before issuing the RFP and (B) awarding a design-build contract. Should the project sponsor proceed with any of the activities specified in this section before the completion of the NEPA process, FTA's concurrence merely constitutes FTA's acquiescence that any such activities complies with Federal requirements and does not constitute project authorization or obligate Federal funds, unless otherwise provided by FTA.

In addition, if the NEPA process has been completed prior to issuing the RFP, the project sponsor may allow a consultant and/or sub-consultant who acted as preparer of the NEPA document to submit a proposal in response to the RFP.

If the NEPA process has not been completed prior to issuing the RFP, the project sponsor may allow a sub-consultant to the preparer of the NEPA document to submit a proposal in response to the RFP only if the project sponsor releases such sub-consultant from further responsibilities with



respect to the preparation of the NEPA document.

(m) *Reservation of Rights*. All rights of FTA not expressly provided herein are hereby reserved by FTA.

Issued this 12th day of January, 2007.

**James S. Simpson,**

*Administrator.*

[FR Doc. E7-651 Filed 1-18-07; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### Research & Innovative Technology Administration

[Docket: OST-2007-26835]

#### Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space—BTS Form 251

**AGENCY:** Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104-13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting reports on the number of passengers holding confirmed reservations that voluntarily or involuntarily give up their seats when the airline oversells the flight. Comments are requested concerning whether (a) the collection is still needed by the Department of Transportation; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted by March 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, Office of Airline Information, RTS-42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone Number (202) 366-4387, Fax Number (202) 366-3383 or E-Mail [bernard.stankus@dot.gov](mailto:bernard.stankus@dot.gov).

*Comments:* Comments should identify the associated OMB approval # 2138-0018 and Docket OST-2007-26835. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a

self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138-0018, Docket OST-26835. The postcard will be date/time stamped and returned.

#### SUPPLEMENTARY INFORMATION:

##### OMB Approval No. 2138-0018

*Title:* Report of Passengers Denied Confirmed Space.

*Form No:* BTS Form 251.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated and foreign air carrier.

*Number of Respondents:* 100.

*Number of Responses:* 400.

*Total Annual Burden:* 1,670 hours.

*Needs and Uses:* BTS Form 251 is a one-page report on the number of passengers denied boarding (voluntarily and involuntarily), whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. and foreign air carriers that operate scheduled passenger service with large aircraft (over 60-seats) must submit Form 251. In addition, carriers report data from inbound international flights because the protections of 14 CFR part 250 Oversales do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary.

While the involuntarily denied-boarding rate has decrease from 4.38 per 10,000 passengers in 1980 to 1.04 for the nine months ended September 2006, the rate is up from the 0.89 attained for the nine months ended September 2005. The publishing of the carriers' individual denied boarding rates has negated the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's customer service policy and its compliance disposition. A rapid sustained increase in the rate of denied boarding often in an indicator of operational difficulty. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with low bumping incidents when booking a trip. This information is available in the Air Travel Consumer Report at: <http://airconsumer.ost.dot.gov/reports/index.htm>. The Air Travel Consumer Report is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rule would be impossible.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires

a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on January 12, 2007.

**Donald W. Bright,**

*Assistant Director, Airline Information, Bureau of Transportation Statistics.*

[FR Doc. E7-711 Filed 1-18-07; 8:45 am]

BILLING CODE 4910-FE-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Ex Parte No. 664]

#### Methodology To Be Employed in Determining the Railroad Industry's Cost of Capital

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of Public Hearing.

**SUMMARY:** The Surface Transportation Board will hold a public hearing beginning at 9:30 a.m. on Thursday, February 15, 2007, at its offices in Washington, DC. The purpose of the hearing will be for members of the public to present their views to assist the Board in its examination of the appropriate methodology to be employed in determining the railroad industry's estimated cost of capital to be used in future annual cost-of-capital determinations. Persons wishing to speak at the hearing should notify the Board in writing.

**DATES:** The public hearing will take place on Thursday, February 15, 2007. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate and should identify the party, the proposed speaker, the time requested, and the topic(s) to be covered, as soon as possible but no later than February 5, 2007. Each speaker should also file with the Board a written summary of his/her testimony by February 12, 2007. Written submissions by interested persons who do not wish to appear at the hearing will also be due by February 12, 2007.

**ADDRESSES:** All notices of intent to participate and testimony may be submitted either via the Board's e-filing