

25. Superfund Amendments and Reauthorization Act of 1986 (SARA).

26. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.

27. Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

28. Executive Orders Relating to Highway Projects (E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species).

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the above-listed laws and executive orders. The State also may assist the FHWA with formal consultations, with consent of a tribe, but the FHWA remains responsible for the consultation. This assignment includes transfer to the State of Utah the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the Criteria in Stipulation I(B) of the MOU that were determined to be CEs prior to the effective date of the proposed MOU but that have not been completed as of the effective date of the MOU.

A copy of the proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting the FHWA or the State at the addresses provided above. A copy may also be viewed online at the following URL: <http://www.udot.utah.gov/go/environmental>. Once the FHWA makes a decision on the proposed MOU, the FHWA will place in the DOT DMS Docket, a statement describing the outcome of the decision-making process and a copy of the final MOU, if any. Copies of the final documents also may be obtained by contacting the FHWA or the State at the addresses provided above, or by viewing the documents at <http://www.udot.utah.gov/go/environmental>.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: May 23, 2011.

James C. Christian,

Division Administrator, Salt Lake City, Utah.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2010–0027]

National Transit Database: Amendments to Urbanized Area Annual Reporting Manual

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Amendments to 2011 National Transit Database Urbanized Area Annual Reporting Manual.

SUMMARY: This notice announces the adoption of certain amendments for the Federal Transit Administration's (FTA) 2011 National Transit Database (NTD) Urbanized Area Annual Reporting Manual (Annual Manual). On October 11, 2010, FTA published a notice in the **Federal Register** (73 FR 7361) inviting comments on proposed amendments to the 2011 Annual Manual. This notice provides responses to those comments, and announces the adoption of certain amendments for the 2011 Annual Manual.

DATES: *Effective Date:* May 27, 2011.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or john.giorgis@dot.gov (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or richard.wong@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary database for statistics on the transit industry. Congress established the NTD to “help meet the needs of * * * the public for information on which to base public transportation service planning * * *” (49 U.S.C 5335). Currently, over 700 transit providers in urbanized areas report to the NTD through its online reporting system. Each year, performance data from these

submissions are used to apportion over \$6 billion of FTA funds under the Urbanized Area Formula (Section 5307) Grants and the Fixed Guideway Modernization Grants Programs. These data are made available on the NTD website at <http://www.ntdprogram.gov> for the benefit of the public, transit systems, and all levels of government. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act. Reporting requirements are governed by a *Uniform System of Accounts* (USOA) and an Annual Reporting Manual that is issued each year. Both the USOA and the Annual Manual are available for review on the NTD Web site at <http://www.ntdprogram.gov>. Additionally, urbanized area transit systems also make monthly reports to the NTD on safety and security incidents through the NTD Safety & Security Module and on ridership and vehicle operations through the NTD Monthly Module.

In an ongoing effort to improve the NTD reporting system, to be responsive to the needs of transit providers reporting to the NTD, and to the needs of the transit data user community, FTA annually refines and clarifies reporting requirements to the NTD. This notice announces the adoption of certain amendments for the 2011 Annual Reporting Manual.

II. Comments and FTA Response to Comments

On October 11, 2010, FTA published a notice in the **Federal Register** (75 FR 192) inviting comments on proposed amendments to the 2011 Annual Manual. FTA received responses from 38 commenters.

(a) Vanpool Eligibility

FTA currently requires all vanpools reported to the NTD to have a public sponsor, a requirement that is currently interpreted as meaning that all vanpool reports to the NTD involving the private sector must be reported by the public sponsor as a “purchased transportation” contract. FTA proposed to replace this requirement with a new four-part test for determining that vanpools were publicly available, compliant with the Americans with Disabilities Act of 1990 (the ADA), and able to report fully-allocated costs to the NTD. FTA also proposed that all existing vanpools in the NTD would have to recertify their reporting eligibility for the 2011 Report Year, and that NTD ID's for vanpools would be assigned to vanpool sponsors.

FTA received 12 comments on the above proposal. Nine of the commenters were generally in favor of the proposal, including two industry associations, an industry supplier, a private vanpool operator, a Metropolitan Planning Organization (MPO), and four transit agencies. Three of the commenters, a large metropolitan planning organization, a large transit agency in a different city, and a mid-sized transit agency in a third city, objected to the proposal. The MPO and the large transit agency expressed concern that allowing additional vanpool reporters into the NTD could result in a "larger base of eligible beneficiaries" of FTA's Section 5307 funding and result in a redirection of FTA's Section 5307 funding away from "replacing and rehabilitating transit capital assets." Two commenters also stated that public sponsors were best-positioned to monitor compliance with the above criteria, and that allowing additional organizations to report to the NTD increased the likelihood of non-compliant vanpools reporting to the NTD and increased the possibility of duplicate data being submitted to the NTD. On the other hand, FTA also received comments from an industry association, an industry supplier, a private vanpool operator, and a mid-sized transit agency specifically expressing support for allowing private providers of vanpool transportation to report directly to the NTD.

FTA Response: FTA has previously allowed both public and private operators of fixed-route transit systems to report to the NTD on a voluntary basis. This policy will extend the same opportunity to private operators of the vanpool mode to report to the NTD, and to allow them to report to the NTD directly. FTA reminds the commenters that NTD Data is used to apportion dollar amounts for the Urbanized Area Formula Program (UAFP) at the urbanized area level. The designated recipient for each urbanized area then makes project selections from the apportioned amounts based on the local Transportation Improvement Plan. Thus, since apportionment is done at the urbanized area level, inclusion in the National Transit Database does not create a binding claim for individual transit providers from the UAFP apportionment to the urbanized area.

In response to some of the concerns raised by the commenters, FTA will amend the final policy to retain the requirement that all vanpools in the NTD must have a public sponsor. However, this requirement will no longer be interpreted as requiring that private providers of vanpool services

may only report as providers under a "purchased transportation" contract ("PT service") to a public provider. Instead, private providers of vanpool transportation that are operating as subrecipients to a public sponsor will be required to follow the same NTD guidance as other modes, which requires subrecipients to either report directly to the NTD, or have the sponsor report on their behalf to the NTD through a "consolidated reporting ID" of multiple subrecipients. In requesting a consolidated reporting ID, the public entity takes responsibility for collecting all necessary information from the transit providers included in the consolidated reporting ID according to NTD reporting requirements, and submits a report to the NTD on behalf of those providers. Furthermore, private providers of vanpool transportation that are operating completely independently may report directly to the NTD on a voluntary basis, provided that they submit a letter to the NTD from a public sponsor indicating that the public sponsor considers the private provider's vanpool transportation services as contributing towards meeting the overall transit needs of the urbanized area.

A mid-sized transit agency objected to the proposal on the grounds that prohibiting vanpools that are restricted *a priori* to riders from a particular employer from reporting to the NTD would result in the discontinuation of this service. A large industry association also objected to this proposal, and suggested that all vanpools operated by public transportation agencies should be included in the NTD, regardless of whether the vehicles were restricted *a priori* to particular employers.

FTA Response: This proposal is based on the statutory language at 49 U.S.C. 5302(a)(10), which specifies that public transportation is "regular and continuing general or special transportation to the public." Transportation that is restricted *a priori* to riders from a particular employer is not being provided "to the public," and so does not meet the statutory definition of public transportation. As such, FTA cannot include these services in the National Transit Database, even when these services are provided by public transportation agencies. This is not a change in policy for the NTD, as it reflects existing law. Any transit systems that have inadvertently been reporting data to the NTD for vanpools restricted *a priori* to a particular employer must discontinue doing so. Furthermore, FTA's updated vanpool policy for the NTD refines this policy by requiring that vanpool operators

actively engage in matching interested members of the public to vans in its program with available seats.

A mid-sized transit agency also requested clarification on the third part of the proposal, requiring the vanpool to be in compliance with the Americans with Disabilities Act of 1990 (the ADA).

FTA Response: The ADA requires that providers of public transportation service make reasonable accommodation for persons with disabilities. Under the Department of Transportation's implementing regulation (49 CFR 37.31) this does not require that every van in the vanpool program be accessible to persons with disabilities, the vanpool program must be prepared to make reasonable accommodations whenever the need arises. Interested parties should contact FTA's Office of Civil Rights for more information on the specific requirements of the ADA as it applies to vanpools.

FTA received several comments regarding our proposal to require all vanpools currently in the NTD to recertify for the 2011 Report Year. One private vanpool operator asked FTA to clarify its intent regarding the proposed recertification requirements. One public transit agency requested clarification of the logistics of the certification process, and whether it will be an annual process.

FTA Response: Given the updated policy regarding the inclusion of vanpools in the NTD, the intent of the recertification requirement is to ensure that all vanpools reporting to the NTD for the 2011 Report Year are in compliance with the updated policy. Each reporter to the NTD will be contacted by a validation analyst and required to submit a written self-certification of compliance with the new vanpool policy, and to upload this as an attachment to the efile of the NTD Online Reporting System. This is intended to be a one-time process for the 2011 Report Year, but eligibility questions may be reviewed by the validation analysts in future years during the course of the normal data validation process. Consistent with the NTD Rule (49 CFR Part 630), FTA may request additional supporting materials from any NTD reporter when necessary to validate the report. This process will also confirm that NTD IDs are properly assigned according to the updated NTD policies. Namely, that the ID is assigned to one of the following: (1) A sponsor that is directly operating a vanpool; (2) a sponsor that is operating a vanpool through a true "purchase of service" purchased transportation contract; (3) a public or private vanpool operator that

is a subrecipient to a vanpool sponsor, and is directly operating the vanpool; or (4) a private vanpool operator that is directly operating a vanpool without public assistance from the public vanpool sponsor;

One industry association and one mid-sized transit agency commented with a concern about the requirement for reporting fully-allocated costs including "ridesharing promotion" expenses that must be reported by vanpools, but are not required to be reported by other modes of transit. Another mid-sized transit agency and an MPO also requested clarification of what FTA meant by its requirement to report fully-allocated costs.

FTA Response: The updated requirements for vanpool reporting to the NTD state that the vanpool must actively engage in matching interested members of the public to vans with available seats. This is an essential activity for the vanpool mode of public transportation, as opposed to vanpools that do not meet the definition of public transportation at 49 U.S.C. 5302(a)(10). To the extent that third parties engage in activities to generally promote the use of public transportation or generally promote carpooling or vanpooling, then these costs do not need to be reported. However, to the extent that a third party (e.g. other than the operator of the vanpool and other than a public sponsor with a purchased transportation relationship with a vanpool operator) engages in the essential activity of matching interested members of the public to vans with available seats, then these costs must be reported. An essential purpose of the NTD is to allow FTA to report to Congress on the costs of public transportation services and future investment needs for public transportation. Thus, the NTD must collect fully-allocated capital and operating costs for all of the reported services, including vanpool public transportation service.

One industry association submitted a comment on an unrelated issue regarding the rules used by FTA to validate current NTD reports. One private vanpool operator submitted comments on a number of unrelated issues, including a concern about the processes used in developing the Transportation Improvement Plan, and the structure of NTD data products. One public transit agency expressed concern about the burden of current NTD data collection requirements on vanpool operators, particularly the requirement to report fuel consumption.

FTA Response: FTA thanks the commenters for their submissions. FTA will continue to review its validation

procedures, data products, and data collection requirements to minimize reporting burden and to improve the accuracy and usefulness of NTD reports.

Final Policy: Based on the comments received, FTA revises and adopts its proposed policy as follows:

Vanpool programs reporting to the NTD must submit a written self-certification to the NTD for the 2011 Report Year, or else for the first year in which reporting for the vanpool is to begin, that: (1) The vanpool is open to the public and that any vans that are restricted *a priori* to particular employers and which do not participate in the public ride-matching service of the vanpool are excluded from the NTD report; (2) the vanpool is actively engaged in advertising the vanpool service to the public and in matching interested members of the public to vans with available seats; (3) that the vanpool program, whether operated by a public or private entity, is operated in compliance with the Americans with Disabilities Act of 1990 and implementing regulations at 49 CFR 37.31; and (4) that the vanpool has a record-keeping system in place to meet all NTD Reporting Requirements, consistent with other modes, including collecting and reporting fully-allocated operating and capital costs for the service. At the same time, the vanpool program must certify that it is publicly sponsored, as either (1) directly-operated by a public entity; (2) operated by a public entity via a contract for purchased transportation service with a private provider; (3) operated by a private entity as a grant recipient or subrecipient from a public entity; or (4) operated by an independent private entity with approval from a public entity that certifies that the vanpool program is helping meet the overall transportation needs of the local urbanized area.

Reporting of fully-allocated operating costs means that the vanpool must report on the total cost of the service, including any fuel, insurance, and maintenance costs paid by vanpool participants; and including any costs paid by any third-parties to support essential features of the vanpool program.

Under this policy NTD IDs for vanpool programs will be assigned according to existing NTD policies on the basis of the entity that is operating the vanpool. A vanpool operator may be a public provider directly-operating the vanpool, a public entity operating the vanpool through a purchased transportation contract with a private provider, or a private provider that is directly operating the vanpool. The

operator of the vanpool is the entity sets the service area of the vanpool program, sets the vanpool participant costs and operating regulations, and generally has control of the vanpool service.

(b) New Modes

FTA proposed creating four new modes to be used in NTD reporting: Commuter Bus (CB), Bus Rapid Transit (RB), Streetcar Rail (SR), and Hybrid Rail (YR). FTA noted that many systems will make a 100% transition from one mode to the other, but proposed to offer waivers of up to two years upon request for reporters who would need time to separate their data.

FTA received 17 comments on this proposal. An industry association expressed specific support for the proposal to create the commuter bus mode. A large transit agency and an MPO expressed support for the proposal in general. Another large transit agency expressed support for the proposed two years of waivers upon request. 11 transit systems and one large industry association expressed concern that the proposal to create the *Commuter Bus* and *Bus Rapid Transit* modes would create too much additional reporting burden through additional reporting for relatively small slices of service. For example, several transit agencies cited examples where various local aspects of geography would cause one or two individual bus routes to meet the proposed definition for *Commuter Bus* of five miles of closed door service. Other concerns included the burden of making additional cost allocations and of additional passenger mile sampling. Another large transit system expressed concern that 1 out of its 5 current *Light Rail* mode routes would fall under the new *Streetcar Rail* mode, and that it would not be able to separate service data for the new *Bus Rapid Transit* Mode based on on-busway service vs. off-busway service. One large transit agency requested that the new modes be made optional. Another large transit agency requested the existing motorbus mode and the proposed *Commuter Bus* mode be allowed to file a single set of financial, asset, and resource forms. FTA did not receive any comments opposing the proposed *Hybrid Rail* mode.

FTA Response: FTA understands the concern of many of these commenters in regards to increased reporting burden. However, FTA also believes that there would be significant benefits to data users in distinguishing data for systems that primarily use motorcoaches (or "over-the-road buses") to provide peak service connecting outlying areas to central cities vs. data for systems that

primarily use low-floor transit buses to provide general local transit service. Additionally, given the significant interest by public transportation service planners in BRT as an alternative to light rail, and in using streetcars as urban circulators, FTA believes that there would be very significant benefits in producing separate data for these modes as well. Furthermore, these benefits would only occur if separate data is reported according to the separate modes.

In response to the concerns about addition burden, FTA notes that it has recently updated its passenger mile sampling guidance by using modern statistical procedures to significantly reduce required sample sizes. Additionally, the updated passenger mile sampling guidance relies upon stratification of services to reduce overall sample sizes. Thus, many transit systems should already be using stratification to collect separate passenger mile samples for the services that would become the separate modes.

FTA also reminds the commenters that variations in service do not constitute a separate mode, and so not all services highlighted by commenters would be reported as separate modes under this proposal. For example, although the *Heavy Rail* mode is generally characterized by use of exclusive guideway and the *Light Rail* mode is generally characterized by guideway with at-grade-crossings or mixed-traffic guideway, there are *Heavy Rail* systems in the NTD that do have at-grade-crossings. The service on those sections with at-grade-crossings is not reported as *Light Rail*: the entirety of the service is reported as *Heavy rail*. Under the same principles, a single bus route that occasionally meets the criteria of five miles of closed-door service would not constitute a separate mode for NTD reporting purposes if the bus route does not meet any of the other characteristics of the *Commuter Bus* mode, and if the vehicles and employees operating that mode are regularly interchanged with operations for the *Motorbus* mode. Similarly, service reported under the *Bus Rapid Transit* mode may include some stretches of off-busway service, provided that the preponderance of the service meets the characteristics of the *Bus Rapid Transit* mode, then the entire service should be reported as *Bus Rapid Transit* mode, including both the on-busway and off-busway portions of the service. However, just as under existing reporting requirements, only the on-busway portions of the service would be credited as *fixed-guideway service* for purposes of the formula apportionments.

A set of services that substantially share vehicles, employees, and operating policies constitute a single mode for NTD reporting purposes, and would be classified to the most-appropriate mode based on the predominant characteristics of the group of services as a whole. The whole group of services is then reported as a single mode. In order to maintain consistency of the data, it is important that modal definitions be applied using consistent principles, rather than being made optional.

One large transit agency expressed concern that part of FTA's proposed definition of the *Bus Rapid Transit* mode as including systems that "operate their entire routes predominantly on fixed-guideways (other than on highway HOV or shoulder lanes, such as for commuter bus service)" would exclude motorbus service provided over HOV lanes as "fixed-guideway" service for purposes of the formula apportionments. This large transit agency also expressed concern that FTA's proposed definition of the *Bus Rapid Transit* mode would not include certain services it was promoting as BRT service. One small transit agency requested clarification if a bus route connecting to suburban areas would qualify as commuter bus.

FTA responds: Nothing in the establishment of these new modes changes the treatment of fixed-guideway service for the apportionments. Although bus service provided to commuters over HOV lanes would not be reported under the *Bus Rapid Transit* mode, it would continue to be reported as *fixed-guideway service*. The definition of *Bus Rapid Transit* mode for use in the NTD parallels the definition of BRT used by FTA's New Starts Program. FTA is intentionally proposing a "high bar" for reporting service as *Bus Rapid Transit* mode to the NTD, and the proposed definition will not include all bus service that operates using one or more characteristics of BRT. However, this definition will help minimize reporting burden by minimizing the number of cases where an NTD reporter might need to split their bus service between the *Motorbus* mode and the *Bus Rapid Transit* mode in NTD reporting. Additionally, as noted previously, not every service meets the NTD modal definitions exactly. In these cases, services are reported according to the modal definition that is the "best fit" for the preponderance of the service. A service between two suburban areas, for example, would be classified as either *Commuter Bus* or *Motorbus* on this basis. FTA will continue to provide

technical assistance, as always, to any transit agency in need of assistance in determining under what modes to report their service.

One mid-sized transit agency asked FTA to consider establishing a separate mode for deviated demand response.

FTA Response: Establishing a separate deviated demand response mode is beyond the scope of this notice, but is something that FTA may consider in proposing updates for future report years.

Final Policy: FTA adopts the following four new modes for the 2011 NTD Report Year. NTD reporters needing additional time to implement reporting for these modes may receive upon request waivers for up to two consecutive years for reporting these new modes. A set of services that substantially share vehicles, employees, and operating policies constitute a single mode for NTD reporting purposes, and would be classified to the most-appropriate mode based on the predominant characteristics of the group of services as a whole.

Bus Rapid Transit (RB): Fixed-route bus systems that either (1) operate their routes predominantly on fixed-guideways (other than on highway HOV or shoulder lanes, such as for commuter bus service) or (2) that operate routes of high-frequency service with the following elements: Substantial transit stations, traffic signal priority or pre-emption, low-floor vehicles or level-platform boarding, and separate branding of the service. High-frequency service is defined as 10-minute peak and 15-minute off-peak headways for at least 14 hours of service operations per day. This mode may include portions of service that are *fixed-guideway* and *non-fixed-guideway*.

Commuter Bus (CB): Fixed-route bus systems that are primarily connecting outlying areas with a central city through bus service that operates with at least five miles of continuous closed-door service. This service typically operates using motorcoaches (aka over-the-road buses), and usually features peak scheduling, multiple-trip tickets, and multiple stops in outlying areas with limited stops in the central city.

Streetcar Rail (SR): Rail systems operating routes predominantly on streets in mixed-traffic. This service typically operates with single-car trains powered by overhead catenaries and with frequent stops.

Hybrid Rail (YR): Rail systems primarily operating routes on the National system of railroads, but not operating with the characteristics of commuter rail. This service typically operates light rail-type vehicles as diesel

multiple-unit trains (DMU's). These trains do not meet Federal Railroad Administration standards, and so must operate with temporal separation from freight rail traffic.

(c) Definitional Clarification

FTA proposed to reclassify Aerial Tramway (TR) Mode as a rail mode in NTD data products, and to combine Monorail (MO) Mode and Automated Guideway (AG) Mode into a single Monorail/Automated Guideway (MG) Mode. Finally, FTA proposed to provide additional clarification on how to calculate the miles of rail for "At Grade with Mixed and Cross Traffic" and "At Grade with Cross Traffic" on the Transit Way Mileage (A-20) Form.

FTA received six comments on this proposal. Two industry associations and three transit agencies supported the proposal. One industry association and one transit agency had questions on how these proposals would impact formula funding. One large transit agency opposed the proposal for changing the way fixed-guideway miles were calculated as being too burdensome. One large transit agency requested clarification of the definition of *At-grade with mixed and cross traffic*.

FTA Responds: These definitional clarifications are simply administrative changes and would not impact funding under the formulas specified in current law. These formulas base funding on the basis of being *fixed-guideway*, rather than on the basis of being "rail," and aerial tramway would remain a *fixed-guideway* mode. FTA believes that the clarification in how to calculate miles of rail is necessary to support data users. Currently some reporters are calculating miles of fixed-guideway classified as *At Grade with Cross Traffic* solely on the basis of the length of each intersection. FTA believes that this is not the intent of the data collection, and significantly limits the usability of the current data. In response to the question, FTA confirms that "mixed traffic" includes alignments where rail and rubber-tired vehicles travel in the same lanes, and alignments where pedestrians can cross freely.

Final Policy: FTA adopts the proposed definitional clarifications as originally proposed.

(d) Reporting Requirements for Small Systems

FTA proposed to align the reporting requirements for systems with nine or fewer vehicles with the reporting requirements for recipients of Section 5311 funding in the Rural NTD. This would make it much simpler for systems that receive both Section 5307

and Section 5311 funding to determine which NTD reports they must complete, and it would also provide additional data in NTD reports on these systems. These new requirements paralleling the Rural NTD would still exempt these small systems from requirements to conduct passenger mile sampling. FTA also proposed to require all urbanized area transit systems to file monthly reports to the Monthly Module and Safety & Security Module of the NTD. Furthermore, FTA proposed to extend these reduced reporting requirements to systems with 30 or fewer vehicles and no fixed-guideway service. However, any system with 30 or fewer vehicles could continue to file a full report if they wished to have passenger mile data including in the formula apportionments.

FTA received 12 comments on this proposal. Two transit agencies with between 10 and 30 vehicles support the proposal to receive reduced reporting requirements. Another transit agency with between 10 and 30 vehicles asked for clarification on how the 30 total vehicles would be calculated, and how use of this waiver would impact the formula apportionments.

FTA Responds: Waivers for systems with 30 vehicles would be calculated on the basis of the vehicles operated in maximum (peak) service (VOMS) across all modes, including fixed-route motorbus, demand response, and vanpool service. A transit agency making use of this waiver would not report passenger mile data to the NTD. As such, use of this waiver might slightly impact the apportionments to urbanized areas (UZAs) over 200,000 in population, although the apportionment to such UZAs is likely to be largely determined by data reported from transit agencies with more than 30 vehicles operating in that UZA. Additionally, a transit agency making use of this waiver would not make their passenger mile data available for meeting any of the three Small Transit Intensive Cities (STIC) apportionment benchmarks that rely upon passenger mile data. However, data from a transit agency making use of this waiver would still be used to help a UZA qualify for any of the three other STIC benchmarks that do not rely upon passenger mile data.

Two transit systems with fewer than nine vehicles objected to the proposal for increased reporting requirements from systems with nine or fewer vehicles in urbanized areas. A large transit agency that reports to the NTD on behalf of many smaller transit systems through a consolidated report requested that they continue to be

allowed to submit the consolidated report, rather than requiring each small system to report directly to the NTD under these requirements.

FTA Responds: FTA confirms that these increased reporting requirements do not change the existing NTD policies regarding consolidated reporting, and consolidated reports will continue to be accepted on behalf of small operators. FTA is mindful of the increased burden of this proposal on small systems with nine or fewer vehicles. However, FTA believes that this concern is outweighed by the interest in closing the current data "doughnut hole," in which the NTD is able to report data to the public on small systems in rural areas and of urbanized systems with ten or more vehicles, but not of urbanized area systems with nine or fewer vehicles. FTA will continue to seek to minimize the burden of NTD reporting on small systems through programs like consolidated reporting and by continuing to seek to minimize and automate reporting requirements. To further minimize this burden, FTA will modify its original proposal to exempt systems receiving a thirty or fewer vehicles waiver from reporting to the Monthly Module and from reporting to the Safety & Security Module.

Two State Departments of Transportation (DOT's) and two industry associations objected to the proposal to reduce reporting requirements for some systems with between 10 and 30 vehicles to a level similar to that required of rural systems. In particular, these State DOT's noted that the Rural NTD reporting requirements do not include operating expenditures by function, nor by object class—only sources of funds for operating expenditures are reported. These State DOT's argued that the reporting burden of this data is relatively low, and that this data is essential for making performance comparisons between small systems. An industry association also noted that the rural reporting requirements do not include the reporting of sampled data for passenger miles, and passenger miles are a key element of many performance benchmark comparisons.

FTA Responds: FTA is sympathetic to the desire of data users for as much data as possible, and in particular, FTA strongly supports the use of NTD data in performance benchmarking. These desires, however, must be balanced against the need to minimize the burden on the public. FTA's past experience with the NTD has shown that the requirement to allocate operating expenses across both object class (e.g. salaries and wages, fuel, utilities, etc.)

and across functions (e.g. vehicle operations, vehicle maintenance, general administration, etc.) can be a significant source of reporting burden for small transit systems. Despite the recent introduction of the new Sampling Manual, which has greatly reduced the overall burden of sampling, FTA recognizes that sampling for passenger miles can still be burdensome and labor-intensive, particularly for small transit operators. Instead, FTA would prefer to align the reporting requirements for these small systems as much as possible with the reporting requirements for rural systems, in order to minimize the confusion among reporters, and to minimize the burden to FTA on presenting final nationwide transit data to users. Additionally, these reduced reporting requirements will minimize the administrative burden to FTA of validating reports from these small transit systems. Since systems with 30 or fewer vehicles account for less than 3.5% of urbanized area transit service and less than 2% of urbanized area ridership, the overall impact on data users should be small from a national perspective. For data users primarily interested in small transit markets, FTA also notes that under this proposal, data from these small systems will not be completely lost, as some systems with thirty or fewer vehicles may choose to not benefit from this waiver in order to benefit from the reporting of passenger miles data for the formula apportionments. Additionally, some States may choose to require all transit systems in their State to file full NTD reports as a condition of receiving State funding in order to support performance benchmarking. FTA believes that these two factors will produce a somewhat suitable cadre of complete reports from small transit systems to support continuing some level of peer analysis among these small systems.

Final Policy: Based on the comments received, FTA adopts this final policy: Starting with the 2011 NTD Report, transit systems operating nine or fewer vehicles will be required to submit a report to the NTD that is aligned with the requirements for rural transit systems, and which continues to support the data required for the Urbanized Area Formula Program apportionment. Systems with nine or fewer vehicles that need additional time to comply with this requirement will be granted reporting waivers for up to two consecutive years. Additionally transit systems operating 30 or fewer vehicles in maximum service across all modes, and not operating any service over fixed-guideways, may request the same

“small systems waiver” for reduced reporting requirements. Transit systems receiving a *small systems waiver* will be exempt from reporting to the Monthly Module and from the Safety & Security Module. Data from transit systems using this *small systems waiver* will have their data included in the formula apportionments for any factors not using passenger miles or some other unreported data element under the waiver. Any system wishing to have their passenger mile data considered in the formula apportionments must submit a full NTD report.

(e) Financial Assets and Liabilities Reporting

FTA has previously proposed, in 2009, to consolidate the reporting of bonds and loans on a single form. FTA now proposed to also include consolidated reporting of financial assets, along with financial liabilities, according to categories already established in the Uniform System of Accounts (USOA), since the reporting of liabilities without the concurrent reporting of asset does not present a full picture of the financial capacity of the transit system. FTA received 13 comments on this proposal. An industry association, two large transit agencies, and three mid-sized transit agencies all supported the proposal. Another industry association requested that FTA engage in additional consultation before adopting the proposal, and three large transit agencies expressed concern about the additional burden of this reporting. Two mid-sized transit agencies expressed concern that they already find it challenging to complete NTD reports on financial information by the current deadline of four months after the close of the fiscal year, and these new requirements will make meeting that deadline even more difficult. One of the large transit agencies and one of the mid-sized transit agencies noted that this requirement would not apply to transit systems that operate as a unit of city or local government, and so do not carry their own financial assets or liabilities. Two large transit agencies asked that the value of capital assets be included in the reporting, as well as of financial assets. One small transit agency also requested clarification of how to report funding surpluses or shortfalls.

FTA Responds: FTA believes that there continues to be great interest in the overall financial capacity and financial health of transit agencies, and so this information would be important to public transportation service planners. At this time, this reporting would not apply to those transit systems

operating as a unit of city or local government, and which do not have their own financial assets and liabilities. FTA reminds the commenters that they are required to submit a “best available” report to the NTD by the established deadline in order to begin the validation process, but revisions may be made during the validation process. Finally, given the difficulty in valuing many transit capital assets, let alone the difficulty of liquidating those assets in order to meet financial liabilities, FTA has decided to minimize reporting burden by not including the reporting of the value of capital assets to the NTD at this time. FTA reminds the commenters that unlike in the Rural NTD, the sources of funds received reported in column c of the *F-10 Form* need not equal the sources of funds applied to operating and capital expenses on columns d and e of the *F-10 Form*. Transit systems requiring additional clarification of how to report financial surpluses or shortfalls should contact either their NTD Validation Analyst or FTA NTD Staff for further assistance.

Final Policy: FTA adopts the proposed reporting of financial asset and liabilities as originally proposed. FTA will grant waivers from this requirement for the 2011 Report Year for any reporter that needs additional time to comply with this requirement.

(f) Revision of Rules for Urbanized Area Allocations

FTA proposed to require that any transit service connecting more than one urbanized area, or a rural area and an urbanized area, must split that service on the *FFA-10 Form* among each of the geographic areas served according to some reasonable representation of the areas served. FTA received 25 comments on this proposal from a variety of industry associations and transit systems of various sizes, almost all of which were opposed to this proposal, with none clearly in favor of this proposal. Comments from several different transit agencies expressed concern that this proposal would increase reporting burden, as well as increase the burden of managing grants from FTA that were allocated through each separate urbanized area. In particular, transit systems operating commuter rail or vanpool service were concerned that these rules would cause them to split their data among a large number of areas, and that many of these areas do not currently provide funding to support these services. These commenters noted that many of these areas would not receive any benefit in the formula apportionments under current law from being credited with a

portion of these services, and the end result of this policy change might well be reductions in transit service to these areas. Additionally one industry associated and a vanpool operated noted that vanpools often connect rural areas and small UZAs with a large UZA, with the intent of meeting the air quality or congestion goals of the large UZA. Another industry association and a large transit agency also noted that current law allows transit service to be credited to the urbanized area served, and argued that transit service connecting more than one urbanized area need not necessarily be credited as serving both urbanized areas as FTA proposed. A small transit agency noted that the current rules provide for unequal treatment of small UZAs relative to large UZAs. In particular, service connecting a small UZA to a large UZA may be allocated 100% to the large UZA, but the reverse is not true—the vehicle revenue miles physically occurring in the large UZA must be allocated to the large UZA under current rules, even if the large UZA does not provide any funding to the transit agency operating the service. One large transit agency proposed that service connecting two UZAs should always be allocated to the larger of the two UZAs. Two transit agencies proposed that FTA should collect one allocation of transit service for data purposes, and a separate allocation of transit service for formula apportionment purposes. One large transit agency requested that any change be deferred until the reauthorization of SAFETEA-LU, and a mid-sized transit agency and an MPO requested that the change be deferred until the 2012 Report Year.

FTA Responds: FTA recognizes the concerns expressed by the commenters that FTA's proposed policy would further disconnect the formula apportionment from the areas that fund a service to those areas. FTA also recognizes the concern of one of the commenters that the current rules often require a transit operator from a small UZA to allocate a portion of their service to a large UZA, even if that large UZA does not provide any funding to the transit service. FTA also remains concerned that the current allocation rules are understating a certain amount of rural transit services provided by operators in urbanized areas. Thus, FTA will modify its proposed policy to respond to the concerns of the commenters, and to more closely connect the allocation of services on the *FFA-10 Form* to the jurisdiction funding the service. The modified policy will give reporting transit agencies the

flexibility to allocate their data based on the geographic area being served, and to tie their allocation to the geographic area or areas funding the service. The only restriction on this flexibility will be that services funded out of FTA's rural formula program must be allocated as rural services. FTA did consider collecting separate allocations for data purposes and for formula apportionment purposes, but the additional burden of conducting two separate allocations, and then validating and publishing the data, led us to decide not to adopt that proposal. FTA believes that the benefits of this increased flexibility and of a more-representative allocation of data in the NTD merit implementing this policy with the 2011 Report Year. The modifications to our proposal based on the comments should minimize the impacts of implementation. Additionally, implementation in the 2011 Report Year will cause the remaining impacts to occur simultaneously with the implementation of new UZA definitions based on the 2010 Census, thus allowing all needed adjustments to occur at the same time. The revised allocation rules are also simpler and provide increased flexibility to reporting transit agencies, which should also ease the reporting burden of implementing the new UZA definitions from the 2010 Census.

Final Policy: Beginning with the 2011 Report Year, transit service that connects one or more urbanized areas, or transit service that connects rural areas with one or more urbanized areas, may generally be allocated by one of two methods, either: (1) Allocated entirely to the geographic area that the reporting transit agency determines is being primarily served by each service, or (2) allocated proportionally among each of the geographic areas served according to some reasonable and consistent methodology. This rule will apply regardless of whether the service connects two or more large UZAs, two or more small UZAs, some combination of small and large UZAs, or one or more UZAs of any size to rural areas. However, any transit service that benefits from grants provided by FTA's Section 5311 Other Than Urbanized Area Formula Program (OTUAFP) must be allocated entirely to rural areas (labeled as UZA-0 on the *FFA-10 Form*), regardless of whether that service benefits from grants for operating expenses or for capital expenditures from the Section 5311 Program, and regardless of whether that service benefits from capital assets funded by the Section 5307 Program.

The only exception to the required rural area allocation is that if service connecting a rural area to a UZA, particularly a small UZA, is benefiting from operating assistance from both the Section 5307 Program and from the Section 5311 Program, then that service may be allocated on a pro-rated basis to the urbanized area served based on the percentage of operating expenses being funded by the Section 5307 UAFP Program (including the local matching funds for the Section 5307 funds).

(g) Special Procedures for New UZA Definitions from the 2010 Census

The Census Bureau is expected to publish new UZA definitions from the 2010 Census in spring 2012. FTA proposed that for the 2011 Report Year, reporting transit systems should complete their *FFA-10* form allocating data according to the UZA definitions from the 2000 Census according to the normal reporting schedule. Once the new UZA definitions are released, FTA then proposed to later require each reporting transit system to submit a new form addenda to allocate their service among the new UZA boundaries, and to sub-allocate their service by State for any UZA that includes portions of more than one State. FTA received 13 comments on this proposal. Two large transit systems supported the proposal, with one asking for FTA to delay requiring the form addenda until information on the new UZAs is available at the Census tract level. The remaining comments from two industry associations and nine large-to-mid-sized transit systems opposed the proposal on the grounds of imposing additional reporting burden with only a short time period for compliance. Five transit agencies asked FTA to delay implementation of the new Census UZAs until the 2012 Report Year. One industry association and one large transit agency asked FTA to seek legislative relief allowing it to delay implementation of the new Census UZAs until the 2012 Report Year.

FTA Responds: FTA understands the concerns of the commenters, and will seek to minimize the reporting burden of this proposal. However, FTA notes that it is required by law to implement data from the 2010 Census for use in the Fiscal Year 2013 apportionments, if it is available, and thus, to implement them in the 2011 NTD Report Year. FTA has already proposed to not require re-submission of the CEO Certification nor of the Independent Auditor Statement in regards to this additional data. To further reduce the reporting burden, FTA withdraws its proposal to require sub-allocation of UZA data by State in

cases where a UZA crosses State lines. Additionally, in response to the comments about the increased workload, FTA will only require the *FFA-10 Form* to be filled out once, during the additional reporting period, and will not require an *FFA-10 Form* to be filled out reflecting the UZA definitions from the 2000 Census. FTA also hopes that its new policy on urbanized area allocations will provide greater flexibility to reporting transit agencies, and so will reduce the overall effort needed to complete the *FFA-10 Form* this year and in future years. FTA will also seek to follow the recommendation of the commenter to delay release of the form addenda until the Census makes detailed maps of the new UZA boundaries available in summer 2012.

FTA will not, however, seek legislative relief from the requirement to use the new urbanized area definitions from the 2010 Census in the Fiscal Year 2013 apportionments. Many urbanized areas will show large increases of population in the 2010 Census, and will no doubt want to benefit from the 2010 Census data in the apportionment as quickly as possible. FTA does not wish to take sides among those that would benefit from a delay in the use of 2010 Census data, and those that would not. In the event that legislative change is sought by some of the commenters, and a legislative change is enacted into law, then FTA will of course modify its policy to accommodate the change in statute.

Final Policy: Based on the comments received, FTA adopts the following policy for the 2011 Report Year: NTD Reports for the 2011 Report Year will be due according to the regular deadlines, except that the *FFA-10 Form* following the UZA definitions from the 2000 Census will not be required. Following the release of detailed maps from the Census Bureau of the new UZA definitions from the 2010 Census, FTA will notify all urbanized area NTD reporters to logon to the NTD Online Reporting System and resubmit their *B-10 Form* identifying which of the new UZAs they serve and to submit a *FFA-10 Form* reflecting the new UZA definitions.

(h) Announcement of Suspension of Personal Security Reporting

FTA also announced that it was suspending indefinitely the reporting of personal security events to the Safety & Security Module of the NTD, effective with the publication of the previous notice. Although FTA did not specifically request comments on this effort to reduce reporting burden, FTA

received comments from an industry association and two large transit agencies in support of this action.

FTA Responds: FTA thanks the commenters.

Issued in Washington, DC, this 24th day of May 2011.

Peter Rogoff,

Administrator.

[FR Doc. 2011-13286 Filed 5-26-11; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2011-0069]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SANTORINI.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2011-0069 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 27, 2011.

ADDRESSES: Comments should refer to docket number MARAD-2011-0069. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979, E-mail Joann.Spittle@dot.gov.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel SANTORINI is:

Intended Commercial Use of Vessel: "Vessel will be operated as a coastal luxury charter yacht, passengers for hire. Types of operations would include day outings, coastal cruising, visiting local ports, etc."

Geographic Region: "California, USA."

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).

By Order of the Maritime Administrator.

Dated: May 19, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011-13076 Filed 5-26-11; 8:45 am]

BILLING CODE 4910-81-P