

challenging. Moreover, individual, isolated conditions may appear to be harmless. However, a combination of several seemingly harmless conditions can present a serious safety hazard.

Examples of contributing factors or actions roadway workers may face or engage in that may have been a factor in one or more roadway worker fatalities since 2000 while the roadway workers were performing work not covered by FRA regulations include, but are not limited to: Ascending or descending; falling objects; electrocution; an unanticipated energy release; slips, trips and falls; hoisting or lowering an object; off-track equipment striking roadway workers; collisions between roadway maintenance machines and standing trains; highway vehicle collisions (vehicle to vehicle); highway vehicles striking roadway workers; and environmental-related hazards (swarming bees, mudslides, heat stroke, flash floods, etc.).

FRA and the railroad industry have witnessed success using the Good Faith Challenge Procedures found in FRA's regulations<sup>5</sup> for situations when a roadway worker believes the on-track safety procedure being used is inadequate for the work being performed. In such a situation, the roadway worker may remain clear of the track until the challenged safety issue is resolved without fear of retribution or retaliation. Many railroads have adopted Good Faith Challenge Procedures for any safety-related concern, not just those FRA regulates. FRA recommends all railroads and railroad contractors adopt appropriate Good Faith Challenge Procedures for any recognized hazard identified during job safety briefings or any hazard otherwise arising during the course of work activities roadway worker believes requires remediation, whether FRA, OSHA, or another Federal agency regulate the that hazard.

**Recommendations:** In light of the above discussion, and in an effort to improve job safety briefings, improve the identification and mitigation of potential safety hazards existing in the working environments of roadway workers, and reduce the number of injuries and fatalities occurring when roadway workers are engaged in activities outside the scope of FRA's safety regulations, FRA recommends railroads and railroad contractors:

1. Develop hazard-recognition strategies identifying and addressing existing conditions posing actual or potential safety hazards, emphasizing the contributing factors or actions

involved in roadway worker-related fatalities occurring since 2000.

2. Provide annual training to roadway workers on the use of hazard-recognition strategies developed by the railroad or the railroad contractor.

3. Institute procedures for mandatory job safety briefings compliant with OSHA's regulations prior to initiating any roadway worker activity. Consistent with OSHA's regulations, roadway workers should use hazard-recognition procedures to identify potential hazards in their job briefings and then determine the appropriate measures to mitigate the identified hazards. If an unforeseen situation develops during work performance, roadway workers should stop working and conduct a second job briefing to determine the appropriate means of mitigating the new hazard.

4. Develop and apply Good Faith Challenge Procedures for all roadway workers who, in good faith, believe a task is unsafe or an identified hazard has not been mitigated.

FRA encourages railroad and railroad contractor industry members to take actions consistent with the preceding recommendations and any other actions that may help ensure the safety of roadway workers. Although the primary purpose of this Safety Advisory is for railroads and railroad contractors to apply these recommendations to activities that fall outside the scope of FRA's safety regulations, FRA also encourages the industry to apply these recommendations to activities FRA's regulations govern.

FRA may modify this Safety Advisory, issue additional safety advisories, or take other appropriate actions necessary to ensure the safety of the Nation's railroads, including pursuing other corrective measures under its safety laws and regulations.

Issued in Washington, DC, on November 22, 2016.

**John K. Alexy,**

*Director, Office of Safety Analysis.*

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**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Private Enterprise Participation

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

**ACTION:** Notice of policy guidance.

**SUMMARY:** The Federal Transit Administration (FTA) hereby establishes policy guidance for documenting compliance with the

private enterprise participation requirements under the Moving Ahead for Progress in the 21st Century Act (MAP-21). It also includes additional clarifications under the Fixing America's Surface Transportation (FAST) Act. Because the policy guidance requirement reiterates existing statutes and regulations and imposes no new requirements on recipients, FTA is not soliciting public comment on this policy guidance.

**DATES:** Effective Date: This policy guidance will be effective January 12, 2017.

**FOR FURTHER INFORMATION CONTACT:** For policy guidance questions, Kimberly Gayle, Office of Budget and Policy, telephone: 202-366-1429; or email: [Kimberly.Gayle@dot.gov](mailto:Kimberly.Gayle@dot.gov). For legal questions, Dana Nifosi, Office of Chief Counsel, telephone: 202-366-1936; or email: [Dana.Nifosi@dot.gov](mailto:Dana.Nifosi@dot.gov).

#### I. Background

The FTA is issuing this policy guidance pursuant to Section 20013(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141). Section 20013(d) requires the Secretary of Transportation to publish policy guidance regarding how recipients of Federal financial assistance under 49 U.S.C. chapter 53 can best document compliance with the requirements for private enterprise participation in public transportation planning and transportation improvement programs contained in sections 5303(i)(6), 5306(a), and 5307(b)<sup>1</sup> of title 49, United States Code.

##### A. Statutory Requirements for Private Enterprise Participation

Section 5303(i)(6) requires that each metropolitan planning organization (MPO) provide interested parties, including private providers of transportation, with a reasonable opportunity to comment on the metropolitan transportation plan (MTP). The Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) amended this section to include the following private providers: "intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program." In addition, MPOs must develop a participation plan that defines

<sup>1</sup> FTA notes that Section 20013(d) of MAP-21 refers to 49 U.S.C. 5307(c); however, the private transportation provider participation requirement is contained within 5307(b). Section 3010(b) of the Fixing America's Surface Transportation Act makes a technical correction to reference the correct subsection.

<sup>5</sup> See 49 CFR 214.311 (responsibility of employers to implement Good Faith Challenge Procedures).

a process for providing all interested parties, including private providers of transportation, with reasonable opportunities to be involved in the metropolitan transportation planning process. The MPO participation plan must be developed in consultation with all interested parties.

Section 5306(a) provides that a plan or program required by 49 U.S.C. 5303, 5304, or 5305 must encourage, to the maximum extent feasible, the participation of private enterprise (Note: 49 U.S.C. 5305 simply provides formula funding for the planning programs and does not establish procedural requirements.) 49 U.S.C. 5307(b) requires recipients of Urbanized Area Formula Grants to develop, in consultation with interested parties, including private transportation providers, a proposed program of projects (POP) for activities to be financed.

#### *B. Regulatory Requirements for Metropolitan Planning Organizations in Metropolitan Areas*

The FTA and the Federal Highway Administration (FHWA) recently promulgated a joint final rule (Joint Planning Rule) to update their regulations governing the development of MTPs and programs for urbanized areas, long-range statewide transportation plans and programs, and the congestion management process, as well as revisions related to the use of and reliance on planning products developed during the planning process for project development and the environmental review process. 81 FR 34049 (May 27, 2016), codified at 23 CFR part 450 and 49 CFR part 613. The regulatory changes implement amendments that MAP-21 and the FAST Act made to the metropolitan transportation planning and statewide and non-metropolitan planning processes.

Subpart C of the Joint Planning Rule implements 49 U.S.C. 5303 Metropolitan transportation planning. Each MPO must develop a Transportation Improvement Program (TIP) for the metropolitan planning area that provides all interested parties with a reasonable opportunity to comment on the proposed TIP in accordance with a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool

programs, vanpool programs, transit benefit programs, parking cash-out programs, shuttle programs, or telework programs), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process. 23 CFR 450.316(a), 450.326(b). When an MPO submits a proposed TIP to FTA and FHWA as part of the Statewide Transportation Improvement Program (STIP) approval process outlined in 23 CFR part 450, subpart B, the MPO must certify that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements, including 49 U.S.C. 5303. This self-certification must be made at least every four years per 23 CFR 450.336.

#### *C. Regulatory Requirements for Statewide and Non-Metropolitan Planning*

Subpart B of the Joint Planning Rule implements 49 U.S.C. 5304 Statewide and metropolitan transportation planning. Each state must undertake a transportation planning process and develop a long-range statewide transportation plan and STIP, which must be submitted, at least every four years, to FTA and FHWA for joint approval. When a state submits a STIP, it must certify that the transportation planning process is being carried out in accordance with all applicable requirements.

In implementing the statewide transportation planning process, States must develop and use a documented public involvement process that, *inter alia*, establishes early and continuous public involvement opportunities that provide timely information about issues and decision-making processes to individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties. See, 23 CFR 450.210.

#### *D. Section 5307 Certification*

Section 5307(b) requires recipients of urbanized area formula grants to develop a POP in consultation with

interested parties, including private transportation providers. Recipients must then publish the proposed POP to provide affected individuals, private transportation providers and local elected officials an opportunity to examine and submit comments on the proposed POP and performance of the recipient. Recipients also must provide an opportunity for a public hearing. In preparing the final POP, recipients must consider comments and views received, especially those of private transportation providers. A recipient of Section 5307 funds must, in each fiscal year in which it requests such funds, submit a final POP and must certify that it has complied with Section 5307(b).

FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions (January 16, 2014), includes guidance that recipients may satisfy the requirements of Section 5307(b) by following the procedures of the public involvement process outlined in the FTA/FHWA planning regulations. The Circular advises that a recipient that chooses to integrate the metropolitan planning process with the development of the POP should coordinate with the MPO and ensure that the public knows that the recipient is using the public participation process associated with TIP development to satisfy the public hearing requirements of Section 5307(b).

## **II. Policy Guidance**

FTA has determined that the best way to document compliance with the private enterprise participation provisions of 49 U.S.C. 5303(i)(6), 5306(a) and 5307(b) is to comply with the public participation requirements imposed by the recently promulgated Joint Planning Rule. FTA's recipients will continue to submit the applicable certifications required by Subparts B and C of the Joint Planning Rule and 49 U.S.C. 5307 through the annual certifications and assurances process. In addition, recipients must retain, and provide to FTA when requested, documentation of participation by interested parties in the metropolitan and statewide planning processes, and evidence of compliance with participation plans and POPs, as applicable, that are developed as part of the 49 U.S.C. 5303 and 5304 metropolitan and statewide planning processes and the 49 U.S.C. 5307 Urbanized Area Formula Grant process.

Accordingly, recipients shall document compliance with the private sector participation provisions through the existing regulatory process implementing Federal planning requirements. FTA will verify

compliance through its current oversight procedures either during the triennial review, state management review, planning certification review, the STIP approval process, and the Section 5307 grant application process. Given that this policy guidance imposes no new requirements, FTA is not requesting public comment.

**Carolyn Flowers,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. USCG-2015-0472]

#### Deepwater Port License Application: Delfin LNG LLC; Delfin LNG Deepwater Port; Final Application Public Hearing and Final Environmental Impact Statement

**AGENCY:** Maritime Administration, U.S. Department of Transportation.

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

**SUMMARY:** The Maritime Administration (MARAD), in cooperation with the U.S. Coast Guard (USCG) and the Federal Energy Regulatory Commission (FERC), announces: (1) The schedule and locations of public hearings; and (2) the availability of the Final Environmental Impact Statement (EIS) for the Delfin LNG, LLC (Delfin LNG) deepwater port license application for the exportation of natural gas.

A Notice of Application that summarized the original Delfin LNG deepwater port license application was published in the **Federal Register** on July 16, 2015 (80 FR 42162). A Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) and Notice of Public Meetings was published in the **Federal Register** on July 29, 2015 (80 FR 45270). A Notice of Receipt of Amended Application was published in the **Federal Register** on December 24, 2015 (80 FR 80455). A Notice of Availability (NOA) and Notice of Public Meetings for the Draft EIS was published in the **Federal Register** July 15, 2016 (81 FR 46157). This NOA incorporates the aforementioned Notices by reference.

The proposed Delfin LNG deepwater port would be located in Federal waters within the Outer Continental Shelf (OCS) approximately 37.4 to 40.8 nautical miles off the coast of Cameron Parish, Louisiana.

The proposed Delfin LNG deepwater port incorporates onshore components,

which are subject to FERC jurisdiction. These facilities are described in the section of this Notice titled "FERC Application."

Publication of this notice begins a 45-day comment period, requests public participation in the environmental impact review process, provides information on how to participate in the process and announces final public hearings in Cameron, Louisiana and Beaumont, Texas. The Final EIS complies with the Deepwater Port Act of 1974, as amended (33 United States Code (U.S.C.) 1501 *et seq.*) (DWPA) and the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR 1500 to 1508). MARAD and the USCG request public comments on the Final EIS and the application.

Pursuant to the criteria provided in the DWPA, both Louisiana and Texas have been designated as Adjacent Coastal States (ACS) for this application.

**DATES:** MARAD and USCG will hold two public hearings in connection with the license application's Final EIS. The first public hearing will be held in Cameron, Louisiana, on December 13, 2016, from 6 p.m. to 8 p.m. The second public hearing will be held in Beaumont, Texas, on December 14, 2016, from 6 p.m. to 8 p.m. Each public hearing will be preceded by an open house from 4:30 p.m. to 5:30 p.m. The public hearing may end later than the stated time, depending on the number of persons who wish to make a comment on the record. Additionally, material you submit in response to the request for comments must reach [www.regulations.gov](http://www.regulations.gov) by close of business January 12, 2017, or 45 days after the date of publication of this NOA in the **Federal Register**, whichever is later.

Federal and State agencies must also submit comments, recommended conditions for licensing, or letters of no objection by Friday, January 12, 2017, or 45 days after publication of this notice in the **Federal Register**, whichever is later. Also, within 45 days following the final hearing, on or prior to January 30, 2017, the Governor of Louisiana and the Governor of Texas (ACS Governors) may approve, disapprove, or notify MARAD of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management for which MARAD may ensure consistency by placing conditions on the license.

MARAD must issue a Record of Decision (ROD) to approve, approve with conditions, or deny the deepwater

port license application, within 90 days following the final license hearing, on or prior to March 14, 2017.

**ADDRESSES:** The open house and public hearing in Cameron, Louisiana will be held at the Johnson Bayou Community Center, 5556 Gulf Beach Highway, Cameron, LA, 70631; telephone: 337-569-2454. Free parking is available at the Community Center. The open house and public hearing in Beaumont, Texas will be held at the Holiday Inn Beaumont Plaza, 3950 Walden Road, Beaumont, Texas 77705; telephone: 409-842-5995. Free parking is available at the Holiday Inn Beaumont Plaza.

The license application, comments, supporting information and the Final EIS are available for viewing at the *Regulations.gov* Web site: <http://www.regulations.gov> under docket number USCG-2015-0472.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. If you submit your comments electronically, it is not necessary to also submit a hard copy. If you cannot submit material using <http://www.regulations.gov>, please contact either Mr. Roddy Bachman, USCG or Ms. Yvette M. Fields, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document. This section provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted. Anonymous comments will be accepted. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roddy Bachman, USCG, telephone: 202-372-1451, email: [Roddy.C.Bachman@uscg.mil](mailto:Roddy.C.Bachman@uscg.mil); or Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, MARAD, telephone: 202-366-0926, email: [Yvette.Fields@dot.gov](mailto:Yvette.Fields@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We request public comments on the Final EIS and the application. We also encourage attendance at the open houses and public hearings; however, the public hearing is not the only opportunity you have to comment. You may submit comments electronically at any time, as described in above in

**ADDRESSES**, to <http://www.regulations.gov> under docket number USCG-2015-0472.