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Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at <http://www.regulations.gov>, docket number USTR-2011-0002. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at <http://www.ustr.gov>, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, <http://www.wto.org>. Comments open to public inspection may be viewed on the <http://www.regulations.gov> Web site.

**William Busis,**

*Deputy Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 2011-21235 Filed 8-18-11; 8:45 am]

**BILLING CODE 3190-W1-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No: FTA-2009-0052]

#### Final Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements Under Federal Transit Law

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

**ACTION:** Final policy statement.

**SUMMARY:** The Federal Transit Administration (FTA) hereby establishes a formal policy on the eligibility of pedestrian and bicycle improvements for FTA funding and defines the catchment area for pedestrians and bicyclists in relation to public transportation stops and stations.

**DATES:** *Effective Date:* The effective date of this final policy statement is August 19, 2011.

**ADDRESSES:** *Availability of the Final Policy Statement and Comments:* One may access this final policy statement, the proposed policy statement, and public comments on the proposed policy statement at docket number FTA-2009-0052. For access to the docket, please visit <http://www.regulations.gov> or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jayme L. Blakesley at [jayme.blakesley@dot.gov](mailto:jayme.blakesley@dot.gov) or Matthew Lesh at [matthew.lesh@dot.gov](mailto:matthew.lesh@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The purpose of this notice is to simplify the process for determining whether a pedestrian or bicycle improvement qualifies for FTA funding by defining a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation. For the reasons outlined in this Policy Statement, and for purposes of determining whether a pedestrian or bicycle improvement has a physical or functional relationship to public transportation, all pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation. Pedestrian and bicycle improvements beyond these distances may be eligible for FTA funding by demonstrating that the improvement is within the distance that people will travel by foot or by bicycle to use a particular stop or station.

##### II. Background

Walking, bicycling, and public transportation are complementary modes of transportation: many people access public transportation by walking a short distance; others arrive by bicycle. The success of public transportation can often be limited by poor "first and last mile" access to the system. Further, safe walking and bicycling access can be important inducements to using public transportation. Thus, it is essential to develop safe, secure, and appropriate pedestrian and bicycle infrastructure if the users of public transportation are to

have safe, convenient, and practical access routes to, as well as appropriate amenities to enhance the utility of, public transportation systems across the country.

Adequate sidewalks, pathways, and roadway crossings in the area around public transportation access points and amenities such as benches, shelters, and lighting at stops and stations are important for pedestrian comfort and safety. The most successful and useful public transportation systems have safe and convenient pedestrian access and provide comfortable waiting areas, all of which encourage greater use.<sup>1</sup> Well-connected sidewalks should be installed in all areas with regular public transportation service so that public transportation patrons will not be forced to walk in the street while traveling to or from a stop or station. Additionally, roadway crossings should be made safer with an appropriate combination of facilities, such as marked crosswalks, median crossing islands, warning signs, and pedestrian signals.<sup>2</sup>

Distances beyond the “walkshed” of public transportation stops and stations may, in fact, be within the range of a short bicycle trip. Indeed, as one author stated, “[bicycles] are the perfect transportation choice for a short one- to three-mile trip to and from a transit station.”<sup>3</sup> Providing secure parking and other amenities for bicycles and cyclists at public transportation stops or stations can be less expensive than providing parking for automobiles. Access to public transportation allows bicyclists the opportunity to make longer trips. Further, where physical conditions prevent a continuous bicycle trip, public transportation can provide a link to previously inaccessible destinations.

A community’s design, including the layout of the roads, public transportation systems, and walkways, has a huge impact on its residents. A “livable community” may promote quality of life, economic development, and social equity. As Secretary of Transportation Ray LaHood noted, a “livable community” is “a community where if people don’t want an automobile, they don’t have to have one; a community where you can walk to work, your doctor’s appointment, pharmacy or grocery store. Or you could

take light rail, a bus, or ride a bike.”<sup>4</sup> As the Secretary further described, “livable communities are mixed-use neighborhoods with highly-connected streets promoting mobility for all users, whether they are children walking or biking to school or commuters riding transit or driving motor vehicles. Benefits include improved traffic flow, shorter trip lengths, safer streets for pedestrians and cyclists, lower greenhouse gas emissions, reduced dependence on fossil fuels, increased trip-chaining, and independence for those who prefer not to or are unable to drive. In addition, investing in a ‘complete street’ concept stimulates private-sector economic activity by increasing the viability of street-level retail small businesses and professional services, creating housing opportunities and extending the usefulness of school and transit facilities.”<sup>5</sup> As one leading scholar noted, “Pedestrian and bicycle traffic use fewer resources and affect the environment less than any other form of transport.”<sup>6</sup> If we are to create livable communities, “the range of transportation choices available to all Americans—including transit, walking, bicycling, and improved connectivity for various modes—must be expanded.”<sup>7</sup>

### III. United States Department of Transportation Policy

On March 15, 2010, the United States Department of Transportation (DOT or the Department) issued a Policy Statement on Bicycle and Pedestrian Accommodations.<sup>8</sup> The statement expressed “support for \* \* \* the establishment of well-connected walking and bicycling networks” and recommended actions to encourage active transportation networks. According to the Policy Statement, “walking and bicycling foster safer, more livable, family-friendly communities; promote physical activity

and health; and reduce vehicle emissions and fuel use.” The Department’s policy is “to incorporate safe and convenient walking and bicycling facilities into transportation projects.”

### IV. Planning Requirements

The joint planning regulations of FTA and the Federal Highway Administration (FHWA) require States and metropolitan planning organizations to integrate pedestrian and bicycle facilities into all transportation plans and improvement programs. Pedestrians and bicyclists must be provided with a reasonable opportunity to comment on long-range statewide transportation plans and metropolitan transportation master plans.<sup>9</sup>

### V. Eligibility of Pedestrian and Bicycle Improvements for FTA Funding

Most grant programs administered by FTA may be used to fund the design, construction, and maintenance of pedestrian and bicycle projects that enhance or are related to public transportation facilities. Improvements made expressly eligible by statute include capital projects like pedestrian and bicycle access to a public transportation facility;<sup>10</sup> and transit enhancements like pedestrian access, walkways, and bicycle access, including bicycle storage facilities and equipment for transporting bicycles on public transportation vehicles.<sup>11</sup> Additionally, certain funding programs administered by FHWA, including the Surface Transportation Program (STP) and the

<sup>9</sup> Federal Transit Law, Title 49, Chapter 53, United States Code, encourages states and metropolitan areas to develop innovative transportation plans and programs which better integrate public transportation, bicycle facilities, pedestrian walkways, and other modes of travel into the existing transportation system. To this end, the statewide transportation plan and the transportation improvement program developed for each state must “provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system.” 49 U.S.C. 5304(a)(2). Similarly, the plans and transportation improvement programs (TIP) of all metropolitan areas must “provide for the integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities).” 49 U.S.C. 5303(c)(2). Moreover, when preparing long-range statewide transportation plans and transportation master plan, each state and metropolitan planning organization (MPO) must provide a reasonable opportunity to comment to the “representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities,” among others. 49 U.S.C. 5303(i)(5) and 5304(f)(3).

<sup>10</sup> 49 U.S.C. 5302(a)(1)(g).

<sup>11</sup> 49 U.S.C. 5302(a)(15)(f).

<sup>1</sup> *Pedestrian Safety Guide for Transit Agencies*, Federal Highway Administration, United States Department of Transportation, February 2008.

<sup>2</sup> *Pedestrian Safety Guide for Transit Agencies*, Federal Highway Administration, United States Department of Transportation, February 2008.

<sup>3</sup> Andrea White-Kjoss, *Building Multimodal Transit Facilities: The One Clear Step toward the New Transportation Paradigm*, Mass Transit, July/August 2009, at 36–37.

<sup>4</sup> Christie Findlay, *Living in a Post-Car World*, AARP Bulletin, October 1, 2009.

<sup>5</sup> Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, United States Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

<sup>6</sup> Jan Gehl, *Cities for People* 105 (2010).

<sup>7</sup> Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

<sup>8</sup> United States Department of Transportation, Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations, March 15, 2010, available at <http://www.dot.gov/affairs/2010/bicycle-ped.html>.

Congestion Mitigation and Air Quality (CMAQ) Program, may be used for public transportation purposes. Once transferred to FTA for a public transportation purpose, these “flexible” funds are administered as FTA funds and take on all the eligibility and requirements of the FTA program to which they are transferred, except for the Federal share, which remains that required under the FHWA program.<sup>12</sup> The following is a description of the eligibility requirements for pedestrian and bicycle improvements under Federal Transit Law.

#### A. Capital Projects

An FTA grantee may use any of the following programs under Title 49, Chapter 53, of the United States Code to fund capital projects for pedestrian and bicycle access to a public transportation facility:

- Section 5307 Urbanized Area Formula Program;
- Section 5309 New Starts and Small Starts Major Capital Investment Programs;
- Section 5309 Fixed Guideway Modernization Program;
- Section 5309 Bus and Bus Facilities Discretionary Program;
- Section 5310 Elderly Individuals and Individuals with Disabilities Formula Program;
- Section 5311 Non-Urbanized Area Formula Program;
- Section 5311 Public Transportation on Indian Reservations;
- Section 5316 Job Access and Reverse Commute Formula Program;
- Section 5317 New Freedom Program; and,
- Section 5320 Paul S. Sarbanes Alternative Transportation in Parks and Public Lands.

Federal Transit Law defines the term “capital project” to mean, among other things, “a public transportation improvement that enhances economic development or incorporates private investment, including \* \* \* pedestrian and bicycle access to a [public] transportation facility.”<sup>13</sup>

This eligibility is not without restrictions.<sup>14</sup> Pedestrian and bicycle projects made eligible under the definition of “capital project” must satisfy additional statutory criteria,

including requirements to enhance economic development or incorporate private investment; to enhance the effectiveness of public transportation project and relate physically or functionally to that project, or to establish new or enhanced coordination between public transportation and other transportation; and to provide a fair share of revenue for public transportation.<sup>15</sup>

#### B. Transit Enhancement Activities

One percent of FTA’s Urbanized Area Formula program funds apportioned to urbanized areas with populations of at least 200,000 are set aside for transit enhancements. Eligible transit enhancement projects include pedestrian access and walkways, bicycle access, bicycle storage facilities, and installing equipment for transporting bicycles on public transportation vehicles.<sup>16</sup> As an added incentive, the Federal share of transit enhancement grants covers 90 percent of the cost of the project.<sup>17</sup> If the project involves providing bicycle access to public transportation, the grant or portion of that grant may be at a Federal share of 95 percent.<sup>18</sup>

#### VI. Response to Public Comments

FTA received approximately 159 comments on its Proposed Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements under Federal Transit Law. Of those 159 comments, 46 comments were filed after the January 12, 2010 deadline. Only three of those comments were filed after January 15, 2010, with the final comment being filed on March 9, 2010. FTA has considered all comments submitted to the docket on or before June 1, 2011.

The commenters represent a broad spectrum of stakeholders throughout the United States, including the New York Metropolitan Transportation Authority, the Washington Metropolitan Area Transit Authority, the Seattle Department of Transportation, the City of Dallas, the Metropolitan Planning Council of Chicago, the Tri-County Metropolitan Transportation District of Oregon, the Center for Transit-Oriented Development, the American Public Transportation Association, the United States Environmental Protection Agency, the Association of Pedestrian and Bicycle Professionals, Smart

Growth America, the National Complete Streets Coalition, and the Bicycle Transportation Alliance. Numerous other State governments, local governments, metropolitan planning organizations, trade associations, and individuals commented on the Proposed Policy Statement.

In this section, FTA responds to public comments in the following topical order: (A) General Comments; (B) The Pedestrian Catchment Area; (C) The Bicycle Catchment Area; (D) Funding Issues; (E) FTA’s Capital Investment Grants Program; (F) Access to Public Transportation for Individuals With Disabilities; (G) Eligible Activities; (H) Bicycle Sharing Programs; (I) Planning Issues; (J) Safety Concerns; (K) Bicycle Improvements in Rural Areas; (L) Research Issues; (M) Public Health Issues; (N) Carpooling and Ridesharing Initiatives; (O) The HUD–DOT–EPA Partnership for Sustainable Communities; (P) Park-and-Ride Lots; (Q) Continuing Control Issues; and, (R) Miscellaneous Comments. Several commenters raised issues that are outside the scope of FTA’s Proposed Policy Statement, and FTA does not address those concerns in this Final Policy Statement.

#### A. General Comments

The majority of commenters expressed overwhelming support for FTA’s Proposed Policy Statement. Many commenters generally indicated that, through the Proposed Policy Statement, FTA was taking a positive step towards fostering the development and the sustainability of livable communities.

*FTA Response:* FTA appreciates the support for the Proposed Policy Statement. As discussed above, by considering pedestrian improvements located within one-half mile and bicycle improvements located within three miles of a public transportation stop or station to have a *de facto* physical and functional relationship to public transportation, individuals will benefit from improved traffic flow, shorter trip lengths, safer streets for pedestrians and cyclists, lower greenhouse gas emissions, reduced dependence on fossil fuels, increased trip-chaining, increased overall health, and independence for individuals who prefer not to or are unable to drive. Additionally, pedestrian and bicycle improvements benefit local economies by increasing activity that supports street-level retail.

#### B. The Pedestrian Catchment Area

The majority of commenters supported FTA’s proposal to create a *de facto* public transportation stop or

<sup>12</sup> 49 U.S.C. 5334(i).

<sup>13</sup> 49 U.S.C. 5302(a)(1)(G).

<sup>14</sup> **Note:** The restrictions described in this paragraph do not apply to projects funded under 49 U.S.C. 5320, Paul S. Sarbanes Alternative Transportation in Parks and Public Lands. Alternative transportation expressly includes activities that provide “a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft).”

<sup>15</sup> For more information, see FTA’s February 7, 2007 guidance on the Eligibility of Joint Development Projects under Federal Transit Law at 72 FR 5788.

<sup>16</sup> 49 U.S.C. 5302(a)(15).

<sup>17</sup> 49 U.S.C. 5319.

<sup>18</sup> 49 U.S.C. 5319.

station radius of one-half mile for purposes of determining whether a pedestrian improvement has a physical or functional relationship to public transportation. Additionally, the majority of commenters supported FTA's proposal to make pedestrian improvements beyond this threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently walk to use the particular stop or station.

Some commenters suggested that FTA should expand the pedestrian catchment radius to encompass more than one-half mile. Some commenters suggested that FTA use a one mile pedestrian catchment area or a two mile pedestrian catchment area. To support the expansion of the pedestrian catchment area, the majority of these commenters made general statements that some studies indicate pedestrians travel at speeds of three miles per hour, and consequently, pedestrians can cover more distance than one-half mile during a fifteen minute walk. Some commenters also made general statements that some studies indicate the majority of pedestrians are willing to walk more than one-half mile to reach a public transportation stop or station.

Some commenters expressed concerns with FTA's proposed use of a *de facto* "radial distance" from a public transportation stop or station to measure whether a pedestrian improvement has a physical or functional relationship to the stop or station. These commenters suggested that FTA use a "street network radius" whereby FTA would measure one-half mile of actual street walking, while considering factors such as density, weather patterns, and physical obstructions surrounding stops and stations, to determine the eligibility of a pedestrian improvement. These commenters asserted that the determination of whether a physical or functional relationship exists varies greatly under the widely divergent circumstances of a local transportation system, and that the relationship should not be mileage-based, but rather, it should be based on a case-by-case analysis.

*FTA Response:* FTA appreciates the support for the creation of the *de facto* one-half mile pedestrian catchment area and for its proposal to make pedestrian improvements beyond the one-half mile threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently walk to use the particular stop or station.

For purposes of the Final Policy Statement, FTA believes that a

conservative, one-half mile *de facto* catchment area is appropriate. As discussed above, recent research indicates that: (1) Pedestrians walk at a pace of approximately two miles per hour, and (2) pedestrians generally are willing to walk approximately fifteen minutes to reach a public transportation stop or station.<sup>19</sup> Accordingly, pedestrians generally are able to walk a distance of approximately one-half mile during a fifteen minute walk at a two mile per hour pace. Based on this information, FTA hereby establishes a one-half mile *de facto* pedestrian catchment area. This *de facto* catchment area will simplify the process of determining whether a pedestrian improvement is eligible for FTA funding. Moreover, FTA will measure one-half mile using a "radial distance" because the radial method further simplifies these determinations.

FTA notes that the majority of the commenters who proposed a catchment area beyond one-half mile did not offer citations to specific studies which lend support to their proposals. Notwithstanding this fact, FTA acknowledges that, in some localities, pedestrians are willing to spend up to thirty minutes walking to a public transportation stop or station.<sup>20</sup> FTA supports investments in pedestrian projects beyond the *de facto* catchment area. Therefore, FTA hereby makes eligible for funding pedestrian improvements beyond the one-half mile catchment area if the improvement is within the distance that people could be expected to safely and conveniently walk to use the particular stop or station. This policy will allow investments in pedestrian improvements well beyond the one-half mile catchment area, and it will account for the variety of factors in any given locality that may impact an individual's ability to reach a public transportation stop or station by walking.

### C. The Bicycle Catchment Area

The majority of commenters supported FTA's proposal to create a *de facto* public transportation stop or station radius of three miles for purposes of determining whether a bicycle improvement has a physical or functional relationship to public

transportation. Additionally, the majority of commenters supported FTA's proposal to make bicycle improvements beyond this threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently bike to use the particular stop or station.

Some commenters suggested that FTA should expand the bicycle catchment radius to encompass more than three miles. Some commenters suggested that FTA use a four mile, a five mile, or a six mile bicycle catchment area. The majority of these commenters did not offer a rationale for these suggestions. However, some commenters referred to various studies which indicate that bicyclists travel at average speeds of twelve to fifteen miles per hour, and they therefore can cover more distance than three miles during a fifteen minute bicycle ride.

Some commenters expressed concerns with FTA's proposed use of a *de facto* radial distance from a public transportation stop or station to measure whether a bicycle improvement has a physical or functional relationship to the stop or station. These commenters suggested that FTA use a "street network radius" whereby FTA would measure three miles of actual bicycling while considering factors such as density, weather patterns, and physical obstructions surrounding stops and stations, to determine the eligibility of a bicycle improvement. These commenters asserted that the determination of whether a physical or functional relationship exists varies greatly under the widely divergent circumstances of a local transportation system, and that the relationship should not be mileage-based, but rather, it should be based on a case-by-case analysis.

Finally, some commenters suggested, without rationale, that FTA should limit bicycle improvements only to areas where transit-oriented development is likely.

*FTA Response:* FTA appreciates the support for the creation of the *de facto* three mile bicycle catchment area. FTA also appreciates the support for its proposal to make bicycle improvements beyond the three mile threshold eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently bike to use the particular stop or station.

For purposes of the Final Policy Statement, FTA believes that a conservative, three mile *de facto* catchment area is appropriate. As discussed above, recent research indicates that: (1) Bicyclists can ride at

<sup>19</sup> Schlossberg, M. et al., How Far, By Which Route, and Why? A Spatial Analysis of Pedestrian Reference, Mineta Transportation Institute, June 2007. See L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations*, Am. J. Prev. Med., November 2005, at 273.

<sup>20</sup> See L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations*, Am. J. Prev. Med., November 2005, at 273.

a pace of approximately ten miles per hour in almost any environment, and (2) bicyclists generally are willing to bike at least fifteen minutes to reach a public transportation stop or station.<sup>21</sup>

Accordingly, bicyclists can cover at least three miles during a fifteen minute bicycle ride at a pace of ten miles per hour. Consequently, FTA hereby establishes a three mile *de facto* bicycle catchment area. This *de facto* catchment area will simplify the process of determining whether a bicycle improvement is eligible for FTA funding. Moreover, FTA will measure three miles using a “radial distance” because the radial method further simplifies these determinations and avoids the complex decision-making that a “street network radius” would foster.

FTA acknowledges that, in some circumstances, bicyclists travel at higher speeds and may be willing to spend more than fifteen minutes biking to a public transportation stop or station. FTA supports investments in bicycle projects beyond the *de facto* catchment area. Therefore, FTA hereby makes eligible for funding bicycle improvements beyond the three mile catchment area if the improvement is within the distance that people could be expected to safely and conveniently bike to use the particular stop or station. This policy will allow investments in bicycle improvements well beyond the three mile catchment area, and it will account for the variety of factors in any given locality that may impact an individual’s ability to reach a public transportation stop or station by biking.

#### D. Funding Issues

In light of FTA’s Proposed Policy Statement, numerous commenters expressed a need for additional Federal funding for pedestrian and bicycle improvements. Some commenters expressed a need for increased Federal funding for (1) capital projects, (2) the Surface Transportation Program, and (3) the CMAQ Program. These commenters asserted that, through the increased funding, local communities could implement livability initiatives, create jobs, and maintain pedestrian and bicycle projects in a state of good repair.

Some commenters suggested that Congress should establish a dedicated funding source for pedestrian and bicycle projects, such as a formula funding program. These commenters

asserted that, through a formula funding program, recipients of Federal transportation funds would not have to weigh the needs of competing projects when making local planning decisions. Other commenters suggested that Congress should provide a short-term operating subsidy to FTA’s grantees to support pedestrian and bicycle projects.

Some commenters suggested various methods of raising revenues to support increased funding in pedestrian and bicycle projects. Some commenters suggested that Congress should raise the Federal gas tax to raise revenues. Other commenters suggested that the Department should encourage road pricing throughout the United States so that local governments could finance pedestrian and bicycle improvements.

*FTA Response:* FTA supports additional funding for pedestrian and bicycle improvements. Indeed, recent research indicates a significant disparity between the percentage of pedestrian and bicycle trips in the United States and the amount of Federal transportation funding for those trips. Approximately 10 percent of all trips are by foot or by bicycle nationwide, however, these modes receive only 1 percent of the total amount of transportation funding at the Federal level.<sup>22</sup> To remedy this disparity, FTA supports the expansion of funding sources, such as the Surface Transportation Program and the CMAQ Program. FTA agrees that, through an increase in Federal funding, local communities could implement livability initiatives, create jobs, and maintain pedestrian and bicycle projects in a state of good repair.

FTA notes that a purpose of this Final Policy Statement is to provide flexibility to recipients of Federal funds so that they can use those funds when alternative funding sources are insufficient to support pedestrian and bicycle projects. These planning and funding decisions take place at the local level, and the burden is on transit agencies and project sponsors to coordinate and identify funding priorities.

Finally, in response to comments that Congress should raise the Federal gas tax or that the Department should encourage road pricing to support funding for pedestrian and bicycle improvements, FTA notes that Congress is in the process of developing a surface transportation reauthorization bill. That bill will establish surface transportation priorities and funding sources to

support those priorities. FTA is currently working with Congress in an effort to develop these priorities and identify potential funding sources for the next reauthorization legislation.

#### E. FTA’s Capital Investment Grants Program

Many commenters identified potential issues with the Proposed Policy Statement as it relates to FTA’s Capital Investment Grants Program at 49 U.S.C. 5309, commonly referred to as FTA’s “New Starts” Program. These commenters expressed concerns with FTA’s method of calculating the cost-effectiveness of a New Starts project. These commenters asserted that an investment in a pedestrian or bicycle component of a New Starts project would increase capital costs and thereby potentially decrease the project’s cost-effectiveness. These commenters suggested that FTA re-evaluate its method for calculating cost-effectiveness so that project sponsors may capture the benefits of a pedestrian or bicycle project—such as decreased carbon emissions—and account for the return that applicants would receive on their investment.

*FTA Response:* FTA appreciates the comments that it received on the relationship between the Proposed Policy Statement and the New Starts program. FTA acknowledges that major capital projects, such as those funded by the New Starts program, benefit from pedestrian and bicycle improvements and that, historically, these improvements may have adversely affected the ability for a project to remain cost effective.

For this reason and others, FTA has revisited its New Starts evaluation criteria. On June 3, 2010, FTA issued an Advanced Notice of Proposed Rulemaking which sought public comments regarding its New Starts and Small Starts project justification criteria.<sup>23</sup> In particular, FTA sought public input on how to improve its calculation of “cost effectiveness” and whether FTA should measure quantifiable benefits other than reduced travel time. Additionally, FTA sought public comments on how it should evaluate environmental benefits and economic development effects. FTA intends to issue a Notice of Proposed Rulemaking on this subject in the near future.

<sup>21</sup> League of American Bicyclists. Retrieved From: <http://www.bikeleague.org/resources/better/commuters.php>. See Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 18.

<sup>22</sup> Alliance for Biking and Walking, *Bicycling and Walking in the United States: 2010 Benchmarking Report*, 2010, at 16, 78.

<sup>23</sup> Federal Transit Administration, *Advance Notice of Proposed Rulemaking, Request for Comments on Major Capital Investment Projects*, 75 FR 31383 (June 3, 2010).

#### F. Access to Public Transportation for Individuals With Disabilities

Many commenters expressed support for FTA's Proposed Policy Statement because they believed that, through pedestrian and bicycle improvements, individuals with disabilities will have better access to public transportation stops and stations. These commenters believed that the Proposed Policy Statement is an excellent "complete streets" initiative.

Some commenters believed one of the benefits of the Proposed Policy Statement is that, with increased pedestrian and bicycle improvements, there will be a decreased need for paratransit service because public transportation stops and stations will become more accessible. They also noted that pedestrian and bicycle improvements are significantly less costly than paratransit service.

Several commenters questioned whether the Proposed Policy Statement would impact any interpretation of the Americans with Disabilities Act.

*FTA Response:* FTA appreciates the comments that it received regarding the relationship between this Final Policy Statement and access to public transportation for individuals with disabilities. FTA agrees that, through pedestrian and bicycle improvements, individuals with disabilities will have better access to public transportation stops and stations. One of the purposes of this Final Policy Statement is to make fixed-route public transportation available and accessible to the largest number of individuals possible. Indeed, pedestrian and bicycle improvements will improve access to public transportation for all users, including individuals with disabilities.

FTA notes that this Final Policy Statement will not impact any interpretation of the Americans with Disabilities Act.

#### G. Eligible Activities

Several commenters expressed support for FTA's Proposed Policy Statement because, through the Policy Statement, FTA makes "all" pedestrian and bicycle improvements within the one-half mile radius and three mile radius eligible for Federal funding. Other commenters requested that FTA define the pedestrian and bicycle improvements that would be eligible for Federal funding under the Proposed Policy Statement. These commenters suggested that eligible activities should include bicycle parking and bicycle stations with storage rooms, bicycle lockers, changing rooms, and space for bicycle repair and rental shops.

*FTA Response:* FTA appreciates the comments that it received regarding eligible activities. Indeed, as discussed in detail above and as indicated in the Final Policy below, "[A]ll pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation."

More specifically, as discussed above, most grant programs administered by FTA may be used to fund the design, construction, and maintenance of pedestrian and bicycle projects that enhance or are related to public transportation facilities. Improvements made expressly eligible by statute include capital projects such as pedestrian and bicycle access to a public transportation facility,<sup>24</sup> and transit enhancements such as pedestrian access, walkways, and bicycle access, including bicycle storage facilities and equipment for transporting bicycles on public transportation vehicles.<sup>25</sup> Additionally, certain funding programs administered by FHWA, including the Surface Transportation Program and the CMAQ Program, may be used for public transportation purposes. Once transferred to FTA for a public transportation purpose, these "flexible" funds are administered as FTA funds and take on all the eligibility and requirements of the FTA program to which they are transferred, except for the Federal share, which remains that required under the FHWA program.

FTA grantees may use any of the following programs to fund capital projects for pedestrian and bicycle access to a public transportation facility:

Section 5307 Urbanized Area Formula Program;

Section 5309 New Starts and Small Starts Major Capital Investment Programs;

Section 5309 Fixed Guideway Modernization Program;

Section 5309 Bus and Bus Facilities Discretionary Program;

Section 5310 Elderly Individuals and Individuals with Disabilities Formula Program;

Section 5311 Non-Urbanized Area Formula Program;

Section 5311 Public Transportation on Indian Reservations;

Section 5316 Job Access and Reverse Commute Formula Program;

Section 5317 New Freedom Program; and

Section 5320 Paul S. Sarbanes Alternative Transportation in Parks and Public Lands.

Pursuant to 49 U.S.C. 5302(a)(1)(G), the term "capital project" means, among other things, "a public transportation improvement that enhances economic development or incorporates private investment, including \* \* \* pedestrian and bicycle access to a [public] transportation facility." This eligibility is not without restrictions. Pedestrian and bicycle projects made eligible under the definition of "capital project" must satisfy additional statutory criteria, including requirements to enhance economic development or incorporate private investment; to enhance the effectiveness of public transportation project and relate physically or functionally to that project, or to establish new or enhanced coordination between public transportation and other transportation; and to provide a fair share of revenue for public transportation.

Finally, one percent of Urbanized Area Formula program funds apportioned to urbanized areas with populations of at least 200,000 are set aside for transit enhancements. Eligible transit enhancement projects include pedestrian access and walkways, and bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles. As an added incentive, the Federal share of transit enhancement grants covers 90 percent of the cost of the project. If the project involves providing bicycle access to public transportation, the grant or portion of that grant may be at a Federal share of 95 percent.

#### H. Bicycle Sharing Programs

Several commenters expressed a hope that FTA would eventually expand funding eligibility to include bicycle sharing initiatives. These commenters believed that bicycle sharing systems assist commuters with the "first and last mile" problem by linking them to public transportation during the beginning and ending of their commutes.

*FTA Response:* FTA agrees that bicycle sharing systems provide meaningful access to public transportation and help address the problem of the "first and last mile." Moreover, bicycle sharing programs, like all forms of active transportation, provide numerous benefits, such as reduced carbon emissions and improved public health.

Federal Transit Law limits the use of FTA funds for "public transportation." Historically, FTA has not included "bicycle" within the definition of

<sup>24</sup> 49 U.S.C. 5302(a)(1)(g).

<sup>25</sup> 49 U.S.C. 5302(a)(15)(f).

“public transportation.” Therefore, while a grantee may use FTA funds to purchase aspects of a bicycle sharing system if those aspects are located near public transportation stops and stations, an FTA grantee may not use FTA funds to purchase bicycles, regardless of whether those bicycles comply with Federal Buy America requirements.

#### I. Planning Issues

Several commenters highlighted the need for transit agencies to work collaboratively with local stakeholders when planning pedestrian and bicycle improvements.

*FTA Response:* FTA and FHWA require coordinated planning efforts and public involvement for project development.<sup>26</sup> FTA requires grantees to work collaboratively with local stakeholders when planning pedestrian and bicycle improvements.

#### J. Safety Concerns

Several commenters expressed a general concern that pedestrians and bicyclists should be safe during their commutes.

*FTA Response:* FTA agrees that pedestrians and bicyclists should be safe during their commutes, and FTA expects its grantees to consider the safety of pedestrians and bicyclists at all times. This Final Policy Statement, however, is limited to identifying the eligibility of capital projects and transit enhancements.

#### K. Bicycle Improvements in Rural Areas

One commenter hoped that the Proposed Policy Statement will foster the development of bicycle lanes in rural areas so that commuters have better access to public transportation.

*FTA Response:* FTA promotes the use of public transportation in both urban and rural areas. Consequently, through this Final Policy Statement, FTA hopes to encourage the development of bicycle lanes in rural areas.

#### L. Research Issues

One commenter suggested that FTA compile and present a series of “best practices” for grantees that intend to develop and implement pedestrian and bicycle projects.

*FTA Response:* FTA is exploring research programs that will support the objectives of this Final Policy Statement. FTA looks forward to working with stakeholders and industry partners to collect information regarding pedestrian and bicycle connections to public transportation systems.

#### M. Public Health Issues

One commenter highlighted potential public health benefits associated with the pedestrian and bicycle catchment areas. This commenter suggested that FTA should require consideration of health benefits when determining catchment areas.

*FTA Response:* FTA appreciates comments regarding the public health benefits related to pedestrian and bicycle improvements. Indeed, there are numerous public health benefits associated with walking and biking, such as a decreased risk of obesity, diabetes, heart disease, and high blood pressure, and reduced overall depression and anxiety.<sup>27</sup> The Centers for Disease Control and Prevention have noted that, to increase overall public health, communities should “[b]uild good pedestrian and bicycle infrastructure, including sidewalks and bike paths.”<sup>28</sup> Additionally, by walking or biking to or from public transportation, individuals reduce overall carbon emissions.

#### N. Carpooling and Ridesharing Initiatives

One commenter urged FTA to consider expanding the scope of eligible activities to include carpooling and ridesharing initiatives.

*FTA Response:* FTA recognizes that carpooling and ridesharing initiatives provide a viable solution to many transportation challenges. Although FTA encourages carpooling or ridesharing, this Final Policy Statement focuses on providing pedestrians and bicyclists with greater access to public transportation.

#### O. The HUD-DOT-EPA Partnership for Sustainable Communities

One commenter suggested that the United States Department of Housing and Urban Development (HUD), the United States Environmental Protection Agency (EPA), and FHWA should make funds available for pedestrian and bicycle improvements.

*FTA Response:* DOT and FTA are strongly committed to the HUD-DOT-EPA Partnership for Sustainable Communities. Together, these agencies are working to promote livable communities.

<sup>27</sup> National Center for Bicycling and Walking, *Increasing Physical Activity Through Community Design*, June 2010; Smart Growth for America, *Measuring the Health Effects of Sprawl*, September 2003;

<sup>28</sup> Centers for Disease Control and Prevention, *Healthy Community Design Fact Sheet*, June 2008.

#### P. Park-and-Ride Lots

Several commenters expressed a preference for investments in pedestrian and bicycle improvements over investments in park-and-ride lots. These commenters believed that investments in pedestrian and bicycle projects are more effective tools of promoting livability.

*FTA Response:* FTA agrees with these comments. Pedestrian and bicycle projects have many advantages over park-and-ride lots. Unlike motor vehicles, pedestrian and bicycle improvements allow individuals to access public transportation without the costs and negative health effects of motor vehicle travel.

#### Q. Continuing Control Issues

Several commenters expressed concerns with potential continuing control issues. By expanding pedestrian and bicycle catchment areas, project sponsors may create access routes on property that is outside the control of the transit agency. One commenter suggested that, in these scenarios, FTA should require the transit agency to execute a subgrantee agreement with the locality to address potential continuing control issues.

*FTA Response:* FTA agrees that continuing control issues may arise through the expansion of pedestrian and bicycle catchment areas. For example, a grantee may expand pedestrian and bicycle catchment areas on real estate that is under the control of a locality.

Pursuant to Section 19 of FTA’s Master Agreement, a grantee “agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA.” FTA believes that, in scenarios such as the one described above, a subgrantee agreement may be necessary to ensure the grantee has a degree of continuing control over real estate that is subject to an FTA investment.

#### R. Miscellaneous Comments

Two commenters noted a spelling error in the following sentence in the Preamble of the Proposed Policy Statement: “Walking, bicycling, and public transportation are complimentary.”<sup>29</sup> These commenters noted that the word “complimentary” should be spelled “complementary.”

*FTA Response:* FTA thanks these commenters for noting the spelling and grammatical error. FTA has changed the word “complimentary” to

<sup>29</sup> Federal Transit Administration, *Proposed Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements under Federal Transit Law*, 74 FR 58679 (Nov. 13, 2009).

<sup>26</sup> 23 CFR 450.210, 771.111 (2010).

“complementary” in the Preamble of this Final Policy Statement.

One commenter suggested that FTA should require recipients of Federal funds for pedestrian and bicycle improvements to certify that the projects will increase public transportation ridership as a result of the Federal investments.

*FTA Response:* The purpose of this Policy Statement is to improve access to public transportation stops and stations by simplifying the process for determining whether the improvements have a physical or functional relationship to public transportation. FTA grantees will not need to certify ridership figures for projects within the one-half mile walk shed and three mile bike shed set forth in this Policy Statement. Research indicates that improved access to a stop or station typically results in higher ridership. For improvements beyond these distances, a study indicating the likelihood of increased ridership would be a valid justification for the improvement.

## VII. Statement of Policy

### A. Background

In accordance with the goals, principles, and legal authority outlined in this notice, FTA encourages the use of its funds for pedestrian and bicycle amenities that expand the catchment area and utility of public transportation stops and stations. Therefore, FTA hereby establishes threshold catchment areas of one-half mile for pedestrian improvements and three miles for bicycle improvements near public transportation stops and stations.

A key requirement for determining the eligibility of a pedestrian or bicycle improvement is whether it has a functional relationship to a public transportation facility. FTA grantees can benefit from FTA determining the typical distances pedestrians and bicyclists can be expected to travel to access a public transportation stop or station. The purpose of this Policy Statement is to propose a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation.

FTA's existing guidance on the eligibility of joint development improvements serves as the foundation for this proposed policy. According to that guidance, “the functional relationship test of activity and use permits the use of FTA funds for joint development improvements [including pedestrian and bicycle improvements] located outside the structural envelope

of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, [but] should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service.”<sup>30</sup>

Relying on this guidance, in most circumstances FTA has considered pedestrian improvements within approximately 1,500 feet of a public transportation stop or station to be functionally related. Improvements beyond a 1,500 foot radius were considered functionally related to public transportation only if they satisfied a test of activity and use.

The distance stated in FTA's existing guidance is too short. “While distance is very important for pedestrians, on average they will walk further than the anecdotal rule of thumb of 400 meters used in many planning applications.”<sup>31</sup> Research indicates that pedestrians are willing to walk at least one-half mile to train stations or other forms of reliable public transportation when the environment surrounding the station is safe and well-designed.<sup>32</sup> A pedestrian may travel a distance of one-half mile during fifteen minutes at a pace of two miles per hour. A one-half mile catchment area is a conservative estimate of the distance a pedestrian is willing to travel to a public transportation stop or station. FTA has reason to believe that pedestrians are willing to spend more than fifteen minutes walking to public transportation stops and stations: A study published in the American Journal of Preventative Medicine concluded that Americans who use public transportation spend a median of nineteen minutes daily walking to and from public transportation; and people in high-density urban areas were more likely to spend approximately thirty minutes walking to and from public transportation daily.<sup>33</sup>

Applying the same timeframes to bicyclists yields at least a three mile catchment area. Bicycle paths may extend further than pedestrian walkways and still be functionally

related to public transportation because “bicyclists are willing to travel much longer distances than pedestrians, largely due to higher average speeds attainable by bicycle.”<sup>34</sup> Inasmuch as the average bicycle commuter travels at ten miles per hour,<sup>35</sup> FTA proposes a bicycle catchment area of three miles from public transportation stops and stations. The three mile catchment area equals the distance the average bicyclist could travel in fifteen minutes time.

### B. Final Policy

For purposes of determining whether a pedestrian or bicycle improvement has a physical or functional relationship to public transportation, regardless of whether it is funded as a capital project or public transportation enhancement, all pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation. Pedestrian and bicycle improvements beyond these threshold distances may be eligible for FTA funding if the improvement is within the distance that people could be expected to safely and conveniently walk or bicycle to use that particular transit stop or station.

Issued this 15th day of August, 2011.

**Peter M. Rogoff,**

*Administrator, Federal Transit Administration.*

[FR Doc. 2011-21273 Filed 8-18-11; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Notice of Applications for Modification of Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Modification of Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart

<sup>30</sup> FTA guidance on the Eligibility of Joint Development Improvements under Federal Transit Law, 72 FR 5790 (Feb. 7, 2007).

<sup>31</sup> Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 29.

<sup>32</sup> Schlossberg, M. *et al.* How Far, By Which Route, and Why? A Spatial Analysis of Pedestrian Reference, Mineta Transportation Institute, June 2007.

<sup>33</sup> L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations*, Am. J. Prev. Med., November 2005, at 273.

<sup>34</sup> Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 18.

<sup>35</sup> League of American Bicyclists. Retrieved From: <http://www.bikeleague.org/resources/better/commuters.php>.