

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by § 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.12 is amended in the table by adding a new paragraph (c)(28) to read as follows:

§ 1308.12 Schedule II.

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(c) * * *

(28) Tapentadol 9780

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Dated: January 27, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-3150 Filed 2-13-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****49 CFR Part 611**

[Docket No. FTA-2006-25737]

RIN 2132-AA81

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) concerning major capital investment projects published in the **Federal Register** on August 3, 2007 (72 FR 43328). FTA has determined that withdrawal of the NPRM is warranted due to an intervening statutory change.

FOR FURTHER INFORMATION CONTACT: Christopher Van Wyk, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave., SE., East Building, Fifth Floor, Washington, DC 20590, (202) 366-4011 or *Christopher.VanWyk@dot.gov*.

SUPPLEMENTARY INFORMATION:**Background**

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU). Section 3011 of SAFETEA-LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA) capital investment grant program. SAFETEA-LU also required that FTA issue regulations establishing an evaluation and rating process for the new Small Starts program. To effectuate the statutory changes and comply with the rulemaking requirement, FTA published an advance notice of proposed rulemaking on January 30, 2006 and a notice of proposed rulemaking (NPRM) on August 3, 2007. On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (122 Stat. 1572) was signed into law, amending 49 U.S.C. 5309 to require that FTA "give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating" for both New Start and Small Start projects. The revisions to the statute require such a fundamental change in how FTA weighs the several project justification criteria that a new approach to rulemaking for the New Starts and Small Starts program is required. Thus, FTA is publishing this notice to

withdraw the NPRM it issued on August 3, 2007.

FTA received numerous written comments in response to the NPRM. The majority of commenters opposed the NPRM, with overwhelmingly negative comment on a number of specific proposals. The following concerns emerged as the most widely held: A regulatory requirement that a project be rated medium on cost-effectiveness in order to obtain a funding recommendation; cost-effectiveness weighted fifty percent of the overall project justification rating; modification of the definition of "fixed guideway" to include High Occupancy Toll (HOT) lanes under certain conditions; consideration given to congestion reduction in evaluating projects; inclusion of weights for evaluation criteria in the regulatory text rather than in policy guidance; the level of simplification for the new Small Starts program; the combination of the evaluation measures for economic development and land use and the weight given to the combined measure; the prohibition on segmenting a New Starts project into several Small Starts projects; and the proposal for the Very Small Starts category of projects.

Today's issue of the **Federal Register** contains another withdrawal notice by which FTA is also withdrawing the NPRM it issued for the Contractor Performance Incentives for the Capital Investment Program on February 19, 2008 (73 FR 9075).

The Withdrawal

In consideration of the foregoing, the NPRM for FTA Docket No. FTA-2006-25737, as published in the **Federal Register** on August 3, 2007 (72 FR 43328) is hereby withdrawn.

Issued in Washington, DC, this 10th day of February, 2009.

Matthew J. Welbes,
Acting Deputy Administrator.

[FR Doc. E9-3208 Filed 2-13-09; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****49 CFR Part 612**

[Docket No. FTA-2008-0005]

RIN 2132-AA96

Contractor Performance Incentives for the Capital Investment Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws an FTA notice of proposed rulemaking (NPRM), Contractor Performance Incentives for the Capital Investment Program, published in the **Federal Register** on February 19, 2008 (73 FR 9075). FTA has determined that contractor performance incentives do not require a rulemaking to be effectuated. Rather, FTA can work with project sponsors on a case-by-case basis to provide incentives, and therefore, the rulemaking is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Sherry Riklin, Deputy Associate Administrator for Planning and Environment, 1200 New Jersey Avenue, SE., East Building, Washington, DC 20590, *phone:* (202) 366-4033, *fax:* (202) 493-2478 or e-mail, *Sherry.Riklin@dot.gov*. For legal questions, please contact Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, Office of Chief Counsel, same address, *phone:* (202) 366-0944, *fax:* (202) 366-3809, or e-mail, *Bonnie.Graves@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible,

and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU). Section 3011 of SAFETEA-LU made a number of changes to 49 U.S.C. 5309 (“Section 5309”), which authorizes the Federal Transit Administration’s (FTA’s) capital investment grant program. SAFETEA-LU emphasized the need to improve the accuracy of the estimates of ridership and costs used to support the selection of a capital investment project (“New Start”) as a locally preferred alternative (LPA) for Section 5309 funds. Section 5309(d)(4)(B)(i) and Section 5309(e)(4)(D) add “the reliability of forecasting methods” as a new evaluation consideration; Section 5309(g)(2)(C) codifies the “before and after” study requirement; and Section 5309(l)(2) requires FTA to produce an annual report on contractor performance in the development of ridership forecasts and cost estimates for New Starts projects.

FTA published a notice of proposed rulemaking (NPRM) for the Contractor Performance Incentives for the Capital Investment Program on February 19, 2008. FTA received written comments from three entities. All three entities expressed general support for the concept of providing incentives for accurate ridership and cost estimates,

and also expressed concerns about the practicality of the proposal.

Upon reflection, FTA has determined that a separate rulemaking is not necessary in order to implement incentives to contractors for accurate ridership and cost estimates. FTA will work with project sponsors case-by-case to provide incentives to contractors for accurate ridership and cost estimates as appropriate, and may, at some point in the future, include incentives in a New Starts rulemaking, or issue a policy statement or guidance document to provide guidelines on incentives.

Today’s issue of the **Federal Register** contains another withdrawal notice by which FTA is also withdrawing the NPRM it issued for the Major Capital Investment Program on August 3, 2007 (72 FR 43328).

The Withdrawal

In consideration of the foregoing, the NPRM for FTA Docket No. FTA-2008-0005, as published in the **Federal Register** on February 19, 2008 (73 FR 9075) is hereby withdrawn.

Issued in Washington, DC, this 10th day of February, 2009.

Matthew J. Welbes,

Acting Deputy Administrator.

[FR Doc. E9-3207 Filed 2-13-09; 8:45 am]

BILLING CODE 4910-57-P