

allocation of fees as required by Section 6(b)(4) of the Act.<sup>6</sup> In connection with the adoption of options licensing fees for GDY options, the Exchange believes that charging an options licensing fee, where applicable, to all Market Participant orders, except for customer orders, is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

## 2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act<sup>7</sup> regarding the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2006-51 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-51 and should be submitted on or before June 26, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-8644 Filed 6-2-06; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket Number: FTA-2005-22658]

### Notice of Final Policy Statement for Implementation of Notice and Comment Procedures for Documents Imposing "Binding Obligations"

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Final notice.

**SUMMARY:** This final notice establishes the Federal Transit Administration's (FTA) policy concerning notice and comment for FTA documents that impose binding obligations. This final policy statement is consistent with the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005—a Legacy for Users (SAFETEA-LU) amendments to FTA's administrative provisions statute.

**DATES:** *Effective Date:* June 5, 2006.

**FOR FURTHER INFORMATION CONTACT:** Linda Lasley, Assistant Chief Counsel, Legislation and Regulations Division, Office of the Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, (202) 366-4011 or [Linda.Lasley@dot.gov](mailto:Linda.Lasley@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### Availability of the Final Policy Statement and Comments

A copy of this policy statement, comments, and material received from the public are part of docket FTA-2005-22658 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Document Management System (DMS) at: <http://dms.dot.gov>. Enter docket number 22658 in the search field. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and

<sup>6</sup> Section 6(b)(4) of the Act states that the rules of a national securities exchange must "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities." 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

the Government Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

## Background

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005—a Legacy for Users (SAFETEA-LU), which reauthorizes Federal transit, highway, and highway safety programs through September 30, 2009. That Act amends FTA's administrative procedures contained in 49 U.S.C. 5334. The amendment specifically states: "The Administrator of the Federal Transit Administration show follow applicable rulemaking procedures under section 553 of title 5 before the Federal Transit Administration issues a statement that imposes a binding obligation on recipients of Federal assistance under this chapter." The amendment also defines a "binding obligation" as: "a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy."

On November 21, 2005, FTA published in the **Federal Register** a proposed policy statement for implementing the above requirements (70 FR 70111). We received seven comments on our proposal, which are summarized and responded to below.

### A. Rulemaking

We proposed that when FTA promulgates a "legislative" or legally binding rule, we will provide notice and an opportunity to comment as required by the Administrative Procedure Act (APA) and we will publish the rule in the **Federal Register**. Rules that are designated as significant will be reviewed before publication in the **Federal Register** by the Office of the Management and Budget in accordance with Department of Transportation (DOT) policies and procedure and Executive Order 12866, which sets out regulatory requirements for all executive branch agencies. In addition, when Congress authorizes FTA to establish a new program, we may issue a rule setting out the basic criteria for the new program.

We received no comments on this portion of our policy statement, and, therefore, we adopt our proposal as final.

### B. Circulars, Guidance, and Policy Documents

We also proposed that when FTA issues circulars, guidance documents or interpretations, and policy statements in connection with the administration of our grant programs, before adopting such documents, we will provide notice and an opportunity for the public to comment. We stated that we will establish a docket in the Department's Docket Management System and post the entire document in the docket. We would also publish a notice in the **Federal Register** announcing the document's availability and the time period for providing public comment.

We received several comments on that proposal. The New Starts Working Group (NSWG), a coalition of nearly sixty transit authorities, urged us to take a broad view of what constitutes a binding obligation. That group also stated we should minimize the use of "Dear Colleague" letters because those letters are only sent to grant recipients, project sponsors, and FTA's regional offices. The group also noted that documents should be published in full in the **Federal Register**.

In response to NSWG's point on interpreting "binding obligation" broadly, SAFETEA-LU provides a definition of binding obligation. FTA fully intends to follow this definition when it determines what we should publish for notice and comment. We agree with NSWG's contention that the use of "Dear Colleague" letters should be minimized. Accordingly, effective as of the date of this notice, FTA will no longer use "Dear Colleague" letters to impose binding obligations. Finally, NSWG did not provide a basis for its statement that documents should be published in full in the **Federal Register**. Given the prevalence of Internet accessibility, accessing documents through DOT's Docket Management System (DMS) is efficient and preferable as the docket is available 24 hours a day through the Internet. In addition, DMS provides a List Serve that can notify interested individuals, via e-mail, when FTA opens a new docket and posts a document. We strongly encourage the use of this system, which can be accessed at <http://dms.dot.gov/emailNotification/index.cfm>. That being said, from time to time, FTA may exercise its discretion and publish some documents in full in the **Federal Register**.

The American Public Transportation Association (APTA) also urged an expansive view of what constitutes a binding obligation. APTA also noted that FTA personnel may cite prior

decisions that are unpublished, unannounced or appear to represent significant changes to prior requirements. APTA suggests FTA specifically state that such determinations have no application to "non-involved" parties; or that FTA will subject those determinations to public comment before applying the determination to others. APTA did not provide a specific example of when FTA personnel have cited such unpublished authority, but an individual may request, at any time, that FTA provide the authority for our determination. FTA personnel strive for consistency in the application of our determinations and requirements. When an inconsistency becomes apparent—without a factual basis to support it—the grantee should request a clarification from FTA.

Link Transit stated in its comment that FTA should submit any compliance, compliant, or audit findings for public comment when those findings are different from previously published or documented statements by FTA. Link Transit provided an example of FTA determining that a grantee should have been reporting each paratransit denial as two denials.

Many of our determinations are based on the unique factual scenario presented, and, therefore, a one-size fits all approach is neither possible nor desirable. Time and again interested parties have used FTA to remain flexible in the application of our requirements in order to take into account any special circumstances presented. Compliance, complaint, and audit findings are very fact specific and we are reluctant to constrain our ability to conduct these proceedings on a case-by-case basis. Link Transit's example of paratransit policies is beyond the scope of this notice because the Office of the Secretary of Transportation (OST) issues the policies affecting paratransit service.

The New York Metropolitan Transportation Authority (MTA) commented that FTA should interpret binding obligations to include the "Master Agreement." MTA also questioned whether the requirement for notice and comment would apply to oral statements made by FTA personnel.

FTA disagrees with MTA that the Master Agreement should be subject to notice and comment. The Master Agreement is a contract entered into voluntarily between a potential recipient and FTA. As such, the terms negotiated between the parties are subject to contract law principles instead of APA rulemaking principles. Likewise, oral statements by FTA personnel cannot realistically be subject

to notice and comment provisions of the APA. FTA personnel attempt to provide the most accurate information to interested persons. When errors occur, we will address those errors.

Application of MTA's suggestion, would effectively eliminate all oral or informal advice given by FTA to the industry, which would have a chilling effect on a grantee's ability to receive funds in a timely fashion.

Jones and Lester (representing Access Services Incorporated) commented that FTA's ADA interpretations were not widely disseminated and it was difficult for transit properties to access those interpretations.

As noted earlier, ADA interpretations flow from OST to FTA. Even so, because those interpretations involve many operating administrations within DOT, FTA works with the industry to apply those interpretations to transit. We are also working hard to ensure a wide dissemination of those interpretations by posting them on our Web site.

Smart Growth America (SGA) commented that our proposed standard of thirty days for comment is not long enough for stakeholders to review, discuss, and weigh in on FTA's binding obligations.

SGA should be aware that FTA will consider a request for an extension of any comment period when the request is supported with a reasonable basis for the extension.

One individual's comments urge FTA to refine its view of "rights, obligations, interests, and policies." She also noted that if FTA intends for a document to be "non-binding" then it should be labeled non-binding. The comment goes on to note that, regarding Americans With Disabilities Act (ADA), it is difficult to determine the stated agency policy and FTA practice and FTA should make clear whether a regulation is an FTA regulation or an OST regulation. Additionally, the comment suggests FTA provide training to staff so as to avoid making public or private statements that treat non-binding information as binding.

FTA is unclear as to what this individual is referring to by "rights, obligations, interests, and policies." As noted earlier, SAFETEA-LU provides FTA a definition of binding obligation and FTA will follow that definition. We disagree with the suggestion of marking non-binding documents as "non-binding" for a few reasons. First, a guidance document may restate statutory or legally binding regulatory language or may recite legally binding contract language. Thus, providing a statement that the guidance is not legally binding may mislead many

people concerning their legal obligations. Second, we may publish material that contains factual information such as census data and include guidance on how to use that information. While the document is not legally binding, a statute, rule, or even tort law may require someone to use that information before taking action. Telling people that it is not legally binding may confuse someone who has a duty to properly use the information in accordance with other requirements. Third, we may advise the public that they can rely on our guidance. Sometimes we issue guidance in response to a request from those who want to know whether, if they act in a certain way, they will be in compliance with a statute or rule. Our response may tell them "yes, you will be considered in compliance;" that is, based on what they have told us, we will not take enforcement action against them if they act in accordance with our guidance. Telling such an individual that, despite these statements, the guidance is not legally binding may defeat the very certainty they are seeking. At a minimum, it will create serious confusion over such things as whether we may take enforcement action even if they follow our guidance.

Regarding the difficulty in distinguishing FTA regulations from OST regulations, when we issue a regulation, it contains a four-digit identifier (2132) for FTA as part of the Regulatory Identification Number (RIN). This is also true for OST, whose four-digit identifier is 2105. In addition to the identifiers, the regulation will contain the name OST or FTA and will amend sections of the Code of Federal Regulations (CFR) pertaining to transit or to the Secretary's office. Thus, FTA currently makes a distinction between our regulations and OST regulations. The same holds true for FTA policies.

Regarding training for FTA staff, we routinely provide training sessions for staff to make them aware of whether a document is a requirement or guidance. If mistakes happen in this area, we will work with affected individuals to correct the error.

The Disability Rights Education and Defense Fund (DREDF) submitted comments in response to Patrisha Piras' comments. That comment contained no substantive statements on FTA's proposed policy statement.

Based on these comments, FTA believes that the approach proposed in the November 21, 2005 Notice is appropriate. Accordingly, when FTA issues circulars, guidance documents or interpretations, and policy statements in connection with the administration of

our grant programs which impose "binding obligations" as defined by SAFETEA-LU, before adopting such documents, we will provide notice and an opportunity for the public to comment. We will establish a docket in the Department's Docket Management System and post the entire document in the docket. We will also publish a notice in the **Federal Register** announcing the document's availability and the time period for providing public comment. FTA will not use "Dear Colleague" letters to impose "binding obligations." The Master Agreement or compliance, complaint, and audit findings are not documents which are subject to the requirement for notice and comment.

### C. Other Information

We also proposed that when we distribute material to assist grant recipients regarding specific topics of a non-binding nature, we will make those documents available on FTA's public Web site at <http://www.fta.dot.gov>.

APTA encouraged FTA to publish administrative decisions of a quasi-judicial nature, U.S. Department of Labor decisions, employee protective arrangements, charter bus decisions, and other administrative decisions (e.g. bid protests) on the FTA Web site. FTA currently posts ADA compliance reviews and Buy America waiver denials on our Web site. Bid protests in third-party contracts are routinely handled by grantees and not FTA. FTA only becomes involved in appeals when there is a Federal interest. FTA has plans in the new future to make charter bus decisions available on its Web site and FTA will consider the request to post other decisions on its Web site.

Issued in Washington, DC this 22nd day of May 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[USCG-2005-22611]

### Neptune LNG, L.L.C., Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement

**AGENCY:** Maritime Administration, DOT.

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

**SUMMARY:** The Maritime Administration (MARAD) announces the availability of