

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Part 633**

[Docket No. FTA-2019-0016]

RIN 2132-AB35

**Project Management Oversight****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Federal Transit Administration proposes to amend its project management oversight rule to make it consistent with recent statutory changes and to modify the scope and applicability of the rule. FTA seeks comments from project sponsors, the transit industry, other stakeholders, and the public on the proposed changes to the rule.

**DATES:** Comments must be received October 25, 2019. Any comments filed after this deadline will be considered to the extent practicable.

**ADDRESSES:** You may submit comments, identified by the docket number at the top of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Docket:** For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket

Operations, M-30, West Building Ground Floor, Room W12-140, between 9:00 a.m. and 5:00 p.m. Eastern time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program matters, Corey Walker, Office of Program Management, (202) 366-0826 or [corey.walker@dot.gov](mailto:corey.walker@dot.gov). For legal matters, Mark Montgomery, Office of Chief Counsel, (202) 366-4011 or [mark.montgomery@dot.gov](mailto:mark.montgomery@dot.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Background
- II. Section-by-Section Analysis
- III. Regulatory Analyses and Notices

**I. Background**

Recognizing a compelling need to strengthen the management and oversight of major capital projects, in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100-17) (April 2, 1987), Congress authorized FTA's predecessor agency, the Urban Mass Transportation Administration (UMTA), to conduct oversight of major capital projects and to promulgate a rule for that purpose. The statute, now codified at 49 U.S.C. 5327, authorizes FTA to obtain the services of project management oversight contractors (PMOCs) to assist FTA in overseeing the expenditure of Federal financial assistance for major capital projects. Further, the statute requires FTA to promulgate a regulation that includes a definition of "major capital project" to identify the types of projects governed by the rule.

Accordingly, UMTA promulgated a rule for oversight of major capital projects on September 1, 1989, at 49 CFR part 633 (54 FR 36708). At that time, UMTA's capital programs were comparatively small, relative to today, totaling a little more than \$2 billion annually. UMTA promulgated a regulation that defined "major capital project" as any project for the construction of a new fixed guideway or extension of an existing fixed guideway or a project involving the rehabilitation or modernization of an existing fixed guideway with a *total project cost* of \$100 million or more. The rule limited covered projects to those receiving funds made available under sections 3, 9, or 18 of the Federal Mass Transit Act of 1964, as amended, 23 U.S.C. 103(e)(4), or section 14(b) of the National Capital Transportation Amendments of 1979. That rule is still in effect today.

By 2011, however, the annual dollar value of the Federal transit capital

programs was nearly five times the level authorized under STURAA in 1987, and the number of active PMOC task orders was more than double the number in 1987. Furthermore, FTA funded a larger number of projects with a total cost of over one billion dollars that presented significant oversight challenges. Thus, on September 13, 2011, FTA published a Notice of Proposed Rulemaking (NPRM) (76 FR 56378) that proposed to enable FTA to identify more clearly the necessary management capacity and capability of a sponsor of a major capital project; spell out the many facets of project management that must be addressed in a project management plan; tailor the level of FTA oversight to the costs, complexities, and risks of a major capital project; set forth the means and objectives of risk assessments for major capital projects; and articulate the roles and responsibilities of FTA's PMOCs.

After the NPRM was published, however, the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) (July 6, 2012) repealed the Fixed Guideway Modernization program, created the State of Good Repair program, and amended the Capital Investment Grants Program to add Core Capacity Improvement projects and streamline the New and Small Starts project development process. Moreover, MAP-21 shifted the initiation of project management oversight to the project development phase and removed the statutory requirement that recipients of financial assistance for projects with a total cost of \$1 billion submit an annual financial plan. Given the fundamental changes to these competitive and formula capital programs, FTA withdrew the NPRM (78 FR 16460) to reexamine its proposed definition of major capital projects and its policy and procedures for risk assessment. Subsequently, the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) (December 4, 2015) further amended section 5327 to limit project management oversight to quarterly reviews, absent a finding that more frequent oversight was necessary, and mandated that the Secretary prescribe regulations outlining a process for at-risk recipients to return to quarterly reviews.

FTA has become much more knowledgeable about the risks inherent in major capital projects, having conducted its own risk assessments since 2005, witnessed some project sponsors' lack of management capacity and capability and appropriate project controls for some projects, and studied the reasons for cost and schedule changes on many major capital projects.

Consequently, FTA now proposes to amend its project management oversight rule.

First, this proposed rule would change the applicability of the regulation by shifting the definition of a “major capital project” from one based on the type of project or total project cost to one based on both the amount of Federal financial assistance and the total project cost, which FTA views as a more appropriate benchmark than the type of project or total capital cost of a project alone. The current definition of a “major capital project” under 49 CFR 633.5 applies to all construction projects for new fixed guideways or extensions of existing fixed guideways, regardless of project cost, and to fixed guideway rehabilitation and modernization projects with total project costs over \$100 million. The NPRM applies a project cost threshold to all fixed guideway capital projects. As a default, the proposed rule raises the total project cost threshold to \$300 million or more and requires that the project receive \$100 million or more in Federal investment to be subject to project management oversight. Under this default, the number of current projects undergoing project management oversight would decrease by forty-nine, out of a total of eighty-eight major capital projects under construction, allowing FTA to focus on higher-risk projects.

Second, as described in more detail below, the NPRM amends the regulation to bring it into compliance with recent statutory changes. The proposed rule limits project management oversight to quarterly reviews, absent a finding by FTA that a recipient requires more frequent oversight, and provides a process for such a recipient to return to quarterly reviews. Additionally, the rule applies project management oversight to major capital projects receiving Federal financial assistance under any provision of Federal law. The proposed changes would have no impact on safety.

## II. Summary of Provisions

### *Section 633.1 Purpose*

This section proposes an update to reflect the mandate in 49 U.S.C. 5327(a) to perform program management oversight of major capital projects for public transportation under Chapter 53 of Title 49, United States Code, or any other provision of Federal law.

### *Section 633.3 Scope*

This section proposes an update to reflect the mandate in 49 U.S.C. 5327(a) that the regulation applies to recipients of Federal financial assistance

undertaking a major capital project for public transportation under Chapter 53 of Title 49, United States Code, or any other provision of Federal Law.

### *Section 633.5 Definitions*

This section sets forth the definitions of some key terms applicable to this rule. FTA proposes to establish a definition for “project development” and remove the definitions for “full funding agreement” and “FT Act.” Also, FTA proposes to amend the current definitions for “fixed guideway,” “major capital project,” “project management oversight,” and “recipient.”

The current definition of a “major capital project” under 49 CFR 633.5 applies to all construction projects for new fixed guideways or extensions of existing fixed guideways, regardless of project cost, and to rehabilitation and modernization projects with total project costs over \$100 million. In this rule, FTA proposes to define a “major capital project” generally as a project to construct, expand, rehabilitate, or modernize a fixed guideway of \$300 million or more that receives \$100 million or more in Federal financial assistance. FTA believes it is more appropriate to apply the regulation to any given project based on the level of Federal investment in addition to total project cost, as opposed to the type of project or the total project cost alone. FTA further proposes that a project that does not meet the dollar-amount thresholds for the level of Federal investment and total project cost may be deemed a “major capital project” under certain circumstances.

This section would amend the definition of “fixed guideway” to add passenger ferries as a qualifying public transportation facility, to reflect amendments made by MAP-21 to the definition of “fixed guideway” under 49 U.S.C. 5302(7). FTA proposes to add a definition for “project development” to correspond with the MAP-21 requirement that oversight begins in this phase, as reflected in 49 U.S.C. 5327(d)(2)(A). The proposed changes to the remaining definitions, “project management oversight” and “recipient,” are simply for clarity.

### *Section 633.11 Covered Projects*

This section would amend the current rule by omitting obsolete legal citations and extending the regulation to all major capital projects funded from any source under 49 U.S.C. Chapter 53 or any other Federal Law, as required under 49 U.S.C. 5327(a).

### *Section 633.13 Initiation of Project Management Oversight Services*

This section would make amendments for clarity and consistency with recent statutory changes. Per 49 U.S.C. 5327(d)(2)(A), project management oversight now begins during the project development phase unless the Secretary determines that it is more appropriate to begin the oversight during another phase of the project to maximize the transportation benefits and cost savings.

### *Section 633.15 Access to Information*

This section would make amendments for clarity.

### *Section 633.17 Project Management Oversight Contractor Eligibility*

This section would make amendments for clarity.

### *Section 633.19 Exclusion From the Project Management Oversight Program*

FTA proposes revising this section as it is no longer necessary to identify the administrative funding source (now in 49 U.S.C. 5338) for FTA to conduct project management oversight. Instead, this section would provide for an exclusion from the definition of “major capital project” for projects for which the Administrator determines that project management oversight would not benefit the Federal government or the recipient.

### *Section 633.21 Basic Requirement*

This section would make amendments for clarity and to reflect that oversight now begins during the project development phase of the project, as required under 49 U.S.C. 5327(a).

### *Section 633.23 FTA Review of a Project Management Plan*

This section would make amendments for clarity.

### *Section 633.25 Contents of a Project Management Plan*

The project management plan is critical to successful management of any major capital project, throughout the development and implementation of that project. The project management plan and its sub plans further enable the sponsor's staff to effectively manage the scope, budget, schedule, and quality of the project through a set of common objectives, while managing the safety and security of the public. This section would provide a summary to clarify that a project management plan is not one-size-fits-all, but rather is based on the complexity of the project. Further, as required under 49 U.S.C. 5327(a), FTA

proposes adding three additional minimum elements to the plan: Periodic updates of the plan, the recipient's commitment to submit a quarterly project budget and schedule, and safety and security management. Additionally, based on industry best practice, FTA proposes adding the management of risks, contingencies, and insurance as an element of the plan.

#### *Section 633.27 Implementation of a Project Management Plan*

FTA's review and approval of a project management plan seeks to verify that a sponsor has all the relevant capabilities and resources in place to ensure successful management of the project using available best practices. A project management plan is a dynamic management tool that requires periodic updates when a project transitions from one phase to another, or as a result of other changes, such as turnover in personnel. This section would continue the requirement for regular reporting and clarify other requirements aimed at improving the management of a major capital project. Specifically, FTA's proposed amendments would limit oversight to quarterly reviews, as opposed to monthly reviews, but provide for more frequent oversight when the recipient fails to meet the requirements of the project management plan and the project is at risk of materially exceeding the budget or falling behind schedule. This section also would add a process for at-risk and noncompliant projects undergoing more frequent oversight to return to quarterly reviews.

#### *Section 633.29 Project Management Plan Waivers*

FTA proposes repealing this section. Instead, section 633.25 of this part, as amended, would provide sufficient flexibility to reflect FTA's practices. FTA may permit a recipient when developing a project management plan to incorporate applicable elements from a previously approved project management plan or to incorporate procedures that a recipient uses to manage other capital projects on a programmatic basis.

### **III. Regulatory Analyses and Notices**

#### *Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)*

This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

#### *Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review) and Department of Transportation (DOT) Regulatory Policies and Procedures*

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. The proposed rule would amend the definition of a "major capital project" under 49 CFR part 633 by raising the total project cost threshold and adding a minimum Federal share, thereby reducing the number of public transportation projects subject to project management oversight. This action complies with Executive Orders 12866 and 13563 to improve regulation.

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. FTA has examined the potential economic impacts of this rulemaking and has determined that this rulemaking is not economically significant because it will not result in an effect on the economy of \$100 million or more. Additionally, this proposed rule would not have an impact on another agency and would not materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs. This rule would not raise novel legal issues.

To calculate the benefits and annual cost savings from this proposed rule, FTA evaluated its project management oversight contracts for major capital projects from 2013 through 2018. This period was chosen to reflect changes to FTA's program management oversight procedures after MAP-21 was enacted in 2012. This period included a number of emergency relief program projects under 49 U.S.C. 5324 to repair significant damages to public transportation infrastructure resulting from Hurricane Sandy, which FTA also analyzed.

Using FTA's risk evaluation tool, FTA evaluated projects in construction during that period based on ten key risk factors to produce a risk score from 0–100. Projects were then assigned a risk range based on the calculated score, with low-risk projects in the range of 0–39, medium-risk projects from 40–55, and high-risk projects from 56–100. This evaluation indicated that a majority of

high-risk projects, including eighteen of the twenty-two projects in the high-risk range, involved total project costs of over \$300 million. While removing project management oversight from projects with total costs between \$100 and \$300 million may increase the risk of materially exceeding budget or falling behind schedule for some projects, there are currently only four high-risk projects in this range, and under the proposed rule, FTA may deem certain projects that do not meet the dollar-amount thresholds a "major capital project" to mitigate unacceptable risk. Additionally, reducing the number of lower-risk projects undergoing project management oversight will allow FTA to focus on higher-risk projects while yielding annual cost savings to FTA and its recipients.

FTA calculated the average total cost of oversight for projects in construction during that period that would not have qualified as major capital projects under the default threshold of this proposed rule. FTA estimates that an average of 38.3 projects annually, including emergency relief program projects, would no longer require additional oversight under the default threshold.

This proposed rule would reduce recipients' labor hours for oversight procedures, which include attending meetings, preparing quarterly reports and other requested documents, and accompanying contractors onto project construction sites. To estimate the potential cost savings for project sponsors, FTA staff examined the current projects in construction that would no longer qualify as major capital projects under the NPRM and estimated the level of effort required for oversight procedures. For two projects, FTA received input from recipients. Assuming variations in the level of effort based on the complexity of the project, FTA estimated that the labor hours required for recipients ranges from 1.7 to 2.3 times FTA's level of effort of approximately 39,477 hours per year for project management oversight procedures. Accordingly, FTA used an average factor of two and determined that the default threshold to qualify as a major capital project under the proposed rule would reduce the level of effort required for project sponsors by an average of 78,955 hours annually at a wage rate of \$139.67 based on an average of the Bureau of Labor Statistics rate for Construction Managers and the PMOC loaded rate for contractors. This burden reduction would result in an annual cost savings to project sponsors of approximately \$11 million.

In addition, the proposed rule would reduce the level of effort required under

FTA's project management oversight contracts and yield corresponding cost savings to FTA. Removing oversight from an average of 38.3 projects annually would yield annual cost savings to FTA of approximately \$8.1 million.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the proposals set forth in this NPRM on small entities, and has determined that the NPRM would not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. Federal public transportation law permits this type of flexibility.

#### *Executive Order 13132 (Federalism)*

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and FTA determined that this action will not have a substantial direct effect or federalism implications on the States. FTA also determined that this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

#### *Executive Order 12372 (Intergovernmental Review)*

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed rulemaking.

#### *Paperwork Reduction Act*

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FTA has analyzed this rule under the Paperwork Reduction Act and determined that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

#### *National Environmental Policy Act*

NEPA requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This proposed rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), which pertains to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

#### *Executive Order 12630 (Taking of Private Property)*

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule effects a taking of private property or otherwise has taking implications under Executive Order 12630.

#### *Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)*

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (77 FR 27534) require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects,

of their programs, policies, and activities on minority and/or low-income populations. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, on July 17, 2014, FTA issued a circular to update its EJ Policy Guidance for Federal Transit Recipients ([www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html)), which addresses administration of the Executive Order and DOT Order.

FTA has evaluated this rule under the Executive Order, the DOT Order, and the FTA Circular and has determined that this rulemaking will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

#### *Executive Order 12988 (Civil Justice Reform)*

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Executive Order 13045 (Protection of Children)*

FTA has analyzed this proposed rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this proposed rule will not cause an environmental risk to health or safety that might disproportionately affect children.

#### *Executive Order 13175 (Tribal Consultation)*

FTA has analyzed this action under Executive Order 13175 (November 6, 2000), and determined that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

FTA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

### Privacy Act

Anyone may search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment, or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8.

### Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5327, which requires the Secretary to conduct oversight of major capital projects and to promulgate a rule for that purpose that includes a definition of major capital project to delineate the types of projects governed by the rule.

### Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects in 49 CFR Part 633

Grant programs—transportation, Mass transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.90.

**K. Jane Williams,**

*Acting Administrator.*

In consideration of the foregoing, and under the authority of 49 U.S.C. 5327, the Federal Transit Administration proposes to amend 49 CFR chapter VI by revising part 633, as follows:

## PART 633—PROJECT MANAGEMENT OVERSIGHT

### Subpart A—General Provisions

Sec.

633.1 Purpose.

633.3 Scope.

633.5 Definitions.

### Subpart B—Project Management Oversight Services

633.11 Covered projects.

633.13 Initiation of project management oversight services.

633.15 Access to information.

633.17 Project management oversight contractor eligibility.

633.19 Exclusion from the project management oversight program.

### Subpart C—Project Management Plans

633.21 Basic requirement.

633.23 FTA review of a project management plan.

633.25 Contents of a project management plan.

633.27 Implementation of a project management plan.

633.29 [Reserved]

**Authority:** 49 U.S.C. 5327; 49 CFR 1.90.

### Subpart A—General Provisions

#### § 633.1 Purpose.

This part implements 49 U.S.C. 5327 regarding oversight of major capital projects. The part provides for a two-part program for major capital projects receiving Federal financial assistance. First, subpart B discusses project management oversight, designed primarily to aid FTA in its role of ensuring successful implementation of federally-funded projects. Second, subpart C discusses the requirement that, to receive Federal financial assistance for a major capital project for public transportation under Chapter 53 of Title 49, United States Code, or any other provision of Federal law, a recipient must prepare a project management plan approved by the Administrator and carry out the project in accordance with the project management plan.

#### § 633.3 Scope.

This rule applies to a recipient of Federal financial assistance undertaking a major capital project for public transportation under Chapter 53 of Title 49, United States Code, or any other provision of Federal Law.

#### § 633.5 Definitions.

As used in this part:

(a) *Administrator* means the Administrator of the Federal Transit Administration or the Administrator's designee.

(b) *Days* means calendar days.

(c) *Fixed guideway* means any public transportation facility: using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a bus rapid transit system.

(d) *FTA* means the Federal Transit Administration.

(e) Except as provided in § 633.19 of this part, *Major capital project* means a project that:

(1) Involves the construction, expansion, rehabilitation, or modernization of a fixed guideway that:

(i) Has a total project cost of \$300 million or more and receives Federal funds of \$100 million or more; and

(ii) Is not exclusively for the acquisition, maintenance, or rehabilitation of vehicles or other rolling stock; or

(2) The Administrator determines to be a major capital project because project management oversight under this part will benefit the Federal government or the recipient, and the project is not exclusively for the acquisition, maintenance, or rehabilitation of rolling stock or other vehicles. Typically, this means a project that:

(i) Involves new technology;

(ii) Is of a unique nature for the recipient; or

(iii) Involves a recipient whose past record indicates the appropriateness of extending project management oversight under this part.

(f) *Project development* means the phase of a project after a locally preferred alternative has been chosen where design and engineering work is undertaken to advance the project from concept to a sufficiently mature scope to allow for the development of a reasonably reliable project cost, schedule, and project management plan.

(g) *Project management oversight* means the risk-informed monitoring of the recipient's management of a major capital project's progress to determine whether the project is on time, within budget, in conformance with design and quality criteria, in compliance with all applicable Federal requirements, constructed to approved plans and specifications, delivering the identified benefits, and safely, efficiently, and effectively implemented.

(h) *Project management plan* means a written document prepared by a recipient that explicitly defines all tasks necessary to implement a major capital project. A project management plan may be a single document or a series of documents or sub plans integrated with one another into the project management plan either directly or by reference for the purpose of defining how the recipient will effectively manage, monitor, and control all phases of the project.

(i) *Recipient* means a direct recipient of Federal financial assistance or the sponsor of a major capital project.

### Subpart B—Project Management Oversight Services

#### § 633.11 Covered projects.

(a) The recipient is using funds made available under Chapter 53 of Title 49, United States Code, or any other provision of Federal law; and

(b) The project is a major capital project.

**§ 633.13 Initiation of project management oversight services.**

Project management oversight services will be initiated as soon as practicable, once the Administrator determines that this part applies. In most cases, this means that project management oversight will begin during the project development phase of the project, unless the Administrator determines it more appropriate to begin oversight during another phase of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

**§ 633.15 Access to information.**

A recipient for a major capital project shall provide the Administrator and the project management oversight contractor chosen under this part access to its records and construction sites, as reasonably may be required.

**§ 633.17 Project management oversight contractor eligibility.**

(a) Any person or entity may provide project management oversight services in connection with a major capital project, with the following exceptions:

(1) An entity may not provide project management oversight services for its own project; and

(2) An entity may not provide project management oversight services for a project if there exists a conflict of interest.

(b) In choosing private sector persons or entities to provide project management oversight services, the Administrator uses the procurement requirements in the government-wide procurement regulations, found at 48 CFR Chapter I.

**§ 633.19 Exclusion from the project management oversight program.**

The Administrator may, in compelling circumstances, determine that a project meeting the criteria of § 633.5(e)(1) of this part is not a major capital project because project management oversight under this part will not benefit the Federal government or the recipient. Typically, this means a project that:

(a) Involves a recipient whose past record indicates the appropriateness of excluding the project from project management oversight under this part; and

(b) Involves such a greater level of financial risk to the recipient than to the Federal government that project management oversight under this part is made less necessary to secure the recipient's diligence.

**Subpart C—Project Management Plans****§ 633.21 Basic requirement.**

(a) If a project meets the definition of major capital project, the recipient shall submit a project management plan prepared in accordance with § 633.25 of this part, as a condition of Federal financial assistance.

(b)(1) The Administrator will notify the recipient when the recipient must submit the project management plan. Normally, the Administrator will notify the recipient sometime during the project development phase. If the Administrator determines the project is a major capital project after the project development phase, the Administrator will inform the recipient of the determination as soon as possible.

d. Revise subsection (b)(2) to read as follows:

(2) Once the Administrator has notified the recipient that it must submit a plan, the recipient will have a minimum of 90 days to submit the plan.

**§ 633.23 FTA review of a project management plan.**

Within 60 days of receipt of a project management plan, the Administrator will notify the recipient that:

- (a) The plan is approved;
- (b) The plan is disapproved, including the reasons for the disapproval;
- (c) The plan will require modification, as specified, before approval; or
- (d) The Administrator has not yet completed review of the plan, and state when it will be reviewed.

**§ 633.25 Contents of a project management plan.**

A project management plan must be tailored to the type, costs, and complexity of the major capital project, and to the recipient's management capacity and capability. A project management plan must be written to a level of detail sufficient to enable the recipient to determine whether the necessary staff and processes are in place to control the scope, budget, schedule, and quality of the project, while managing the safety and security of all persons. A project management plan must be developed with a sufficient level of detail to enable the Administrator to assess the adequacy of the recipient's plan.

At a minimum, a recipient's project management plan shall include:

- (a) Adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;
- (b) A budget covering the project management organization, appropriate

contractors and consultants, property acquisition, utility relocation, systems demonstration staff, audits, contingencies, and miscellaneous payments as the recipient may be prepared to justify;

(c) A construction schedule for the project;

(d) A document control procedure and recordkeeping system;

(e) A change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(f) A description of organizational structures, management skills, and staffing levels required throughout the construction phase;

(g) Quality control and quality assurance functions, procedures, and responsibilities for project design, procurement, construction, system installation, and integration of system components;

(h) Material testing policies and procedures;

(i) Internal plan implementation and reporting requirements including cost and schedule control procedures;

(j) Criteria and procedures to be used for testing the operational system or its major components;

(k) Periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts;

(l) The recipient's commitment to submit a project budget and project schedule to the Administrator quarterly;

(m) Safety and security management; and

(n) Management of risks, contingencies, and insurance.

**§ 633.27 Implementation of a project management plan.**

(a) Upon approval of a project management plan by the Administrator the recipient shall begin implementing the plan.

(b) Generally, a project management plan must be modified if the project is at a new phase or if there have been significant changes identified. If a recipient must modify an approved project management plan, the recipient shall submit the proposed changes to the Administrator along with an explanation of the need for the changes.

(c) A recipient shall submit periodic updates of the project management plan to the Administrator. Such updates shall include, but not be limited to:

- (1) Project budget;
- (2) Project schedule;
- (3) Financing, both capital and operating;

(4) Ridership estimates, including operating plan; and

(5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.

(d) A recipient shall submit current data on a major capital project's budget and schedule to the Administrator on a quarterly basis for the purpose of reviewing compliance with the project management plan, except that the Administrator may require submission more frequently than on a quarterly basis if the recipient fails to meet the requirements of the project management plan and the project is at risk of materially exceeding its budget or falling behind schedule. Oversight of projects monitored more frequently than quarterly will revert to quarterly oversight once the recipient has demonstrated compliance with the project management plan and the project is no longer at risk of materially exceeding its budget or falling behind schedule.

#### **§ 633.29 [Reserved]**

[FR Doc. 2019-18286 Filed 8-23-19; 8:45 am]

#### **BILLING CODE P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**RIN 0648-BH67**

### **Fisheries of the Northeastern United States; Omnibus Deep-Sea Coral Amendment**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of availability of omnibus amendment; request for comments.

**SUMMARY:** NMFS announces that the New England Fishery Management Council has submitted the Omnibus Deep-Sea Coral Amendment, incorporating the Environmental Assessment and the Regulatory Flexibility Analysis, for review by the Secretary of Commerce, and is requesting comments from the public. This action would protect deep-sea corals from the impacts of commercial fishing gear on Georges Bank and in the Gulf of Maine. These proposed management measures are intended to reduce, to the extent practicable, impacts of fishing gear on deep-sea

corals in New England while balancing their costs to commercial fisheries.

**DATES:** Comments must be received on or before October 25, 2019.

**ADDRESSES:** The Council has prepared a draft Environmental Assessment (EA) for this action that describes the proposed measures in the Omnibus Deep-Sea Coral Amendment and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR/IRFA, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/omnibus-deep-sea-coral-amendment>.

You may submit comments, identified by NOAA-NMFS-2019-0092, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2019-0092](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2019-0092), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Omnibus Deep-Sea Coral Amendment NOA."

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, (978) 281-9233.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The Council submitted its final version of Omnibus Deep-Sea Coral Amendment to NMFS for review on June 25, 2019. NMFS has declared a transmittal date of August 20, 2019. The Council has reviewed the Omnibus Deep-Sea Coral Amendment proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

### **Background**

The coral protection zones included in this amendment were initially developed during 2010 and 2011 as part of the Council's Omnibus Essential Fish Habitat Amendment 2 (OHA2), finalized April 9, 2018 (83 FR 15240; April 9, 2018). In September 2012, the Council split the coral protection zones and associated management measures out of OHA2 into a separate omnibus amendment. On March 13 and 15, 2017, the Council held workshops in New Bedford, MA, and Portsmouth, NH, to discuss the coral zone boundaries, considering the canyon and slope zones on Georges Bank (broad zone) at the first meeting and the offshore Gulf of Maine zones at the second. On April 18, 2017, the Council chose preferred alternatives for the coral zones to go out to public hearing. The Council held public hearings throughout New England in May of 2017, and revisited its preferred alternatives at its June 2017 meeting. On June 22, 2017, the Council took final action on the Gulf of Maine portions of the amendment, but did not select final preferred alternatives for the broad coral protection zone on Georges Bank. Instead, the Council added a new alternative for analysis that was suggested during the public hearings. Finally, on January 30, 2018, the Council selected a final preferred alternative for the broad zone and adopted the Omnibus Deep-Sea Coral Amendment.

The Council submitted the Amendment to NMFS for initial review on December 21, 2018. Due to the lapse in Federal appropriations, NMFS's review of the document was delayed. The Council submitted a revised draft of