

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

[Docket No. FTA-99-5474]

RIN 2132-AA63

Major Capital Investment Projects**AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA-21) requires the Federal Transit Administration (FTA) to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems ("new starts") will be evaluated and rated. This Notice of Proposed Rulemaking (NPRM) describes the procedures that FTA proposes to use in the project evaluation and rating process. When finalized, this rule will enable FTA and Congress to identify those new starts projects that should be funded, in part, by the Federal government.

DATES: Comments on this proposed rule must be submitted by July 6, 1999. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written comments must refer to the docket number appearing above and must be submitted to the United States Department of Transportation, Central Dockets Office, PL-401, 400 Seventh Street SW, Washington, DC 20590. All comments received will be available for inspection at the above address from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a stamped, self-addressed postcard with their comments.

FOR FURTHER INFORMATION CONTACT: For program issues, John Day, Office of Policy Development, FTA, (202) 366-4060. For legal issues, Scott A. Biehl, Assistant Chief Counsel, FTA, (202) 366-4063.

SUPPLEMENTARY INFORMATION:**Electronic Access**

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I. Background

The Federal Transit Administration (FTA) is issuing this NPRM to carry out the requirements of Section 3009(e)(5) of TEA-21. The proposed regulation defines the process FTA will use to evaluate candidate new starts under 49 USC 5309.

These procedures will replace those in force since the December 19, 1996 **Federal Register** Notice [61 FR 67093-106], and the November 12, 1997 amendments to this Notice [62 FR 60756-58], which described the measures then used by FTA to evaluate candidate projects for discretionary new starts funding under the statutory criteria at that time.

This rule, together with the FTA/Federal Highway Administration (FHWA) planning and environmental regulations at 23 CFR Parts 450 and 771, will flesh out the requirements of 49 U.S.C. 5309(e). The statute now requires candidate projects to be "(A) based on the results of an alternatives analysis

and preliminary engineering, (B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and (C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension." This rule sets forth the approach FTA proposes to use to evaluate candidate projects in terms of their justification and local financial commitment. Consistent with 49 U.S.C. 5309(e)(6), as amended by Section 3009(e) of TEA-21, these procedures will be used to approve candidate projects for entry into preliminary engineering and final design. These procedures will also be used to evaluate projects in order to make recommendations for funding in the annual report to Congress required by 49 U.S.C. 5309(o)(1).

II. History

Since the early 1970's, the Federal government has provided a large share of the Nation's capital investment in urban mass transportation, particularly for "new starts" (major new fixed guideway transit systems or extensions to existing fixed guideway systems). By the mid-1970's, because of the magnitude of the New Start commitments being proposed, the Department found it useful to publish a statement of Federal policy to ensure that the available resources would be used in the most prudent and effective manner.

A. The First Policy Statement (1976)

The first policy statement was issued in 1976 [41 FR 41512-14 (9/22/76)]. It introduced a process-oriented approach with the requirement that New Start projects be subjected to an analysis of alternatives, including a Transportation System Management (TSM) alternative that used no-capital and low-capital measures to make the best use of the existing transportation system. The Statement also required projects to be "cost-effective."

B. Policy on Rail Transit (1978)

The original policy was supplemented in 1978 by a "Policy on Rail Transit" [43 FR 9428-30 (3/7/78)]. This Statement reiterated the requirement for Alternatives Analysis, established requirements for local financial commitments to the project, established the concept of a contract providing for a multi-year commitment of Federal funds, with a maximum limit of Federal participation (the Full Funding Grant

Agreement—FFGA), and required that local governments undertake supporting local land use actions. This was supplemented by a 1980 policy statement that linked the Alternatives Analysis requirement to the Environmental Impact Statement development process [45 FR 71986–87 (10/30/80)].

C. Statement of Policy on Major Urban Mass Transportation Capital Investments (1984)

These principles were reiterated and refined in a May 18, 1984, Statement of Policy on Major Urban Mass Transportation Capital Investments [49 FR 21284–91]. The major feature of this Policy Statement was the introduction of an approach for making comparisons between competing projects. To do so, a rating system was established under which projects were evaluated in terms of a cost effectiveness index of forecast incremental cost per incremental rider for the build alternative, compared with the TSM alternative as the base. Further, index threshold values were established which projects had to pass in order to be considered for funding. In addition, the criteria to be used to judge local financial commitment were spelled out.

D. Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)

The principles of the 1984 policy statement were later incorporated into law with enactment by Congress of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17). This act established in law a set of criteria which new starts projects had to meet in order to be eligible for Federal discretionary grants. Specifically, projects had to be “cost-effective” and “supported by an adequate degree of local financial commitment.” STURAA also added a requirement for an annual report to Congress laying out the Department’s recommendations for discretionary funding for new starts for the subsequent fiscal year.

To effectuate the requirements set forth in STURAA, on April 25, 1989 FTA (then the Urban Mass Transportation Administration) issued a Notice of Proposed Rulemaking [54 FR 17878–92]. This Proposed Rule would have codified the requirements of the 1984 Policy Statement and made the “Cost Per New Rider” Index and threshold values regulatory. However, in the FY 1990 and FY 1991 Appropriations Acts, Congress directed that this rulemaking not be advanced [See the Department of Transportation and Related Agencies Appropriations

Act, 1990 (Pub. L. 101–164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101–516)]. Thus, on February 3, 1993, this rulemaking was withdrawn [58 FR 6948].

E. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made substantial changes to the legislative basis for the criteria used to evaluate candidate projects. Specifically, the original requirement that a project be “cost-effective” was expanded; the new requirement specified that projects be “justified, based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, and operating efficiencies.” In addition, certain “considerations” and “guidelines” were established that were to be taken into account in determining how well the project meets the criteria.

F. Executive Order 12893 (1994)

On January 26, 1994, the President issued Executive Order 12893 [59 FR 4233–5], describing the principles which Federal agencies are to apply in determining how to invest in all forms of infrastructure, including transportation. The Order requires a systematic analysis of the costs and benefits of proposed investments, and sets out the parameters for such analysis. It calls for efficient management of infrastructure, including a focus on the operation and maintenance of facilities, as well as the use of pricing to manage demand, and calls for comparison of a comprehensive set of options and consideration of quantifiable and qualitative measures of benefits for all programs.

G. Policy Discussion Paper (1994)

Thereafter, in September 1994, FTA circulated a “policy discussion paper” to the transit industry and other stakeholders for comment. This paper detailed various approaches for evaluating proposed projects under the ISTEA criteria, and requested comment on nine specific issues. Interest was extensive, and a period of public comment, further analysis, additional industry input, and additional analysis ensued.

H. The 1996 Statement of Policy

On December 19, 1996, FTA issued a Notice in the **Federal Register** that formally adopted the ISTEA project justification criteria [61 FR 67093–106]. This Notice defined the criteria, established the process, and described

the measures that would be used to evaluate candidate projects for discretionary new starts funding. This Notice also established a multiple-measure method of project evaluation, in a manner consistent with Executive Order 12893.

This Statement of Policy was amended on November 12, 1997, to incorporate Departmental guidance establishing a Department-wide standard for valuing travel time, and make other technical corrections [62 FR 60756–58].

III. Transportation Equity Act for the 21st Century (TEA–21)

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) was enacted. TEA–21 leaves much of past law and policy regarding new starts intact, including the basic project justification criteria and the multiple-measure method of project evaluation. However, a number of significant changes were introduced.

A. Significant Changes

- Integration of the Major Investment Study (MIS) requirement into the FTA/FHWA planning and environmental regulations (23 CFR Part 450 and 23 CFR Part 771), elimination of the MIS as a separate requirement (see Section 1308 of TEA–21), and required streamlining of the environmental process (see Section 1309 of TEA–21);
- The requirement for FTA to establish overall project ratings of “highly recommended,” “recommended,” or “not recommended;”
- The requirement for FTA approval for a project to advance to the final design stage of the project development process; and
- The requirement that FTA publish regulations on the manner in which proposed projects will be evaluated and rated (the purpose of this rule).

B. Other Changes

- Several additional statutory “considerations” have been added to the project evaluation process, including the cost of sprawl, infrastructure cost savings due to compact land use, population density and current transit ridership in a corridor, and the technical capacity of the grantee to undertake the project.
- TEA–21 expressly prohibits FTA from considering the dollar value of mobility improvements (see Section 3010).
- The ISTEA exemptions from the FTA statutory project evaluation process, for proposed projects that

require less than one-third of the project funding from 49 U.S.C. 5309 or are part of a State Improvement Plan for air quality, were eliminated. The exemption remains for projects requiring less than \$25 million in 49 U.S.C. 5309 funding.

- For evaluating local financial commitment, the consideration for local funding beyond the required non-Federal share has been incorporated into statute.

- A second annual report to Congress, in addition to the existing *Report on Funding Levels and Allocations of Funds*, is now required. This new "Supplemental New Starts Report," due each August, will include updated ratings for projects that have completed the alternatives analysis and preliminary engineering stages of development since the date of the last *Report on Funding Levels and Allocations of Funds*.

IV. Government Performance and Results Act of 1993

The Government Performance and Results Act (GPRA) was enacted in 1993 to provide for the establishment of strategic planning and performance measurement in the Federal Government. It is primarily intended to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

In recognition of the GPRA's results-oriented focus, FTA intends to develop performance measures to evaluate our administration of the new starts program, and to measure the performance of Federal new starts investments. Both of these measures would be incorporated into FTA's management of new starts projects.

To evaluate FTA's own performance in the administration of the new starts program, we plan to develop indicators to measure the progress and cost of projects at the time they open for revenue service against the schedule and cost estimated in the FFGA (accounting for the fact that the actual project funding stream is dependent on Congressional appropriations). FTA invites comment on what indicators may be appropriate for this evaluation.

FTA is also interested in measuring the actual benefits of new starts once they have opened for revenue service. Toward that end, we plan to incorporate a "follow-up" mechanism into the new starts project development process to monitor the actual performance of a new starts project after it opens for revenue service. Measures should address the full range of benefits of new starts investments, such as those embodied in

the statutory project justification criteria, while not imposing a large reporting burden on project sponsors. FTA invites comment on appropriate measures and timeframes for evaluation.

V. Outreach

The development of this proposed rule began with a series of outreach sessions conducted during the months of September and October 1998. Three workshops were held around the country: one in Portland, Oregon, in conjunction with the RailVolution Conference on September 14; one in Washington, DC on September 25; and one in New York City, in conjunction with the Annual Meeting of the American Public Transit Association (APTA) on October 8.

The purpose of these outreach sessions was to describe the changes made by TEA-21 to the new starts program, discuss how we plan to implement them, and solicit general comment on FTA's policies and procedures in managing the new starts program.

The comments received during this outreach process were generally supportive of our proposed approach to this rule, including the retention of the basic principles of the 1996 Statement of Policy.

VI. Today's Proposed Rule

This rule defines the process FTA proposes to use to make the statutory evaluation of project justification under 49 U.S.C. 5309(e) (1)-(4), and to approve entry into the preliminary engineering and final design stages of project development as required by 49 U.S.C. 5309(e)(6), for new starts projects proposed for funding under 49 U.S.C. 5309.

To a large degree, this proposed rule builds upon the December 19, 1996 Notice (as amended). The project justification criteria and the evaluation measures are largely unchanged by TEA-21. However, there are a number of important changes to the new starts program that are reflected in this rule. Major elements of the proposed rule are discussed below.

Major Elements of This Proposed Rule

- Establishment of overall project ratings of "highly recommended," "recommended," or "not recommended" to determine the eligibility of proposed projects for funding.

- Requirement for FTA approval before a proposed project can advance into preliminary engineering or final design, based on the evaluation and rating of the project.

- Incorporation of additional factors for consideration in FTA project evaluations, including reductions in infrastructure cost achieved through compact land use development, the cost of urban sprawl, population density, current transit ridership in the corridor, and the technical capacity of the grant recipient to construct the proposed project.

- Elimination of the exemption from the 49 U.S.C. 5309(e) project evaluation process for proposed projects with a Federal share of less than one-third, or that are part of State Implementation Plans for air quality.

VII. Section-by-Section Analysis

A. Section 611.1: Purpose and Contents

This section states that this rule is issued to meet the statutory requirement of Title 49, United States Code, Section 5309(e)(5).

This rule establishes the methodology by which FTA will evaluate proposed new starts projects as required by 49 U.S.C. 5309(e). The data collected as part of the planning and project development processes and related regulations, conducted under 23 CFR 450 and 23 CFR 771, will provide the basis for this evaluation. Applicants must follow these rules to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions ("new starts").

The results of this evaluation will be used by FTA to make the findings required by statute for proposed projects to advance into the preliminary engineering and final design stages of project development, and to develop funding recommendations for the President's annual budget request. They will also be used to determine which projects are eligible for funding commitments under Full Funding Grant Agreements.

The information collected and ratings developed under this rule will form the basis for the annual Report on Funding Levels and Allocations of Funds, as required under 49 U.S.C. 5309(o)(1), and the "Supplemental New Starts Report," as required by 49 U.S.C. 5309(o)(2). To ensure timely publication of these reports, this rule establishes cutoff dates for submission of project-specific information to be included in these reports.

B. Section 611.3: Applicability

This section states that this rule applies only to the evaluation of projects seeking Federal capital investment funds for new transit fixed guideway and extension projects ("new starts") under 49 U.S.C. 5309.

It also states that proposed projects are exempt from evaluation under this rule if the total amount of funding under 49 U.S.C. 5309 is less than \$25,000,000, or if they are specifically exempt by statute. Such projects must still meet the requirements under 23 CFR 450 and 23 CFR 771, and the project development process described in this rule. Further, FTA must still have a basis to approve entry into preliminary engineering and final design, and make decisions regarding funding commitments—even for exempt projects. Sponsors of proposed projects that they believe to be exempt are therefore strongly urged to submit project evaluation information to FTA.

Finally, this section notes that projects for which a Federal funding commitment (FFGA) has been issued are not subject to reevaluation under this rule.

C. Section 611.5: Definitions

This section defines key terms used in this Part.

D. Section 611.7: Relation to Planning and Project Development Processes

New start projects, like all transportation investments in metropolitan areas, must emerge from a regional multimodal transportation planning process in order to be eligible for Federal funding. In addition, 49 U.S.C. 5309(e)(1) specifies that discretionary grants or loans for new starts may only be approved if a proposed project is based on the results of alternatives analysis and preliminary engineering, and that certain project justification and financial criteria have been met. To be eligible for FTA capital investment funds for a new start project, the proposed project must emerge from the metropolitan and/or Statewide planning process. Local officials must perform a corridor-level analysis of mode and alignment alternatives. This *alternatives analysis* will provide information on the benefits, costs, and impacts of alternative strategies, leading to the selection of a locally-preferred solution to the community's mobility needs. The FTA/FHWA planning and environmental regulations (23 CFR Parts 450 and 771), which required a Major Investment Study (MIS) that fulfilled the requirement for alternatives analysis, are being revised in accordance with TEA-21.

The approach taken in this regulation envisions alternatives analysis as a key planning tool, supplemented by subsequent project development analyses, for determining appropriate solutions to transportation issues. As FTA and FHWA approach modification

of their joint planning and environmental regulations, this rule may have implications for that effort and vice versa. FTA is particularly interested in comments about the relationship between the alternatives analysis requirement and its relationship to the planning and project development processes. The agency also welcomes comments regarding appropriate strategies for considering management and operation strategies, including the TSM and no build options, in the context of planning and project development.

Federal financial support for the planning process is derived from a number of sources, including the Metropolitan Planning Program under 49 U.S.C. 5303, the State National Planning and Research Program under 49 U.S.C. 5313, and planning programs administered by the Federal Highway Administration. FTA Urbanized Area Formula funds under 49 U.S.C. 5307 and flexible funds under the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality (CMAQ) Program may also be used to support certain planning activities. Given the significant demands placed on the new start program, FTA does not support the use of 49 U.S.C. 5309 funds for initial planning activities. Moreover, as amended by TEA-21, 49 U.S.C. 5309(m)(2) limits the amount of new starts funding that can be used for purposes other than final design and construction to not more than 8 percent of funds appropriated. In evaluating the local financial commitment to a proposed project, FTA will therefore consider the degree to which initial planning activities are conducted without funding from section 5309.

When the sponsoring agency for a new start project desires to initiate the preliminary engineering phase of project development, it must submit a request to the FTA regional office. The request must provide information on the metropolitan and/or Statewide plan that identifies the project, including the adoption of the project into the metropolitan transportation plan and the programming of the preliminary engineering study in the TIP. The request must also address the project justification and local financial commitment criteria outlined below. (This information is normally developed as part of an alternatives analysis.) FTA will then evaluate the proposed project as required by 49 U.S.C. 5309(e)(6) and determine whether or not to advance the project into preliminary engineering. FTA approval to initiate preliminary engineering is not a commitment to fund final design or construction.

Where the sponsoring agency believes that a proposed project is exempt from evaluation under this rule, submission of project justification and financial commitment information to FTA is not required. However, without such information FTA will have no basis for approving an exempt project for entry into preliminary engineering and final design, and will be unable to make decisions on whether to recommend Federal funding commitments. Therefore, sponsors of exempt projects are strongly encouraged to submit information on project justification and financial commitment.

During the preliminary engineering phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. The process results in estimates of project costs, benefits and impacts in which there is a higher degree of confidence. In addition, NEPA requirements are completed (for new starts, this will normally entail the completion of an environmental impact statement), project management concepts are finalized, any required funding sources are put in place, and safety matters are addressed. Information on project justification and the degree of local financial commitment will be continually updated and reported as appropriate. As part of their preliminary engineering activities, localities are encouraged to consider policies and actions designed to enhance the benefits of the project and its financial feasibility.

Project sponsors should ensure that safety considerations are weighed during the preliminary engineering phase. With regard to rail projects that will be subjected to Federal Railroad (FRA) safety jurisdiction, FTA will notify FRA of pending new starts because important decisions impacting rail safety should be made early in the planning and grant development process. FRA will forward any recommendations it has to FTA, which will forward them to the project sponsor.

A comprehensive preliminary engineering effort should address the evaluation criteria described in this rule.

Preliminary engineering is typically financed with 49 U.S.C. 5303 and 5307 funds, local revenues, and flexible funds under the STP and CMAQ programs.

Final Design is the last phase of project development, and includes right-of-way acquisition, utility relocation, and the preparation of final construction plans (including construction management plans), detailed specifications, construction

cost estimates, and bid documents. The final design stage cannot be initiated until environmental requirements have been satisfied, as evidenced by a Record of Decision (ROD) or a Finding of No Significant Impact (FONSI). Consistent with 49 U.S.C. 5309(e)(6), FTA will approve entry into final design based on the results of the project evaluation process. Final design is typically eligible for 49 U.S.C. 5309 new start funds.

E. Section 611.9: Project Justification Criteria

To make the statutory approvals required for a project to enter preliminary engineering and final design; for execution of an FFGA; and annual project funding recommendations, FTA will evaluate information developed through the planning and project development processes. The method used to make these determinations is a multiple measure approach in which the merits of candidate projects will be evaluated against a set of measures. These measures will also be used to determine which projects to recommend for funding in the report required by 49 U.S.C. 5309(o)(1). The ratings for each measure will be updated throughout the preliminary engineering and final design processes, as costs, benefits and impacts are more precisely defined. As a candidate project proceeds through the stages of the project development process, a greater degree of certainty is expected with respect to these measures. Measures have been established for each of the following criteria:

1. Mobility improvements;
2. Environmental benefits;
3. Operating efficiencies;
4. Cost effectiveness;
5. Transit-supportive existing land use policies and future patterns; and
6. Other factors, including:
 - (a) the degree to which the policies and programs (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts;
 - (b) project management capability; and
 - (c) additional factors relevant to local and national priorities and relevant to the success of the project.

In all cases, the proposed new start will be evaluated against both a no-build and TSM alternative. For each proposed project, FTA will assign one of five descriptive ratings ("high," "medium-high," "medium," "low-medium," or "low") for each of these six criteria.

The measures for these criteria are described in Appendix A to this proposed rule. FTA may amend or modify these measures in response to the results of ongoing research into methods for evaluating the benefits of transit investments.

"Transit-supportive land use policies and future patterns" is not listed among the project justification criteria contained in 49 U.S.C. 5309(e)(1)(B), but is listed as one of the "considerations" under 49 U.S.C. 5309(e)(3) that FTA must take into account when determining a proposed project's "justification." Consistent with past practice, we have included land use among the project justification criteria for a number of reasons. Transit-supportive local land use policies, which target development around the Federally-assisted project, have been an important indicator of future project success. Additionally, TEA-21 added two new land-use-related considerations to the project evaluation process: the reduction in local infrastructure costs achieved through compact land use development (49 U.S.C. 5309(e)(3)(B)), and the cost of suburban sprawl (49 U.S.C. 5309(e)(3)(C)). This appears to be a clear intent by Congress to give additional attention to this issue. In making the determination of project justification, 49 U.S.C. 5309(e)(3) requires the FTA to consider a variety of factors, as follows:

1. The direct and indirect costs of relevant alternatives;
2. Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed and to recognize reductions in local infrastructure costs achieved through compact land use development;
3. Mass transportation-supportive existing land use policies and future patterns, and the cost of suburban sprawl;
4. The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;
5. Population density and current transit ridership in the corridor;
6. The technical capability of the grant recipient to construct the project;
7. Differences in local land, construction, and operating costs; and
8. Other factors that the Secretary determines appropriate.

This represents a modest expansion of the "considerations" established by ISTEA. Specifically, Section 3009(e) of TEA-21 added the consideration for the cost of suburban sprawl noted in (3) above; for population density and

current transit ridership in the corridor in (5) above; and for the technical capacity of the grantee to carry out the proposed project in (6) above. The "considerations" serve to illustrate the project justification criteria, providing further detail on specific information that should be collected and how the criteria should be evaluated. Much of the data required to consider these factors is already developed as part of the existing planning and project development processes, however, as required under 23 CFR 450 and 23 CFR 771.

When evaluating proposed new starts projects, FTA will apply these criteria to the project as proposed for Federal funding under 49 U.S.C. 5309. This means that if local project sponsors are seeking new starts funding at this time for a segment of a larger planned transit investment, only that specific segment will be evaluated.

F. Section 611.11: Local Financial Commitment

Section 5309(e)(1)(C) requires that proposed projects also be supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain and operate the system or extension. This proposed rule retains the following criteria for evaluation of the local financial commitment to a proposed project:

1. The proposed share of total project costs from sources other than Section 5309, including Federal formula and flexible funds, the local match required by Federal law, any additional capital funding ("overmatch"), and the degree to which initial planning activities have been carried out without relying on funds from section 5309.

2. The strength of the proposed capital financing plan (rated "high," "medium-high," "medium," "low-medium," or "low").

3. The ability of the sponsoring agency to fund operation and maintenance of the entire system as planned once the guideway project is built. Ratings of "high," "medium-high," "medium," "low-medium," or "low" will be used to describe stability and reliability of operating revenue.

The measures for these criteria are carried over intact from those used previously, and are more fully explained in Appendix A. The only change is that "overmatch" was added as a statutory consideration by TEA-21.

G. Section 611.13: Overall Project Ratings

Perhaps the most significant change to this process brought by TEA 21 is the

requirement that FTA establish summary recommendations for each project, in addition to the ratings for each of the project justification criteria. Section 5309(e)(6) requires FTA to "evaluate and rate [each] project as 'highly recommended,' 'recommended,' or 'not recommended,'" based on the results of the project evaluation process. It also requires that ratings be assigned to each of the individual evaluation criteria.

FTA will combine the ratings for each of the financial rating factors and project justification criteria into overall "finance" and "justification" ratings. These ratings will then be combined into the single, overall project ratings required by TEA-21. For a proposed project to be rated as "recommended," it must be rated at least "medium" in terms of both finance and justification. To be "highly recommended," a proposed project must be rated at least "medium-high" for both finance and at justification. Proposed projects not rated at least "medium" in both finance and justification will be rated as "not recommended."

These ratings will be used both to approve entry into preliminary engineering and final design, and to recommend proposed projects for Federal funding commitments. A proposed project must receive a rating of at least "recommended" in order to be approved for any of these purposes.

It is important to note that a *rating* of "recommended" does not translate directly into a *funding* recommendation in any given fiscal year. Rather, the overall project ratings are intended by this proposed rule to reflect overall project merit. Proposed projects that are rated "recommended" or "highly recommended," and have been sufficiently developed for consideration of a Federal funding commitment (i.e., FFGA), will be eligible for funding recommendations in the Administration's proposed budget for a given fiscal year.

VIII. Request for Comments on Particular Issues

FTA seeks comment on the following issues, in particular:

1. Consistent with FTA's 1996 Statement of Policy and prior practice, this proposed rule does not establish "threshold" values for the statutory project justification criteria. Instead, we rate each project as "high," "medium-high," "medium," "low-medium," or "low" according to its individual merits under each of the measures. Should FTA establish "threshold" or "pass/fail" values for evaluating each of these

criteria? If so, what thresholds are appropriate for each criterion?

2. FTA has historically relied on the measure of "cost per new rider" (more precisely, incremental cost per incremental rider) to indicate cost effectiveness, an approach retained in this proposed rule. Are there other means for measuring the cost effectiveness of a proposed new starts project?

3. 49 U.S.C. 5309(e)(3) establishes a number of "factors" that FTA must consider when evaluating proposed projects under the justification criteria. In particular, 49 U.S.C. 5309(e)(3)(F) directs us to "consider the technical capability of the grant recipient to construct the project," and 49 U.S.C. 5309(e)(3)(H) directs FTA to consider "other factors" as "appropriate." How should FTA evaluate the "technical capability" of project sponsors? What "other factors" might be appropriate?

4. FTA also seeks comment on how much relative attention should be given to each of the project justification criteria (mobility improvements, environmental benefits, operating efficiencies, cost effectiveness, land use and other factors) to establish the overall project ratings.

IX. Regulatory Evaluation

The Federal Transit Administration (FTA) has evaluated the industry-wide costs and benefits of the rule, Major Capital Investment Projects, which is required by section 3009(e) of the TEA-21. This rule will determine the process that FTA will use to evaluate and rate major capital investments under the statutory criteria in 49 U.S.C. 5309(e), which requires FTA to establish overall project ratings of "highly recommended," "recommended," or "not recommended," and to consider new criteria elements. The changes required by TEA-21 to FTA's pre-existing statutory criteria are relatively minor and affect FTA program management operations more than a recipient's operations. The preliminary regulatory evaluation is available for public inspection in the docket established for this rulemaking.

X. Regulatory Process Matters

A. Executive Order 12688

The FTA has evaluated the industry costs and benefits of the major capital investments rule and has determined that it is a significant rule under E.O. 12688 because of the significant policy issues involved in federally funding major capital investments. This rule will not, however, have an impact on the economy of \$100 million or more.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this rule is to establish how the Secretary will rate various major capital investment projects.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FTA has evaluated the effects of this rule on small entities. Based on this evaluation, the FTA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities because this rule concerns only major capital investments, which are not usually undertaken by small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act; however, due to the fact that TEA-21 eliminated the MIS as a stand-alone requirement, the agency believes that a reduction in the paperwork burden is the likeliest outcome. Because the rule is related to two other proposed rulemakings, Environmental Procedures (currently codified at 49 CFR 622 and 23 CFR 771) and Planning (49 CFR 613 and 23 CFR 450) concerning similar issues, the agency is unable to determine the actual reduction in the paperwork burden. The NPRMs for these rules are expected to be issued later this year. The agency will submit a request for a Paperwork Reduction Act approval with the proposed Environmental and Planning rules. FTA currently collects information under an approved Paperwork Reduction Act request (control #2132-0529).

E. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

F. National Environmental Policy Act

The agency has determined that this proposed rule, if adopted, will have positive effects on the environment by encouraging the use of mass transit, which may reduce the use of single occupancy vehicles.

G. Energy Act Implications

This regulation should have a positive effect on energy consumption because, through the Federal investment mass transit projects, it would increase the use of mass transit.

H. Effects on the Year 2000 Computer Problem

This rule does not mandate business process changes or require modifications to computer systems that will detract recipients from using resources to address any possible year 2000 computer problems.

I. Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100,000,000 or more in any one year.

List of Subjects in 49 CFR Part 611

Government Contracts, Grant programs—Transportation, Mass transportation.

Accordingly, for the reasons set out in the preamble, the Federal Transit Administration proposes to add 49 CFR part 611, reading as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Sec.

- 611.1 Purpose and contents
- 611.3 Applicability
- 611.5 Definitions
- 611.7 Relation to Planning and Project Development Processes
- 611.9 Project Justification Criteria for Grants and Loans for Fixed Guideway Systems
- 611.11 Local financial commitment criteria
- 611.13 Overall Project Ratings

Appendix A to Part 611—Description of Measures Used for Project Evaluation

Authority: 49 U.S.C. 5309; 49 CFR 1.51

§ 611.1 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions to existing systems ("new starts"). Also, this part prescribes the procedures used by FTA to evaluate proposed new starts projects as required by 49 U.S.C. 5309(e), and the scheduling of project reviews required by 49 U.S.C. 5328(a).

(b) This part defines how the results of the evaluation described in paragraph (a) of this section will be used to:

- (1) Approve entry into preliminary engineering and final design, as required by 49 U.S.C. 5309(e)(6);
- (2) Rate projects as "highly recommended," "recommended," or

"not recommended," as required by 49 U.S.C. 5309(e)(6);

(3) Assign individual ratings for each of the project justification criteria specified in 49 U.S.C. 5309(e)(1)(B) and (C);

(4) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements; and

(5) Determine funding recommendations for this program for the Administration's annual budget request.

(c) The information collected and ratings developed under this part will form the basis for the annual reports to Congress, required by 49 U.S.C. 5309(o)(1) and (2). For purposes of these reports, project information will be considered current as of the following dates:

(1) December 1 of each year, for the annual Report on Funding Levels and Allocations of Funds required by 49 U.S.C. 5309(o)(1) and due not later than the first Monday of each February; and

(2) July 1 of each year, for the annual Supplemental New Starts Report required by 49 U.S.C. 5309(o)(2) and due on the 31st day of August of each year.

§ 611.3 Applicability.

(a) This part applies to all proposals for Federal capital investment funds under 49 U.S.C. 5309 for new transit fixed guideway systems and extensions to existing systems.

(b) Projects described in paragraph (a) of this section are not subject to evaluation under this part if the total amount of funding from 49 U.S.C. 5309 will be less than \$25 million, or if such projects are otherwise exempt from evaluation by statute.

(1) Exempt projects must still be rated by FTA for purposes of approving entry into preliminary engineering or final design, as required by 49 U.S.C. 5309(e)(6), or entering into a Federal funding commitment as required by 49 U.S.C. 5309(e)(7). Sponsors who believe their projects to be exempt are strongly encouraged to submit data for project evaluation as described in this part.

(2) Such projects are still subject to the requirements of 23 CFR part 450 and 23 CFR part 771.

(3) This part does not apply to projects for which a Federal funding commitment (FFGA) has already been issued.

(c) Consistent with 49 U.S.C. 5309(e)(8)(B), FTA will make decisions on the justification of proposed projects using expedited procedures as appropriate, for proposed projects that are:

- (1) Located in a nonattainment area;
- (2) Transportation control measures as defined by the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(3) Required to carry out a State Implementation Plan.

(4) For such projects, FTA will complete action on approving entry into preliminary engineering and final design in less than the normal time.

§ 611.5 Definitions.

The definitions established by Titles 12 and 49 of the United States Code, the Council on Environmental Quality's regulation at 40 CFR parts 1500 through 1508, and FHWA-FTA regulations at 23 CFR parts 450 and 771 are applicable. In addition, the following definitions apply:

Alternatives analysis is a corridor level analysis which evaluates all reasonable mode and alignment alternatives for addressing a transportation problem, and results in the adoption of a locally preferred alternative by the appropriate State and local agencies and official boards.

Extension to existing fixed-guideway system means a newly-constructed extension to an existing fixed guideway system.

FFGA means a Full Funding Grant Agreement.

Final design is the final phase of project development, and includes the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents.

Fixed guideway system means a mass transportation facility which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed catenary system and a right of way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, and exclusive facilities for buses and other high occupancy vehicles.

FTA means the Federal Transit Administration.

Full Funding Grant Agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions.

Major transit investment means any project that involves the construction of a new fixed guideway system or extension of an existing fixed guideway system for use by mass transit vehicles.

New fixed guideway system means a newly-constructed fixed guideway system where no such system exists.

New start means a new fixed guideway system, or an extension to an existing fixed guideway system.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), at 23 CFR part 771; the NEPA process is completed when a Record of Decision (ROD) or Findings of No Significant Impact (FONSI) is issued.

No-build alternative means a baseline case consisting of those elements in a region's transportation plan excluding the proposed new start.

Preliminary Engineering is the process by which the design of the proposed project is refined, estimates of project costs, benefits and impacts are developed, NEPA requirements are completed (for new starts, this will normally entail the completion of an environmental impact statement), project management concepts are finalized, and required funding sources are put in place.

Secretary means the Secretary of Transportation.

TEA-21 means the Transportation Equity Act for the 21st Century.

Transportation system management (TSM) alternative means a package of low to moderate cost improvements designed to make more efficient use of an existing transportation system. TSM alternatives typically include elements such as traffic engineering and signalization, transit operational changes, and modest capital.

§ 611.7 Relation to planning and project development processes.

To be eligible for FTA capital investment funding, a proposed project must be based on the results of alternatives analysis and preliminary engineering. The selected strategy must be included in the metropolitan transportation plan.

(a) *Planning considerations.* All new start projects proposed for funding assistance under 49 U.S.C. 5309 must emerge from the metropolitan and Statewide planning process, consistent with 23 CFR part 450.

(b) *Alternatives analysis.* (1) *To be eligible for FTA capital investment funding for a major fixed guideway transit project, local project sponsors must perform an alternatives analysis.*

(2) The alternatives analysis develops information on the benefits, costs, and impacts of alternative strategies, leading to the adoption of a locally preferred alternative.

(3) The alternative strategies evaluated in an alternatives analysis must include a TSM and no-build

alternative, as well as the proposed new start.

(4) *Exceptions:*

(i) The requirement for an alternatives analysis shall not apply to certain new start projects that, by statute, are exempt from evaluation under this part.

(ii) Consistent with 49 U.S.C. 5309(e)(8), proposed projects are exempt from the project rating process if the amount of Section 5309 assistance being sought for the project is less than \$25 million.

(iii) Projects for which FFGAs have been issued prior to [the effective date of the final rule] shall not be re-evaluated under this part.

(c) *Preliminary engineering.* Consistent with 49 U.S.C. 5309(e)(6) and 5328(a)(2), FTA will approve entry of a proposed project into preliminary engineering within 30 days of receipt of a formal request from the project sponsor(s).

(1) FTA's approval will be based on the results of its evaluation as described in this part.

(2) At a minimum, a proposed project must receive an overall rating of "recommended" to be approved for entry into preliminary engineering.

(d) *Final design.* (1) The final design stage cannot be initiated until environmental requirements have been satisfied, as evidenced by completion of the NEPA process.

(2) Consistent with 49 U.S.C. 5309(e)(6) and 5328(a)(3), FTA will approve entry of a proposed project into final design within 120 days of receipt of a formal request from the project sponsor(s).

(i) FTA's approval will be based on the results of the project evaluation described in this part.

(ii) At a minimum, a proposed project must receive an overall rating of "recommended" to be approved for entry into final design.

(e) *Full Funding Grant Agreements.*

(1) FTA will determine whether to execute an FFGA based on the evaluations and ratings established by this part.

(2) An FFGA shall not be executed for a project that is not authorized for final design and construction by Federal law.

(3) FFGAs will be executed only for those projects which are rated as "recommended" or "highly recommended" and which are ready to utilize Federal new starts funds, consistent with available program authorization.

(4) In any instance in which FTA decides to provide financial assistance for construction of a new start project, FTA will negotiate an FFGA with the grantee during final design of that

project. Pursuant to the terms and conditions of the FFGA:

(i) A maximum level of Federal financial contribution will be fixed;

(ii) The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated;

(iii) FTA and the grantee will set a mutually agreeable schedule for anticipating Federal contributions during the final design and construction period; and

(iv) Specific annual contributions under the FFGA will be subject to the availability of budget authority and the ability of the grantee to use the funds effectively.

(5) The total amount of Federal obligations under Full Funding Grant Agreements and potential obligations under Letters of Intent will not exceed the amount authorized for new starts under 49 U.S.C. 5309.

(6) FTA may also make a "contingent commitment," which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g), 5338(b), and 5338(h).

§ 611.9 Project justification criteria for grants and loans for fixed guideway systems.

In order to approve a grant or loan under 49 U.S.C. 5309, FTA must find that the proposed project is justified as described in section 5309(e)(1)(B).

(a) To make the statutory evaluations and assign ratings for proposed projects, as required by section 5309(e)(6), FTA will evaluate information developed locally through alternatives analyses and refined through preliminary engineering and final design.

(1) The method used to make this determination will be a Multiple Measure approach in which the merits of candidate projects will be evaluated against each of the criteria specified by section 5309(e)(1)(B).

(2) The measures for these criteria are specified in Appendix A to this part.

(3) The measures for these criteria will also be used to determine which projects to recommend for funding in the report required by section 5309(o)(1).

(4) The measures will be applied to the project as it has been proposed to FTA for funding under 49 U.S.C. 5309.

(5) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: "high," "medium-high," "medium," "low-medium," or "low."

(6) The ratings for each criterion will be updated throughout the preliminary

engineering and final design stages of project development, as costs, benefits and impacts are more precisely defined.

(7) As a candidate project proceeds through preliminary engineering and final design, a greater degree of certainty is expected with respect to these criteria.

(8) The proposed new start will be compared to both the TSM and no-build alternatives.

(b) The criteria are as follows:

(1) *Mobility improvements.*

(2) *Environmental benefits.*

(3) *Operating efficiencies.*

(4) *Cost-effectiveness.*

(5) *Transit supportive existing land use policies and future patterns.*

(6) *Other factors.* Additional factors, including but not limited to:

(i) The degree to which the programs and policies (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts,

(ii) Project management capability, including the technical capability of the grant recipient to construct the project, and

(iii) Additional factors relevant to local and national priorities and relevant to the success of the project.

(c) In evaluating proposed new starts projects under these criteria in paragraph (b) of the section, the following factors shall be considered:

(1) The direct and indirect costs of relevant alternatives;

(2) Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed, and recognize reductions in local infrastructure costs achieved through compact land use development;

(3) Mass transportation-supportive existing land use policies and future patterns, and the cost of urban sprawl;

(4) The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;

(5) Population density and current transit ridership in the corridor;

(6) The technical capability of the grant recipient to construct the project;

(7) Differences in local land, construction, and operating costs; and

(8) Other factors as appropriate.

(d) FTA may amend the measures for the criteria in paragraph (b) of this section, pending the results of ongoing studies regarding transit benefit evaluation methods.

(e) The individual ratings for each of the criteria in paragraph (b) of this section will be combined into a summary rating for project justification.

“Other factors” will be considered as appropriate.

§ 611.11 Local financial commitment criteria.

In order to approve a grant or loan under 49 U.S.C. 5309, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by section 5309(e)(1)(C). The local financial commitment to a proposed project will be evaluated according to the following measures:

(a) The proposed local share of project costs, defined as the percentage of capital costs to be met using funds from sources other than 49 U.S.C. 5309, including both the local match required by Federal law and any additional capital funding (“overmatch”), and the degree to which initial planning activities have been carried out without funding from section 5309;

(b) The strength of the proposed capital financing plan; and

(c) The ability of the local transit agency to fund operation of the system as planned once the guideway project is built.

(d) For each proposed project, ratings for paragraphs (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: “high,” “medium-high,” “medium,” “low-medium,” or “low.” For paragraph (a), of this section the percentage of Federal funding sought from 49 U.S.C. 5309 will be reported.

(e) The individual ratings for each measure described in this section will be combined into a summary rating for local financial commitment.

§ 611.13 Overall project ratings.

(a) The ratings developed for each of the project justification criteria and for local financial commitment (§§ 611.9 and 611.11) will form the basis for the overall rating for each project.

(b) Overall ratings of “highly recommended,” “recommended,” and “not recommended,” as required by 49 U.S.C. 5309(e)(6), will be assigned to each proposed project.

(c) These ratings will be used to:

(1) Approve advancement of a proposed project into preliminary engineering and final design;

(2) Approve projects for FFGAs; and

(3) Make annual funding recommendations to Congress in the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(o)(1).

(d) Projects will receive overall ratings based on the following conditions:

(1) Projects will be rated as “recommended” if they receive a rating

of “medium” or higher for both project justification (§ 611.9) and local financial commitment (§ 611.11)

(2) Projects will be rated as “highly recommended” if they receive a rating higher than “medium” for both local financial commitment and project justification.

(3) Projects will be rated as “not recommended” if they do not receive a rating of at least “medium” for both project justification and local financial commitment.

Appendix A to Part 611—Description of Measures Used for Project Evaluation

Project Justification

1. FTA will use several measures to evaluate candidate new starts projects according to the criteria established by 49 U.S.C. 5309(e)(1)(B). These measures have been developed according to the considerations identified at 49 U.S.C. 5309(e)(3) (“Project Justification”), consistent with Executive Order 12893. From time to time, FTA has published technical guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may well choose to amend these measures, pending the results of ongoing studies regarding transit benefit evaluation methods.

2. The first four criteria listed in paragraphs (a) through (d) represent the benefits of proposed new start projects by comparing the new start project to either the TSM or no-build alternative. In order for this comparison to fairly reflect the benefit of the new start project, it is mandatory that planning factors external to the new start project and its supporting corridor bus service be the same among the TSM, no-build and new start project alternatives. For these alternatives, this means that highway and transit networks should be the same outside the corridor of the new start project, and the policies affecting travel demand and cost such as parking costs and land use, should also be the same.

3. The fifth criterion, “transit supportive existing land use policies and future patterns,” reflects the importance of transit-supportive local land use policies as an indicator of ultimate project success.

(a) *Mobility Improvements.*

(1) The aggregate travel time savings per year (forecast year) anticipated from the new investment, compared to both the no-build and TSM alternatives. This aggregate includes the travel time savings of people using competitive modes, along with those on the trips made by transit. Travel time savings for those switching from highways to transit will be calculated using a consumer surplus approach, taking one-half of the total travel time savings for those riders assumed in the no-build or TSM alternatives. The net figure will be expressed in terms of the total projected travel time savings for the region.

(2) The net figure of travel time savings for low income households affected by the new start alternative, in comparison with the no-build and TSM alternatives.

(3) The absolute number of low income households located within ½ mile of

boarding points associated with the proposed system increment.

(b) *Environmental Benefits.*

(1) The annual forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated in terms of tons for each criteria pollutant or gas;

(2) The forecast net change per year (forecast year) in the regional consumption of energy, ascribable to the proposed new investment, expressed in British Thermal Units (BTU);

(3) Current Environmental Protection Agency designations for the region's compliance with National Ambient Air Quality Standards.

(4) The new start alternative will be compared to both the no-build and TSM alternatives.

(c) *Operating Efficiencies.* The forecast change in operating cost per passenger-mile (forecast year), for the entire transit system. The new start will be compared to both the TSM and no-build alternatives.

(d) *Cost-Effectiveness.* The cost effectiveness of a proposed project shall be evaluated according to the incremental change in total capital and operating cost per incremental passenger, based on the forecast change in annual transit ridership (forecast year) and the annualized total (Federal and local) capital investment and operating cost. The new start will be compared to the no-build and TSM alternatives.

(e) *Transit supportive existing land use policies and future patterns.* Transit-supportive land use policies and patterns shall be evaluated according to the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies. The following seven factors will form the basis for this evaluation:

(1) Existing land use;

- (2) Containment of sprawl;
- (3) Transit-supportive corridor policies;
- (4) Supportive zoning regulations near transit stations;
- (5) Tools to implement land use policies;
- (6) The performance of land use policies; and
- (7) The value of any reductions in local infrastructure costs achieved through compact land use development.

(f) *Other factors.* Other factors that will be considered when evaluating projects for funding commitments include:

- (1) The degree to which the policies and programs (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts;
- (2) Project management capability, including the technical capability of the grant recipient to construct the project;
- (3) Population and employment density in the corridor within ½ mile of the transit stops of the new start project, for current and forecast years;
- (4) Current ridership potential for the new start project, determined by forecasting ridership for the new start project using today's land use and modifying the current transit network by inserting the new start project and necessary feeder bus service; and
- (5) Additional factors relevant to local and national priorities and to the success of the project.

Local Financial Commitment

FTA will use the following measures to evaluate the local financial commitment to a proposed project:

(a) The proposed local share of project costs, defined as the percentage of capital costs to be met using funds from sources other than 49 U.S.C. 5309, including both the local match required by Federal law and any additional capital funding ("overmatch"). Consideration will be given to:

(1) The use of innovative financing techniques, as described in the May 9, 1995,

Federal Register notice on *FTA's Innovative Financing Initiative* (60 FR 24682);

(2) The use of "flexible funds" as provided under the CMAQ and STP programs;

(3) The degree to which alternatives analysis and preliminary engineering activities were carried out without funding from section 5309; and

(4) The actual local share of the cost of recently-completed or simultaneously undertaken fixed guideway systems and extensions that are related to the proposed project under review (FTA's intent is to recognize that a region's local financial commitment to fixed guideway systems and extensions may not be limited to a single project).

(b) The strength of the proposed capital financing plan, according to:

(1) The stability and reliability of each proposed source of local match, including inter-governmental grants, tax sources, and debt obligations, with an emphasis on availability within the project development timetable;

(2) Whether adequate provisions have been made to cover unanticipated cost overruns; and

(c) The ability of the local transit agency to fund operation of the system as planned once the guideway project is built, according to:

(1) An evaluation of the operating revenue base; and

(2) Its ability to expand to meet the incremental operating costs associated with a new fixed guideway investment and any other new services and facilities.

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Gordon J. Linton,
Administrator.

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