DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2006–25737]

RIN 2132–AA81

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) provides interested parties with the opportunity to comment on proposed changes to the Federal Transit Administration's (FTA's) New Starts program and a new proposed Small Starts program category. The new Small Starts program category is a discretionary grant program category for public transportation capital projects that run along a dedicated corridor or a fixed guideway, have a total project cost of less than $250 million, and are seeking less than $75 million in Small Starts program funding. This NPRM addresses comments on the Advanced Notice of Proposed Rulemaking (ANPRM) on Small Starts issued on January 30, 2006 and the draft Guidance on New Starts Policy and Procedures issued on January 19, 2006, and makes proposals for the New Starts and Small Starts programs which take into account these comments. FTA is concurrently issuing policy guidance for comment that describes the factors and measures used in its evaluation process, which are not described in the NPRM.

DATES: Comments must be received by November 1, 2007.

ADDRESSES: *Written Comments:* Submit written comments to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.

Comments. You may submit comments identified by the docket number (FTA–2006–25737) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION.**

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033. FTA is located at 1200 New Jersey Ave., SE., East Building, Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). Section 3011 of SAFETEA–LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA's) fixed guideway capital investment grant program known as ''New Starts.'' This Notice of Proposed Rulemaking (NPRM) implements those changes and proposes a number of other changes that FTA believes will improve the New Starts program.

In addition to the changes made to the New Starts program, SAFETEA–LU amended 49 U.S.C. 5309 to add a new capital investment program category for projects requesting less than $75 million in Section 5309 Capital Investment funds and having a total project cost of less than $250 million. That new capital investment program, which will be referred to as the ''Small Starts'' program, is the other subject of this NPRM. Based on comments received on this NPRM, FTA plans to issue a final rule in the future that will finalize the proposed changes to the existing New Starts program, as well as proposed rules for the Small Starts program.

This NPRM is the culmination of two public involvement initiatives for the New Starts and Small Starts programs—the Small Starts Advance Notice of Proposed Rulemaking (ANPRM) (71 FR 4864, Jan. 30, 2006) and the Guidance on New Starts Policies and Procedures (Notice of availability and request for comments, 71 FR 3149, Jan. 19, 2006). These separate pre-rule public involvement processes are being consolidated into this one rulemaking so that issues of overlap and coordination between these two aspects of FTA's discretionary capital investment program may be addressed. This NPRM closes the dockets for both of these pre-rule activities and creates a new docket for comments on the NPRM.

FTA provided further opportunity for public involvement by holding a number of listening sessions throughout the country. Those listening sessions were held at the following dates and locations:

—San Francisco, CA—February 15–16, 2006, Hyatt Regency San Francisco.
—Ft. Worth, TX—March 1–2, 2006, Radisson Plaza Hotel Fort Worth.
—Washington, DC—March 9–10, 2006, Wardman Park Marriott Hotel.

FTA is planning to conduct similar outreach activities on both this NPRM and the policy guidance that FTA is issuing concurrently. Details on these activities will be announced in a **Federal Register** notice at a later date and on FTA's Web site.

The Response to Comments section of this notice summarizes and responds to comments received on each of the questions raised in the Small Starts ANPRM and the Guidance on New Starts Policies and Procedures. It begins by restating each question, then summarizes the comments received on that question, as well as our response to the comments and concludes with FTA's proposal for addressing those comments in our proposed regulatory language. The Response to Comments portion of the Preamble is broken down by the following subjects: Eligibility, Evaluation and Ratings, and Procedures for Planning and Project Development, first with respect to the Guidance on New Starts Policies and Procedures and then with respect to the APRM on Small Starts and concludes with a section entitled ''Additional Discussion Items for Comment'' where FTA specifically seeks feedback on several new issues that it would like to address in the final rule. The Section-by-Section Analysis in this notice explains our rationale for the language proposed for the regulation, as well as suggesting alternative proposals to some provisions.

In order to make the regulation more understandable, FTA is proposing to divide it into four subparts that will cover General Provisions, ''New Starts,'' ''Small Starts,'' and ''Very Small Starts.'' Subpart A would include General Provisions that apply to all projects seeking Section 5309 Capital Investment funds. Subpart B would include those provisions that apply to New Starts (projects of $250 million or more in total cost *or* requesting $75 million or more in New Starts funds). Subpart C would cover Small Starts projects (projects of less than $250 million in total cost *and* requesting less than $75 million in Small Starts funds but not qualifying as a Very Small Start). Subpart D would cover Very Small Starts (a subset of Small Starts projects which are less than $50 million in total cost and $3 million per mile (excluding vehicles) and which meet other specified characteristics). FTA has chosen this approach, even though there is a lot of similarity in the requirements of each subpart, in order to assist a project sponsor in finding all of the applicable procedures and evaluation criteria in a single subpart, depending on the size and nature of the proposed project.

II. Response to Comments

The following is a summary of the comments received in response to our questions raised in Part 2 of the Guidance on New Starts Policies and Procedures and in the Small Starts ANPRM, our response to the comments received and our proposal for addressing the issue raised by the questions in the proposed NPRM.

Guidance on New Starts Policies and Procedures

Eligibility

1. How might FTA determine whether a Bus Rapid Transit (BRT) project is a ''fixed guideway'' project?

Comment: Nine comments were received in answer to this question. The range of BRT eligibility requirements suggested in the comments highlights the inherent difficulty in determining whether a BRT project is a ''fixed guideway'' project. Some commenters suggested that eligible BRT projects should operate in an exclusive right-of-way (ROW) or that certain percentages of project length should be in an exclusive ROW. Others stated that eligibility should be based on percentage of length subject to certain features or ''intensity'' of usage, such as ridership or vehicles per unit of time. Finally, some thought that eligibility should be determined on a case-by-case basis.

Response: There is no statutory requirement that a fixed guideway project must operate in its entirety in a separate or exclusive ROW. The varied responses indicate the difficulty in strictly defining the parameters that should apply to BRT when it does not include a fixed guideway for its full length. FTA has previously made eligibility determinations on a case-by-case basis and has allowed eligibility for projects that include a significant fixed guideway portion, *e.g.*, a dedicated busway, but also include some mixed-traffic sections.

Proposal: FTA proposes to define a BRT project as a ''fixed guideway'' if the project operates on a fixed guideway that is dedicated to transit or high occupancy vehicle use for at least 50 percent of its length during the peak period, or when congestion inhibits transit system performance. In making this determination it is not necessary that the 50 percent of its length be contiguous as long as the 50 percent that is dedicated is designed to provide significant travel times savings.

In addition, for the purposes of funding design and construction of New Starts and Small Starts, FTA proposes to revise the definition of a ''fixed guideway'' to include projects meeting certain other conditions. FTA is asking for specific comment, under a section entitled ''Additional Discussion Items for Comment'' on this revised definition that would include a transportation facility that, by means of pricing and other enhancements, replicates the benefits of ''free-flow'' conditions for transit users historically achieved by a physically separated right-of-way available solely for transit and high-occupancy vehicles. To make such projects eligible for New Starts or Small Starts funding, FTA proposes to incorporate into the regulatory definition of ''fixed guideway system'' a provision that deems such a facility, subject to certain limitations, to be ''a separate right-of-way reserved for the exclusive use of public transportation.'' The operation of the new provision would be limited strictly to defining eligibility for discretionary funding under New Starts (49 U.S.C. 5309(d)) and Small Starts (49 U.S.C. 5309(e)), and would not alter the definition of ''fixed guideway mile'' for purposes of calculating the distribution of funds under formula programs administered by FTA.

The practical effect of amending the definition of ''fixed guideway'' in this way is that it would allow FTA to fund a portion of the construction of high occupancy toll (HOT) lanes, on which transit vehicles would run, with money from the Section 5309 Capital Investment program. This has the advantage of providing more flexibility to project sponsors with creative ideas for potentially building cost effective transit projects.

Specifically, FTA proposes to revise the definition of ''fixed guideway system'' to include the following clause at the end of the definition:

> ''Additionally, a transportation facility shall be deemed a fixed guideway system solely for the purposes of funding eligibility under New Starts (49 U.S.C. 5309(3) if the project is designed so that in any given month (i) transit vehicles utilize the transportation facility on a barrier-separated right-of-way; and (ii) by means of tolling or other enhancements, 95 percent of the transit vehicles using the facility will be able to maintain an average speed of not less than 5 miles per hour below the posted speed limit for the time they are on the facility.''

In applying this definition FTA intends to limit the amount of New Starts and Small Starts funds that can be used for constructing the facility to that portion which benefits transit. FTA could calculate the ''total project cost'' of a fixed guideway made eligible under this proviso as follows: (i) The total project cost of the fixed guideway in its entirety, multiplied by (ii) a ratio, (a) the numerator of which would be the expected peak transit vehicle-miles traveled on the fixed guideway and (b) the denominator of which would be the expected total peak vehicle-miles traveled on the fixed guideway. The product of the calculation would be deemed the total project cost attributable to a transit project eligible for funding under New Starts or Small Starts. Eligible fixed guideway costs, in other words, would be proportionate to the transit use of the facility. Alternatively, FTA and the applicant may designate a mutually agreeable amount as the total project cost. In either case, the Federal share, if any, contributed toward such project costs would be made available subject to full compliance with the standard rating criteria for New Starts (or Small Starts) projects, as provided by applicable statutes, regulations, and FTA guidance.

2. Should FTA fund HOV projects to the degree that they provide benefits to public transit riders?

Comment: Sixteen comments were received in answer to this question. Responses to this issue were equally mixed, with similar numbers of commenters supporting and opposing the concept. Those who favored support for HOV projects cited minimum service levels and ridership as necessary conditions. Those opposed were concerned that the already limited FTA funding for New Starts projects would be further reduced by those funds being diverted to projects traditionally funded by the FHWA.

Response and Proposal: FTA has not participated in HOV projects through the New Starts program for the last decade and FTA does not propose to change that policy. However, as stated in the response above, FTA is considering revising the definition of a fixed guideway system, to allow for funding a portion of a new HOT facility that meets certain conditions.

Project Evaluation and Ratings

3. How might the New Starts evaluation framework be changed to better support informed decision-making? Is there a preference for Option 1, Option 2, or something different?

Note: Option 1 was described as an extension of the current framework with the two new criteria in SAFETEA–LU, economic development and reliability of the forecast of costs and ridership, added to the project justification criteria currently used. The project justification rating would result from weights applied to the ratings for each of the component criteria. The project justification rating described in Option 2 relied on ratings of the problem or opportunity that the New Start was intended to address, the effectiveness of the project as a response, and the project's cost effectiveness. The rating for effectiveness would be based on ratings for mobility for all users, mobility for transit dependents, environmental benefits, and economic development. The rating for reliability would be used to raise or lower ratings for project justification and local financial commitment.

Comment: Seventeen comments were received in answer to this question. Of those commenters who chose between Options 1 and 2, the majority favored the Option 2 framework, stating that it allows FTA to more fully understand and appreciate the merits of a particular project. However, these commenters suggested some slight modifications to Option 2, specifically with regard to the treatment of land use. The commenters stated that the treatment of land use solely as a risk/uncertainty measure rather than as a benefit measure under project effectiveness is inconsistent with the intent of SAFETEA–LU.

Those commenters favoring Option 1 stated that it has the benefit of continuity and keeps the rating process stable for project sponsors. One of these commenters wrote that because Option 2 involves the simultaneous introduction of numerous complex factors and includes subjective appraisals by FTA or its contractors for some of the proposed measures, it is less desirable than Option 1. Several of the commenters favoring Option 1 stated that Option 2 overemphasized the role of reliability in the evaluation of projects relative to what was intended by SAFETEA–LU.

A number of commenters suggested that neither Option 1 nor Option 2 is preferred, but rather a new framework should be developed in consultation with the transit industry. However, few commenters provided specifics on how the framework could be structured. Most stated that analytical perfection should not be the goal, and that an overemphasis on quantification of measures misses the need for judgment about some factors that are important yet inherently subjective. One commenter suggested a point system be developed, similar to the one proposed in the Transit Cooperative Research Program Quick Response Project J–06 on the Small Starts program.

Response: FTA has striven to make its evaluations understandable, consistent, and fair, and has emphasized that quantifiable measures best achieve these goals. Nevertheless, qualitative measures have been used when sufficient quantitative measures cannot be identified. Each option relies on a combination of quantitative and qualitative measures.

Given the myriad of benefits associated with New Starts projects, it is difficult to create a New Starts evaluation process to effectively capture all of them. Further, it is not necessary to evaluate all the benefits in order to distinguish the merits of projects. Option 2 allows for a more complete organization of the key project evaluation factors that address different perspectives of a project's merits. These include the nature of the problem/opportunity in the area where the project has been proposed, the project's effectiveness as a response, the degree to which the project generates benefits commensurate with its costs (cost effectiveness), the strength of the local financial commitment, and the uncertainty in the evaluation measures. This organization facilitates a more coherent description of the worthiness of a project for New Starts funding in language that is more understandable to decision makers. In addition, SAFETEA–LU emphasizes the need for more reliable ridership and cost information, adding ''the reliability of forecasting methods'' as a new evaluation consideration, codifying the ''before and after'' study requirement, and requiring FTA to produce an annual report on contractor performance in the development of ridership forecasts and cost estimates. Option 2 responds to SAFETEA–LU by directly incorporating an evaluation of the reliability of the forecasts when FTA evaluates and rates proposed projects.

Proposal: FTA proposes to advance the framework described in Option 2 into the NPRM with one exception that is discussed more fully in the next set of questions. Instead of the nature of the problem or opportunity being evaluated as one of the primary factors of project justification, along with effectiveness and cost effectiveness, FTA proposes that it will be rated and evaluated under ''other factors''. The effect of this change is that the ''nature of the problem/opportunity'' rather than being included as a separate factor, will be considered as an ''other'' factor that can either raise or lower the overall rating for project justification.

4. In what ways could FTA improve the evaluation process to highlight the ''case'' for a proposed New Starts project rather than focus on numerical ratings?

5. Are there any other measures that might indicate and characterize the nature and extent of the problem or opportunity addressed by a proposed New Starts project?

6. How should FTA evaluate or rate projects that address significant transportation problems compared to projects that take advantage of opportunities to improve service?

Comment: Question 4 received 4 comments, question 5 received 7 comments, and question 6 received 6 comments. Questions 4, 5, and 6 addressed FTA's proposal to include in the evaluation of project merit an examination of the nature or extent of the problem or opportunity in a corridor. FTA suggested some measures that might be used to quantify the problem or opportunity in the corridor, including current bus travel speeds, current highway speeds, vacancy rates, value of land, and others.

The majority of commenters wrote that each project may have unique strengths or may be structured to meet specific local objectives. Rather than FTA dictating standard measures that might indicate and characterize the nature and extent of the problem or opportunity, these commenters felt that each sponsoring agency should be left to define the specific measures appropriate to their project. A few commenters provided specific suggestions for measures that might be included in defining the problem or opportunity such as congestion/crowding relief and maintenance of existing mode share.

The majority of commenters were opposed to giving more weight to projects that seek to address demonstrated transportation problems than those projects that take advantage of opportunities.

Response: At the heart of any planning, environmental, or transportation study is an adequate description of the nature and magnitude of the needs that are driving consideration of projects that could require significant funding and/or have significant impacts on the communities in which they are built. Because of the diversity of regional conditions in which New Starts projects are implemented, local areas are in the best position to describe the nature of the needs that a project is intended to address. It is undeniable that projects that address problems that are already severe have more benefits over the long term than those that address problems that are less severe now, but which are forecast to be worse over time. However, the New Starts process, which measures project benefits for forecast periods that are 20 to 25 years into the future, based on annualized costs and benefits, does not account for the year in which the benefits occur. The conventional approach that properly accounts for costs and benefits over time would be to determine them for each year into the future and perform a net present worth computation to today. However, to account for each year of project costs and benefits would pose a significant burden on project sponsors due to the considerable effort required for interim year forecasts of travel and transit system capital and operating and maintenance costs. Therefore, projects designed to take advantage of an opportunity to improve transportation and economic development, while serving areas that have less severe transportation problems compared to what is predicted in the future, are currently advantaged in the New Starts evaluation process compared to areas with current severe problems. Consideration of higher ratings for projects with severe problems currently can reduce this unfair advantage.

Proposal: FTA proposes to use the current ''make the case'' document under ''other factors'' as the basis for evaluating the severity of the transportation or economic development problem that the New Starts project is to address. This document is currently part of the evaluative information that FTA requests of sponsors of New Starts projects. While FTA will not dictate specific measures to describe the nature and extent of the problem or opportunity addressed by the proposed New Start project, it will consider the nature of the problem and opportunity in the overall project justification rating. While actual rating measures will be described in policy guidance, one way to do this is to use a three-tiered rating with the highest rating given to projects with severe transportation or economic problems; the next highest rating to projects with less severe transportation or economic problems; and the lowest rating for projects which are opportunities to improve transportation or economic development. Projects in areas with demonstrable existing problems will be rated more highly than projects in areas where problems are only predicted to develop over the next 20 to 25 years, all else being equal. As congestion is one of the Nation's most daunting transportation challenges, one measure that FTA intends to consider under ''other factors'' is the degree to which a project is a part of an effective congestion reduction strategy. FTA will evaluate projects that are a principal element of an effective congestion reduction strategy, in general and a pricing strategy, in particular, more highly. FTA seeks comment on how it might better measure congestion in the future.

FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. The rating for ''other factors'' will be compared to the combined rating for effectiveness and cost effectiveness and can be used to raise or lower the overall project justification rating.

7. Is there a preference for analyzing regional economic benefits or station area economic development benefits? Could FTA utilize both perspectives in evaluating expected economic development impacts?

8. How might FTA evaluate economic development and land use as distinct and separate measures?

9. Are there any additional methods available to predict economic development impacts? If so, how might these other measures be used to evaluate proposed New Starts projects?

Comment: Question 7 received 7 comments, question 8 received 11 comments, and question 9 received 16 comments. Four commenters expressed a preference for analyzing station area economic development benefits rather than regional economic development benefits. Reasons given for the preference included agreement with FTA's stated opinion that projections of regional benefits would be time-consuming and expensive and that a project's influence on a regional basis would be greatly diluted by other regional economic factors.

Three commenters supported an evaluation of both regional and station area economic impacts. One of these commenters stated that regional forecast models tend to be more reliable than those for smaller station areas.

Commenters generally supported the evaluation of both land use and economic development as distinct and separate measures, though few comments articulated a clear difference between these two measures. Many comments characterized economic development and land use factors interchangeably or stated that land use factors were a component or indicator of economic development potential. One industry association supported characterizing land use impacts as ''buildings and density'' while economic development would be characterized as ''jobs and sales.''

As a means of predicting economic development impacts, several commenters suggested that FTA focus on existing developer agreements and partnerships and the existence of local development incentives.

Response: FTA agrees that both station area economic development and regional economic impacts are useful and valid measures of project benefits. At the current time, however, the analytical tools used to develop regional economic analyses appear to be overly costly and burdensome to impose on every project sponsor. FTA intends to continue research efforts and case studies of both the station area impacts and regional economic impacts to develop tools that can be applied to measure the economic development impacts of New Starts projects. The regulation is structured to allow new measures to be added through policy guidance, following public review and comment.

Whether for land use or economic development, a common theme of the majority of respondent suggestions was to use indicators of the likelihood of increased development in areas near projects. Past research confirms that this increased development is not added to the region but that the effect of transit investments is to attract development around stations that would locate elsewhere if not for the project, in effect redistributing development within a region. Existing land use conditions, existing and planned transit-oriented plans and policies, and projections of increases in employment and revenues are all factors that help to determine whether or not a transit project is likely to have an impact on development. Indeed, it is not possible to ascertain the likelihood of a project's effect on surrounding development unless a number of factors relating to both land use and economic development are considered in combination. Land use considerations provide information about the potential for development or redevelopment and whether that development can occur in a transit-oriented way. Although these are necessary conditions, they are not in themselves sufficient to ensure that the proposed project spurs development, as the local development climate must be robust enough to provide the engine needed for development; the project must be perceived as permanent to entice developer interest; and the project must increase accessibility to the area. Because all these factors must be viewed in combination, it is critical that land use and economic evaluation criteria be combined into a single criterion.

Proposal: Until additional research is completed, FTA proposes to implement an evaluation measure for land use and economic development impacts that focuses on the potential for station-area development impacts of the proposed projects. The best available measures of likely land use and economic development benefits can be derived from the circumstances in which the projects would be implemented rather than from actual forecasts of development. This approach is necessary because forecasts of additional development due to New Starts projects require considerable resources and contain considerable uncertainty.

FTA proposes to use a single criterion to ascertain the likelihood of increased transit-oriented development resulting from a New Starts project. Given the important role that land use plays in increasing development, in developing specific measures for this criterion, FTA will draw upon many of the same factors used in its current evaluation of land use. These will be augmented with indicators that provide further incentives to development. A survey of available research on the development impacts of transit suggests two primary transit-related drivers of development (1) increased accessibility and (2) permanence of the transit investment. While the actual FTA proposes to evaluate whether or not the conditions necessary to support economic development exist in the project corridor by using the following specific measures: (1) Current land-use conditions, (2) development and land-use plans and policies, (3) the economic development climate in the corridor and region, (4) the project-related change in transit accessibility for developable areas in the corridor; and (5) the economic lifespan of new transit facilities proximate to those developable areas. FTA seeks comment on how it might better measure land use/economic development in the future.

10. Are there any other measures of mobility benefits that could be used to evaluate New Starts projects?

Comment: Ten comments were received in answer to this question. Commenters suggested that FTA should examine ways to better capture the following in the mobility benefits measure: benefits to highway users; benefits resulting from special events trips; benefits resulting from non-home-based trips; and benefits generated by automobile trips not taken due to enhanced pedestrian activity in the corridor.

Response: FTA is committed to incorporating highway benefits into its mobility and cost effectiveness rating in every way feasible. In fact, the ''SUMMIT'' software used by FTA to calculate user benefits already has the ability to capture benefits to all transportation system users (including highway users). Further, the definition of user benefits included in the current regulation includes benefits to highway users. However, this function of the SUMMIT software cannot currently be used because FTA has found that most travel models around the country do not accurately predict changes in highway speeds resulting from transit improvements. This is a problem with travel models nationally. FTA does not have the resources on its own to correct the deficiencies but is working with the Federal Highway Administration to address this issue. The rule is structured in a way that once reliable forecasts of such benefits can be produced, they can easily be incorporated into the measures of mobility and cost effectiveness through the policy guidance. In addition, FTA proposes to adopt other measures on a temporary basis that would provide an indication of the congestion relief benefits to highway users. Such measures would be based on measures of current congestion in the project corridor. FTA seeks comment on how it might better measure congestion in the future.

Likewise, the SUMMIT software used by FTA already captures the benefits resulting from non-home based trips to the extent they are accurately estimated in the local travel model. Typically, few areas of the country have good data on the non-home-based trip market, which affects the ability of the local model to develop accurate forecasts. If a local area is willing to put resources into a data collection effort to improve the forecasts for this market, the Summit software used by FTA to calculate user benefits will automatically capture any additional benefits that may accrue.

FTA has always worked individually with various project sponsors to better capture the benefits resulting from special events markets. Local travel models are not generally structured to capture ridership/benefits for this market. Consequently, FTA has helped project sponsors in the past to include ''off-model'' calculations to capture these benefits and will continue to do so in the future.

FTA acknowledges the value of the trip not taken in terms of reducing congestion but has not yet been able to develop methodologies capable of making reliable estimates of this benefit.

Proposal: FTA is proposing to adopt a definition of user benefits that explicitly includes congestion relief benefits to highway users and pedestrians. FTA is supporting the Office of the Secretary of Transportation and the Federal Highway Administration to improve travel forecasts so that the transportation system user benefits to highway users can be calculated reliably and be included in the cost effectiveness calculation. The Department of Transportation expects to release a Request for Proposals/Work Statement for model improvements in Fall 2007. In the interim, as discussed below under item 4 of ''Additional Discussion Items for Comment,'' FTA will explore the use of surrogate measures which can assess the degree to which a proposed New Start results in congestion relief. These measures could include the current level of service, delay compared to free flow speed, or the average daily VMT on any highway facility in the project corridor.

Absent any specific suggestions for other measures of mobility benefits, FTA will use its policy guidance to set specific measures for mobility. Two measures that FTA considers to have merit are user benefits per passenger mile for those using the New Starts project, and the absolute number of passengers using the project. The first would measure the magnitude of the user benefits for each traveler and whether the savings are significant, while the second would measure the number of travelers affected.

11. Does the proposed (low-income mobility) measure entail implementation difficulties for measurement, reporting, or comparison between projects?

12. Are there any other measures that FTA should consider when evaluating

the benefits that accrue to transit dependent populations?

Comment: Question 11 received 3 comments and question 12 received 6 comments. In the Guidance on New Starts Policies and Procedures, FTA proposed using a new measure for determining mobility for transit dependents—the share of user benefits accruing to passengers in the lowest income stratum or to the lowest auto ownership stratum (depending on which is used in the local travel model) compared to the regional share of the lowest income stratum or lowest auto ownership stratum. All commenters to Question 11 noted that the proposed measure may result in some inconsistencies among projects because of this difference in how local models stratify trip takers. An additional comment noted that in densely developed urban areas, transit dependency does not correlate with either income or car ownership.

The comments included the following suggested alternative populations to include when calculating the benefits to transit dependent populations, but did not identify a specific way to measure the benefits to these populations: Elderly persons, persons with disabilities, and university students. One commenter suggested that FTA should include in the measure how well the overall transit system serves job centers, but there was no specific discussion of how this might be measured.

Response: FTA acknowledges that examining the benefits that accrue to the lowest income stratum or the lowest auto ownership stratum from the local travel forecasting models is only a surrogate for determining the benefits to transit dependents. But this information is already available from all local travel models and does not require development of additional data by project sponsors. Furthermore, since the measurement relies on the change in service for that stratum in a given city, it is not necessary for every city to use the same stratum in order for the measure to allow for comparisons between cities.

FTA believes that whatever measure is used, it should have a way of identifying how the project serves transit dependents rather than simply characterizing the project corridor demographics. Unfortunately, local travel models do not usually stratify trips by some of the suggested categories—elderly persons, persons with disabilities, and university students. Consequently, the benefits accruing to these populations cannot be calculated.

Proposal: The regulation simply states that FTA will measure Mobility Benefits. The actual measures will be listed in policy guidance. One approach that FTA is considering is to utilize the share of user benefits accruing to passengers in the lowest income stratum or to the lowest auto ownership stratum (depending on which is used in the local travel model) compared to the regional share of the lowest income stratum or lowest auto ownership stratum for the region for evaluating mobility for transit dependents.

13. How could FTA improve the current method of evaluating environmental benefits to produce a more useful measure?

Comment: Three comments were received in answer to this question. FTA currently measures environmental benefits from proposed New Starts projects by examining the projected change in regional vehicle miles traveled (VMT), various types of vehicle emissions, and energy consumption. All comments received indicated support for continuing the current measures given that other replacement measures are not readily available. One commenter expressed concern that the current measures are biased in favor of projects that help reduce highway congestion and against those projects that help relieve transit congestion. Since a project that is meant to reduce existing congestion on a transit system does not reduce VMT, no environmental benefits would be shown under the current method. The commenter stated that the rating process should make accommodations for this situation, but acknowledged that no other measures of environmental benefits are readily available to address this problem.

Response: The current measure is limited to capturing reduced emissions, projecting the change in VMT and energy consumption as a result of automobiles being taken off the road when travelers use transit instead of driving. However, even in that case, the change is usually very small compared to emissions region wide, limiting the usefulness of the measure.

Proposal: FTA proposes to continue to evaluate environmental impacts, with the actual measures identified in policy guidance. FTA is currently conducting research to try to develop other measures that better distinguish the environmental merits of projects.

14. Should FTA rely on the cost effectiveness evaluation to address the operating efficiency criterion?

15. If not, in what way could agency operating cost information be used to compare New Starts projects to each other?

Comment: Question 14 received 6 comments and question 15 received 11 comments. Four comments received were in favor of eliminating the operating efficiency criterion because of the inability of the measure to distinguish in a meaningful way between projects. However, two commenters disagreed with the proposal, stating that operating efficiency can be a significant factor in comparing a single new rail line with the transit system as a whole.

Response: In the past, FTA has used the projected system-wide change in operating cost per passenger mile to measure the impact of proposed New Starts projects on operating efficiency. However, this measure has not proven to be a meaningful way of distinguishing among proposed projects. On the other hand, FTA's evaluation of cost effectiveness has always included the annual system-wide operating and maintenance expense as a component of annualized cost. Therefore, the impact of the project on operating and maintenance costs is already captured in the calculation of cost effectiveness.

Proposal: FTA proposes to remove the operating efficiency factor as a separate evaluation criterion, relying instead on the evaluation of cost effectiveness to address this statutory criterion. Project sponsors may still calculate operating efficiency if they find it useful for their own comparisons.

16. Is it desirable for FTA to attempt to incorporate other measures of effectiveness besides mobility when evaluating cost effectiveness?

17. If so, what measures might be incorporated and how?

18. How could FTA combine transportation system user benefits measures with economic development measures into a valid measure of cost effectiveness?

Comment: Question 16 received 2 comments, question 17 received 1 comment, and question 18 received 8 comments. For all three of the questions, comments received were opposed to incorporating other measures of effectiveness in the evaluation of cost effectiveness. Reasons for the opposition included the potential for ''double-counting'' benefits and the increased complexity that would result from adding other measures.

Response: FTA sees value in acknowledging additional benefits of transit projects when comparing benefits to costs. There are two major components of these additional benefits that are distinct from those currently calculated: Travel time saved by users of the highway system who experience less congestion as a result of fewer vehicles on the highway; and transportation benefits from more compact development patterns. For the first, FTA has discovered that current highway assignment models do not reliably predict the reductions in travel time for highway users. Research and development of improved travel models are needed to ensure that highway travel time benefits are reliable. For the second, additional development would have to be forecast with and without the New Starts project and travel models employed to ascertain the user benefits that result. The analytical analysis required to accomplish this is beyond the capabilities of the current demand forecasting models in virtually every urban area in the nation. As a result, at this time there is no analytical approach that can be implemented to determine the additional economic development benefits that should be added to those currently predicted for travel time savings. However, FTA has identified a surrogate for including economic benefits to the travel time savings calculation. The breakpoint for cost effectiveness already includes an assumption that the non-transportation benefits, including economic development, are approximately equal to the value of the travel time savings for a project. Therefore every city is given the same credit for other benefits.

Proposal: Because of the difficulty of incorporating additional measures into its evaluation of project cost effectiveness, FTA is proposing to maintain its current cost effectiveness measure of annualized cost per hour of user benefits at this time.

19. Are there any ways that FTA could improve the evaluation of financial capability?

Comment: Five comments were received in response to this question. Two comments were received with specific suggestions for improvements or changes to the financial evaluation process. The first comment stated FTA should consider the degree to which private sector resources are leveraged to assist with project financing (public-private initiatives) as well as the degree to which synergies between Federal funding sources are leveraged to build and operate the project. The second comment stated that FTA should consider a broader set of indicators to rate the current capital condition of an agency rather than just the average age of the fleet and the agency's bond ratings. The commenter stated that capital condition should be evaluated in the context of the project sponsor's full fleet management plan, including replacement cycles, miles between breakdowns, and budgeted purchases.

Three additional comments concerned with the current evaluation methodology were received, but the commenters did not suggest ways to improve the evaluation methodology. Other points noted in the five comments indicated the policy guidance was not clear with regards to who will assess financial capability. One commenter stated that the current process examines the reliability of capital, operating, and maintenance cost estimates under both the project justification evaluation and the financial capability evaluation and requested more detail from FTA on exactly how financial capability is currently evaluated. Lastly, one commenter stated that the requirements for operating and maintenance plans are more detailed than necessary for systems with a long history of consistent performance.

Response: Although not specifically accounted for in the financial capability evaluation process, FTA does consider the degree to which private sector resources are utilized to assist with project financing when making funding recommendations. In addition, FTA has recently initiated the Public Private Partnership Pilot Program outlined in SAFETEA–LU as a means to distinguish projects that are supported by private sector resources.

Section 3011(c) of SAFETEA–LU authorizes the Secretary of Transportation to establish and implement the Pilot Program to demonstrate the advantages and disadvantages of public-private partnerships (PPPs) for certain new fixed guideway capital projects. In particular, the Pilot Program is intended to study whether, in comparison to conventional procurements, innovative contracting arrangements, known as PPPs, better reduce and allocate risks associated with new construction of such projects, accelerate their delivery, enhance their operating performance once they are constructed and improve the reliability of projections of project costs and benefits. This Pilot Program will evaluate this view as applied to the procurement and operation of eligible projects, which may include projects funded under the Section 5309 Capital Investment program.

On March 22, 2006, FTA issued a notice in the **Federal Register** (71 FR 14568), soliciting comments and requesting preliminary expressions of interest in sponsoring a project under the Pilot Program. Five potential project sponsors submitted expressions of interest. On January 19, 2007, FTA issued a notice in the **Federal Register** (72 FR 2583) establishing the Pilot Program's operating criteria and soliciting formal applications.

FTA believes that the process of establishing Public-Private Partnerships, which include innovative arrangements for operating New Starts projects, can result in contractual arrangements that can reduce and/or improve the reliability of forecasts of operating costs on New Starts systems. Arrangements under which private sector interests take responsibility for the design, construction, operations, finance, and maintenance of projects can result in transferring much of the long term risk of project capital and operating costs to the private partner. Alternatively, the process of procuring such arrangements can identify changes that can produce significant improvements in the efficiency of publicly provided services through innovative contractual arrangements. As a result, projects which utilize such approaches are likely to be rated better, because operating costs will be lower (producing better ratings of cost effectiveness), and the reliability of the estimates of such costs will be higher (producing higher ratings of reliability). FTA asks for specific comments on this approach under question 5 under the section ''Additional Discussion Items for Comment.''

FTA has tried whenever possible to base the financial ratings on readily available information that all project sponsors consistently calculate and report. Of the additional items mentioned by one commenter for inclusion in the capital condition subfactor rating, FTA believes that two—replacement cycles and budgeted purchases—are already captured in the average fleet age calculation. Clearly the average fleet age will change from year to year as replacement vehicles are purchased and older vehicles retired. This is true for all grantees. The other item mentioned by the commenter—miles between breakdowns—is not always routinely prepared by all transit agencies or prepared with a consistent methodology. For example, different operators may classify breakdowns in a different way. Therefore, FTA feels this would not be a good measure to use. FTA believes the existing measures for capital condition are fair, easily reported, and consistently applied to all grantees.

In response to the comment that more detail is needed from FTA on exactly how financial capability is evaluated, FTA would like to point out that each year as part of the New Starts Reporting Instructions and again as an appendix to the Annual Report on New Starts, FTA includes a detailed description of the entire rating process, including a discussion of the financial capability evaluation and rating process. Included in this appendix are two matrices that outline specifically what is required in the financial plan to receive each level of rating (from low to high) for each and every financial subfactor used in the evaluation. In addition, FTA has posted on its Web site the guidance that it provides to its financial contractors who help develop the financial capability ratings. This provides the industry with additional insight into exactly how the ratings are determined for those areas of the evaluation that are more subjective than quantitative. FTA feels the process is very well described, standardized, and completely transparent.

Proposal: FTA proposes to keep the current financial capability evaluation and rating process since the requirements were not changed by SAFETEA–LU, the current process has proven to be useful for distinguishing among projects, and the process is thoroughly documented and transparent. However, FTA will continue to issue the specific measures for each factor for review and comment in its policy guidance. In addition, the proposed regulation would provide for an assessment of the degree to which project proposals include innovative contractual arrangements which produce significant reductions in operating expenses, or which improve the reliability of forecasts of operating costs.

20. Should the existing weighting factors used to develop the financial ratings be changed?

Comment: Seven comments were received in answer to this question. Of the comments received, approximately half were in favor of maintaining the existing weights used to develop the financial ratings, and half were opposed, stating that the current weights are awkward, provide little insight, and should be changed. Of those opposed to the existing weighting scheme, one commenter proposed a simple pass/fail approach for evaluating the capital financial plan as well as a much less rigorous review of the operating financial plan. Other comments received concerned retaining the credit given on the New Starts share rating when higher local shares are proposed.

Response: Not only does SAFETEA–LU require FTA to rate projects on both project justification and local financial commitment on a five tier scale from low to high, but also FTA sees merit in showing gradations in financial plan ratings versus employing a simple pass/fail approach, particularly with regard to making tough funding recommendation decisions. A less rigorous evaluation of the operating and maintenance financial plan, as suggested by one commenter, is inconsistent with the requirement added by SAFETEA–LU that FTA must ensure local funding is available to operate, maintain, and re-capitalize the proposed project as well as the rest of the transit system without a reduction in existing services or levels of service. The change in SAFETEA–LU to this criterion was clearly intended to strengthen, not weaken, FTA's review of the operating and maintenance financial plan. FTA believes the current financial capability evaluation methodology meets the requirements of the law.

FTA agrees that project sponsors should be given credit when higher local shares are proposed. FTA proposes to maintain the non-New Starts funding share as one of the financial capability evaluation criterion. FTA proposes to continue the practice of giving project sponsors a higher rating based on a higher non-New Starts share and will set the measures for this in its policy guidance. In addition, FTA may consider the non-New Starts share during the decision to recommend a project for a Full Funding Grant Agreement (FFGA). However, consistent with SAFETEA–LU, FTA will also consider the project sponsor ability to provide only a 20 percent match and will not rate the project's local financial commitment at less than Medium, solely on the basis of a 20 percent match, so long as the project sponsor can demonstrate that the 20 percent match is based on the limited fiscal capacity of State and local governments. In this way, FTA can address the SAFETEA–LU requirement that FTA consider State and local fiscal capacity at the same time that it addresses the SAFETEA–LU requirement that it gives priority to financing projects with a higher-than-required non-New Starts/Small Starts share.

Proposal: The NPRM proposes that the local financial commitment rating consist of equally weighting the ratings of the capital and the operating financial plan.

21. How might the FTA incorporate measures of reliability into project evaluation?

Comment: Four comments were received in answer to this question. All comments received were opposed to incorporating measures of reliability into project evaluation, stating that the New Starts process already includes a number of mechanisms to evaluate the reliability of forecasts so that additional reviews are unnecessary. In addition, one commenter stated that peer projects are difficult, if not impossible, to identify.

Response: Although the New Starts process certainly includes mechanisms intended to improve the quality of forecasts, reliability can vary considerably for a variety of reasons that relate to (1) transit-orientation of existing and future land uses and land-use plans and policies, based on the degree to which project effectiveness depends upon projected changes in future land use patterns and the likelihood of those changes occurring;

(2) Project sponsor experience with implementing previous projects; (3) Industry experience with the proposed project type; (4) The reliability of forecasting methods used to prepare those estimates, as well as the reliability of the information provided to FTA for its evaluation of the project; (5) How the opening year project ridership compares to that estimated for the 20 to 25 year planning horizon; (6) Enhanced reliability of operating cost forecasts due to use of innovative contractual arrangements; and (7) Mitigation actions the project sponsor takes to help improve the reliability of the information submitted in support of a proposed project. For example, travel forecasts made for downtown circulator projects are by their very nature less reliable than those for projects intended to attract a predominately commuter-oriented travel market. This is because travel models have traditionally been better able to predict the travel behavior of commuters, and historically have been poor predictors of travel involving the type of discretionary trips that a downtown circulator is intended to attract. Other travel markets that can be problematic to predict include suburban-to-suburban travel and park-and-ride travel in areas with few existing park-and-ride lots. In addition, capital cost estimates historically have been problematic for tunnels and elevated structures. Moreover, recent construction experience has shown that commodity prices can be volatile and that the bidding environment plays a much larger role in cost estimates compared to the past.

Project sponsors of new transit projects commonly ask for peer reviews to help them assess the quality of their cost and ridership forecasts. While FTA acknowledges that no two projects are identical, drawing on past experience from a similar type of project has proven invaluable to improving the cost and ridership forecasts of the newer project because these projects often have enough features in common to gain insights that result in improved forecasts.

Proposal: SAFETEA–LU specifically requires FTA to evaluate projects based on the reliability of their forecasts. Furthermore, FTA's experience over the past three decades indicates that there is a considerable range of reliability in forecasts based on the factors discussed above. FTA proposes to consider reliability of the costs and ridership forecasts in its evaluation and to adjust, either upward or downward, the ratings of the individual criteria that rely on these forecasts. The measures for reliability will be identified in policy guidance but are likely to be designed to address the issues addressed above, such as transit-orientation of existing and future land use plans and policies; project sponsor experience with implementing previous projects; industry experience with the proposed project type; the reliability of the forecasting methods; a comparison of the opening year ridership to that estimated for the planning horizon covering no less than 20 years; use of innovative contractual arrangements which improve the reliability of cost estimates; and mitigation actions taken by the project sponsor.

22. How should information on the reliability of forecasts be modified or updated as a proposed project advances through project development?

Comment: Six comments were received in answer to this question. One comment was received stating that FTA and the project sponsor should work to improve reliability of forecasts as projects advance through project development. The remaining respondents addressed the unrelated topic of how and when to solidify funding sources.

Response: FTA agrees that with more detailed information generated as the project progresses through project development the reliability of forecasts should improve over time. However, FTA's experience also shows that even with this updated information, forecasts are by their very nature predictive and that it is only through actual completion of the project that true costs and ridership are known.

Proposal: FTA acknowledges that it is impossible to totally remove uncertainty from any stage of the process. However, the measures prescribed by FTA are written broadly enough to allow FTA to tailor its assessment of reliability to reflect the stage that the project is in. Therefore, FTA will use these measures to assess the reliability of forecasts as a proposed project advances through project development and use the most recent information available in making its assessment of reliability.

23. How should FTA help to ensure that contingencies adequately reflect the uncertainties in project design, prices, and quantities at each stage of project development?

Comment: Three comments were received in response to this question. Four themes or suggestions emerged from the comments that relate to the treatment of uncertainties, project costs, and project contingencies. In the first theme, dealing with project uncertainties, many commenters stated that FTA's project management oversight (PMO) program and risk assessment processes constitute a worthwhile and sufficient approach. In addition, one commenter stressed the value of peer review for cost estimates. Many commenters suggested that uncertainties could be reduced through simplification of FTA's process, specifically through implementation of policies to screen out unworthy projects earlier (i.e., at entry to preliminary engineering (PE)) and to execute FFGAs within six months of final design entry.

A second theme, calling for greater collaboration between project sponsors and FTA, was seen throughout the comments. Collaborative relationships and ''shirt-sleeve'' working sessions were suggested as a way of establishing appropriate contingency amounts after risk assessment, improving project reviews ''through a series of intense partnering sessions,'' achieving greater accountability for project success, and assisting new project sponsors or sponsors with previous difficulties.

The third suggestion was that FTA should use an index other than the GDP deflator to adjust cost effectiveness breakpoints given that supporting studies show that construction costs over the past five years have risen at rates up to17 percent faster than costs reflected in the GDP deflator.

The fourth theme is a corollary to the third and pertains to cost management procedures. Rather than requiring project sponsors to carry extraordinarily large contingencies that may jeopardize a cost effectiveness rating, many commenters suggested an incentive approach to cost control, specifically allowing sponsors to retain remaining funds at construction completion. In addition, commenters stated that project sponsors should be allowed to incur costs, even if they exceed the FFGA amount by more than 5 percent, as long as the project sponsor is responsible for paying for the cost increases out of its own funds. The commenters did feel, however, that FTA should provide New Starts funding flexibility when a project experiences cost increases due to sudden market shifts beyond the project sponsor's control.

Response: Although SAFETEA–LU calls for projects to include adequate contingency funds ''to cover unanticipated cost increases,'' the amount of contingency required depends on the amount and nature of uncertainties. FTA agrees that reducing uncertainties earlier in the process benefits everyone. FTA intends to pursue this through earlier use of its risk assessment and project management oversight programs, as well as peer reviews of cost estimates. The amount of contingency at various points can be guided by industry standard percentages but should be established for a specific project through collaboration between FTA and the project sponsor after reviews have been conducted. FTA will further study the commenters' suggestions regarding early screening of projects, rapid execution of the FFGA, institution of more collaborative processes, the makeup of the cost effectiveness breakpoints, and cost management. Nothing in the proposed regulation would preclude FTA from making changes in these areas through its policy guidance.

Proposal: FTA proposes to add a requirement, taken directly from SAFETEA–LU, as part of the criterion on the stability of capital funding plan that takes into account the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases. FTA will collaborate with project sponsors to ensure that project contingencies are appropriate to the specific uncertainties related to the proposed project and to the level of design. For the purpose of rating a project to address the reliability of the cost estimate, FTA will rely in large part on evaluations by its project management oversight contractors.

24. What weights should FTA apply to each measure?

Comment: Six comments were received in answer to this question. FTA proposed to continue the equal weighting of the local financial commitment and project justification ratings when determining the overall project rating. Of the comments received on this question, there was no clear majority of opinion. One commenter agreed with FTA's equal weighting of local financial commitment and project justification. One commenter stated that local financial commitment and project justification should not be combined to arrive at an overall project rating. This commenter stated that the local financial commitment rating should merely be pass/fail, and that the project justification rating would prevail for the overall project rating if local financial commitment were found to be worthy of a passing grade. Another commenter suggested an entirely new weighting scheme: 20 percent weight each to mobility improvements, cost effectiveness, and financial capability; 15 percent weight each to land use and economic development; and, 10 percent weight to the remaining measures. The remainder of the comments focused solely on how the project justification rating is derived, stating that cost effectiveness should not be weighted greater than one third of project justification and should not be used as a project veto if it does not meet FTA's specified threshold.

Response: SAFETEA–LU places equal emphasis on project justification (referred to as ''project merit'' in the January 19, 2006 Guidance on News Starts Policies and Procedures) and local financial commitment (referred to as ''financial capability'' in the January 19, 2006 proposed Guidance on New Starts Policies and Procedures). As stated previously, FTA feels there is merit in showing gradations in financial plan ratings (low to high) versus employing a simple pass/fail approach, particularly with regard to making tough funding recommendation decisions. Furthermore, FTA believes that moving to a pass/fail rating approach for financial commitment as suggested by one commenter would diminish its importance relative to project justification, going against the apparent intention of SAFETEA–LU.

Regarding the new weighting scheme proposed by another commenter, FTA has stated previously the general difficultly in measuring economic development benefits and the concern of ''double-counting'' when rating and evaluating economic development versus land use. Consequently, until such time as better measures are developed for these areas, the proposed weighting scheme would be very difficult to implement. With regards to not using a cost effectiveness to veto a project, in the past there has been considerable support by the Administration to establish a minimum standard for a project's cost effectiveness in order for the project to advance through project development.

Proposal: FTA proposes to give equal weight to both project justification and local financial commitment in calculating the project's overall rating. Within the Project Justification rating, cost effectiveness and effectiveness are proposed to be weighted equally at 50 percent. Further, the NPRM proposes that the effectiveness rating be comprised of the following criteria and weights: 40 percent to land use, 40 percent to mobility for the general population, 10 percent to environmental benefits, and 10 percent to transit dependent mobility. Finally, under the proposed regulatory text, a project would not be eligible for a funding recommendation unless it achieves a medium or better rating on cost effectiveness.

25. How can the reliability of forecast measures be used to adjust New Starts project ratings?

Comment: Four comments were received in answer to this question. Three of these comments stated opposition to FTA's proposal to add uncertainty and risk of the forecasts as evaluation criteria or stated that additional guidance and clarification is needed before implementation. The primary reason given for opposing the proposal was that determining the uncertainties in the forecasts would require lengthy reviews that would ultimately add cost to the project. The commenters also stated that the additional analyses would not eliminate risk and uncertainty in the forecasts.

The one commenter supportive of the proposal agreed with FTA's simple strategy for incorporating the uncertainty measures into the ratings process. That is, the uncertainty ratings should be used to decide the outcome for ratings at breakpoint between two ratings.

Response: FTA is not proposing to eliminate risk and uncertainty from forecasts, which is impossible, but for project sponsors to report the nature of the uncertainty as a result of their analysis. This will allow both the project sponsor and FTA to use that information as they make decisions on whether to advance the project.

More explicit representation of uncertainties is required by SAFETEA–LU because reliability of forecasts is now one of the listed criterions for project justification. An explicit representation of uncertainties is also essential if the project sponsor and FTA are to meet other requirements in SAFETEA–LU. For instance, an early discussion of uncertainties is essential if the project sponsor is to understand and explain the reasons that forecasts may change between entry into PE, entry into final design, and after opening the project to revenue operations as required for before/after studies, as well as for FTA to accurately assess contractor performance. An understanding of uncertainties also provides information to FTA as it implements SAFTETEA–LU's cost incentive provision, which allows FTA to provide more New Starts funding if project costs are no more than 110 percent, and ridership no less than 90 percent, of the estimates made when the project was admitted into PE.

Current FTA guidance on capital cost estimation and travel forecasting discusses the role of uncertainty in forecasts and describes how these uncertainties could be reported. However, to ensure that uncertainties are being reported consistently by all grantees, FTA intends to issue more explicit guidance of what factors should be included in this discussion.

Proposal: FTA believes a requirement to adjust ratings based on the reliability of the data should be included to satisfy several SAFETEA–LU requirements. Understanding uncertainty will allow FTA to better recommend funding among projects with similar costs and benefits, but with significant differences in uncertainties. A better understanding of uncertainties will facilitate a better understanding of why costs and ridership vary from predictions so that better approaches to forecasts can be developed for future projects. Additionally, because a major purpose of planning and project development studies is to disclose information for decision-making, a more explicit representation of uncertainties better informs decision-makers by providing richer information about the likelihood of achieving the project benefits and costs. FTA will consider the reliability of operating costs certainties by looking at whether there are any innovative contractual arrangements which produce significant reductions in operating expenses, or which improve the reliability of forecasts of operating costs.

Project Development Procedures

26. Does the proposed requirement to have local endorsement of the financial plan address FTA's desire to enhance the degree of confidence in the likelihood of proposed funding sources to materialize?

27. Do project sponsors foresee any potential problems securing these local endorsements?

Comment: Question 26 received 3 comments and question 27 received 7 comments. FTA proposed a requirement that all proposed sources of funding be specified in the financial plan and that each sponsoring agency provide a letter endorsing the proposed financial strategies and funding amounts. The proposal was meant to increase FTA's confidence level earlier in the project development process (prior to entry into PE) that the project has the support of the proposed funding partners. Almost all commenters misunderstood the proposal to mean that letters of commitment of local funding would be required earlier in the project development process. As a result, of the 3 comments received in response to this question, only one (an MPO) thought the proposed requirement had merit and would enhance the degree of confidence in the likelihood of funding sources materializing. The MPO also stated that the inability of a project sponsor to get the required endorsement would be most telling. All other commenters stated that requiring letters of endorsement (which they interpreted as letters of commitment) from local agencies on the financial plan early in the project development process was premature. They indicated it would be difficult to get financial commitments from local governments without a corresponding commitment at the same time from FTA. Others stated that FHWA does not require a similar endorsement from State and local governments for highway projects.

Response: The requirement to obtain a letter of endorsement of a financial plan is not intended to be as stringent as having to obtain a firm letter of commitment of funding. FTA believes that this requirement, so clarified, should not be that difficult to address, so long as the project sponsor has worked closely with the proposed funding partners, and these partners have actually developed an understanding of their proposed roles. FTA acknowledges that, as with many of the New Starts requirements, there is not a similar requirement for highway projects. However, the great majority of Federal aid highway projects are funded through FHWA formula grants, and the selection of projects is the prerogative of the States, in cooperation with the metropolitan planning organization designated for the area per 23 U.S.C. 134 (j)(5) and (k)(4), and 49 U.S.C. 5303 (j)(5) and (k)(4); conversely, major transit capital investments are funded through the Section 5309 Capital Investment discretionary program, and projects are selected for funding on a competitive, nationwide basis.

Proposal: FTA is proposing to require letters of endorsement for any non-grantee controlled or non-committed source of funding specified in the financial plan prior to entry into PE and with each annual New Starts submission. In the letter of endorsement, each sponsoring agency would need to give their support to pursuing whatever steps are necessary for them to ultimately commit the proposed financial strategies and funding amounts.

28. Are there any other policies or requirements that could enhance FTA's confidence in the funding plans for proposed New Starts projects?

Comment: Four comments were received in answer to this question. Three comments were received that suggested other policies or requirements FTA might use. Two transit agencies discussed including a timeline for obtaining funding commitments in a project development agreement (PDA). The fourth comment suggested that FTA consider the degree to which the project sponsor has expended funds on the project at its own risk as an indication of the agency's commitment to the project.

Response: FTA agrees that a PDA could be used to lay out timelines for receipt of funding commitments, but this would not provide FTA with any added confidence that the funding would actually materialize. FTA also agrees that the degree to which a project sponsor has expended funds on a project is an indication of the project sponsor's commitment to the project. However, FTA does not agree that this in and of itself reflects local political support from other potential funding partners. Too often, project sponsors have been unable to obtain sufficient local funding from outside sources, even though they have expended a considerable amount of their own resources to undertake alternatives analysis and PE.

Proposal: Lacking any other suggestions, FTA will rely on the requirement that all proposed sources of funding be specified in the financial plan and that each sponsoring agency provide a letter endorsing the proposed financial strategies and funding amounts. Again, such a letter would not constitute a commitment on the part of a proposed funding partner, but only an indication that the funding partner understands and is willing to proceed with further development of its proposed role in funding the project. In addition, FTA would continue to require that funding commitments be provided as the project moves through the process, with 50 percent of the commitments in place as a condition of entry into final design, and 100 percent of the commitments in place prior to execution of a FFGA.

29. In what ways could FTA describe the baseline alternative more clearly?

Comment: Twelve comments were received in answer to this question. Two commenters said the no-build should be the baseline. One commenter stated that the use of a baseline that is different than the no-build puts it in conflict with the National Environmental Policy Act (NEPA). Others stated that it should be the Transportation System Management (TSM) alternative, defined succinctly as the best than can be done without construction of a new fixed guideway, and that it should be identified as such. Other concerns included changes to the baseline late in the project development process and the opinion that too much emphasis is placed on the baseline alternative given that in most circumstances it would not be built.

Response: FTA believes that a properly-defined TSM constitutes an appropriate baseline for the purpose of estimating New Starts project justification criteria and that, because there are only limited circumstances in which the use of a no-build alternative is justified, referring to the baseline by its ''intended'' name—the TSM alternative—makes sense. FTA does not support using the no-build as the baseline because a consistently defined TSM alternative is required to ensure a level playing field when comparing projects across the country. FTA has not required that the TSM alternative be carried forward in NEPA documents when the project sponsor has adequately described its reason in the NEPA document for not carrying the alternative forward for detailed analysis. Both FTA's oversight of the technical work supporting alternatives analyses and the project sponsor's performance of the tests identified in the policy guidance prior to FTA approval of the baseline alternative are intended to obviate the need for review and adjustment of the baseline during subsequent project development stages. The fact that SAFETEA–LU establishes a Small Starts program that provides a source of capital funding for low-cost major transit investments undermines the argument that TSM-level improvements cannot be built. This undercuts the argument that it is not fair to evaluate the merits of a New Start against an ''academic'' TSM, because the TSM is now a viable alternative, which could receive funding through the Small Starts program category.

Proposal: FTA is already in the process of enhancing its guidance on the development of the New Starts baseline alternative. Because FTA is only clarifying, rather than changing, its existing guidance, such clarification can be addressed as technical guidance, without affecting any of the higher-level principles articulated in the existing regulation and carried forward in the NPRM. The guidance will clarify FTA's expectations that the New Starts baseline will be identical to the TSM alternative in all but very rare cases, and will use that terminology to describe the attributes of the baseline. Since in most cases the baseline will be the TSM alternative, the guidance will describe the process for developing the TSM alternative, the appropriate tests for optimizing the TSM alternative, and the rationale for these tests. The guidance will further provide examples for the development of appropriate TSM alternatives in specific environments.

30. Should there be a way to report project benefits of the proposed New Starts project compared to the no-build alternative outside the cost effectiveness evaluation?

Comment: Two comments were received in answer to this question. Both commenters answered in the affirmative, although neither provided suggestions on how to report benefits.

Response: In response to comments submitted by the transit industry and in recognition of the desire to simplify the New Starts process, the December 2000 New Starts Final Rule eliminated the requirement for an evaluation comparing the New Starts criteria for the build alternative against both the no-build and the TSM alternative. Instead, the regulation promulgated the current requirement that projects be evaluated against a single ''baseline'' alternative, typically the TSM alternative. Permitting an alternative presentation of project benefits (build vs. no-build) would result in additional work for project sponsors and could lead to confusion over the true representation of project benefits. Nevertheless, FTA has always allowed project sponsors to use criteria and measures in their studies that depart from those used by FTA, but which address local concerns.

Proposal: FTA will maintain the requirement as stated in the current regulation that cost effectiveness will be based solely on a comparison between the proposed project and the baseline alternative, while clarifying that the baseline in almost all cases is the TSM alternative and providing enhanced guidance on the development of the TSM alternative.

31. How recent should on-board surveys be to ensure that the information is still valid?

32. Are there cases where an on-board survey less than 5 years old could be out of date? If so, how might FTA be sure of the usefulness of on-board survey information?

Comment: Question 31 received 5 comments and question 32 received 3 comments. One commenter believed that on-board surveys were not needed, stating that other data sources would suffice. Four commenters suggested surveys be conducted within the past 5 to 10 years.

Response: Given the critical role that the information gleaned from on-board surveys plays in understanding the nature of the transit riding market and in ensuring that travel models can replicate current conditions, it is essential that the data on ridership patterns be as current as possible. To the extent that the data used to validate the model varies from current ridership patterns because of significant changes in population, service, or other factors, the usefulness of the data is diminished. In fact, it may be necessary to update all or a portion of the survey more frequently than every five years if an area has experienced dramatic changes in service, population, and employment or other factors during that time. For example, if the survey was taken when little park-and-ride service existed, and considerable park-and-ride service was implemented after the survey, a new survey would be necessary to understand park-and-ride behavior if the New Start project relied in large part on the park-and-ride market to generate ridership.

Proposal: FTA proposes that, for project sponsors using traditional four-step travel forecasting procedures to estimate transportation system user benefits, the procedures be rigorously validated using an on-board survey of transit riders completed no more than five years prior to entry into PE. FTA will determine if changes in service, demographics, or other factors are significant enough to require a more recent survey to validate the model.

33. Would a clearer definition of the preliminary engineering phase for New Starts projects help project sponsors target resources expended on preliminary engineering in ways that better support the decision-making process for New Starts?

Comment: Three comments were received in answer to this question. Two comments were received in support of this proposal, and one provided an alternative. Commenters stated that significant resources would need to be shifted from final design to preliminary engineering (PE). Commenters also stated concern about potential increases in costs. One commenter stated that an explanation of how PE relates to the NEPA process would be helpful. Another stated that all NEPA requirements should be met during PE and that a Record of Decision (ROD) and FFGA should be issued simultaneously prior to final design. Another respondent inquired about the purpose of final design if PE is expanded to include capping of funds. That agency suggested that FTA should have clear criteria for entrance into PE.

Response: The goal of PE is to finalize the project scope, cost estimate, and financial plan. Project scope must be defined such that all environmental impacts are identified and adequate provisions made for their mitigation in accordance with NEPA. FTA will not complete the NEPA process until a project has been approved for entry into PE. In addition, although the level of scope development may vary from project to project, it must, at a minimum, be advanced to the point where design issues are fully addressed and no significant unknown impacts to cost may result. FTA intends that the cost estimate produced at the end of PE be used as the baseline cost estimate for determining the share of Section 5309 Capital Investment funds to be awarded in the full funding grant agreement. Similarly, FTA expects that the project financial plan produced during PE (and submitted to FTA as part of its statutory evaluation to approve project entrance into final design) will demonstrate adequate financial capacity and provide support for the local financial commitment necessary before FTA can execute the FFGA.

In its May 2006 New Starts Policy Guidance, FTA adopted a policy requiring that NEPA scoping be performed prior to entry into PE. Scoping prior to PE fosters informed decision-making in the New Starts process and allows for resolution of issues regarding the alternatives to be considered in the NEPA review to be made during the planning process instead of discovering them during PE and having to do additional planning analyses to address them. NEPA completion during PE facilitates performing the requisite engineering and analysis to define the project scope, cost, and financial plan, which are documented in a ROD.

Final design is a statutorily prescribed phase of the New Starts project development process following PE and preceding construction. Technically, final design is the phase of project development in which the project sponsor prepares for project construction. During final design, the engineering and design products of PE are refined for the development and solicitation of construction contract packages, as well as the development and/or updating of various project management plans and risk mitigation strategies. It is, however, expected that under the definition of New Starts PE adopted in the May 2006 New Starts Policy Guidance, the duration of final design will be considerably shortened as PE would result in developing sufficient engineering and design to arrive at an accurate and reliable cost estimate. Thus, it is expected that the time between entrance into final design and negotiations on an FFGA will be reduced.

Proposal: FTA has defined the conditions that must be met at the completion of New Starts PE. FTA believes that these conditions will help in clarifying when a New Starts project is ready to move from one step to the next.

34. How might the Project Management Oversight (PMOC) process be designed to support the higher expectation regarding the results of preliminary engineering?

Comment: Only one comment was received, and it favored enhanced PMOC assistance. The respondent stated that although nearly all the information needed to make a final decision on project funding should be complete at the end of PE, completion of engineering should not be a criterion for exiting PE. Design refinements and subsequent cost adjustments should be expected through the final design phase. The earlier in the process that the PMOC understands the unique challenges the project faces in terms of engineering and cost estimating, the more likely the PMOC will be able to assist in determining whether or not the contingencies are appropriate.

Response: FTA has a number of activities underway to strengthen its project management oversight activities during PE. These include cost validation, independent cost estimates, and risk analysis and management. The PMOC reviews grantee data and corresponding engineering analysis throughout PE to determine the completeness and mechanical correctness of the baseline cost estimate. Project cost reviews are an iterative review process, whereby costs are assessed for consistency with the project scope adopted in the ROD (as amended and/or updated to the selected alignment), as well as consistency with relevant, identifiable industry or engineering practices. In this manner, FTA can determine that the project scope and costs are sufficiently complete to support the level and quality of revenue service expected. Using these tools during project development allows the grantee, with Federal oversight, to identify opportunities to improve the operation and cost effectiveness of its project. Whereas design refinements are expected during final design, significant cost adjustments should not occur. The scope and cost reviews that FTA incorporates in its risk analysis conducted during PE are intended to identify those project elements that are likely to require cost adjustments so that these potential cost adjustment may be accounted for in the resulting baseline cost estimate, as part of the contingency calculation, at the completion of PE.

Proposal: FTA is currently reviewing its PMOC regulations and guidance with the goal of providing greater program effectiveness in New Starts project development and delivery. These changes will be discussed under a separate rulemaking to amend the Project Management Oversight regulation and are not reflected in this NPRM.

35. Does this approach significantly increase the cost of preliminary engineering? If so, is that problematic if costs are just shifted from final design?

Comment: Two comments were received in response to this question, both generally agreeing that the cost of PE would increase. One commenter stated that the proposed requirement would result in an extended PE phase and blur the line between PE and final design. Specifically, the commenter noted that a shift in consultants between phases could result in increased costs due to the need to redesign project elements and that increased costs should not eliminate projects from the New Starts pipeline. The other stated that asking project sponsors to front load their design costs may prove to be an onerous burden.

Response: It is not clear that costs for PE will increase in order to meet FTA's requirement for a more reliable cost estimate. This is because the nature of work performed in PE and in final design has never been well defined, and as a result the level of engineering performed varies widely among projects. Expenditures for PE in the past have not always been focused on a reliable cost estimate, but have addressed a variety of concerns, many of which did not necessarily enhance the soundness of the cost estimate. In addition, many candidate New Starts project sponsors have already undertaken ''continuing/extended PE'' prior to entry into final design in order to identify and resolve engineering and/or design issues. In those instances, the project's sponsors have generally been able to complete final design in a shorter timeframe. From an accounting standpoint, requiring this effort by all project sponsors may increase costs incurred during the designated PE phase but decrease costs during final design.

Proposal: The proposed regulation clearly identifies the products of both PE and final design. With FTA clearly defining each phase of New Starts project planning and development, along with prescribed exit criteria, project sponsors can assess their resource needs and plan for them accordingly.

36. Does the proposed policy of MPO reaffirmation of the proposed project address FTA's goal of ensuring local support for implementing and financing proposed New Starts projects?

37. If FTA implements the previously mentioned local endorsement of the Financial Plan, does this separate action become redundant?

Comment: FTA received 8 comments on question 36 and 1 comment on question 37. Five commenters noted opposition to the proposal mentioned in question 36. Those opposed who wrote this proposal would add an unnecessary step to the process that would delay final design approval and thereby add to the cost of project development. In addition, they wrote this would not help to address FTA's concern of ensuring local support for financing of the project. Lastly, commenters suggested this would create a disconnect with requirements placed on highway projects. Three comments were received stating no objection to the proposal, but also not stating strong support of it. These commenters wrote it was reasonable and in line with current local planning process requirements, but would not help address FTA's concern. Only one comment was received on whether the proposal was redundant should FTA implement its other proposal for local endorsement of financial plans. That commenter wrote it was not redundant and that it is important for the MPO as a regional entity to formally state that it supports the project in its final configuration.

Response: FTA does not believe this proposal would add significant time or cost to the project development process. The FTA/FHWA metropolitan and statewide planning regulations require that before Federal funds may be spent on a project, it must be adopted into the MPO's financially constrained metropolitan transportation plan and transportation improvement program. FTA's proposal would ensure that the latest information on the project's cost estimate and impacts is incorporated into the region's transportation plan.

Proposal: To verify that New Starts projects, with their final scope and costs, are supported by regional planning partners, FTA proposes to require that MPOs reaffirm their commitment to implementing and financing projects, prior to those projects advancing into final design, if significant changes have occurred in the project definition or cost.

38. Section 5309(h)(3) as amended by SAFETEA–LU accords FTA the discretion to provide a higher percentage of New Starts funding than that requested by the project sponsor as an incentive to producing reliable ridership forecasts and cost estimates. How could FTA implement this provision of SAFETEA–LU?

Comment: Eight comments were received in total, but very few included specific ideas on how the incentive could be implemented. Two commenters were opposed to the incentive idea. Four transit agencies and one MPO were supportive of the idea. One transit agency expressed neither support nor opposition, but rather concerns with what projections would be evaluated to determine eligibility, suggesting that the proposal may result in less accurate cost and ridership forecasts. The two commenters opposed to the idea, and one of the transit agencies in support of the idea, suggested that rather than allowing grantees to reduce the local share if New Starts funding is increased under the incentive, project sponsors should instead be required to use the additional funding for betterments to the project. One transit agency suggested that incentives are acceptable only if they are kept small (2–3 percent increase) while another transit agency suggested that FTA should work with the project sponsor to determine an incentive amount that would be meaningful. Another comment stated that an FFGA should be amended before it is fully paid out to increase the New Starts share if ridership and cost estimates prove reliable over the course of the first year of operation.

Response: Regarding the accuracy of forecasts, the concern of the commenting agency that this proposal could result in less accurate cost and ridership forecasts may be unfounded. Presumably the commenter is suggesting that grantees would overstate costs and understate ridership during project development so as to come in under budget after completion of the project and with higher ridership to be eligible for an incentive. The very nature of the New Starts rating and evaluation process would prevent this from happening, because overstating costs and understating ridership would significantly impact a project's cost effectiveness. Furthermore, FTA examines both cost and ridership projections closely throughout project development and would not accept obvious misrepresentation of costs and ridership.

Proposal: FTA proposes to implement a new feature of FFGAs, consistent with changes made by SAFETEA–LU, that would include an incentive clause that would allow for an amendment to either increase the Federal funding contribution or allow for the addition of scope, when actual opening year ridership is no less than 90 percent of that forecast and actual capital costs, adjusted for inflation, are not more than 110 percent of that estimated, at the time the project entered PE. This standard is slightly more stringent than the wording in SAFETEA–LU, as FTA is proposing to amend the FFGA only after the project is complete and operating, rather than assessing whether forecasts have stayed within these limits prior to execution of the FFGA. FTA believes that the incentive should only be provided for actual performance not for projected performance. However, as suggested by the commenters, FTA is allowing the incentive to be used either to increase the Federal share or to add scope to the system.

ANPRM on Small Starts

Small Starts Eligibility

SAFETEA–LU constrains eligibility of projects for Small Starts funding by imposing limits of less than $75 million in Section 5309 Capital Investment funds and less than $250 million for total project cost. However, it broadens eligibility in terms of project definition by relaxing the existing requirement that the project include a fixed guideway. With this change, a project that would not meet the fixed-guideway criterion is now eligible if it (1) includes a substantial portion that is in a separate right-of-way, or (2) represents a substantial investment in specific kinds of transit improvements in a defined corridor.

The eligibility provisions of the statute raise several issues: (1) How to define ''substantial portion in a separate right-of-way;''; (2) how to define ''substantial investment''; (3) the possibility that project sponsors could divide traditional New Starts projects into two or more Small Starts projects; and (4) the possibility that a Small Starts project might be proposed as the initial transit service in a corridor. The ANPRM provided a discussion of the challenges and merits of various approaches to addressing these issues, and readers of this NPRM are encouraged to refer to it for more information. The ANPRM further posed several questions related to the eligibility of Small Starts projects with the goal of facilitating a discussion of this important topic. These questions, a summary of industry reaction to the questions, and FTA's response and proposal for the NPRM follows:

1. What portion of the project should be in a separate right-of-way to qualify for funding under the Small Starts eligibility criteria? Should this determination be based on length or on performance?

2. How might FTA interpret the requirements that a project represent a ''substantial investment?''

3. How might we ensure that a Small Starts project is in a ''defined corridor?''

Comments: Questions 1 and 2 received 20 comments each, and question 3 received 11 comments.

Comments were generally split on the first question of eligibility. Of the 12 comments that noted the need for a separate right-of-way for Small Starts projects, there was a consensus that 25–50 percent of the length of the project should be in exclusive right-of-way to be eligible for Small Starts funding. Reasons cited for a minimum guideway threshold included the ability to show a permanence of investment, which would better support the land use and economic development objectives of proposed transit investments, and to ensure travel time savings. But 4 of the 8 commenters not in favor of requiring a dedicated right-of-way noted similar gains in performance may be made through the use of ITS technology such as signal prioritization, queue jumping, and other operational treatments. Indeed, slightly more than half of the commenters on this question favored a performance-based determination of eligibility, with travel time savings the most commonly suggested performance criteria.

All 20 of the commenters favored the inclusion in the NPRM of a definition of ''substantial investment.'' However, 2 comments stressed the need for flexibility and opposed either a dollar value or a specific list of criteria elements that needed to be met, as proposed in the ANPRM. Twelve comments requested that a portion of the right-of-way be dedicated, although 7 of these stated that FTA should not mandate that a separate right-of-way be an element of every Small Start. More specific comments noted that a substantial investment should be defined in terms of infrastructure investment. Fifteen commenters recommended that FTA define substantial investment as a ''package'' of investments listed in 49 U.S.C. 5309(e)(10), as amended by SAFETEA–LU, including hardware such as signal pre-emption, off-board fare collection, level boarding, station investment, and special vehicles. Due to the large number of potential variables associated with a ''substantial investment,'' 7 comments noted the need for clear, non-regulatory based guidance that should cover the majority of projects.

Suggestions to the question on ''defined corridor'' were wide ranging. Three commenters noted that a traditional view of an arterial street or a transportation corridor may be too rigid of a definition and suggested that FTA take a flexible approach to the definition of a ''corridor'' for Small Starts purposes. One commenter recommended, for example, that a corridor could be defined as a combination of parallel streets, as a downtown shopping area, or as a central business district. To further define the corridor, local policies on economic development and land use should be examined and matched to the corresponding area of interest. Seven commenters suggested that a more narrow definition be used, for the reason that the modest costs of Small Starts tend to lend themselves to improvements to existing travel corridors rather than creation of more expensive new services. Two commenters expressed concern that any definition must be able to distinguish Small Starts from improvements that could be funded under the Section 5309 bus or FTA formula programs.

Two commenters cited additional concerns on consideration of a Small Starts project that would cross multiple jurisdictions. To proceed on a project spanning jurisdictions, it was recommended that a number of construction and planning phases be allowed if that type of implementation approach facilitated project delivery.

Response: FTA believes that there is significant merit to using a performance-based approach to determine whether or not the separate right-of-way is ''significant.'' Because all fixed guideway projects (rail projects and those with catenary, i.e., electric trolley-bus service using overhead wires for power supply) are automatically eligible for New Starts and Small Starts, the following is relevant to bus projects only. Generally, the purpose of a separate right-of-way for bus projects is to remove transit vehicles from general-purpose traffic, thereby speeding up service. Therefore, a performance-based determination would ensure that the portion of the project in a separate right-of-way actually had the intended effect of better operating performance. However, FTA has never applied a performance standard to fixed-guideway projects. Thus, in the interest of consistency among potential Section 5309 Capital Investment projects, FTA believes that using a criterion based on physical characteristics is more appropriate.

Likewise, FTA believes that it is necessary to define a minimum level of transportation investment sufficient to justify the project for discretionary Small Starts funding. Otherwise, Small Starts projects would be competing for funding with many capital investments (*e.g.* buses) that should be funded with FTA formula, bus discretionary, or Title 23 flexible funds. Thus, FTA is proposing a number of specific project components that would comprise a ''substantial investment'' to improve the level of transit service, yet not require a specific threshold or dollar value of improvements.

It is very difficult to prescribe the dimensions of a ''defined corridor'' given the diversity of project contexts. Nevertheless, the principles guiding the definition should be that the project addresses a single travel shed that consists of a concentration of trip origins and destinations. While there is no rigid definition of travel corridor, routes with significant geographic separation would be considered to serve different corridor travel markets.

Proposal: FTA proposes in this NPRM that to qualify for funding, Small Starts bus projects must either (a) provide a dedicated right-of-way for at least 50 percent of the total project length in the peak period or when congestion inhibits transit system performance, or (b) be a corridor-based bus project with the following minimum elements:

• Substantial transit stations

• Traffic signal priority/pre-emption, provided that there are traffic signals on the corridor,

• Low-floor buses or level boarding,

• Branding of the proposed service, and

• 10-minute peak/15-minute off peak headways or better while operating at least 14 hours per weekday

The first three bullets are taken directly from the statute; the fourth is a low-cost strategy for achieving a sense of the uniqueness and permanence of transit service and is thus consistent with SAFETEA–LU's requirement that a corridor-based bus capital project include ''features that support long-term corridor investment.'' The fifth bullet embodies the underlying concept that, to be successful transportation investments, Small Starts projects must provide for a significant level of transit service. Experience in major transit corridors across the United States suggests that 10-minute peak frequencies, in addition to representing a high level of service, is the minimum headway at which passengers' decision to take transit is not based upon route schedule information.

While other project features such as park-and-ride lots and off-board fare collection are also eligible expenses under the program, they are not required elements. The regulation simply states that the project must be a corridor bus project; however, FTA intends to review proposed projects on a case-by-case basis to determine whether they are located in a ''defined corridor.'' A key consideration for this review will be whether the project is located in a single travel shed.

4. Should we try to prevent traditional New Starts projects from being divided into two or more Small Starts projects? If so, in what ways might we prevent this from happening?

Comments: Twenty comments were received in answer to this question. Only three of the commenters indicated they were in favor of allowing traditional New Starts projects to be divided into two or more Small Starts projects. The main reason cited to permit this division was that any phased implementation would result in faster implementation of at least some portions of a larger proposed investment, and that any ''stand-alone'' segment/project should be considered by FTA so long as it is deemed worthy when evaluated against the Small Starts criteria. The remaining 17 commenters noted that the division of large New Starts projects into two or more Small Starts projects is contrary to the intent of the Small Starts program. However, 14 commenters noted that the funding of projects in the same region but on adjacent or unrelated corridors should be allowed and even encouraged. In addition, other more specific comments included limiting the amount of funding over a given time period or justifying funding on the basis of how corridor improvements are included in a region's metropolitan transportation plan.

Response: The purpose of the simplified evaluation and project development process for Small Starts is to scale the analysis and procedures according to the complexity of the projects. Projects that are very large investments in fixed guideway transit facilities demand the full due diligence regarding the benefits, costs, and the project sponsor's capability and readiness in order to ensure that public resources are allocated to their best use. These larger projects should not be able to evade due diligence simply because they are divided into phases which individually meet the cost limits for Small Starts.

Proposal: FTA proposes that all potential Small Starts projects (i.e., portions of a larger investment) planned in a corridor will be evaluated as a single project. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Small Starts limits, the project will be evaluated as traditional New Starts project.

5. Should we establish a minimum ridership requirement to ensure that Small Starts projects are used to improve the quality of service for existing transit markets rather than represent the first transit service offered to potentially new transit markets? If not, how can a project demonstrate need for an investment?

Comments: Twenty-seven comments were received in answer to this question. Approximately two-thirds of commenters opposed the idea of instituting a minimum ridership requirement for Small Starts, citing that this would penalize communities that are in the initial stages of land development and thus currently do not have a demand for transit or communities that are trying to open up new markets to transit. The 9 commenters in favor of the minimum ridership requirements indicated that such a threshold would allow Small Starts funds to be provided only to those areas that have a demonstrated need for improved transit. It was further suggested by 8 of these 9 commenters that in these existing cases, there would be substantially less risk to a project's achievement of success because of this demonstrated need.

Response: FTA recognizes that the implementation of high quality transit service in areas where such service does not exist today can, when combined with aggressive corridor land use development initiatives, contribute to future use of service.

Proposal: In the interim guidance for Small Starts, FTA required, as one criterion for qualifying as a Very Small Start, that sponsors of such projects provide evidence of current corridor ridership that would benefit from the project of no less than 3,000 average weekday passengers. FTA proposes to maintain this eligibility requirement for Very Small Starts since it is an intrinsic element of FTA's ability to warrant the project as being cost effective. For all other projects, FTA proposes not to require a minimum ridership threshold. However, FTA notes that it would seem unlikely that Small Starts projects proposed in corridors with a small or non-existent transit market would be able to generate immediate transportation benefits, as required by SAFETEA–LU in its requirement that cost effectiveness be calculated for an opening, rather than design, year. In considering the reliability of ridership estimates, FTA will closely examine the justification for the ridership and travel time benefits of such projects. Consequently, sponsors of such projects must make an extremely compelling case that there is sufficient planned development to result in conditions that support a strong transit travel market.

Small Starts Evaluation and Ratings

As amended by SAFETEA–LU, 49 U.S.C. 5309(e)(2) allows the Secretary of Transportation to provide funding assistance to a proposed project under this new Small Starts category only if the Secretary finds that the project is:

(A) Based on the results of planning and alternatives analysis;

(B) Justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

(C) Supported by an acceptable degree of local financial commitment.

The statute expands on the justification required in paragraph (B), requiring that the Secretary make the following determinations:

• The degree to which the project is consistent with local land use policies and is likely to achieve local development goals;

• The cost effectiveness of the project at the time of the initiation of revenue service;

• The degree to which a project will have a positive effect on land use and local economic development;

• The reliability of the forecasting methods used to estimate costs and ridership associated with the project; and

• Any other factors that the Secretary determines appropriate to make funding decisions.

The statutory provisions for the evaluation of proposed Small Starts projects raise several issues. These include the framework for the evaluation; the specific measures used in the evaluation; and scaling of the evaluation approach for Small Starts projects of different size, cost, and complexity. The ANPRM provided a discussion of the challenges and merits of various approaches to addressing these issues. Most notably, FTA proposed two potential options for organizing the Small Starts project criteria into a coherent evaluation framework. This is the same framework that is discussed in Question 3 under the Guidance on New Starts Policy and Procedures. The ANPRM further posed several specific questions related to the evaluation and rating of Small Starts projects. These questions, a summary of industry comments, and FTA's response and proposal for this NPRM follow:

6. How should the evaluation framework for New Starts be changed or adapted for Small Starts projects?

Comments: Twenty-four comments were received in response to this question. Several commenters addressed not only the overall evaluation framework but also measures for local financial commitment and FTA's proposal that the nature of the problem or opportunity in the Small Starts project corridor be included in FTA's evaluation of Small Starts. Comments on these specific measures were addressed in our response to questions that specifically addresses these two issues. Of the two evaluation framework options presented in the ANPRM, Option 2 generated the most support, although 3 commenters strongly indicated that land use should be elevated to a benefit rather than used as a risk factor. Four commenters objected to both Options 1 and 2, and proposed an alternative approach—a ''point-system'' developed in a Transit Cooperative Research Program (TCRP) quick study report.

In terms of local financial commitment, 1 commenter noted that FTA should not penalize smaller Small Starts project sponsors who may not be able to generate more than a 20 percent local funding match, although another commenter hoped that FTA would continue to encourage local overmatch through its evaluation of local financial commitment. Two commenters suggested that State and local governments or private investors are unwilling to commit project revenues until they receive assurances of Federal funding, and that FTA needs to consider prior history in obtaining non-Federal commitments as a surrogate for actual commitments.

There was little comment on the proposal that projects be evaluated in terms of the problems they solve or the opportunity they take advantage of. One respondent was concerned that the ANPRM couches ''problems'' as only being mobility related.

Response: Based upon the comments received, FTA intends to advance the framework described in Option 2 into the NPRM with one exception that is discussed more fully in the question 3 under the Guidance on New Starts Policy and Procedures. FTA has reviewed the TCRP proposal for evaluating Small Starts projects and notes that the approach entails double counting and difficulties determining the proper weights. FTA understands the positive and negative aspects of encouraging local overmatch to Federal discretionary funding, but notes that SAFETEA–LU permits FTA to consider the degree to which the project financial plan depends upon non-New Starts funding, and FTA therefore intends to reward overmatch for Small Starts just as it does New Starts. Further it would be poor program management for FTA to make Federal funding commitments in advance of local commitments. Equally importantly, FTA expects that the demand for Small Starts funding will be great enough among projects that can demonstrate such commitments that it would be counterproductive for FTA to commit its funds in advance of local funding commitments. FTA strongly encourages project sponsors to provide an overmatch under the Small Starts program as it is likely to be as highly competitive, if not more so, as the New Starts program.

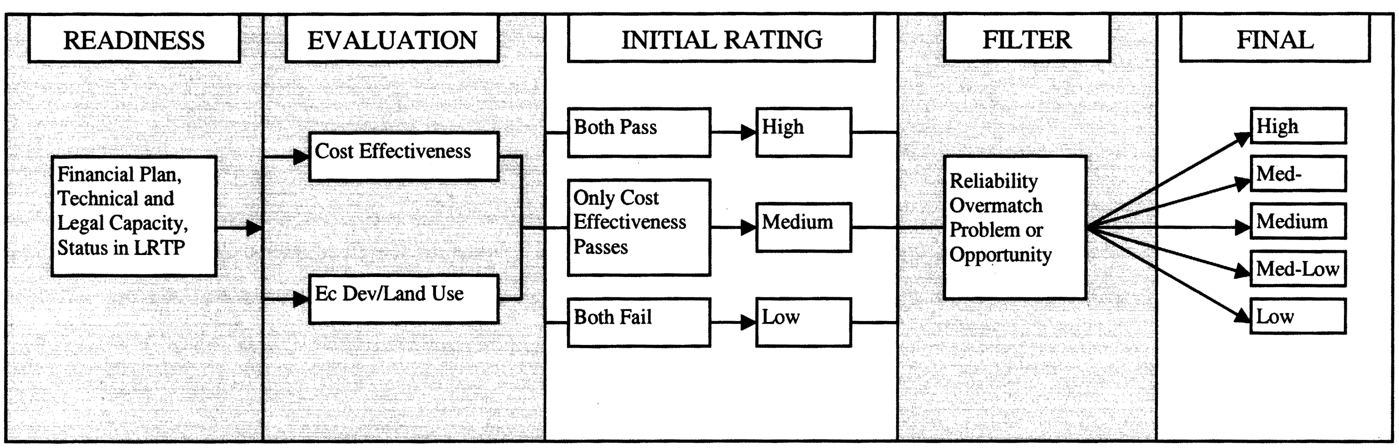
Proposal: The NPRM advances for further review and comment the Option 2 evaluation framework first proposed in the ANPRM. However, Option 2 has been modified in three important ways. First, the ''nature/extent of problem or opportunity'' in the project corridor has been removed as an explicit evaluation criterion. FTA acknowledges that this factor is not specifically identified in 49 U.S.C. 5309(e)(4). However, FTA notes that 49 U.S.C. 5309(e)(4)(E) directs FTA to ''consider other factors that the Secretary determines appropriate.'' Therefore, whenever a project is evaluated, FTA intends to consider the degree to which the proposed Small Starts project addresses the existing and forecast problem and opportunity as an ''other'' factor. As congestion is one of this Nation's most daunting transportation challenges, another measure that FTA currently intends to consider under ''other factors'' is the degree to which a project is a part of a significant congestion reduction strategy. FTA will evaluate projects that are a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular, more highly. FTA seeks comment on how it might better measure congestion in the future.

FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. This consideration could result in a project's rating being increased or decreased.

Further, FTA is proposing that land use be included under both the economic development/land use criterion (under effectiveness) and the reliability criterion. FTA intends that current land use conditions, as well as land use plans and policies, be critical components of these criteria. The economic development/land use criterion will account for 60 percent of the effectiveness rating, with the remaining 40 percent of the rating comprised of mobility benefits. This should ensure that the factor is given sufficient overall attention in the rating process. FTA seeks comment on how it might better measure economic development/land use in the future.

In addition to revising Option 2, FTA is asking for specific comment, under a section entitled ''Additional Discussion Items for Comment'' on an alternate evaluation framework for rating proposed Small Starts projects. This framework is based upon three principles that FTA espouses, which it has heard expressed by many in the transit industry. The first principle is that there are two primary reasons for implementing major transit capital investments—mobility improvements and economic development—and that these can be evaluated on a pass/fail basis. In the Small Starts program, FTA considers cost effectiveness in terms of the cost of improving mobility. The second principle is that FTA's evaluation process for Small Starts should be as simple as possible, and only needs to be sufficient to identify the best projects, ferret out the worst projects, and array those in the middle. Finally, the third principle is that whatever the merit of proposed Small Starts, lack of sufficient financial capability will prevent its implementation; therefore, financial commitment should be treated as a ''minimum'' or ''readiness'' requirement, rather than a component of an overall New Starts project rating.

Figure 1 presents FTA's proposed Option 3 evaluation framework:



Under this framework, the financial commitment, as measured by the adequacy of a project's capital and operating plan (but not its proposed Small Starts share) would join technical and legal capacity, and the achievement of Federal metropolitan planning requirements, as basic ''readiness'' requirements for being considered for advancement in the Small Starts project development process. Once readiness is determined, projects would be subject to a ''pass/fail'' assessment of their cost effectiveness and economic development/land use impacts. If projects pass both assessments, they will receive an initial rating of High. If a project passes the cost effectiveness assessment but not the economic development/land use assessment, it would receive an initial rating of Medium. A project that fails both assessments, or passes the economic development assessment but not the cost effectiveness assessment, would receive an initial rating of Low and will not be considered by FTA for either advancement into project development or a funding recommendation until the rating is improved.

These initial ratings are then adjusted by three factors: (1) The reliability of the project's travel forecasts and cost estimates; (2) the degree of Small Starts funding overmatch; and (3) the magnitude of the problem or opportunity the project is intended to address. All of these factors are important. Based upon these adjustments, the initial project ratings may go up or down. For example, a project that received an initial rating of Medium, but that is providing a significant overmatch of Small Starts funding and/or demonstrates reliable estimates of project costs and ridership could receive a Medium-High or High overall project rating. On the other hand, a project with a similar initial rating of Medium but that does not address a severe transportation problem and/or for which ridership and cost forecasts are considered not as reliable would receive an overall rating of Medium-Low or Low. However, consistent with SAFETEA–LU, FTA will also consider the project sponsor's ability to provide only a 20 percent match and will not rate the project's local financial commitment at less than Medium, solely on the basis of a 20 percent match, so long as the project sponsor can demonstrate that the 20 percent match is based on the limited fiscal capacity of State and local governments. In this way, FTA can address the SAFETEA–LU requirement that FTA consider State and local fiscal capacity at the same time that it addresses the SAFETEA–LU requirement that it gives priority to financing projects with a higher-than-required non-New Starts/Small Starts share.

7. How should the baseline alternative be defined?

Comments: Twenty-three comments were received in response to this question. Twenty-one commenters strongly favored the use of a ''no-build'' scenario as a baseline alternative for Small Starts. Expanding on this, 1 commenter suggested that the Small Starts baseline be consistent with the NEPA baseline, be locally driven, and reflect a project that is included in local transportation plans and improvement programs. It was further suggested by a commenter that the baseline no longer be carried into final design. Another commenter suggested that the Small Starts baseline should be adjusted based on the complexity of the project. For example, one commenter favored using a ''no-build'' scenario for smaller projects, but using the TSM for larger projects.

Response: FTA agrees that the definition of the Small Starts baseline should be a locally driven process but disagrees that it should be identical to the NEPA ''no build'' in all cases. Consequently, FTA continues to require—as it does for traditional New Starts—that the alternatives analysis study be the venue for developing and evaluating a number of low- to higher-cost alternatives that meet the purpose and need for transportation improvements in a given corridor. No reasonable alternative should be excluded for consideration until an appropriate analysis determines that it does not sufficiently address locally-identified problems, commensurate with its cost and other impacts. It is through this process that a Small or New Starts baseline alternative should be defined. However, while the alternatives analysis process is the venue for identifying the baseline alternative it should be noted that FTA uses the baseline alternative not to determine whether it is reasonable to advance that alternative for further study, but as the required comparison for measuring the benefits of the project.

FTA acknowledges that many Small Starts, particularly Very Small Starts, will be Transportation System Management (TSM) improvements: that is, lower-cost, operations-oriented upgrades to existing transit services that do not require construction of a new fixed guideway. For such projects, a no-build alternative would be the appropriate Small Starts baseline. For more complex projects, including those that contemplate the implementation of a fixed guideway, a non-guideway alternative—for example, a TSM alternative that provides for similar service levels as the proposed Small Starts—would be the appropriate baseline. Whatever the baseline alternative, FTA agrees that, once a Small Starts project is approved into project development, the baseline should not change unless the scope of the Small Start project changes and will be used only as a comparison for preparing the required information for the annual New Starts Report (as necessary) and for making a recommendation on funding for a PCGA.

Proposal: Cognizant of SAFETEA–LU's expectation that the advancement of Small Starts projects be streamlined to the extent possible, FTA has simply proposed in the NPRM that FTA must approve the baseline alternative. However, FTA intends to rely on the following simple guidelines for definition of the Small Starts baseline alternative:

• A project with a dedicated right-of-way for 50 percent or more of its length in the peak period would usually have a TSM as its baseline. In general, a TSM can be satisfied by (1) the inclusion within its scope of the physical features found in a Very Small Starts project, as defined elsewhere in this NPRM; and (2) service levels which are comparable to the proposed Small Start.

• A project that does not meet the definition above, including a Very Small Start, would use a no-build alternative as its baseline alternative.

By following these guidelines, FTA believes that the process for approving the Small Starts baseline alternative will be extremely simplified in comparison with the process for FTA approval of the baseline alternative for traditional New Starts. FTA also desires to provide some flexibility in the definition of the baseline alternative for project sponsors who believe, for whatever reason, these guidelines are inappropriate for their proposed Small Starts project. Therefore, FTA will consider deviations from these guidelines. In such cases, FTA strives to make its review and determination as quickly as possible, but notes that it is the responsibility of the project sponsor to make a compelling justification for deviation from the guidelines.

8. How might FTA evaluate economic development and land use as distinct and separate measures?

Comments: Eighteen comments were received in response to this question. In terms of land use, 2 commenters suggested comparing the current densities with the proposed densities of planned developments. In addition to density, however, it was also noted by 7 commenters that the existence or planning of transit-oriented policies would be a good measure. Economic development had a similar depth of interest and comments. For example, 4 commenters suggested measurement of the increase in employment and tax revenue, or the property values of current properties versus the selling price of future acreage/developments. In addition to these specific suggestions, other commenters noted precautions that should be taken when considering these two measures. One commenter cited concern that these should be downplayed in the initial stages of the project's development, and focus should instead be placed on mobility and cost effectiveness.

Response: Whether referring to land use or economic development, a common theme of the majority of respondent suggestions was to use indicators of the likelihood of increased development in areas near projects. Existing land use conditions, existing and planned transit-oriented plans and policies, and projections of increases in employment and revenues are all necessary, but not sufficient conditions for inducing transit-supportive development patterns as a result of a transit project. Indeed, it is not possible to ascertain the likelihood of a project's effect on surrounding development unless a number of factors relating to both land use and economic development are considered in combination. Land use considerations provide information about the potential for development or redevelopment and whether that development can occur in a transit-oriented way. However, while these are necessary conditions, they are not sufficient in and of themselves, as the local development climate must be sufficiently robust to provide the engine needed for development; the project must be perceived as permanent to entice developer interest; and the project must increase accessibility to the area. All these factors must be viewed in combination in order to evaluate the potential economic development benefits of the project.

Proposal: FTA proposes to use a single economic development/land use criterion based on the likelihood of increased transit-oriented development resulting from a Small Starts project. The following describes FTA's current thinking with respect to what these measures will be. Given the important role that land use plays in supporting, guiding, and often increasing development, FTA will draw upon many of the same factors used in its current evaluation of land use. These will be augmented with indicators that provide further incentives to development. Because measurement of economic development in terms of jobs or value of future development is not currently feasible, FTA proposes instead to evaluate whether or not the conditions necessary to support economic development exist in the project corridor. To accomplish this, FTA proposes to use the following specific measures: (1) Current land-use conditions, (2) development and land-use plans and policies, (3) the economic development climate in the corridor and region, (4) the project-related change in transit accessibility for developable areas in the corridor, and (5) the economic lifespan of new transit facilities proximate to those developable areas. FTA is conducting research in this area and as more quantifiable measures are developed they will be proposed as part of any new policy guidance. FTA seeks additional comment on how it can better measure economic development/land use.

9. Are there other measures of effectiveness that should be considered?

Comments: Thirteen comments were received in response to this question. An assessment of a project's effect on economic development was the subject of many commenters. The response to those comments was addressed as part of Question 3 above. Two commenters stated that FTA faces a challenging task when creating appropriate measures of effectiveness for Small Starts projects. For example, it was noted that one measure, changes in passenger travel time, may be difficult to capture in cities where limited ridership or bus service exists. Despite the potential challenges, several measures of effectiveness were suggested. Increased access to job centers as well as the reduction in the number of single occupancy vehicles on the roadway were two measures noted. In addition, several ideas mentioned in the ANPRM were emphasized in the comments, including: Reductions in passenger travel time, the ability to maintain a cost effective transit project, the appearance of permanence of the Small Starts project, and trends in land values and development in and near the project area. Other suggested measures included the availability of land, the success in development near transit in neighboring communities, plans, ordinances and policies that support transit-oriented development, and economic development.

Response: Measures of effectiveness vary within each project due to its size, sponsor experience and capabilities, and location specific criteria. For the concerns relating to changes in passenger travel time and increased access to jobs, transportation user benefits provides an excellent metric that captures all the benefits of interest. Measures related to land use and economic development will be considered by FTA in its evaluation of the criterion for economic development/land use.

Proposal: Because the primary objectives of transit projects are to improve mobility and foster economic development, FTA has chosen to use two criteria for measuring the project's effectiveness. These are mobility, which is the travel time savings calculated as part of the cost effectiveness measure, and economic development/land use, the components of which are discussed in Question 8 under Guidance on New Starts Policies and Procedures. Although FTA sees merit in identifying other measures of effectiveness, the lack of analytical methods to address many of the desirable characteristics of transit projects results in an inability to determine these benefits fairly at this time. If FTA is later able to identify additional measures, these can be added to the evaluation as part of any changes to our policy guidance, which would be subject to public review and comment.

10. Is it desirable for FTA to attempt to incorporate other measures of effectiveness besides mobility when evaluating cost effectiveness? If so, what measures might be incorporated and in what manner?

Comments: Thirteen comments were received in response to this question. The number and variety of responses seem to indicate not only a great interest in this evaluation tool, but also provide a view of priorities in the respondent communities. Suggestions regarding cost effectiveness concerned numerous areas, including service, neighborhood revitalization, and congestion reduction. Commenters specifically suggested increased service to transit dependent users and improved connectivity to job, residential, or retail centers, and contributions to local land-use changes and economic development as measures. Specifically, 2 commenters noted that the cost effectiveness should include mobility benefits that would accrue to highway users with the increase of transit use. In addition, 2 other commenters noted that walkability should also be incorporated into cost effectiveness. In addition to the mobility-oriented measures listed previously, other suggested measures include the extent to which a community is considered livable. Other comments noted that the evaluation of effectiveness should be simplified, thus eliminating the need for additional measures of evaluation.

Response: FTA supports a simplified cost effectiveness evaluation process. The need to maintain this simplification has been taken into account when choosing the appropriate measures and tools. Thus, specific, quantifiable, and easily attainable measures such as transportation user benefits and capital costs are necessary components of the evaluation process. More qualitative measures such as regional connectivity, neighborhood revitalization, walkability, and contributions to land-use and economic development are difficult to incorporate in a measure of cost effectiveness because they are difficult to measure reliably. As described in the response to Question 10 under New Starts, FTA is currently unable to accurately assess the mobility benefits that accrue to highway users from high-capacity transit due to the inability of local travel models to reliably determine the effect. Once travel models have been improved to reliably forecast these benefits, FTA will use them. In addition, as described under Question 4 in ''Additional Discussion Item for Comment,'' FTA is interested in exploring certain surrogate measures that could account for highway user benefits.

Proposal: Because of the difficulty of incorporating additional measures into its evaluation of project cost effectiveness, FTA is proposing to maintain its current cost effectiveness measure of annualized cost per hour of user benefits. As described in Question 10 under New Starts above and Question 4 under ''Additional Discussion Items for Comment,'' FTA will continue to seek ways to include the benefits to highway users in the calculation of user benefits.

11. Should mode-specific constants be allowed in the travel demand forecasts? If so, how should they be applied?

Comments: Fourteen comments were received in response to this question. All but two of the commenters favored use of an asserted modal constant in the estimation of Small Starts project ridership and mobility estimates. The two opposed cited the short timeframe for a Small Start project and that there is too little national data gathered at this time and too much variation between communities to make this worthwhile. Those in favor of utilizing a modal constant noted that in areas with a total absence of a particular transit mode, it may provide a useful assessment tool. These comments varied from using a locally-derived constant when the mode is in place to use of nationally determined constants.

Response: FTA allows use of a mode-specific constant in forecasts that have been carefully calibrated using ridership information from the mode. Mode-specific constants play two roles in travel forecasting. The first is to represent all the attributes of the mode that are not otherwise explicitly included in the travel models. These service attributes include visibility, reliability, span of service, and comfort, as well as others. Constants also act as correction factors for all the errors that occur in the models so that model results can replicate current transit ridership. Deciding the magnitude of each of these roles is extremely difficult and the subject of current FTA-sponsored research. When this research has been completed, FTA aspires to having an approach to the application of mode-specific constants nationally that will both produce accurate representations of these omitted attributes and be fair to all projects seeking funding. In the interim, in the policy guidance issued in June 2007, FTA has allowed credits for a constant for a new transit mode to an area. The credits are based on the attributes of the project.

Proposal: FTA's current policy allows the use of mode constants for travel models that have been carefully calibrated against travel demand for an existing transit mode, and which fall within a reasonable range established by prior experience. For areas proposing a new mode, FTA has specified credits for a constant based on the project's attributes. It should be noted that this position is not specifically addressed in the NPRM as FTA intends to treat the issue of a modal constant through policy guidance, not regulation.

12. How might FTA incorporate risk and uncertainty into project evaluation for Small Starts?

Comments: Fifteen comments were received in response to this question. Due to the simplified nature of the Small Starts program, 7 comments related to ways in which risk and uncertainty (which FTA now describes as reliability) could be incorporated into the evaluation process without compromising this simplicity. For instance, 4 commenters indicated that peer reviews and risk analysis based on similar and previously approved projects would be a sufficient means of evaluation. Six other commenters indicated that risk analysis measures should be broad in scope such that simple travel demand models would be able to analyze these measures effectively and without costly software packages. To further simplify risk analysis, 4 commenters were in favor of creating separate Small Start and Very Small Start project analysis criteria. Specific measures of risk and uncertainty proposed by commenters include the presence or development of transit-oriented development policies and public/private funding.

Three commenters stated that risk and uncertainly were adequately addressed within the financial analysis and evaluation and that additional measures of risk may overly complicate the process.

Two commenters questioned the inclusion of travel forecast and cost estimate reliability as an evaluation factor, noting that (1) the simplified nature of Small Starts projects minimizes risk and uncertainties associated with their implementation and (2) the process for evaluating projects should be streamlined and no new measures should be introduced.

Response: Although the Small Starts evaluation process is meant to be simpler than that used for New Starts projects, accurately weighting reliability factors remains an important task. Further, SAFETEA–LU calls for FTA to include an assessment of the reliability of forecasts for Small Starts, just as it does for New Starts. Reliability measures take into account a project sponsor's ability to manage transit projects, as well as factoring in local expertise and development conditions. Financial reliability depends on both the amount and the terms of local financial funding, as well as the size of the funding request (e.g., is it reasonable in relation to other projects of a similar size in a similar community?). In addition, measures such as forecasted ridership and peer reviews are valid means to assess reliability.

Proposal: FTA proposes to consider reliability of the costs and ridership forecasts in its evaluation and to adjust, either upward or downward, the ratings of the individual criteria that rely on these forecasts. The measures for reliability will be identified in policy guidance and these could include a number of factors. For instance, for travel forecasts (1) the current land use and land-use policies, (2) the soundness of forecasting tools and data used to predict ridership and mobility benefits, including steps to reduce uncertainty through peer reviews and other quality control procedures, (3) comparisons of ridership forecasts against peer projects—similar projects in similar settings, with particular scrutiny for projects without any peers, and (4) the track record of the project sponsor with benefits forecasts for previous transit projects.

The reliability of the cost effectiveness measure would necessarily depend on any uncertainties associated with both the effectiveness measures and the cost estimates. The effectiveness reliability could be quantified with the measures outlined above. The cost reliability measures could be based on (1) the soundness of cost-estimating procedures, including steps to reduce risk through peer reviews and other quality-control efforts, (2) comparisons of the cost estimates against peer projects, and (3) the track record of the project sponsor with cost estimates for previous transit projects. In addition, since operating efficiencies are measured as part of cost effectiveness, FTA would consider any innovative contractual arrangements, especially Public Private Partnership arrangement, which produce significant reductions in operating expenses, or which improve the reliability of forecasts of operating costs in its assessment of reliability.

13. What weights should FTA apply to each measure?

Comments: Nine comments were received in response to this question. Although the specific weights varied considerably among commenters, most agreed that the overall measures of cost effectiveness, land use, and economic development would provide an accurate assessment of the project. Those who stated that cost effectiveness is a moderate to important factor weighted it between 33 percent and 50 percent. One commenter suggested a scenario in which a project would be required to rate well in cost effectiveness, land use, and economic development, or be able to score highly in any of the three, to receive project funding. Three commenters suggested that although cost effectiveness was an important measure, the evaluation process should allow for leniency where other project benefits outweigh cost effectiveness. One additional commenter indicated that project merit and a local commitment to funding should outweigh the cost effectiveness measure.

Response: The variety of responses indicates the difficulty in assigning weights to each measure. This difficulty is compounded by the fact that there is no research that can be used to guide a decision on the importance of each of the criteria. Therefore, the application of weights is policy driven.

Proposal: FTA proposes in the NPRM to give equal weight to both project justification and local financial commitment for the overall project rating. Further, the project justification rating will be comprised of cost effectiveness, weighted at 50 percent and effectiveness, weighted at 50 percent. Economic development/land use will account for 60 percent of the effectiveness rating, with the remaining 40 percent of the rating comprised of mobility benefits. An alternative approach, which uses a pass/fail decision rule in lieu of weights was described in Question 6 under the ANPRM on Small Starts and is specifically called out in the ''Additional Discussion Items for Comment'' at the end of this section.

14. Should the FTA make a distinction in the way we evaluate Small Starts projects of different total project costs and scope?

Comments: Thirty-three comments were received in response to this question. Twenty-seven commenters favored a scaled approach to Small Starts projects. Although some of these preferred the distinction between Small Starts and Very Small Starts as proposed in the ANPRM, others simply noted that a threshold should be created below which little modeling or intensive quantitative analysis would occur. Of the 6 commenters opposed to creating a distinction among Small Starts projects, most still saw the need for a scaled approach to evaluating Small Starts projects. This was especially true for those commenters who operated existing transit projects, and for which the proposed project was simply an extension of an existing project.

Response: As noted in the ANPRM, several options are available for evaluation of Small Starts proposals: (1) Application of the same evaluation methods for all projects regardless of scale; (2) development of simplified analytical procedures for smaller projects; or (3) defining for small projects a set of conditions, effectively ''warrants'' based on project scope and implementation setting, under which proposals are automatically deemed to have an acceptable level of project justification.

Small Starts projects may range in size from non-guideway improvements costing $20 million, or perhaps less, to new guideways costing just under $250 million. Given this relatively wide range of project costs and the potential for complexity and risk, different approaches seem appropriate for projects of different scale. Furthermore, FTA recognizes that the effort expended by project sponsors to develop the necessary information and by FTA to ensure the reliability of that information should be matched to the size and complexity of the proposed project. Lower levels of effort, however, should result from lower levels of complexity, detail, and rigor, not from a reduced ability to address the full range of evaluation criteria. Given the relatively straightforward nature of the financial measures, most of the differences in evaluation methods should occur in the evaluation of project justification, particularly in the methods used to compute mobility benefits and, therefore, cost effectiveness.

Proposal: FTA advances in this NPRM the very simplified evaluation process for Very Small Starts projects that was first proposed in the ANPRM and established, on an interim basis, in the Final Interim Guidance on Small Starts issued August 8, 2006. This process relies on pre-existing ''warrants,'' which if met set the project's justification and local financial commitment ratings at Medium. In addition, while Small Starts projects would be subject to a similar evaluation process as is used for New Starts, the forecast year and level of detail are significantly simplified.

Small Starts Procedures for Planning and Project Development

SAFETEA–LU specifies the use of some different planning and project development procedures for Small Starts projects from those used for traditional New Starts projects. Like the requirement for traditional New Starts, 49 U.S.C. 5309 requires that Small Starts projects be based on the results of planning and alternatives analyses but because of the short timeframe for the analysis (opening year versus the planning horizon covering no less than 20 years), it is likely that this process can be simplified. Unlike traditional New Starts, Small Starts need only be approved to advance from planning and alternatives analysis to project development and construction; no separate approval to enter final design is required. A Project Construction Grant Agreement (PCGA), which is a simplified Full Funding Grant Agreement, is used to provide a multi-year funding stream for Small Starts projects. The ANPRM included a discussion of, and asked for comment on, a number of these issues. The following summarizes the comments received, FTA's response and proposal for addressing the issue in the NPRM:

15. Should there be a distinction in the alternatives analysis requirements for Small Starts compared to traditional New Starts?

16. Should there be a distinction in the alternatives analysis requirements for Very Small Starts compared to larger projects that qualify as Small Starts?

17. Within an alternatives analysis, what other alternatives should be considered in addition to the Small Start and the existing service alternatives?

18. What should be the key elements or features of a highly simplified or simplified alternatives analysis?

Comments: Question 15 received 18 comments, and question 16 received 12 comments. Question 17 received 7 comments, and question 18 received 8 comments. There was universal support expressed for differentiating alternatives analysis between Small Starts and New Starts. Numerous commenters suggested that letting the NEPA process fulfill the requirement for alternatives analysis would streamline the project development process. The desire for simplification was rooted in the idea that Small Starts projects, due to their small size, are inherently less risky than the larger New Starts projects, and the planning process should be correspondingly less complicated.

Another suggestion was to permit the analysis of different alignments or phasing strategies of just one mode or technology, rather than to require an analysis of alternative modes.

Approximately two-thirds of the commenters favored a distinction in the requirements of alternatives analysis between Very Small Starts and Small Starts. These commenters opined that the size of the Very Small Starts projects were not substantial enough to warrant an alternatives analysis. Some mentioned that this would be a redundant step that could be easily covered in the NEPA documentation process. The remaining third of commenters did not believe there should be a difference in the alternatives analysis process, because by differentiating between the two programs, some may use this as an incentive to keep projects just under the Small Starts cost thresholds in order to perform less analysis and be able to step through a streamlined process.

There was a consensus from the commenters that no additional alternatives should be considered. Six commenters suggested that the alternatives analysis should be limited to a ''build'' and a ''no build.'' One commenter specified that such an analysis was appropriate in established transit markets, but that a simplified analysis might include a ''build'' and ''improved system'' for less-well-served transit markets. One commenter wrote that the consideration of other alternatives should be a matter of local discretion, so long as the process meets NEPA requirements.

In terms of what constitutes a highly simplified or simplified alternatives analysis, 3 commenters again focused on the narrowing of alternatives and adherence to NEPA as the key factors that would simplify the process. One commenter noted that many Small Starts, and in particular Very Small Starts, would qualify as categorical exclusions and thus not require an analysis of alternatives. In such cases, they suggested that the NEPA determination ought to serve as meeting the requirement for alternatives analysis.

Response: Although larger projects require a number of alternatives to be considered in an alternatives analysis to assess the numerous tradeoffs in costs, benefits, and impacts, the consideration of Small Starts often implies that fewer useful alternatives exist, and in some cases, there may only be two alternatives, one representing the Small Start and the other representing today's service levels. Nevertheless, the number of alternatives considered must continue to meet the requirements of NEPA, good planning practices, and proper identification of project costs and benefits for funding recommendations. Where an alternatives analysis is performed prior to initiation of NEPA (but consistent with NEPA principles), the subsequent NEPA process and document ought to recognize and incorporate planning analysis and decisions; this applies to both New Starts and Small Starts. A very simple alternatives analysis and subsequent evaluation process can be used when Very Small Starts are being considered.

Proposal: In this NPRM, FTA incorporated the proposal advanced in the ANPRM and established, on an interim basis, in its Final Interim Guidance on Small Starts issued August 8, 2006. This proposal acknowledges that a very limited number of alternatives are permissible and that use of the no-build alternative as the baseline is appropriate if the project does not include a new fixed guideway. For Small Starts, the level of analysis for an alternatives analysis may be considerably simpler than that for New Starts if issues associated with the projects being considered are less complex. For Very Small Starts only minimal information needs to be developed relating to a clear description and assessment of the problem or opportunity in the corridor, a clear description of the project and how it addresses the problem or opportunity, determination of the project sponsor's ability to support the costs of building and operating the project, and a plan for implementing the project.

19. Should Small Starts projects also be required to perform a ''before and after'' study?

Comments: Nineteen comments were received in answer to this question. Approximately two-thirds of the commenters indicated a ''before and after'' study should not be required of Small Starts projects. Of those opposed to requiring the study, reasons cited included the cost relative to the project funding allotment, as well as the need for greater consistency in reporting requirements. Others opposed to requiring the study noted that while data collection and analysis is a useful process, and one that should be included in the project funding, it should not be a requirement. For the one-third of the commenters who supported a requirement for a ''before and after'' study, the need for a solid base of data and analysis of Small Starts projects nationwide was consistently cited as a reason. However, another commenter noted the need for simplicity with regard to data requirements and analysis methods. It was further suggested that the ''before and after'' study be cost effective and in line with the project size and scope, with little or no analysis required for Very Small Starts projects. Specific measures that were noted as potentially useful included projected versus actual ridership; annual report of ridership; projected versus actual costs (operations and maintenance, capital); project scope; and projected service levels versus actual service levels.

Response: The objectives of the ''before and after'' study are two-fold: (1) To expand insights into the costs and impacts of major transit investments; and (2) to improve the technical methods and procedures used in the planning and development of those investments. These objectives are equally important to both large-scale and smaller-scale transit projects. Small Starts projects have a unique opportunity to affect a greater number of transit agencies with the results provided from a ''before and after'' study.

Proposal: FTA proposes to require a ''before and after'' study for all Small Starts projects. Support for this approach can be found in 49 U.S.C. 5309(g)(2)(C), which applies to all Section 5309 Capital Investments, not just to those funded under 49 U.S.C. 5309(d). However, FTA is cognizant of the need to simplify this process and therefore the FTA guidance on ''before and after'' studies for New Starts will be modified to allow for a simplified study approach for Small Starts. In addition, for Very Small Starts, the requirements for the Before and After Study in the NPRM have been extremely simplified since the project sponsor is required to submit project information that is generally available.

20. Should FTA mandate an early scoping approach for those alternative analyses that are not being conducted concurrently with the formal NEPA process?

Comments: Fifteen comments were received in answer to this question. In order to better address environmental requirements for alternatives analyses, the ANPRM proposed an ''early scoping'' procedure. That procedure is described in Council on Environmental Quality's (CEQ) guidance. It allows for a scoping process in advance of the Notice of Intent to prepare an Environmental Impact Statement. Response to this proposal was mixed with 6 commenters supporting the approach and 9 commenters opposing it. However, it should be noted that more experienced entities and those representing the largest transit operators were opposed to the proposal due primarily to the fact that scoping is likely to not be required for the majority of Small Starts projects under the National Environmental Policy Act (NEPA) regulations. Those entities stated that because the requirement will often be more stringent than what NEPA requires, it should not be imposed.

Response: Early scoping, undertaken by sponsors, could assist FTA in making a well-reasoned class of action determination for each Small Starts project. If, in advance of any informal early scoping process, it appears that, based on established facts and circumstances, a particular project proposal qualifies for a categorical exclusion, then early scoping by the project sponsor need not be undertaken; otherwise, early scoping is the best means of determining the appropriate class of action for purposes of the NEPA process. However, because of the likelihood that a vast majority of proposed projects will not be required to engage in formal scoping, this additional effort outweighs its limited value.

Proposal: FTA is not proposing that early scoping, as defined by CEQ guidance, be required for Small Starts projects. Instead, for projects requiring an Environmental Impact Statement, FTA is proposing to require that the project has progressed beyond the NEPA scoping phase before FTA will approve entry into project development. This requirement is identical to that currently applied to New Starts.

Additional Discussion Items for Comment

A few additional issues have been raised since publication and comment on the Guidance on New Starts Policies and Procedures and the ANPRM on Small Starts. FTA specifically requests feedback on these issues, which are identified below and are also discussed in either the Response to Comments or in the Section-by-Section Analysis. FTA will consider comments received on these issues during future stages of the rulemaking process.

1. FTA has revised the definition of a fixed guideway system in section 611.5 to reflect the changes included in SAFETEA–LU. In addition, however, FTA has included in that definition facilities, such as HOT lanes, that replicate the kind of free-flow conditions expected of a traditional fixed guideway system through pricing or other enhancements. This proposal is more fully described under the proposal for Question 1 in the Eligibility section of the Guidance on New Starts Policies and Procedures.

2. In sections 611.13(b), 611.23(b), and 611.33(b) of the regulatory text, of the NPRM FTA is proposing that the costs of all ''essential project elements'' must be included in the capital cost estimates that lead to a project's cost effectiveness rating. Cost estimates that do not include all of these elements will be considered incomplete and will not be accepted for rating. FTA requests industry input as to which ''essential project elements'' should be required for inclusion. There has been much discussion in the past as to what constitutes an essential element of the project versus a project betterment, which can and should be funded entirely with local funds. In addition, in the interest of ''right-sizing'' some project sponsors have excluded improvements needed in the latter years of the planning horizon from the scope of the FFGA, even though such costs are always required for cost effectiveness calculations. This has led to some confusion as to whether the project sponsor is required to provide these improvements, since they are necessary to generate the benefits used in the cost effectiveness calculation. One way this problem has been addressed is that the project sponsor has included these improvements in the 20 year financial plan but has shown that they will be funded with non-Section 5309 Fixed Guideway funds. FTA seeks the industry views on how these various concepts, ''essential project elements'', ''betterments'' and ''right-sizing'' should be addressed in the New Starts/Small Starts process.

3. FTA is considering whether an extremely simplified alternative evaluation framework should be allowed for Small Starts projects. The framework would allow for a ''pass/fail'' rating for economic development/land use and cost effectiveness, which, when combined with a reliability factor, would translate into the five levels (high, medium-high, medium, medium-low, and low) for the overall rating. This framework could simplify the rating process, while identifying the projects with the most potential. It would not, however, provide as much information on the variations between projects. This proposal is more fully described in the Response to Comments section under the proposal for Question 6 in the Small Starts Evaluation and Ratings section.

4. Relief of congestion is a top priority of the Department of Transportation, as reflected in its recently announced Congestion Initiative. The proposals made in this Notice include several features which are designed to assure that Major Investment projects contribute to reducing congestion. For example, as noted below, FTA intends to take account of, as a part of its review of ''other factors,'' the degree to which a project is supported by an effective congestion relief strategy including variable pricing. Second, FTA proposes to continue to include highway user transportation benefits, such as travel time savings from reduced demand on the highway system, as part of its measure of transportation system user benefits used to calculate mobility improvements and cost effectiveness. However, while this factor has been included in the definition of user benefits for some time, as described above in response to Question 10 under New Starts, reliable estimation of these benefits has been problematic. FTA intends to continue to work closely with the Federal Highway Administration to address the improvements needed in travel models to assure that reliable estimates can be developed and included in the measurement of transportation system user benefits. However, until such estimates are uniformly available on a reliable basis, FTA believes it is appropriate to use alternative measures that could provide some indication of the congestion relief benefits of New Starts projects. One such measure could be the reduction in highway vehicle miles of travel between the New Start and baseline alternative, weighted by a factor of highway congestion (e.g., daily vehicle miles of travel per lane mile in the New Starts project corridor). Such a measure, while imperfect, would allow for consideration of the amount of reduced highway demand to be assessed in the context of the severity of congestion in the corridor. Accordingly, as the third way in which congestion would be addressed in evaluating projects, FTA is proposing to include ''congestion relief'' as one of the features of ''mobility improvements'' evaluated as part of establishing project justification. FTA is interested in comment on the implications for the New Starts program of taking into account the congestion reduction benefits of transit projects, the measure of congestion relief proposed above, other possible measures of congestion relief, and the methods by which the current travel models could be used to produce better and nationally consistent estimates of highway system user benefits.

5. FTA is seeking feedback on how to provide additional incentives to increase the role of public/private partnerships in Section 5309 Capital Investment projects. FTA is proposing

to explicitly address the role of public/private partnerships as part of an assessment of the role that innovative contractual arrangements can play in reducing and/or improving the operating costs both as a measure of the reliability of estimates of operating costs and in its assessment of the operating plan under local financial commitment. However, there may be additional steps that FTA could take. In addition, FTA is looking at ways that public/private partnerships can enhance the capital plan under local financial commitment as well as measure cost effectiveness. For purposes of this question, a public/private partnership assumes that the private sector invests its own financial capital (as opposed to an in-kind contribution) in the project. One possible approach would be to allow ''betterments'' funded by private entities to be excluded from the cost effectiveness calculation. This would allow private entities to invest in particular elements of a project that they viewed to be of particular benefit to them without jeopardizing an acceptable cost effectiveness rating. This approach would be available to a project with an acceptable cost effectiveness rating calculated without taking into account such betterments. To the extent that the addition of the betterments to the project's design would result in the project's cost effectiveness becoming unacceptable, FTA would exclude such costs from the calculation of cost effectiveness if they were borne by private entities. Examples of such improvements, or betterments, could include additional station entrances to subway stations, substantial improvements to a station's design beyond the design standards used for other stations in the system, and changes in the vertical or horizontal alignment of the project. Alternatively, FTA could exclude from the calculation of the cost effectiveness rating those project costs paid for by private capital—whether such costs are for betterments or otherwise—and calculate a project's cost effectiveness based only on costs borne by the public.

6. FTA has chosen to publish the weights used to calculate the Project Justification and local financial commitment ratings for New and Small Starts projects in the final rule. Previously, these weights as well as measures used to determine New or Small Starts Project Justification and Local Financial Commitment ratings have been published in the Annual Report on Funding Recommendations and separately in other FTA publications. FTA seeks comment on whether to publish both the weights and the measures in the final rule, or to preserve a degree of flexibility and maintain the measures in a separate document.

7. FTA is seeking comment on how it might develop a methodology to better quantify the user benefits attributable to a project. First, FTA seeks comment on a methodology for quantifying the user benefits that would accrue from the interaction of the proposed New Start or Small Start project and road pricing included in an effective congestion management strategy.

Second, FTA seeks a methodology for quantifying the benefits attributable to the economic development/land use changes that occur as a result of a proposed New Start or Small Start project. Those changes in economic development/land use may provide benefits that are not otherwise included in FTA's current estimation of user benefits. FTA seeks comment on how to quantify this difference in economic development/land use attributable to the project, as well as how to measure the benefits that result.

III. Section-by-Section Analysis

Reorganization

In order to make the regulation more understandable, FTA is proposing to divide it into four subparts that will cover General Provisions, ''New Starts,'' ''Small Starts,'' and ''Very Small Starts.'' Subpart A would include General Provisions that apply to all projects seeking Section 5309 Capital Investment funds. Subpart B would include those provisions that apply to New Starts (projects of over $250 million in total cost *or* requesting more than $75 million in New Starts funds). Subpart C would cover Small Starts projects (projects of under $250 million in total cost *and* requesting less than $75 million in Small Starts funds but not qualifying as a Very Small Start). Subpart D would cover Very Small Starts (a subset of Small Starts projects which are less than $50 million in total cost and $3 million per mile (excluding vehicles) and which meet other specified characteristics). FTA has chosen this approach, even though there is a lot of similarity in the requirements of each subpart, in order to assist a project sponsor in finding all of the applicable procedures and evaluation criteria in a single subpart, depending on the size and nature of the proposed project.

Subpart A includes a general statement of purpose and contents, statements on applicability of the regulation, and a section on definitions. These sections are similar to section in the current regulation, but include certain amendments, which are described below. This is followed by a new section on measures of reliability, which applies to all projects seeking Section 5309 Capital Investment funds, no matter the size.

Subparts B, C, and D each include separate provisions on eligibility, the project justification criteria, the local financial commitment criteria, overall project development ratings, and the project development process, as they apply to New Starts, Small Starts, and Very Small Starts, respectively. These subparts build on the sections in the existing regulations that cover these subjects, amended as described below, and tailored to the size and complexity of the projects being considered.

Distribution Table

For ease of reference, the following distribution table indicates proposed changes in section numbering and titles from the current version of the regulations in 49 CFR part 611.

Current part 611	Proposed part 611
611.1 Purposes and Contents	Subpart A—611.1 Purpose and Contents.
611.2 Applicability	Subpart A—611.3 Applicability.
	Subpart B—611.9 New Starts—Eligibility.
	Subpart C—611.19 Small Starts—Eligibility.
	Subpart D—611.29 Very Small Starts—Eligibility.
611.5 Definitions	Subpart A—611.5 Definitions.
611.7 Relation to planning and project development processes	Subpart B—611.17 New Starts—Project development process.
	Subpart C—611.27 Small Starts—Project development process.
	Subpart D—611.37 Very Small Starts—Project development process.
611.9 Project justification criteria for grants and loans for fixed guideway systems.	Subpart B—611.11 New Starts—Project justification criteria.
	Subpart C—611.21 Small Starts—Project justification criteria.

Current part 611	Proposed part 611
	Subpart D—611.31 Very Small Starts—Project justification criteria.
611.11 Local financial commitment criteria	Subpart B—611.13 New Starts—Local financial commitment criteria. Subpart C—611.23 Small Starts—Local financial commitment criteria. Subpart D—611.33 Very Small Starts—Local financial commitment criteria.
611.13 Overall project ratings	Subpart A—611.7 Measures of reliability in the Section 5309 capital investment evaluation and rating process. Subpart B—611.15 New Starts—Overall project ratings. Subpart C—611.25 Small Starts—Overall project ratings. Subpart D—611.35 Very Small Starts—Overall project ratings.

Subpart A—General Provisions

Section 611.1: Purpose and Contents

This section describes the purpose of the proposed rule, which is to implement the requirements of Title 49, United States Code (U.S.C.), sections 5309(d) and (e) and 5328(a).

As is the case with the current regulation, the proposed rule establishes the methodology by which FTA will evaluate candidate projects for Section 5309 Capital Investment funding. Applicants must follow these rules to be considered eligible for discretionary capital investment grants for new fixed guideway systems, including substantial corridor-based bus systems or extensions to existing systems. As in the current regulation, data collected as part of the planning and project development process and related regulations, conducted under 23 CFR part 450 and 23 CFR part 771, provide the basis for evaluating projects seeking to proceed under the New Starts, Small Starts, or Very Small Starts programs.

As in the current regulation, the results of these evaluations will be used by FTA to make the findings required to advance a project into preliminary engineering (PE) and final design for New Starts, and into project development for Small Starts and Very Small Starts. They also will be used to make recommendations, as required under 49 U.S.C. 5309(k)(1), for inclusion in the President's annual budget request, and to determine which projects are eligible for funding commitments under Full Funding Grant Agreements, in the case of New Starts, or Project Construction Grant Agreements, in the case of Small Starts and Very Small Starts. The annual report was previously called the New Starts Report, but will now be retitled because it will include funding recommendations for both New Starts and Small Starts. In contrast to the current regulation, information will not be needed for an annual Supplemental Report on New Starts, formerly required by 49 U.S.C. 5309(o)(2), as it was dropped by the amendments made to 49 U.S.C. Chapter 53 by SAFETEA–LU.

Section 611.3: Applicability

This section states that this rule, as in the current regulation, applies only to the evaluation of projects seeking Federal capital investment funds (New Starts and Small Starts) for new fixed guideway systems and extensions to existing systems under 49 U.S.C. 5309. However, in contrast to the current regulation, ''substantial capital investments in new corridor-based bus projects'' are added to the eligible activities for Small Starts, implementing additional eligibility provided by SAFETEA–LU. New Starts projects must continue to include a fixed guideway component, as will be described below in more detail.

As in the current regulation, this section also states that the rule does not apply to projects already in final design or under a Full Funding Grant Agreement.

The proposed rule, consistent with SAFETEA–LU, does not continue the current exemption from the requirements of this rule for projects seeking less than $25 million in Section 5309 Capital Investment funds. However, the proposed rule would permit projects which had been exempt and which had already been approved into project development (PE or final design) to use funds that have already been made available through the appropriations process and to receive those funds without being rated and evaluated under the proposed rule. However, to receive additional Section 5309 Capital Investment (New Starts and Small Starts) funds from FTA, previously exempt projects would have to be rated and evaluated in accordance with the provisions of the rule.

Section 611.5: Definitions

As in the current regulation, this section defines key terms used in 49 CFR part 611. Many of the definitions would remain unchanged from the current regulation. However, several definitions have been changed to provide more detail or specificity or to be consistent with changes proposed to be made elsewhere in the rule. Key changes include the following.

The definition of ''alternatives analysis'' is proposed to be expanded to include a requirement that an alternatives analysis must ''include sufficient key information to enable the Secretary to make the findings * * * required under section 5309.'' This was added to be consistent with the definition of alternatives analysis added to 49 U.S.C. 5309 by SAFETEA–LU.

The definition of ''baseline alternative'' is proposed to be changed slightly to modify the reference to alternatives that have a better ratio of measures of mobility to cost than the no build alternative by explicitly stating the condition that the cost effectiveness of the baseline alternative must meet. This is consistent with long standing FTA guidance. Specific reference to Transportation System Management or Very Small Start-like alternatives as typical baseline alternatives is proposed to be added.

A definition of ''metropolitan transportation plan'' is proposed to be added, which is based on the requirements in 49 U.S.C. 5303.

The term ''Project Construction Grant Agreement (PCGA)'' is proposed to be defined as a document similar in concept to a Full Funding Grant Agreement (FFGA), but for Small Starts (including Very Small Starts) projects.

The term ''project development'' is proposed to be defined as steps taken during PE and final design, prior to award of a FFGA or a PCGA.

A definition is provided for the term ''Section 5309 Capital Investments Program'' which includes funding for New Starts and Small Starts projects under Section 5309(b)(1), (b)(4), and (m)(2)(A). While the title for all of Section 5309 is ''Capital Investment Grants,'' this rule applies only to projects seeking discretionary grants for New Starts and Small Starts funding under subsections (b)(1), (b)(4) and (m)(2)(A) and not to funding for Fixed Guideway Modernization under subsections (b)(2) and (m)(2)(B) or discretionary bus grants under subsections (b)(3) and (m)(2)(C).

FTA is proposing a definition of ''Project Development Agreement'' (PDA), which is an agreement between FTA and the project sponsor that must be executed before the project is approved for entry into PE. The terms and conditions of a model PDA are set forth in Appendix A to the proposed rule.

The term ''Section 5309 Capital Investment'' is proposed to be defined as those projects eligible for assistance with funds from the discretionary Section 5309 Capital Investment Program. This includes new fixed guideway systems and extensions, as in the current regulation, but also an expanded definition of this term. First, FTA has proposed that the definition include a transportation facility that, by means of pricing or other enhancements, replicates the benefits of ''free-flow'' conditions for transit. Second, in response to SAFETEA–LU for Small Starts funding, the definition includes corridor-based bus projects with at least 50 percent of the project operating in a guideway dedicated to transit or high occupancy vehicle use during peak periods, or a substantial investment in a defined corridor which includes certain key elements. The key elements proposed are substantial transit stations, traffic signal priority/pre-emption, low floor buses or level boarding, branding of the proposed service, and 10 minute peak and 15 minute off-peak headways or better for at least 14 hours per day. The definition also would provide for a categorization of projects into three categories (New Starts, Small Starts, and Very Small Starts), depending on the size of the project and certain project features. New Starts projects would be defined as those requesting $75 million or more in Section 5309 Capital Investment funds, or a total project cost of $250 million or more. Small Starts projects would be projects requesting less than $75 million in Section 5309 Capital Investment funds and a total project cost of less than $250 million. Very Small Starts projects would be defined as meeting Small Starts requirements, but in addition having a total cost of less than $3 million per mile (not including vehicles), a total project cost of less than $50 million, and including demonstrably effective and cost-effective project elements. For the purpose of categorizing projects, costs would be expressed in year-of-expenditure dollars.

A definition of ''Transportation System Management (TSM)'' would be added that is drawn from long-standing use of the term in the planning process. In essence, it is defined as the best than can be done without construction of a new fixed guideway. At a minimum it must be more cost effective as compared to the no build alternative than the New or Small Starts project compared to the no build alternative. This could include upgrades to transit service through operational and small physical changes, selected highway improvements, minor widenings, and other focused traffic engineering improvements.

A definition of ''user benefit'' has been added. The term is defined as transportation system user benefits accruing to all travelers affected by the proposed Section 5309 Capital Investment improvement, compared to a baseline alternative. User benefits include travel time savings, reduced out-of-pocket travel costs, improvements in comfort, convenience, and reliability, and other benefits that accrue to users of specific travel modes, where such benefits are supported by verifiable data. The definition explicitly includes highway users, transit users, and pedestrians as users of the transportation system.

Section 611.7: Measures of Reliability in the Section 5309 Capital Investment Evaluation and Rating Process

This section, which is completely new compared to the existing regulation, would provide that FTA would evaluate and rate the reliability of the forecasts of ridership and costs estimated and proposed for a Section 5309 Capital Investment project. SAFETEA–LU amended 49 U.S.C. 5309 to add new provisions (49 U.S.C. 5309(d)(3)(B) and 49 U.S.C. 5309 (e)(4)(D)) that require FTA to evaluate the reliability of these forecasts and proposals. However, as stated in the NPRM, the specific measures that will be used to evaluate and rate reliability will be established in policy guidance. It is likely that these measures would address the transit orientation of existing and future land uses in the environment of the proposed project, the experience of the project sponsor in implementing previous major projects similar to that being proposed, industry experience with implementation of projects of a similar nature, the reliability of forecasting methods used by the project sponsor and of the information provided by the project sponsor in support of the evaluation process, a comparison of opening year project ridership to that estimated for the planning horizon covering no less than 20 years, the degree to which innovative contractual arrangements are in place or planned which reduce the uncertainty of operating cost estimates, and mitigation efforts by the project sponsor to improve the reliability of forecasts. Once a project's reliability of forecasts has been established, the proposed rule would allow FTA to adjust, upward or downward, specific ratings that would otherwise be applied to the specific project justification or local financial commitment criteria that would be affected by the uncertainties associated with the area of estimation reliability determined in the evaluation of the factors outlined above.

FTA is considering an alternative structure for developing overall project ratings for Small Starts projects. This proposal is more fully described in the Response to Comments section under the Proposal for Question 6 under the Small Starts Evaluation and Ratings section. Should the alternative approach be adopted, FTA would also consider the amount of funding proposed to come from outside the Section 5309 Capital Investment program as an indication of the reliability of the financial commitment to the proposed Small Starts project.

Subpart B—New Starts

Section 611.9: Eligibility for Section 5309 Capital Investments Funds (New Starts)

This section would establish the eligibility for New Starts funding. New Starts are defined, in section 611.5, as those projects requesting $75 million or more in New Starts funds or having a total project cost of $250 million or more. As in the current regulation, New Starts projects must be the result of planning and alternatives analysis. Codifying current FTA practice, projects must have at least 50 percent of the project length (not necessarily contiguous) operating on a fixed guideway that is dedicated to transit or high occupancy vehicle use during the peak period or when congestion inhibits transit system performance. Projects which qualify as a New Start project due to their cost or requested New Starts share must be evaluated under the criteria and procedures provided for in Subpart B; they may not be subdivided for the purpose of analysis, rating, and evaluation into a series of Small Starts or Very Small Starts projects covered by Subparts C or D.

Section 611.11: Project Justification Criteria (New Starts)

The approach taken in the proposed rule for evaluation of the justification for New Starts projects builds on the approach in section 611.9 of the current regulation. As required by 49 U.S.C. 5309(d)(2)(B), FTA must find that a project is ''justified'' based on a comprehensive review of a series of criteria. Many of these criteria were unchanged by SAFETEA–LU, but several were added or were given added emphasis. As under the current regulation, FTA will evaluate and rate a proposed project based on information coming from locally-conducted alternatives analyses and project development processes. Also as in the current regulation, FTA will use a ''multiple measure'' approach to determine the overall justification of a proposed project, combining the ratings made against a series of criteria.

As in the current regulation, ratings for each of the specified criteria will be expressed in terms of five levels of descriptive indicators ranging from ''high'' to ''low.'' Subsection (a)(2) provides that the specific measures for each of the project justification criteria will be published in policy guidance and may be changed from time to time. However, as required by SAFETEA–LU, such changes will be subject to notice and comment before they are finalized and will be published at least every two years or when substantial changes occur.

As proposed in the January 2006 Guidance on New Starts Policy and Procedures, FTA is proposing to adopt a new approach to classify the criteria used for project justification. Mobility improvements (including mobility for transit dependents and congestion relief), economic development/land use, and environmental benefits will be classified as measures of project effectiveness.

Cost effectiveness is proposed to be evaluated separately, measured as annualized capital and operating costs divided by transportation system user benefits. The capital cost used for cost effectiveness must include all essential project elements necessary for completion of the project. Transportation system user benefits are explicitly defined elsewhere to incorporate benefits to all transportation system users, including transit riders, highway users, and pedestrians. In the long run, it is expected that the measure will count highway user benefits explicitly, once transportation models are capable of providing reliable and nationally consistent estimates of their value.

''Operating efficiencies'' is no longer included as a separate evaluation criteria, even though it is called out in 49 U.S.C. 5309(d)(2)(B) as one of the factors to be assessed by FTA in finding that a project is ''justified.'' Instead, FTA proposes to address this factor through the cost effectiveness measure, which already includes operating costs in the annualized costs, because experience has shown that a separate measure of operating efficiencies does not meaningfully distinguish between projects. FTA expects that operating efficiencies resulting from innovative contractual arrangements will result in lower operating expenses and hence higher cost effectiveness ratings. FTA will consider any innovative contractual arrangements, including public private partnerships, as a measure of operating efficiencies in its evaluation of both reliability and the operating plan as part of local financial commitment.

Consistent with the changes made by SAFETEA–LU, which explicitly added ''economic development'' to the list of justification factors, and which elevated ''public transportation supportive land use policies and future patterns'' from a consideration to a justification factor, ''economic development/land use'' is included as a measure of effectiveness. As described above in the Questions 7 and 8 of the response to comments received on the Guidance on New Starts Policies and Procedures and Question 8 of the ANPRM on Small Starts, it is difficult to separately evaluate these two factors. Nonetheless, recognizing the importance that SAFETEA–LU provided by including both these factors, FTA will use this combined measure as an important part of the evaluation of project justification. Thus, the rating of cost effectiveness and of effective will be weighted equally in computing the project justification rating. Economic development/land use will comprise 40 percent of the effectiveness measure, with an additional 40 percent given to mobility for the general population (including congestion relief), 10 percent to environmental benefits, and the final 10 percent to transit dependent mobility.

As in the current regulation, effectiveness and cost effectiveness are evaluated by comparing the project to the baseline alternative and ''other factors'' will be considered in setting the overall rating for project justification. Although FTA is not proposing, as was proposed in the January 19, 2006 draft Guidance on New Starts Policies and Procedures, to explicitly assess the case for the project as a separate measure, FTA intends to evaluate this issue for all projects as part of its assessment of ''other factors.'' As part of its policy guidance FTA will identify which additional factors will be considered as ''other factors.'' One measure that FTA currently intends to consider under ''other factor'' is the degree to which a project is a part of a significant congestion reduction strategy that incorporates pricing. Others could include multimodal emphasis of the locally preferred investment strategy, including the proposed New Starts project as one element; environmental justice considerations and equity issues; consideration of innovative financing, procurement and construction techniques, including design-build turnkey applications; and additional factors relevant to local and national priorities and to the success of the project.

In the current regulation, a series of ''considerations'' specified in 49 U.S.C. 5309(d) are laid out. The proposed rule does not explicitly include these considerations as specific criteria. However, the measures which will be used to support the criteria that are explicitly identified do implicitly cover the considerations included in 49 U.S.C. 5309(d). Specifically, congestion relief (49 U.S.C. 5309(d)(3)(D)(i)) and improved mobility (49 U.S.C. 5309(d)(3)(D)(ii)) are incorporated in the measures of mobility and transportation system user benefits; air pollution (49 U.S.C. 5309(d)(3)(D)(iii)), noise pollution (49 U.S.C. 5309(d)(3)(D)(iv), and energy consumption (49 U.S.C. 5309(d)(3)(D)(v) are addressed in the measure for environmental benefits; and, finally, ancillary and mitigation costs (49 U.S.C. 5309(d)(3)(D)(vi)) and local land, construction, and operating costs (49 U.S.C. 5309(d)(3)(J)) are included in the costs used to calculate cost effectiveness. As noted earlier, measures of congestion relief could also include measures of reduced highway travel weighted by severity of congestion, as well as being included in the measure of transportation system user benefits used to calculate cost effectiveness. Further, infrastructure costs and other [land use] benefits (49 U.S.C. 5309(d)(3)(E)) and the cost of suburban sprawl (49 U.S.C. 5309(d)(3)(F)) are addressed in the measure of economic development/land use. The mobility of the public transportation dependent population (49 U.S.C. 5309(d)(3)(G)) is, in fact, a key part of the mobility measure of effectiveness, and economic development (also in 49 U.S.C. 5309(d)(3)(G)) is part of the economic development/land use measure of effectiveness. Population density (49 U.S.C. 5309(d)(3)(H)) is addressed as part of the economic development/land use measure of effectiveness and current transit ridership (also in 49 U.S.C. 5309(d)(3)(H)) forms an important part of the new measure of reliability.

Finally, the technical capacity of the grant recipient (49 U.S.C. 5309(d)(3)(I) is addressed in the measures of reliability, as well as forming an important part of the assessment of readiness to proceed to through project development.

Subsection (c) is essentially unchanged from the existing regulation and requires the New Starts project to be compared to the baseline alternative and that a greater degree of certainty with respect to the scope, level of commitment and the plans and policies that support land use and economic development are required as the project moves through the process.

A new subsection (d) is added that indicates that while project sponsors are expected to use the traditional four-step model to estimate mobility benefits, alternative, simpler methods may be applied with FTA approval.

Finally, as in the current regulation, subsection (e) states that the ratings for each of the criteria will be combined into an overall rating of project justification. As in the current regulation, the overall rating for project justification will range on a five level scale from ''high'' to ''low.'' ''Other factors'' will be considered in setting the overall rating. The proposed rule explicitly indicates that applying these ''other factors'' can result in an adjustment, upward or downward, in the overall rating of project justification.

Section 611.13: Local Financial Commitment Criteria (New Starts)

The approach taken to evaluate local financial commitment is proposed to be largely unchanged from the current regulation. This includes an assessment of the amount of non-Section 5309 Capital Investment funds being requested, and the stability and reliability of the funding proposed to be used to cover both the capital costs of the project and the operating costs of the entire transit system, including the project. As in the current regulation, the capital and operating financing plans will be rated over the planning horizon covering no less than 20 years for the project. The measures for rating the stability of the funding to cover operating costs will include an assessment of the degree to which innovative contractual arrangements are in place to assure the reliability of operating cost estimates.

The provision which calls for FTA to assess the degree to which planning and PE have been carried out with other than Section 5309 Capital Investment funds has been dropped, as this requirement was deleted by SAFETEA–LU. In addition, as required by SAFETEA–LU, a provision is proposed that would provide that FTA would give priority to financing projects that require less New Starts funds, while at the same time considering the fiscal capacity of State and local governments to provide more New Starts funds in determining whether to rate the project's overall local financial commitment below ''medium.''

As in the current regulation, ratings of the percentage of Federal funds sought from the New Starts program and the capital and operating financial commitments will be made on a five level scale ranging from ''low'' to ''high.'' These ratings will be combined, as in the current regulation, into an overall rating of financial commitment on a five level scale ranging from ''low'' to ''high.''

Section 611.15: Overall Project Ratings (New Starts)

As in the current regulation, the ratings on project justification and local financial commitment will be combined into an overall project rating. In contrast to the current regulation, which, as provided for in Transportation Equity Act for the 21st Century (TEA–21), called for overall project ratings to be expressed as ''highly recommended,'' ''recommended,'' or ''not recommended,'' the proposed rule calls for, consistent with SAFETEA-LU, projects to be assigned overall ratings on a five level scale of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' and ''low.'' In addition, in response to the requirement in SAFETEA-LU, the proposed rule calls for the summary rating to take into account the degree of the reliability of the estimates of ridership and costs.

As in the current regulation, ratings will be made at the time a project seeks to move from one step in the project development process to another, and annually for the purposes of the annual report on funding recommendations required by 49 U.S.C. 5309(k)(1).

The proposed rule does not specify how the ratings of project justification and local financial commitment will be translated into the overall project ratings, except to indicate, similar to the current regulation, that a project must be rated at least ''medium'' on project justification, and local financial commitment to be rated ''medium'' overall. Since, as required by SAFETEA-LU, a five level scale will now be used, FTA proposed to apply a similar decision rule to determining the rating of ''medium-high'' and ''high'' as is used in the current regulation which required ratings of at least ''medium'' on both local financial commitment and project justification to achieve a rating of ''recommended,'' which is now a rating of ''medium.'' In other words, both project justification and local financial commitment would have to be rated ''high, medium-high or medium'' in order to achieve an overall rating of ''high, medium-high or medium.'' Consistent with SAFETEA-LU, the proposed rule continues to require an overall project rating of at least ''medium'' for a project to advance to a subsequent step in the project development process or to be recommended for funding.

Section 611.17: Project Development Process (New Starts)

This section provides for the procedures by which New Starts projects are to advance through the project development process. For New Starts, this process is largely consistent with the project planning and development procedures in section 611.7 of the current regulation. All projects must emerge from the metropolitan and Statewide planning processes. Projects must proceed through both the PE and final design stages of the project development process before being eligible to be recommended for New Starts funding.

As in the current regulation, project sponsors must perform an alternatives analysis. The proposed rule indicates that this analysis must be consistent with FTA guidance and NEPA requirements. The alternatives analysis must cover a range of alternatives and result in selection of a locally preferred alternative that is formally adopted and included in the region's metropolitan transportation plan.

The proposed rule defines project development to include PE and final design. The proposed rule includes more detail on the definition of the activities that are included in PE which are then translated into entry criteria for final design. It indicates that PE includes completion of the NEPA process, design of all major project elements to the extent that no significant cost-related issues remain, and cost estimation that permits development of a financial plan that establishes the maximum amount of New Starts funding which FTA will provide if the project were to receive a full funding grant agreement. As in the current regulation, minimum readiness criteria for entry into PE are provided. Along with the previous requirement that FTA approve the baseline alternative, new features of these criteria include a requirement that the NEPA scoping process has been completed before FTA approves entry into PE, that independent endorsement has been received from potential funding partners of the proposed financing strategy, and that the travel demand forecasting methods have been validated against a survey of transit riders no more that five years old. In addition, approval to enter PE will also require development of a preliminary plan to conduct the ''before and after study'' that is required by the amendment to 49 U.S.C. 5309(g)(2)(C) added by SAFETEA-LU. Such studies are already required by the current regulation. This added requirement to enter PE is designed to assure that the process of conducting such studies is facilitated. An overall rating of ''medium'' is required to receive approval to enter PE; this is consistent with the current regulation's requirement that the project have an overall rating of ''recommended.'' As in the current regulation, project sponsors approved to enter PE are granted pre-award authority to conduct all PE activities prior to grant approval.

In a new subsection (2(H)) FTA is proposing to require the execution of a Project Development Agreement (PDA) before approval of entry into PE. The PDA would set forth the mutual understandings of FTA and the project sponsor regarding the steps and schedule to ensure the satisfactory completion of the NEPA process, the steps and schedule to complete preliminary engineering and final design, including development of reliable cost estimates and ridership forecasts, a discussion of all significant uncertainties in the development of costs, benefits and financial information, and the steps and schedule to secure funding commitments. The terms and conditions of a model PDA between FTA and a project sponsor are set forth in Appendix A to the proposed rule.

Final design entry criteria are also proposed in subsection (d), similar to those in the current regulation. New readiness criteria include a requirement that the project be reaffirmed in the region's metropolitan transportation plan if there are any significant cost or scope changes during PE, and a requirement for an agreement between FTA and the project sponsor as to the maximum amount of New Starts funding that will be sought for the project. However, as stated in subsection (d)(2)(D), FTA will entertain requests for increases above this amount in an FFGA for the project if it is determined that costs have increased outside of the project sponsor's control. As in the current regulation, approval to enter final design will require further development of the plan to conduct the ''before and after'' study. However, the proposed rule requires that data on the project through the end of PE must be collected and submitted to FTA as part of the final design submittal. Again, analogous to the current regulation's requirement for a rating of ''recommended,'' a project must receive an overall rating of at least ''medium'' to advance into final design. Further, as in the current regulation, project sponsors approved to enter final design are granted pre-award authority to conduct final design activities, right-of-way acquisition and utility relocation prior to grant approval. Other project activities would require a Letter of No Prejudice. As stated in subsection (d)(7), projects that are approved into final design will be exempt from any changes in New Starts policy or guidance.

As in the current regulation, criteria are provided for execution of Full Funding Grant Agreements (FFGAs) in subsection (e). Projects must be rated ''medium'' or better, project sponsors must be determined to have the technical capacity to carry out the project, and no outstanding issues may remain. The proposed rule notes in subsection (e)(2) that FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.''

As noted earlier, it is intended that the maximum New Starts share of the project be established at entry into final design. However, FTA will entertain requests for additional New Starts funds, on a case-by-case basis where costs have increased outside the control of project sponsors. FFGAs are proposed to continue to specify the cost and scope of the project, the schedule that the project sponsor must meet, and the schedule of Federal funding amounts (subject to appropriations). Consistent with changes made by SAFETEA–LU, in subsection (e)(7), FTA proposes to add a new feature of FFGAs, which would be an incentive clause that would allow for an amendment to increase the Federal funding contribution when actual opening year ridership is no less than 90 percent of that forecast and actual capital costs are not more than 110 percent of that estimated at the time the project entered PE, compared in constant dollars. The standard being set for ridership and cost is slightly more stringent than provided for in SAFETEA–LU, as FTA is proposing to process an amendment for these additional incentive funds only after the project is complete and operating, rather than providing an immediate incentive based on whether forecasts stayed within these limits after entry into PE but prior to execution of the FFGA. FTA believes that the incentive should only be provided for actual performance, not for projected performance. As in the current regulation, FTA is limited in the amount of FFGA commitments it can make during a given reauthorization cycle by the amount authorized, plus a statutory limit on contingent commitments, which are subject to future authorizations. Finally, consistent with the current regulation, a ''before and after'' study must be completed within 30 months of project opening that assesses the costs of the project and actual ridership two years after opening compared with the estimated costs and forecast ridership at entry into PE, final design, and the FFGA.

Subpart C—Small Starts

Subpart C provides for the eligibility, criteria, and process requirements that will be applied to Small Starts projects that do not meet the requirements for Very Small Starts. As required by 49 U.S.C. 5309(e), as amended by SAFETEA–LU, it is based on a simplified process but similar to that used for the larger, New Starts projects covered by Subpart B.

Section 611.19: Eligibility for Section 5309 Capital Investment Funds (Small Starts)

Section 611.19 provides the eligibility criteria for Small Starts. First, as defined in section 611.3, a Small Starts project must have a total project cost of less than $250 million and seek no more than $75 million in Section 5309 Capital Investment funds. To be eligible as a fixed guideway, as with New Starts, the project must involve operation for at least 50 percent of its total length (not necessarily contiguous) on a facility dedicated to transit and other high occupancy vehicles during peak periods (or other congested periods). However, in contrast to New Starts, a Small Starts project may also involve a corridor bus project with certain design features. The proposed rule requires substantial transit stations, traffic signal priority or preemption, low floor buses or level boarding, branding of the service, and 10 minute peak/15 minute off peak headways at least 14 hours per day. New Starts projects may not be subdivided to meet Small Starts eligibility. Larger projects must follow the requirements of Subpart B.

Section 611.21: Project Justification Criteria (Small Starts)

This section provides the justification criteria for Small Starts. Although similar to the criteria for New Starts in section 611.11, there are some significant simplifications. Small starts projects must still be rated based on the results of an alternatives analysis, but, given the reduced amount of justification information required, it is likely that such analysis may be simpler. A multiple measure approach is again specified, but the number of criteria is reduced. Specific measures for each criterion are not specified in the regulation but will be published and changed, upon notice and comment as part of the process of developing policy guidance.

The project justification criteria for Small Starts are classified into those related to effectiveness, contributing to 50 percent of the project justification rating and cost effectiveness contributing 50 percent of the project justification rating. For Small Starts, the effectiveness criteria are mobility improvements for the general population and economic development/ land use. The mobility measure would include a calculation of the travel time savings for highway users as discussed under New Starts above and provides 40 percent of the effectiveness rating. As with New Starts, economic development and land use will be evaluated together as a measure of effectiveness. But under Small Starts, economic development/ land use will contribute to 60 percent of the effectiveness rating. As described above in the Response to Comments under Question 7 and 8 on the Guidance on New Starts Policies and Procedures and under Question 8 on the ANPRM on Small Starts, it is difficult to evaluate these two factors separately. Nonetheless, recognizing the importance that SAFETEA–LU provided by including both these factors, FTA has incorporated a combined criterion as an important part of the evaluation of project justification.

As with New Starts, cost effectiveness is proposed to be defined as annualized costs divided by user benefits. As with New Starts, ''other factors'' will be used to assess those features not included in the explicit criteria for effectiveness and cost effectiveness, and will be used to adjust the overall project rating. Other factors will always include a rating for the problem or opportunity in the project corridor. Another measure that FTA intends to consider as an ''other factor'' is the degree to which a project is a part of a significant congestion reduction strategy. FTA will evaluate projects that are a principal element of a significant congestion reduction strategy, in general and a pricing strategy, in particular, more highly. FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. Measures of effectiveness and cost effectiveness will be based on comparing the proposed project with a baseline alternative and will be assessed using opening year forecasts (rather than the forecasts for the planning horizon covering no less than 20 years, as is the case for New Starts).

There is likely to be a significant difference between the analytical procedures used for Small Starts and New Starts projects. As opening year forecasts will be the basis for evaluation, simplified methods for projecting user benefits may be used, but are subject to FTA approval.

As with New Starts, an overall rating on a five level scale ranging from ''high'' to ''low'' will be applied to the measures for each criterion that make up the Small Starts project justification rating.

Section 611.23: Local Financial Commitment Criteria (Small Starts)

Section 611.23, covering local financial commitment criteria for Small Starts, is almost identical to section 611.13, which covers these criteria for New Starts. Project financial plans for capital and operating costs must be rated to determine their stability and reliability. The rating of the stability of operating costs will take into account the degree to which innovative contractual arrangements, especially public private partnerships, are in place which can improve the reliability of estimates of operating costs. Based on the amount of non-Section 5309 Capital Investment funding proposed, the capital plan and the operating plan will each be rated on a five level scale from ''high'' to ''low.'' An overall rating of ''high'' to ''low,'' also on a five level scale, will be assigned based on the ratings of the capital and operating plans and proposed New Starts share. The only significant difference in the regulation is that projects will be rated based on plans which go through the year of opening, rather than for the planning horizon covering no less than 20 years. Detailed measures will be provided in the policy guidance that will identify simplified information that can be used to satisfy the financial plan requirement. Furthermore, while FTA will give priority to projects that include more than required Small Starts funds it will not rate projects that propose a funding strategy based on an 80 percent Section 5309 funding share below ''medium'' so long as the amount of Section 5039 funding requested is consistent with the fiscal capacity of State and local governments. FTA strongly encourages all project sponsors to request the lowest amount of Section 5309 funding reasonable. Like New Starts, the Small Starts program is likely to be extremely competitive. While FTA will not use the Section 5309 funding request to reduce the overall local financial commitment rating below ''medium,'' it is likely in its policy guidance to propose a process that rewards projects for requesting a lower than 80 percent Section 5309 share. In addition, as noted in section 611.27(c)(2) just because a project is rated Medium, there is no guarantee that the project will be recommended for funding.

Section 611.25: Overall Project Ratings (Small Starts)

The approach taken in section 611.25 for developing the overall project ratings for Small Starts projects is essentially identical to the approach used in section 611.15 for New Starts. Projects will be assigned an overall project rating on a five level scale ranging from ''high'' to ''low'' that will combine the ratings made for project justification and local financial commitment. Projects must be rated at least ''medium, medium-high or high'' on both project justification and local financial commitment to receive an overall rating of ''medium, medium-high or high,'' respectively. Projects must have an overall rating of ''medium'' to advance from one step in the project development process to the next. The only significant differences are that there is no requirement for a separate approval for PE and final design in project development and the commitment document is a simpler Project Construction Grant Agreement (PCGA), rather than an FFGA.

Section 611.27: Project Development Process (Small Starts)

The initial steps in the project planning and development process for Small Starts are identical to the process required under section 611.17 for New Starts. On the other hand, due to the smaller scale of these projects, the type and detail of the analysis that must be conducted is likely to be somewhat simpler. Projects must be the result of alternatives analyses and must be included in the local metropolitan transportation plan. The alternatives analysis must address a range of alternatives (albeit, a shorter list), including a TSM alternative as the baseline alternative. However, where no fixed guideway alternative is being considered, the no-build alternative may serve as the baseline.

For Small Starts, the second step in the process is ''project development,'' which combines PE and final design. The steps which must be undertaken for entry into project development are essentially the same as those required under section 611.17 for New Starts PE and final design, but combined and tailored to the smaller scale of the proposed Small Starts project. The NEPA process must be completed before final design can begin and before a funding recommendation can be made. During the project development, costs must be established and uncertainties mitigated, but the Federal contribution of Small Starts will not be set until negotiation of the PCGA.

The criteria for entry into Small Starts project development are essentially the same as those for entry into New Starts PE, again scaled to the project's size: (1) Alternatives analysis must be completed; (2) the NEPA scoping process must be completed unless a categorical exclusion has been granted; (3) the project must be in the metropolitan transportation plan; (4) financing strategies must be endorsed by prospective funding partners; (5) the travel demand forecasting process must be validated; and (6) the project sponsor must have adequate technical capacity to carry out the project. A project must be rated at least ''medium'' to advance into project development. A ''before and after'' study is required for Small Starts, and the plan for developing the study must be completed during project development. Pre-award authority is provided for all preliminary engineering activities upon approval to enter project development. In addition, once the environmental process is completed, as represented by a signed ROD or FONSI or a finding that the project is a categorically excluded under 23 CFR 777.117, the project sponsor also has automatic pre-award authority for final design, right of way acquisition and utility relocation.

For Small Starts, the commitment document is a PCGA. As with the FFGA for New Starts, the PCGA specifies the amount and schedule of Federal funding, which can include a commitment of future funds, and the project cost, scope, and schedule, and commits the grantee to complete the project based on these parameters. To be eligible for a PCGA, FTA must find that the environmental process is complete, the project is based on the evaluations and ratings required, the project has an overall rating of ''medium'' or better, the sponsor has the technical capacity to carry out the project, and there are no major outstanding issues interfering with successful completion of the project. The PCGA will include a requirement for completion of the ''before and after'' study. In the case of Small Starts, ''after'' is defined as one year after service commences, rather than two years as is the case with New Starts. Data on the progress of the project to date must be submitted before the PCGA will be awarded. FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.'' The total amount of funding committed in PCGAs cannot exceed the amount of funding for Small Starts authorized in law, plus a statutorily limited amount of contingent commitments, subject to future authorizations.

Subpart D—Very Small Starts

Subpart D provides for the eligibility, evaluation criteria, and procedural requirements that will be applied to Very Small Starts projects. It is essentially identical to Subpart C, but provides for an even more simplified approach to project development and uses ''warrants'' for determining project justification for Very Small Starts projects, which are a subset of Small Starts projects that have a set of defined characteristics. These very simple, smaller projects can be found to be justified solely on the basis of these project characteristics. This process is also based on, but now highly simplified from, the requirements for the larger, New Starts projects covered by Subpart B.

Section 611.29: Eligibility for Section 5309 Capital Investment Funds (Very Small Starts)

Section 611.29 provides the eligibility criteria for Very Small Starts. First, as defined in section 611.3, a Very Small Starts project must have a total project cost of less than $50 million and a project cost of less than $3 million per mile (not including vehicles) and serve a corridor where at least 3,000 existing riders per day will benefit from the project. Projects that do not meet these criteria, but which still are small enough to qualify as a Small Start, must follow the procedures and criteria set out in Subpart C. To be eligible as a fixed guideway, as with New Starts, a Very Small Starts project must involve operation for at least 50 percent of its total length (not necessarily contiguous) on a facility dedicated to transit and other high occupancy vehicles during peak periods (or other congested periods). However, in contrast to New Starts, and similar to a Small Starts project, a Very Small Start project may also involve a corridor bus project with certain design features. The proposed rule requires substantial transit stations, traffic signal priority or preemption, low floor buses or level boarding, branding of the service, and 10 minute peak/15 minute off peak headways at least 14 hours per day. As with New Starts, projects may not be subdivided to meet Very Small Starts eligibility. Larger projects must follow the requirements of Subpart B or C.

Section 611.31: Project Justification Criteria (Very Small Starts)

This section provides the justification criteria for Very Small Starts. Although similar to the criteria for Small Starts in section 611.21, there is a major simplification. While Very Small Starts projects must still be based on the results of an alternatives analysis, the justification information required is related to the predefined characteristics of the Very Small Starts project. Because Very Small Starts projects are made eligible based on a set of project characteristics that assures that they are effective and cost-effective, rather than rate these projects on the basis of an evaluation of information, FTA will simply assign an overall project justification rating of ''medium'' to these projects if they meet the predefined characteristics, although ''other factors'' can be used to increase this rating. ''Other factors'' include whether a project is a principal element of a significant congestion reduction strategy, in general and a pricing strategy, in particular. FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. Another significant difference between Very Small Starts and Small/New Starts will be in the analytical procedures used. No forecasts are required; the sponsor need only provide counts of existing ridership in the corridor and the cost per mile.

Section 611.33: Local Financial Commitment Criteria (Very Small Starts)

Section 611.33, covering local financial commitment criteria for Very Small Starts, is identical to section 611.23, which covers these criteria for Small Starts. Financial plans for capital and operating costs must be rated to determine their stability and reliability. FTA intends to issue very simplified information to support the capital and operating plan requirements as part of its Policy Guidance. The rating of the stability of operating costs will take into account the degree to which innovative contractual arrangements, especially public private partnerships, are in place which can improve the reliability of estimates of operating costs.

Furthermore, while FTA will give priority to projects that include more than required Small Starts funds, it will not rate projects that propose a funding strategy based on an 80 percent Section 5309 funding share below ''medium'' so long as the amount of Section 5039 funding requested is consistent with the fiscal capacity of State and local governments. FTA strongly encourages all project sponsors to request the lowest amount of 5309 funding that is financially feasible. Like New Starts, the Very Small Starts program is likely to be extremely competitive. While FTA will not use the 5309 funding request to reduce the overall local financial commitment rating below ''medium,'' it is likely in its policy guidance to propose a process that rewards projects for requesting a lower than 80 percent 5309 share. In addition, as noted in section 611.27(c)(2), just because a project is rated Medium, there is no guarantee that the project will be recommended for funding.

The capital plan and operating plan and the proposed Section 5309 Capital Investment share will each be rated on a five level scale from ''high'' to ''low.'' An overall rating of ''high'' to ''low,'' also on a five level scale, will be assigned based on the ratings of the capital and operating plans and proposed Section 5309 Capital Investments share. Projects will be rated based on plans that go through the year of opening.

Section 611.35: Overall Project Ratings (Very Small Starts)

The approach taken in section 611.35 for developing the overall project ratings for Very Small Starts projects is similar to the approach used in section 611.25 for Small Starts. Projects will be assigned an overall project rating on a five level scale ranging from ''high'' to ''low,'' which will combine the ratings made for project justification and local financial commitment. Since projects which qualify as a Very Small Start by their nature automatically are granted a rating of ''medium'' for project justification, a project must have a rating of at least ''medium'' on local financial commitment to receive an overall rating of ''medium.'' It should be noted that a project can receive a rating higher than ''medium'' for project justification only through the use of ''other factors'' or the application of the reliability measures. Projects must be rated at least ''medium'' overall to enter the project development process or to be recommended for funding and receive a PCGA.

Section 611.37: Project Development Process (Very Small Starts)

The initial steps in the project planning and development process for Very Small Starts are identical to the process required under section 611.17 for New Starts and under Section 611.27 for Small Starts. However, due to the even smaller scale of these projects, the type and detail of the analysis that must be conducted is simpler. For instance, no baseline alternative is required as the project sponsor does not prepare specific information on effectiveness and cost effectiveness but simply provides existing data that supports the rating for the project. However, projects must be the result of alternatives analyses and must be included in the local metropolitan transportation plans.

For Very Small Starts, as with Small Starts, the second step in the process is ''project development,'' which combines PE and final design. The steps that must be undertaken are essentially the same as those required under section 611.17 for New Starts PE and final design, but again combined and tailored to the much smaller scale of the proposed Very Small Starts project. The NEPA process must be completed during project development, which for a Very Small Start, might involve only documentation of a categorical exclusion. During project development, costs must be established and uncertainties mitigated but the Federal contribution of Small Starts will not be set until negotiation of the PCGA.

As with Small Starts, the criteria for entry into Very Small Starts project development are essentially the same as those for entry into New Starts PE, again scaled to the project's much smaller size: (1) Alternatives analysis must be completed; (2) the NEPA scoping process must be completed unless a categorical exclusion has already been granted; (3) the project must be in the metropolitan transportation plan; (4) financing strategies must be endorsed by prospective funding partners; and (5) the project sponsor must have adequate technical capacity to carry out the project. A project must be rated at least ''medium'' to advance into project development. A very simplified ''before and after'' study is required for Very Small Starts and the plan for developing the study must be complete before a PCGA is executed. Pre-award authority is provided for preliminary engineering upon approval to enter project development. In addition, once the environmental process is completed, as represented by a signed ROD or FONSI or a finding that the project is categorically excluded under 23 CFR 117.17, the project sponsor also has automatic pre-award authority for final design, right of way acquisition and utility relocation.

For Very Small Starts, the commitment document is a PCGA. As with the FFGA for New Starts, the PCGA specifies the amount and schedule of Federal funding, which can include a commitment of future funds, and the project cost, scope, and schedule, and commits the grantee to complete the project based on these parameters. To be eligible for a PCGA, FTA must find that the environmental process is complete, the project is based on the evaluations and ratings required, the project has an overall rating of ''medium'' or better, the sponsor has the technical capacity to carry out the project, and there are no major outstanding issues interfering with successful completion of the project. The PCGA will include a requirement for completion of the ''before and after'' study. In the case of Very Small Starts, ''after'' is defined as one year after service commences, rather than two years as is the case with New Starts. The NPRM notes again in subsection 611.37(d)(2) that a sufficient rating under the proposals contained in this NPRM is not a guarantee that a PCGA will be recommended. The total amount of funding committed in PCGA's cannot exceed the amount of funding for Small Starts authorized in law plus a statutorily limited amount of contingent commitments, subject to future authorizations.

IV. Regulatory Analysis and Notices

A. Executive Order 12866

FTA has determined that this is a significant rule under E.O. 12866 because it will affect transfers (i.e., grant payments) of more than $100 million or more annually. This NPRM implements a grant program, and as such, it only imposes regulatory requirements upon applicants requesting funding under the program. The rating criteria that are the subject of this NPRM are Congressionally-mandated.

The proposed rule is not intended to address a market failure, rather it is intended to both make the regulation consistent with the recent changes to 49 U.S.C. 5309 and change the way projects are currently evaluated. Under the existing regulation, all non-exempt New Starts projects are evaulated using the same process without regard to the size of the investment. This results in a more rigorous evaluation of smaller projects than is needed given the size of the Federal investment. Thus, this proposed rule would vary the level of evaluation based on the size of the project and the size of the Federal investment based on the changes recently made to 49 U.S.C. 5309.

B. Regulatory Evaluation

FTA performed a regulatory evaluation of this NPRM, but did so in a qualitative manner due to the difficulty of evaluating the industry-wide costs and benefits of the program this NPRM would implement. This NPRM proposes a process that FTA will use to evaluate and rate major capital investments under the statutory criteria in 49 U.S.C. 5309. This includes smaller capital projects requesting less than $75 million in Section 5309 Capital Investment program funds and that have a total cost of less than $250 million. Given the discretionary nature of the program and the fact that FTA cannot anticipate in advance which projects will be submitted for evaluation and funding, it is impossible to determine with accuracy the industry-wide costs and benefits of this rule.

Based on its past experience though, FTA has qualitatively evaluated the financial impact the NPRM would place on applicants if the adopted as proposed. The grant application requirements specified in law are substantial, but the major capital grant program makes available funds to defray project development costs. For example, 49 U.S.C. 5309(m)(5) allows up to 8 percent of funds allocated for New Starts and Small Starts to be available for project development costs. Additionally, 49 U.S.C. 5339, as amended by SAFETEA–LU, makes funding available for the alternatives analysis phase of project development. Finally, the transit formula program under 49 U.S.C. 5303 and 5307 and flexible funds under Title 23 may also be used for planning and project development activities. Thus, the financial impact of this rule on the applicants is minimal given that a portion of their project development costs can be reimbursed with Federal funds.

C. 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 NPRM is to propose how FTA will process, rate and recommend for funding various major public transportation capital investment projects.

D. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ‘‘prepare and make available for public comment an initial regulatory flexibility analysis,’’ which will ‘‘describe the impact of the proposed rule on small entities.’’ (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

As noted earlier, it is difficult for FTA to estimate the number and types of applications it may receive for major capital investment funds. Based on FTA's experience, however, major capital investments are not undertaken by small municipal entities. Even so, if small municipal entities were to apply for funding under this regulatory proposal, they would likely do so under the Small Starts program or the Very Small Starts program, for which the requirements have been streamlined. Based on this evaluation, FTA hereby certifies that the proposals for the New Starts program contained in this NPRM, if adopted, would not have a significant economic impact on a substantial number of small entities. FTA invites comment from members of the public who believe there will be a significant impact on small municipal entities.

E. Paperwork Reduction Act

This NPRM proposes information collection requirements subject to the Paperwork Reduction Act. The calculation of the paperwork burden of this NPRM is provided in the docket. The agency has submitted a request for a Paperwork Reduction Act approval. FTA currently collects information under an approved Paperwork Reduction Act request (control #2132–0529).

F. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The proposed regulations would implement a discretionary grant program that would make funds available, on a competitive basis, to States, local governments, and transit agencies. The requirements only apply to those entities seeking funds under this chapter, and thus this action would have not substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Based on this analysis, it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Comment is solicited specifically on the Federalism implications of this proposal.

G. National Environmental Policy Act

FTA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and has determined that this proposed action would not have any effect on the quality of the environment. This action qualifies for a categorical exclusion under FTA's NEPA regulations at 771.117(c)(20), which covers the ‘‘[p]romulgation of rules, regulations, and directives.’’

H. Energy Act Implications

The proposals contained in this NPRM would likely have a positive effect on energy consumption because, through the Federal investment in public transportation projects, these projects would increase the use of public transportation.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to ensure meaningful and timely input from Indian tribal government representatives in the development of rules that ‘‘significantly or uniquely affect’’ Indian communities and that impose ‘‘substantial and direct compliance costs’’ on such communities. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals in this NPRM may have on Indian communities.

J. Unfunded Mandates Reform Act

This rule will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more in any one year. However, this expenditure is voluntary, and not the result of a Federal, unfunded mandate.

K. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of section 3011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which requires the Secretary of Transportation to prescribe regulations for Small Starts capital investment projects funded under 49 U.S.C. 5309 with a Federal share of less than $75,000,000 and a total cost of less than $250,000,000. In addition, this NPRM implements changes made by section 3011 to the New Starts program for funding capital investment projects with a higher Federal share or total cost than that specified for the Small Starts program.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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 number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

M. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 611

Government contracts; Grant programs—Transportation; Public Transportation.

For the reasons stated in the preamble, the Federal Transit Administration proposes to revise 49 CFR part 611 to read as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

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

Subpart A—General Provisions

§ 611.1 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment funds for new fixed guideway systems, substantial investments in corridor-based bus systems, or extensions to existing systems under 49 U.S.C. 5309(d) and (e). Also, this part prescribes the rules that will be used by FTA to evaluate proposed Section 5309 Capital Investment projects as required by 49 U.S.C. 5309(d) and (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(d)(5), for New Starts, or into project development as required by 49 U.S.C. 5309(e)(6), for Small Starts;

(2) Rate projects as ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low,'' as required by 49 U.S.C. 5309(d)(5) and 49 U.S.C. 5309(e)(6);

(3) Assign individual ratings for each of the project justification and local financial commitment criteria specified in 49 U.S.C. 5309(d)(2)(B) and (C) and 49 U.S.C. 5309(e)(2)(B) and (C);

(4) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements as specified in 49 U.S.C. 5309(g)(2) or Project Construction Grant Agreements as specified in 49 U.S.C. 5309(e)(7);

(5) Support funding recommendations for this program for the Administration's annual budget request; and

(6) Fulfill the reporting requirements under 49 U.S.C. 5309(k)(1), Annual Report on Funding Recommendations.

§ 611.3 Applicability.

(a) This part applies to all proposals for Federal Section 5309 Capital Investment funds for new fixed guideway systems and extensions to existing fixed guideway systems, including substantial capital investments in corridor-based bus projects.

(b) This part does not apply to projects approved into final design prior to [the effective date of final rule] unless the sponsor proposes project changes that warrant the project's return to preliminary engineering. Such projects will continue to be rated under the regulatory provisions in effect at the time the project was approved into final design until the Full Funding Grant Agreement is executed.

(c) Projects that were exempt from the project evaluation and rating process (requesting under $25 million in Section 5309 Capital Investment funding), and were approved into project development prior to [the effective date of final rule], will receive the Section 5309 Capital Investment funds that have been appropriated before [the effective date of final rule] without being evaluated and rated under the provisions of this part, as long as all grant requirements are met. To receive additional Section 5309 Capital Investment funds after [the effective date of the final rule], projects must be evaluated and rated according to the process defined in this part.

§ 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 1500–1508, and FHWA/FTA regulations at 23 CFR parts 450 and 771 are applicable, unless a different definition is described below, in which case, the definition in this section will apply for purposes of this part. In addition, the following definitions apply:

Alternatives analysis means a study conducted as part of the transportation planning process required under 49 U.S.C. sections 5303 and 5304, that evaluates all reasonable mode and alignment alternatives for addressing a transportation problem in a corridor or subarea, and results in the selection of a locally preferred alternative by the chief executive officers or official boards of the sponsoring governmental agency(ies) and the metropolitan planning organization(s) with jurisdiction through a public process. An alternatives analysis also provides sufficient information to enable FTA to evaluate and rate the project justification and local financial commitment criteria as required by this regulation.

Baseline Alternative means the alternative against which the proposed Section 5309 Capital Investment project is compared to develop project justification measures. Relative to the no-build alternative, it should include transit improvements lower in cost than the proposed Section 5309 Capital Investment project that represent the best that can be done to address mobility problems in the corridor without constructing a new fixed guideway. The baseline alternative is typically the Transportation System Management alternative or a Very Small Starts arterial bus project.

Bus Rapid Transit (BRT) means a series of coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on urban roadways. The intention of BRT is to reduce bus travel time, improve service reliability, increase the convenience of users, and increase transit ridership.

Fixed guideway system means a public transportation facility that utilizes and occupies a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles for at least 50 percent of the length of the project, or uses a fixed catenary system and a right-of-way usable by other forms of transportation, or in the case of Small Starts, a corridor-based bus project where at least 50 percent of the project operates in a separate right-of-way during the peak period or the project represents a substantial investment in a defined corridor that includes at least the following elements: substantial transit stations; traffic signal priority/pre-emption; low-floor buses or level boarding; branding of the proposed service; and 10 minute peak/15 minute off-peak headways or better for at least 14 hours per day. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and dedicated facilities for buses (such as BRT) and other high occupancy vehicles. Additionally, a transportation facility shall be deemed a fixed guideway system solely for the purposes of funding eligibility under New Starts (49 U.S.C. 5309(d)) and Small Starts (49 U.S.C. 5309(e)) if the project is designed so that in any given month: transit vehicles utilize the transportation facility on a barrier-separated right-of-way; and by means of tolling or other enhancements, 95 percent of the transit vehicles using the facility will be able to maintain an average speed of not less than 5 miles per hour below the posted speed limit for the time they are on the facility. This definition does not alter the definition of ''fixed guideway mile'' for purposes of calculating eligibility for formula programs administered by FTA, including Urbanized Area Formula Grants (49 U.S.C. 5307(b)) and Fixed Guideway Modernization.

FTA means the Federal Transit Administration.

Full Funding Grant Agreement (FFGA) means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(d)(1) and (g)(2).

Metropolitan transportation plan means the official multimodal transportation plan covering a period of no less than 20 years that is developed, adopted and updated by the metropolitan planning organization through the metropolitan transportation planning process under 23 CFR part 450.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), found at 23 CFR part 771. The NEPA process is completed when a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) is issued by FTA, or when FTA agrees that the project is categorically excluded under 23 CFR part 771. Requirements under other Federal environmental laws should be integrated into the environmental review process per FTA's NEPA regulations at 23 CFR 771.113(a) and 23 CFR 771.133.

Planning horizon means the period used for forecasting costs and benefits. For New Starts the planning horizon must be at least 20 years. For Small Starts the planning horizon is opening year.

Project Construction Grant Agreement (PCGA) means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).

Project development refers to the activities and procedures that are to be conducted during preliminary engineering and final design before FTA can execute a Full Funding Grant Agreement or Project Construction Grant Agreement.

Project Development Agreement means a signed agreement between FTA and a project sponsor for a New Starts project that sets forth the principal issues to be resolved, products to be completed, all significant cost and ridership uncertainties and the strategies to address them, and the schedule for reaching significant milestones during the course of project development The terms and conditions of a model PDA are set forth in Appendix A to this part.

Secretary means the Secretary of Transportation.

Section 5309 Capital Investment program means a program of assistance for new fixed guideway and certain corridor-based bus systems and extensions to such systems eligible for assistance under 49 U.S.C. 5309(b)(1), (b)(4), (d), (e), and (m)(2)(A) and this part.

Section 5309 Capital Investment means a new fixed guideway system or an extension to an existing fixed guideway system, but does not include rail modernization or non-corridor bus capital projects funded under 49 U.S.C. 5309. Projects eligible for Section 5309 Capital Investment program funding will be categorized as follows:

(1) *New Starts* project refers to a project requesting Section 5309 Capital Investment program funds of $75 million or more in Section 5309 Capital Investment program funds or that has a total cost of $250 million or more, both in year of expenditure dollars.

(2) *Small Starts* project refers to a project requesting less than $75 million in Section 5309 Capital Investment program funds and that has a total cost of less than $250 million, both in year of expenditure dollars.

(3) *Very Small Starts* project refers to a subset of Small Starts projects that cost less than $3 million per mile (excluding vehicles) and have a total cost of less than $50 million in year of expenditure dollars, and are composed entirely of demonstrably effective and cost-effective project elements.

Transportation System Management (TSM) alternative is a low-cost alternative compared to the fixed guideway alternatives considered. It represents the best low-cost strategies that can be applied in a corridor to address identified problems without the construction of a fixed guideway system. At a minimum it must be more cost effective as compared to the no build alternative than the New or Small Start project compared to the no build alternative. It is usually the baseline against which all of the guideway alternatives are evaluated. Generally, the TSM alternative emphasizes upgrades in transit service through operational and small physical improvements, plus selected highway upgrades through intersection improvements, minor widenings, and other focused traffic engineering actions.

User benefits refers to the transportation system benefits, expressed in hours of perceived travel time (travelers perceive wait and walk time as more onerous than in-vehicle time, so that perceived travel time converts wait and walk time into equivalent minutes of in-vehicle time), that accrue to all travelers affected by the proposed Section 5309 Capital Investment project compared to a baseline alternative. User benefits include travel-time savings, out-of-pocket travel and parking costs, convenience, comfort, reliability, and other benefits that accrue to users of specific travel modes over the planning horizon forecast. Travelers include transit riders, highway users and pedestrians.

§ 611.7 Measures of reliability in the Section 5309 Capital Investment evaluation and rating process.

In the evaluation of project justification and local financial commitment for Section 5309 Capital Investment projects, FTA shall consider the reliability of the estimates of ridership and costs as required by 49 U.S.C. 5309(d)(3)(B) and (4)(B)(i), as well as 49 U.S.C. 5309(e)(4)(D).

(a) The measures of reliability in the forecasts used to support the measures of project justification and local financial commitment will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made

(b) Reliability measures will be applied by adjusting, either upward or downward, ratings for the specific project justification and local financial commitment criteria affected by the associated uncertainties.

Subpart B—New Starts

§ 611.9 Eligibility.

(a) To be eligible for New Starts funding, a proposed project must meet the following prerequisites:

(1) Be based on the results of planning and alternatives analysis as described in § 611.17.

(2) Have at least 50 percent or more of the total project length as a fixed guideway during the peak period or when congestion inhibits transit system performance.

(3) Have a total project cost of $250 million or more or a requested Section 5309 Capital Investment share of $75 million or more, both in year of expenditure funds.

(b) Projects that would otherwise qualify for funding as a New Starts project may not be subdivided into several Small Starts projects. Projects may be built in phases or a series of minimum operable segments, but all projects envisioned for a single corridor, for the purposes of establishing Small Starts program eligibility, will be evaluated together as a single project. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Small Starts limits, the projects will be evaluated as New Starts projects.

§ 611.11 Project justification criteria.

In order to approve a grant for a proposed New Starts project and to approve entry into the preliminary engineering and final design phases as required by 49 U.S.C. 5309(d)(5), FTA must find that the proposed project is meritorious as described in 49 U.S.C. 5309(d)(3).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through the project development phases.

(1) The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(b) The evaluation criteria and weights assigned to each for New Starts project justification are as follows:

(1) Effectiveness criteria (50 percent of the summary rating for project justification):

(i) Mobility improvements for the general population (40 percent of the ratings for effectiveness), including congestion relief. Congestion relief shall be measured based on the degree to which the project reduces highway travel demand and the relative level of congestion in the corridor based on estimated delay.

(ii) Economic development/land use (40 percent of the ratings for effectiveness). Economic development/land use shall be measured using factors that address the additional development expected around project stations as a result of the New Start project. These factors include the extent to which current land use is ripe for development, transit-oriented plans and policies, the economic development climate in the project corridor, the increase in transit accessibility offered by the project, and the economic lifespan of the project.

(iii) Environmental benefits (10 percent of the ratings for effectiveness).

(iv) Mobility improvements for transit dependents (10 percent).

(2) Cost effectiveness (50 percent of the summary rating for project justification) shall be calculated by dividing annualized capital and operating costs by transportation system user benefits. Cost effectiveness for New Starts will be evaluated based on the forecast made over the planning horizon. Annualized cost shall include all elements necessary for completion of the project with contingency amounts that are reasonable to cover unanticipated cost increases plus annual operating and maintenance costs. The breakpoints corresponding to the cost effectiveness ratings will be adjusted for inflation annually as part of the Reporting Instructions.

(3) Other factors will be considered under the authority provided by 49 U.S.C. 5309(d)(3)(K).

(i) All projects will be evaluated and rated on the severity of the transportation and economic development problem or opportunity in the corridor and consideration of the appropriateness of the proposed project as a response.

(ii) Depending upon the applicability, also considered will be the following factors:

(A) Identification of the project as a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular;

(B) Any factor which the New Start project sponsor believes articulates the benefits of the proposed major capital investment but which is not captured within the other project justification criteria; and

(C) Other factors that the Secretary determines to be appropriate to carry out the evaluation.

(c) In evaluating proposed New Starts projects under these criteria:

(1) For the effectiveness and cost effectiveness criteria, the proposed New Starts project will be compared to the baseline alternative.

(2) As a candidate project proceeds through project development, a greater degree of certainty is expected with respect to the scope of the project and a greater level of commitment is expected with respect to the funding strategy and the plans and policies intended to support economic development and transit supportive land use.

(d) New Starts project sponsors will generally use traditional methods to estimate mobility benefits (user benefits and ridership). These methods are based on the traditional four-step regional travel demand modeling procedures, and project sponsors shall follow FTA guidelines in defining alternatives, operating plans, and other assumptions used to develop travel forecasts. Project sponsors that wish to use alternative technical methods to develop forecasts of ridership and project benefits must receive prior written approval from FTA.

(e) The individual ratings for each of the criteria described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for project justification using the weights provided for above. ''Other factors'' will be considered and applied by adjusting, either upward or downward, the summary project justification rating.

§ 611.13 Local financial commitment criteria.

In order to approve a grant for a New Starts project under 49 U.S.C. 5309, and to approve entry into the preliminary engineering and final design phases as required by 49 U.S.C. 5309(d)(5), FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(d)(4).

(a) The financial capability of the project sponsor to build, operate, and maintain the proposed project as well as the existing and planned system will be evaluated according to the following measures:

(1) The proposed share of project capital costs to be met using funds from sources other than the Section 5309 Capital Investment program, including both the non-Federal match required by Federal law and any additional local, State or non-Section 5309 Capital Investment Federal funding (''overmatch''). Unless otherwise specified in Federal law, FTA will not take into account the non-Federal funds expended on a project other than the New Starts project being evaluated when computing the non-Federal share of that New Starts project. However, FTA will give priority to financing projects that include more non-5309 funds than are required as local match under 5309(h). At the same time, FTA will take into consideration the fiscal capacity of State and local governments by not reducing the overall local financial commitment rating below ''medium,'' for projects that, due to state or local fiscal capacity constraints, propose a funding strategy with an 80 percent Section 5309 Capital Investment funding.

(2) The stability and reliability of the proposed capital funding plan for constructing all essential elements of the New Starts project and transit system, including the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases.

(3) The stability and reliability of the proposed operating funding plan to operate and maintain the entire transit system as planned, including local resources to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the proposed project, and including the existence of contractual arrangements that are designed to reduce and/or make more predictable the annualized cost of operations.

(b) The capital and operating plans specified in paragraphs (a)(2) and (3) of this section will be evaluated over the planning horizon, consistent with the planning horizon used for travel forecasting purposes.

(c) For each proposed project, ratings for paragraphs (a)(1), (2), and (3) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(d) The individual ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for local financial commitment. To develop the summary ratings, the rating for capital and operating financial plans will be given equal weights. The rating for the proposed share from other than the Section 5309 Capital Investments program will be used to assign a higher or lower rating should the weighting of the capital and operating financial plan ratings produce a rating which would otherwise fall between the summary rating levels specified in this section.

§ 611.15 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment, adjusted by the degree of reliability of estimates of ridership, costs, and funding sources (§§ 611.7, 611.11, and 611.13), will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' as required by 49 U.S.C. 5309(d)(5)(B) to each proposed project. To obtain an overall rating of ''medium,'' a project must have at least a ''medium'' rating for project justification and local financial commitment. To obtain an overall rating of ''medium-high,'' a project must have at least a rating of ''medium-high'' for both project justification and for local financial commitment. To obtain a rating of ''high,'' a project must have a rating of ''high'' for both project justification and for local financial commitment.

(1) These ratings will indicate the overall merit of a proposed project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(k)(1), and as required for FTA approvals during the following project development steps:

(i) Advancement of proposed New Starts projects into both preliminary engineering and final design;

(ii) Decision to recommend New Starts projects for Full Funding Grant Agreements; and

(iii) Projects that achieve an overall rating of ''medium'' or better will be allowed to advance into and through project development, and may be recommended for funding.

§ 611.17 Project development process.

All New Starts projects must emerge from the metropolitan and statewide planning process, consistent with 23 CFR part 450, and be included in the metropolitan transportation plan. Proposed projects must be based on the results of alternatives analysis and proceed through the phases of project development before being recommended for New Starts program funding.

(a) Alternatives Analysis. To be eligible for project funding under the New Starts program, local project sponsors must perform an alternatives analysis consistent with FTA guidance.

(1) The alternatives analysis must develop information on the benefits, costs, and impacts of alternative strategies to address a transportation problem or opportunity in a given corridor, leading to the adoption of a locally preferred alternative.

(2) The alternative strategies evaluated in an alternatives analysis should include a no-build alternative, at least one TSM alternative that is able to serve as the New Starts project baseline alternative, and a number of build alternatives that represent the full range of reasonable responses to the transportation problem or opportunity. The project baseline alternative represents the best that can be done without building a fixed guideway system. This generally means a bus alternative that addresses as effectively and cost-effectively as possible the same transportation problem or opportunity as the build alternative. FTA will determine whether to require a separate baseline alternative on a case-by-case basis, if a project sponsor provides information intended to demonstrate that the no-build alternative (i.e., a continuation of existing transit service policies in the study area) fulfills the requirements for a baseline alternative (indicated by very high levels of existing transit service),

(3) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan transportation plan.

(b) Project Development. Consistent with 49 U.S.C. 5309(d)(5) and 49 U.S.C. 5328(a)(2), FTA will approve entry of proposed projects into project development. Project development will include FTA approval points for preliminary engineering and final design. Preliminary engineering and final design will proceed as described in paragraphs (c) and (d) of this section.

(1) Consistent with 49 U.S.C. 5328(a)(2), FTA will complete the evaluation of a proposed project for approval into preliminary engineering within 30 days of receipt of a complete formal request from the project sponsor(s).

(2) Consistent with 49 U.S.C. 5328(a)(3), FTA will complete the evaluation of a proposed project for approval into final design within 120 days of receipt of a complete formal request from the project sponsor(s).

(c) Preliminary Engineering.

(1) The preliminary engineering phase of New Starts project development is the process of finalizing the project scope, cost, and the financial plan such that:

(i) All environmental and community impacts are identified and adequate provisions made for their mitigation in accordance with 49 U.S.C. 5324(b) and NEPA, with issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI);

(ii) All major or critical project elements are designed to the level that no significant unknown impacts relative to their costs are likely; and

(iii) All cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the New Starts program financial contribution needed to implement the project.

(iv) The project sponsor has used credible, relevant, identifiable and cost-effective industry or engineering practices that are uniformly and consistently applied in preparing for and making these determinations. The cost estimating process during preliminary engineering would specifically identify the main components of the project as identified in FTA's Standardized cost categories, including all essential project elements, and add sufficient contingencies to cover the remaining design and cost uncertainties that will be addressed in final design.

(2) A proposed project can be considered for advancement into preliminary engineering only if:

(i) Alternatives analysis has been completed;

(ii) FTA has approved the alternative that will serve as the baseline alternative against which the proposed project will be compared in the evaluation and rating process;

(iii) The NEPA scoping process has been completed or the project has been granted a categorical exclusion;

(iv) The proposed project has been adopted as the locally preferred alternative in the metropolitan transportation plan;

(v) The proposed financial strategies, planned funding sources, and amounts have been independently endorsed by those agencies identified as responsible for providing or approving the funding. Where future State and/or local government action or public referendum is required to establish (and commit) the proposed funding source, a letter of endorsement and a timeframe for implementation and commitment is required from the appropriate policy-making or decision-making body responsible for providing or approving the proposed funding;

(vi) For project sponsors using traditional travel forecasting procedures (commonly referred to as four-step models) to estimate transportation system user benefits and ridership, the procedures have been rigorously validated using a survey of transit riders that has been completed not more than five years prior to a request to enter preliminary engineering;

(vii) Project sponsors have demonstrated adequate technical capability to carry out preliminary engineering for the proposed project;

(viii) FTA and the project sponsor have signed a Project Development Agreement (PDA) that identifies principal issues to be resolved, products to be completed during project development, all significant uncertainties and the strategies to address them, and schedules for reaching significant milestones during the course of project development. At a minimum, a PDA will include the steps and schedule to ensure the satisfactory completion of the NEPA process, the steps and schedule to complete preliminary engineering and final design including development of reliable cost estimates and ridership forecasts, a discussion of all significant uncertainties in the development of cost, benefit, and financial information, and the steps and schedule to secure funding commitments; and

(ix) All other applicable Federal and FTA program requirements have been met.

(3) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors shall submit a preliminary plan for collection and analysis of information to identify the ''before and after'' impacts of the New Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit the initial information on project scope, service levels, capital costs, operating costs, and ridership of the project produced during alternatives analysis, identify the entity responsible for each in order to facilitate FTA's compliance with preparation of the Contractor Performance Assessment Report required by 49 U.S.C. 5309(l)(2),

and provide a discussion of the key uncertainties that may affect achievement of the forecasts.

(4) FTA's approval will be based on the results of its evaluation as described in §§ 611.11 through 611.15.

(5) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into preliminary engineering.

(6) This part does not in any way revoke FTA approvals to enter preliminary engineering made prior to [effective date of the final rule]; however, in order to advance to final design, the project would be subject to the requirements of this part.

(7) New Starts projects approved to advance into preliminary engineering receive blanket pre-award authority to incur project costs for preliminary engineering activities prior to grant approval.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(d) Final Design. Consistent with 49 U.S.C. 5309(d)(5), FTA will evaluate a proposed New Starts project prior to approval into final design.

(1) Final Design is the phase of project development during which the significant remaining uncertainties in the construction cost estimate that were specified at the end of preliminary engineering are mitigated, detailed specifications and bid documents are produced, all significant third party and relocation agreements are signed, all funding commitments needed to complete the project are finalized, and all remaining technical and regulatory issues relating to readiness to begin construction are completed.

(2) A proposed project can be considered for advancement into final design only if:

(i) The NEPA process has been completed with FTA's issuance of a ROD or FONSI, or FTA's concurrence in a categorical exclusion;

(ii) All of the conditions described in § 611.17(c)(1) and as further defined in FTA's policy guidance for completion of preliminary engineering have been met.

(iii) The project is reaffirmed in its final configuration and costs (after NEPA and preliminary engineering) in the metropolitan transportation plan if significant changes have occurred in the project definition or cost compared to the project that was approved to enter preliminary engineering;

(iv) FTA and the project sponsor have agreed on the final New Starts program funding amount that generally may not be exceeded in any subsequent Full Funding Grant Agreement. FTA will entertain requests for higher levels of New Starts funding when, during final design but prior to execution of the Full Funding Grant Agreement, FTA determines that the increase in costs is beyond the project sponsor's control. These cost increases are expected to be limited to unforeseen cost increases due to unusual occurrences. FTA will decide on a case-by-case basis whether these circumstances apply to a given project and what dollar amount is attributable to these occurrences. FTA would participate in these cost increases proportionate to the previously agreed-to percentage share between FTA and the project sponsor; likewise FTA would participate in any cost reductions identified during final design proportionate to the previously agreed-to percentage share between FTA and the project sponsor.

(v) Project sponsors have demonstrated adequate technical capability to carry out final design for the proposed project; and

(vi) All other applicable Federal and FTA program requirements have been met.

(3) FTA's approval will be based on the results of its evaluation as described in §§ 611.11 through 611.15.

(4) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into final design.

(5) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors seeking Full Funding Grant Agreements shall submit a complete plan for collection and analysis of information to identify the ''before and after'' impacts of the New Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit updated information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during preliminary engineering; identify the entity responsible for each in order to facilitate FTA's compliance with preparation of the Contractor Performance Assessment Report required by 49 U.S.C. 5309(l)(2); prepare an analysis of the changes between the current project information and the information prepared during alternatives analysis; and discuss the key remaining uncertainties that may affect achievement of the forecasts.

(i) The plan shall finalize the preliminary ''before and after'' plan developed prior to entry into preliminary engineering. The plan will provide for: Collection of ''before'' data on the current transit system; documentation of the ''predicted'' scope, service levels, capital costs, operating and maintenance costs, and ridership of the project; collection of ''after'' data on the transit system two years after opening of the New Starts project; and analysis of the consistency of ''predicted'' project characteristics with the ''after'' data.

(ii) The ''before'' data collection shall obtain information on transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics. The ''after'' data collection shall consist of information comparable to the before data on transit service levels and ridership patterns, plus information on the as-built scope and capital costs of the New Starts project.

(iii) The analysis of this information shall describe the impacts of the New Starts project on transit services and transit ridership, evaluate the consistency of ''predicted'' and actual project characteristics and performance, and identify sources of differences between ''predicted'' and actual outcomes.

(iv) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(6) Project sponsors shall collect data on the current system, according to the plan required under § 611.17(c)(3) as approved by FTA, prior to the beginning of construction of the proposed New Starts project. Collection of this data is an eligible part of the proposed project for funding purposes.

(7) Projects that are approved into final design are exempt from any changes in New Starts policy, guidance, and procedures.

(8) This part does not in any way revoke prior FTA approvals to enter final design that were made prior to [the effective date of the final rule]; however, if the project has not already been recommended for a Full Funding Grant Agreement, in order to be so recommended the project would be subject to the requirements of this part.

(9) Projects approved to advance into final design receive blanket pre-award authority to incur project costs for final design activities prior to grant approval. Pre-award authority to acquire real property and to relocate residents and businesses in accordance with the

Uniform Relocation and Real Property Acquisition Policies Act is granted upon completion of the NEPA process.

(i) All other activities must receive a Letter of No Prejudice (LONP) to be eligible for Federal reimbursement.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(e) Full-Funding Grant Agreements (FFGAs).

(1) FTA will determine whether to execute an FFGA for proposed New Starts projects based on:

(i) The evaluations and ratings established by this regulation;

(ii) The technical capability of project sponsors to complete the proposed New Starts project; and

(iii) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed New Starts project.

(2) FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.''

(3) An FFGA shall not be executed for a project that is not authorized for final design and construction in accordance with Federal law.

(4) FFGAs may be executed only for those projects that:

(i) Have an overall rating of ''medium'' or better;

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize New Starts funds, consistent with available program authorization.

(5) In any instance in which FTA decides to provide financial assistance under the Section 5309 Capital Investment program for construction of a New Starts 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) The maximum level of Federal financial contribution under the Section 5309 Capital Investment program will be consistent with the maximum New Starts share determined at the time the project entered final design as provided in paragraph (d)(2)(iv) of this section;

(ii) The grantee will be required to complete construction of the project, as defined in the scope, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated using non-Section 5309 Capital Investment funds;

(iii) FTA and the grantee will establish a schedule for anticipating Federal contributions; and

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

(6) If a project is completed using less than the total funding authorized in the FFGA, the project sponsor may request a grant amendment to spend the remaining funds on other system capital improvements.

(7) Consistent with 49 U.S.C. 5309(h)(3), the FFGA may include an incentive clause that will provide a specified higher than requested New Starts funding share, not to exceed 80 percent, under the following conditions:

(i) Actual opening year ridership is not less than 90 percent of the opening year ridership estimated at the time the project entered preliminary engineering for a project of equivalent scope; and

(ii) The actual scope and construction cost of the project is not more than 10 percent higher than the construction cost estimated at the time the project entered preliminary engineering. The construction costs will be compared in constant dollars for the year the project entered preliminary engineering.

(iii) The higher New Starts share will be in the form of an amendment to the FFGA to be used either to increase the Federal share for costs incurred in completing the project as agreed to in the FFGA, or for other agreed to system capital improvements, prior to closing out the FFGA.

(8) The total amount of Federal obligations under FFGAs and potential obligations under Letters of Intent will not exceed the amount authorized for New Starts under 49 U.S.C. 5309.

(9) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g)(B) 5338(c), and 5338(f).

(10) Consistent with 49 U.S.C. 5309(g)(2)(C), the FFGA will require implementation of the data collection plan prepared in accordance with § 611.17(d)(5):

(i) Prior to the beginning of construction activities the grantee shall collect the ''before'' data on the existing system, if such data has not already been collected as part of final design, and document the predicted characteristics and performance of the project.

(ii) Two years after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the New Starts project, determine the impacts of the project, and analyze the consistency of the ''predicted'' performance of the project with the ''after'' data. A report on the findings and supporting data will be submitted to FTA no later than 30 months after the project opens for revenue service.

(iii) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

(11) This part does not in any way alter, revoke, or require re-evaluation of existing FFGAs that were issued prior to [the effective date of the final rule].

Subpart C—Small Starts

§ 611.19 Eligibility.

(a) To be eligible for Small Starts funding, a proposed project must meet the following prerequisites:

(1) Be based on the results of planning and alternatives analysis as described in § 611.27.

(2) Must include at least 50 percent of the total project in a fixed guideway during the peak period or when congestion inhibits transit system performance, or be a corridor bus project that includes at least the following elements:

(i) Substantial transit stations;

(ii) Traffic signal priority/pre-emption;

(iii) Low-floor buses or level boarding;

(iv) Branding of the proposed service; and

(v) 10 minute peak/15 minute off peak headways or better for at least 14 hours per day.

(3) Must have a total project cost of under $250 million and request less than $75 million in Section 5309 Capital Investment funds, both in year of expenditure funds. If the project exceeds either of these limits, it shall be considered and evaluated as a New Start under subpart B of this part.

(b) Projects that would otherwise qualify for funding as a New Starts project may not be subdivided into several Small Starts projects. Projects may be built in phases or a series of minimum operable segments, but all potential Small Starts projects envisioned for a single corridor will be considered together as a single project for the purpose of determining Small Starts eligibility. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Small Starts limits, the projects will be evaluated as New Starts projects.

§ 611.21 Project justification criteria.

In order to approve a grant for a proposed Small Starts project, and to approve entry into the project development phase as required by 49 U.S.C. 5309(e)(6), FTA must find that the proposed project is meritorious as described in 49 U.S.C. 5309(e)(4).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through the project development phase.

(1) The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published as policy guidance, subject to notice and comment, at least every two years or when substantial changes are made.

(b) The evaluation criteria and weights assigned to each for Small Starts project justification are as follows:

(1) Effectiveness criteria (50 percent of the summary rating for project justification):

(i) Mobility improvements for the general population (40 percent of the ratings for effectiveness), including congestion relief. Congestion relief shall be measured based on the degree to which the project reduces highway travel demand and the relative level of congestion in the corridor based on estimated delay.

(ii) Economic development/land use (60 percent of the ratings for effectiveness). Economic development/land use shall be measured using factors that address the additional development expected around project stations as a result of the New Start project. Such factors include the extent to which current land use is ripe for development, transit-oriented plans and policies, the economic development climate in the project corridor, the increase in transit accessibility offered by the project, and the economic lifespan of the project.

(2) Cost effectiveness (50 percent of the summary rating for project justification) shall be calculated by dividing annualized capital and operating costs by transportation system user benefits. Cost effectiveness for New Starts will be evaluated based on the forecast made over the planning horizon. Annualized cost shall include all elements necessary for completion of the project with contingency amounts that are reasonable to cover unanticipated cost increases plus annual operating and maintenance costs. The breakpoints corresponding to the cost effectiveness ratings will be adjusted for inflation annually as part of the Reporting Instructions.

(3) Other factors will be considered under the authority provided by 49 U.S.C. 5309(d)(3)(K).

(i) All projects will be evaluated and rated on the severity of the transportation and economic development problem or opportunity in the corridor and consideration of the appropriateness of the proposed project as a response.

(ii) Depending upon the applicability, also considered will be the following factors:

(A) Identification of the project as a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular;

(B) Any factor which the Small Start project sponsor believes articulates the benefits of the proposed project but which is not captured within the other project justification criteria; and

(C) Other factors that the Secretary determines to be appropriate to carry out the evaluation.

(c) In evaluating proposed Small Starts projects under these criteria:

(1) For the effectiveness and cost effectiveness criteria, the proposed Small Starts project will be compared to the baseline alternative.

(2) As a candidate project proceeds through project development, a greater degree of certainty is expected with respect to the scope of the project and a greater level of commitment is expected with respect to the funding strategy and the plans and policies intended to support economic development and transit supportive land use.

(d) Simplified methods may be used for Small Starts projects with prior written approval from FTA. Depending on the scope and complexity of the proposed Small Starts project, information regarding user benefits and ridership could be estimated based on existing ridership, on-board surveys, calculations of stop-to-stop running time improvements, peer project experience, pivot-point and elasticity based methods, or other methods of estimating ridership and user benefits consistent with FTA guidance and industry practice.

(e) The individual ratings for each of the criteria described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for project justification using the weights provided for above. ''Other factors'' will be considered and applied by adjusting, either upward or downward, the summary project justification rating.

§ 611.23 Local financial commitment criteria.

In order to approve a grant for a Small Starts project under 49 U.S.C. 5309, and to approve entry into project development as required by 49 U.S.C. 5309(e)(6), FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(e)(5). The financial capability of the project sponsor to build, operate and maintain the proposed project as well as the existing and planned system will be evaluated according to the following measures:

(a) The proposed share of project capital costs to be met using funds from sources other than the Section 5309 Capital Investment Program, including both the non-Federal match required by Federal law and any additional local, State or non-Section 5309 Capital Investment Federal funding (''overmatch''). However, FTA will give priority to financing projects that include more non-Section 5309 Capital Investment funds than are required as local match under section 5309(h). At the same time, FTA will take into consideration the fiscal capacity of State and local governments by not reducing the overall local financial commitment rating below ''medium,'' for projects that, due to state or local fiscal capacity constraints, propose a funding strategy with an 80 percent Section 5309 Capital Investment funding. Unless otherwise specified in Federal law, FTA will not take into account the non-Federal funds expended on a project other than the Small Starts project being evaluated when computing the non-Federal share of the Small Starts project.

(b) The stability and reliability of the proposed capital funding plan for constructing all essential elements of the Small Starts project and transit system, including the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases.

(c) The stability and reliability of the proposed operating funding plan to operate and maintain the entire transit system as planned, and including the existence of contractual arrangements, including public private partnership arrangements, that are designed to reduce and/or make more predictable the annualized cost of operations.

(d) The capital and operating plans specified in paragraphs (b) and (c) of this section must include costs and revenues up to and including opening year.

(e) For each proposed project, ratings for paragraphs (a), (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(f) The individual ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for local financial commitment. To develop the summary ratings, the rating for capital and operating financial plans will be given equal weights. The rating for the proposed share from other than the Section 5309 Capital Investments program will be used to assign a higher or lower rating should the weighting of the capital and operating financial plan ratings produce a rating which would otherwise fall between the summary rating levels specified above.

§ 611.25 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment, adjusted by the degree of reliability of estimates of ridership and costs, as provided in §§ 611.7, 611.21, and 611.23, will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' as required by 49 U.S.C. 5309(e)(6)(B), to each proposed project. To obtain an overall rating of ''medium,'' a project must have at least a ''medium'' rating for project justification, and local financial commitment. To obtain an overall rating of ''medium-high,'' a project must have at least a rating of ''medium-high'' for both project justification and for local financial commitment. To obtain a rating of ''high,'' a project must have a rating of ''high'' for both project justification and for local financial commitment.

(1) These ratings will indicate the overall merit of a proposed project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(k)(1), and as required for FTA approvals during the following project development steps:

(i) Advancement of proposed Small Starts projects into project development;

(ii) Decision to recommend Small Starts projects for Project Construction Grant Agreements.

(c) Projects that achieve an overall rating of ''medium'' or better will be allowed to advance into project development and may be recommended for funding.

§ 611.27 Project development process.

All Small Starts projects must emerge from the metropolitan and statewide planning process, consistent with 23 CFR part 450, and be included in the metropolitan transportation plan. Proposed projects must be based on the results of alternatives analysis and proceed through project development before being recommended for Small Starts program funding.

(a) Alternatives analysis. To be eligible for project funding under the Small Starts program, local project sponsors must perform an alternatives analysis consistent with FTA guidance.

(1) The alternatives analysis must develop information on the benefits, costs, and impacts of alternative strategies to address a transportation problem or opportunity in a given corridor, leading to the adoption of a locally preferred alternative.

(2) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative, at least one Transportation System Management (TSM) alternative that is able to serve as the Small Starts project baseline alternative, and an appropriate number of build alternatives. If the alternatives analysis only considers projects that would qualify as Small Starts projects and does not include a new fixed guideway alternative, the Small Starts project already fits the definition of a TSM alternative. In this case, the no-build alternative will serve as the baseline in both the alternatives analysis and in the Small Starts evaluation and rating process.

(3) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan transportation plan.

(b) Project development. Consistent with 49 U.S.C. 5309(e)(6) and 5328(a)(2), FTA will evaluate proposed Small Starts projects for approval into project development. For Small Starts projects, project development combines the goals and activities of preliminary engineering and final design into a single phase with a single FTA approval point. However, under NEPA regulations (23 CFR part 771), final design activities may not commence prior to completion of the NEPA process.

(1) The project development phase of Small Starts is the process of finalizing the project scope, cost, and the financial plan such that:

(i) All environmental and community impacts are identified and adequate provisions made for their mitigation in accordance with 49 U.S.C. 5324(b) and NEPA, with FTA's issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), unless the project is found to be categorically excluded from the NEPA process by FTA under 23 CFR 771.117;

(ii) All major or critical project elements are designed to the level that no significant unknown impacts relative to their costs will result; and

(iii) All cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the Small Starts program financial contribution needed to implement the project.

(iv) The project sponsor has used credible, relevant, identifiable, and cost-effective industry or engineering practices that are uniformly and consistently applied in preparing for and making these determinations. The cost estimating process would specifically identify the main components of the project as identified in FTA's standardized cost categories, including all essential project elements, and add sufficient contingencies to cover unanticipated cost increases.

(v) Detailed specifications and bid documents are produced, all funding commitments needed to complete the project are finalized, and all remaining technical and regulatory issues relating to readiness to begin construction are completed.

(2) A proposed project can be considered for advancement into project development only if:

(i) Alternatives analysis has been completed;

(ii) FTA has approved the alternative that will serve as the baseline alternative against which the proposed project will be compared in the evaluation and rating process;

(iii) The NEPA scoping process has been completed or the project has been granted a categorical exclusion;

(iv) The proposed project has been adopted as the locally preferred alternative in the metropolitan transportation plan;

(v) The proposed financial strategies, planned funding sources, and amounts have been independently endorsed by those agencies identified as responsible for providing or approving the funding. Where future State and/or local government action or public referendum is required to establish (and commit) the proposed funding source, a letter of endorsement and a timeframe for implementation and commitment is required from the appropriate policy-making or decision-making body responsible for providing or approving the proposed funding;

(vi) For project sponsors using traditional travel forecasting procedures (commonly referred to as four-step models) to estimate transportation system user benefits and ridership, the procedures have been rigorously validated using a survey of transit riders that has been completed not more than five years prior to a request to enter project development;

(vii) Project sponsors have demonstrated adequate technical capability to carry out project development for the proposed project; and

(viii) All other applicable Federal and FTA program requirements have been met.

(3) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors shall submit a preliminary plan for collection and analysis of information to identify the ''before and after'' impacts of the Small Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit the initial information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during alternatives analysis, identify the entity responsible for each in order to facilitate FTA's compliance with preparation of the Contractor Performance Assessment Report required by 49 U.S.C. 5309(l)(2), and provide a discussion of the key uncertainties that may affect achievement of the forecasts.

(4) FTA's approval will be based on the results of its evaluation as described in §§ 611.7 and 611.21 through 611.25.

(5) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into project development.

(6) This part does not in any way revoke prior FTA approvals to enter project development made prior to [the effective date of the final rule].

(7) Small Starts projects entering project development receive blanket pre-award authority to incur project costs for preliminary engineering prior to grant approval. Pre-award authority for final design and to acquire real estate and to relocate residents and businesses in accordance with the Uniform Relocation and Real Property Acquisition Policies Act is automatically granted upon completion of the NEPA process as evidenced by FTA's issuance of a ROD or FONSI, or FTA's concurrence in a categorical exclusion. All other activities must receive a Letter of No Prejudice (LONP) to be eligible for Federal reimbursement.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(c) Project Construction Grant Agreements (PCGAs).

(1) FTA will determine whether to execute a PCGA for Small Starts projects based on:

(i) The results of the evaluations and ratings process contained in this part;

(ii) The technical capability of the project sponsor to complete the proposed Small Starts project;

(iii) The NEPA process has been completed with FTA's issuance of a ROD or FONSI or FTA's concurrent in a categorical exclusion;

(iv) The project is reaffirmed in its final configuration and costs (after NEPA and project development) in the metropolitan transportation plan if significant changes have occurred in the project definition or cost compared to the project that was approved to enter into project development; and

(v) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed Small Starts project.

(vi) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors seeking PCGAs shall submit a complete plan for collection and analysis of information to identify the ''before and after'' impacts of the Small Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit updated information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during project development, an analysis of the changes between the current project information and the information prepared during alternatives analysis, and a discussion of the key remaining uncertainties that may affect achievement of the forecasts.

(A) The plan shall finalize the preliminary plan developed prior to entering project development as required by § 611.27(c)(3). The plan will provide for: Collection of ''before'' data on the current transit system; documentation of the ''predicted'' scope, service levels, capital costs, operating costs, and ridership of the project; collection of ''after'' data on the transit system one year after opening of the Small Starts project; and analysis of the consistency of ''predicted'' project characteristics with the ''after'' data.

(B) The ''before'' data collection shall obtain information on transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics. The ''after'' data collection shall consist of comparable information on transit service levels and ridership patterns, plus information on the as-built scope and capital and operation and maintenance costs of the Small Starts project.

(C) The analysis of this information shall describe the impacts of the Small Starts project on transit services and transit ridership, evaluate the consistency of ''predicted'' and actual project characteristics and performance, and identify sources of differences between ''predicted'' and actual outcomes.

(D) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(vii) Project sponsors shall collect data on the current system, according to the plan required under § 611.27(b)(3) as approved by FTA, prior to the beginning of construction of the proposed Small Starts project. Collection of this data is an eligible part of the proposed project for funding purposes.

(2) FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.''

(3) A PCGA shall not be executed for a project that is not authorized for construction by Federal law.

(4) PCGAs may be executed only for those projects that:

(i) Have an overall rating of ''medium'' or better;

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize Small Starts funds, consistent with available program authorization.

(5) In any instance in which FTA decides to provide financial assistance under the Section 5309 Capital Investment program for construction of a Small Starts project, FTA will negotiate a PCGA with the grantee during project development. Pursuant to the terms and conditions of the PCGA:

(i) 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 with local or other non-Section 5309 Capital Investment funds;

(ii) FTA and the grantee will establish a schedule for anticipating Federal contributions; and

(iii) Specific annual contributions under the PCGA will be subject to the availability of overall budget, authority, Congressional appropriations, and the ability of the grantee to use the funds effectively.

(6) The total amount of Federal obligations under PCGAs and potential obligations under Letters of Intent will not exceed the amount authorized for Small Starts under 49 U.S.C. 5309.

(7) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g)(B) 5338(c), and 5338(f).

(8) The PCGA will require implementation of the data collection plan prepared in accordance with paragraph (c)(1)(vi) of this section:

(i) Prior to the beginning of construction activities, the grantee shall collect the ''before'' data on the existing system, if such data has not already been collected during project development, and document the predicted characteristics and performance of the project.

(ii) One year after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the Small Starts project, determine the impacts of the project, analyze the consistency of the ''predicted'' performance of the project with the ''after'' data, and report the findings and supporting data to FTA no later than 18 months after the project opens for revenue service.

(iii) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

Subpart D—Very Small Starts

§ 611.29 Eligibility.

(a) To be eligible for Section 5309 Capital Investment funding for a Very Small Start, a proposed project must meet the following prerequisites:

(1) Be based on the results of planning and alternatives analysis as described in § 611.37.

(2) Have at least 50 percent of the project in a fixed guideway during the peak period or when congestion inhibits transit system performance, or be a corridor bus project that includes at least the following elements:

(i) Substantial transit stations;

(ii) Traffic signal priority/pre-emption;

(iii) Low-floor buses or level boarding;

(iv) Branding of the proposed service; and

(v) 10 minute peak/15 minute off peak headways or better for at least 14 hours per day.

(3) Must have the following characteristics to qualify for pre-approval of the project justification criteria:

(i) Be in a corridor with a minimum of 3,000 existing transit riders who will benefit from the proposed project.

(ii) Have a total project cost of less than $50 million and an average cost of less than $3 million per mile (exclusive of rolling stock). Projects that exceed the limits provided for in paragraph (a)(3) of this section will be considered and evaluated as a Small Starts project, described in Subpart C of this part.

(b) Projects that would otherwise qualify for funding as a New Starts or Small Starts project may not be subdivided into several Very Small Starts projects. Projects may be built in phases or a series of minimum operable segments, but all projects envisioned for a single corridor will be considered together as a single project for the purpose of determining eligibility as a Very Small Starts project. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Very Small Starts limits, the projects will be evaluated as a New Starts or Small Starts project.

§ 611.31 Project justification criteria.

In order to approve a grant for a proposed Very Small Starts project, and to approve entry into the project development phase as required by 49 U.S.C. 5309(e)(6), FTA must find that the proposed project is meritorious as described in 49 U.S.C. 5309(e)(4).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through the project development phase.

(b) For Very Small Starts projects, a single summary rating of project justification will be provided, based on the project's ability to meet the requirements in § 611.29(a)(3) that takes into account the project's mobility improvements, economic development, land use impacts, and cost effectiveness.

(c) Other factors will be considered under the authority provided by 49 U.S.C. 5309(d)(3)(K).

(1) All projects will be evaluated and rated on the severity of the transportation and economic development problem or opportunity in the corridor and consideration of the appropriateness of the proposed project as a response.

(2) Depending upon the applicability, also considered will be the following factors:

(i) Identification of the project as a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular;

(ii) Any factor which the Very Small Start project sponsor believes articulates the benefits of the proposed project but which is not captured within the other project justification criteria; and

(iii) Other factors that the Secretary determines to be appropriate to carry out the evaluation.

(d) The procedures used to produce the information to support the project justification rating for Very Small Starts will be based on data supporting the existing ridership and average cost per mile required under § 611.29(a)(3) .

(e) Very Small Starts projects are composed of project elements described in § 611.29(a)(3) that are warranted as both effective and cost-effective and shall be rated ''medium'' for project justification. Projects not composed of such elements do not qualify for evaluation as a Very Small Start, and are subject to the requirements of subpart C of this part.

§ 611.33 Local financial commitment criteria.

In order to approve a Very Small Starts project into project development or for a grant 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 49 U.S.C. 5309(e)(5). The financial capability of the project sponsor to build, operate and maintain the proposed project, as well as the existing and planned system will be evaluated according to the following measures:

(a) The proposed share of project capital costs to be met using funds from sources other than the Section 5309 Capital Investment program, including both the non-Federal match required by Federal law and any local, state or additional non-Section 5309 Capital Investment Federal funding (''overmatch''). However, FTA will give priority to financing projects that include more non-5309 funds than are required as local match under 5309(h). At the same time, FTA will take into consideration the fiscal capacity of State and local governments by not reducing the overall local financial commitment rating below ''medium,'' for projects that, due to state or local fiscal capacity constraints, propose a funding strategy with an 80 percent Section 5309 Capital Investment funding. Unless otherwise specified in Federal law, FTA will not take into account the non-Federal funds expended on a project other than the Very Small Starts project being evaluated when computing the non-Federal share of the Very Small Starts project.

(b) The stability and reliability of the proposed capital funding plan for constructing all essential elements of the Very Small Starts project and transit system, including the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases; and

(c) The stability and reliability of the proposed operating funding plan to operate and maintain the entire transit system as planned and including the existence of contractual arrangements that are designed to reduce and/or make more predictable the annualized cost of operations.

(d) The capital and operating plans specified in paragraphs (a), (b) and (c) of this section must include annual costs and revenues through opening year.

(e) For each proposed project, ratings for paragraphs (a), (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria, and the weights given to each criterion, will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(f) The individual ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for local financial commitment.

§ 611.35 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment, adjusted by the degree of reliability of estimates of ridership and costs (as described in §§ 611.7, 611.31, and 611.33), will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low,'' as required by 49 U.S.C. 5309(e)(6)(B), to each proposed project. To obtain an overall rating of ''medium,'' a project must have at least a ''medium'' rating for both project justification and local financial commitment.

(1) These ratings will indicate the overall merit of a proposed project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(k)(1), and as required for FTA approvals during the following project development steps:

(i) Advancement of proposed Very Small Starts projects into project development; and

(ii) Decision to recommend Very Small Starts projects for Project Construction Grant Agreements.

(c) Projects that achieve an overall rating of ''medium'' or better will be allowed to advance into project development and may be recommended for funding.

§ 611.37 Project development process.

All Very Small Starts projects must emerge from the metropolitan and statewide planning process, consistent with 23 CFR part 450, and be included in the metropolitan transportation plan. Proposed projects must be based on the results of alternatives analysis and proceed through project development before being recommended for Section 5309 Capital Investment program funding.

(a) Alternatives analysis. To be eligible for project funding under the Section 5309 Capital Investment program, local project sponsors must perform an alternatives analysis consistent with FTA guidance.

(1) The alternatives analysis must develop information on the benefits, costs, and impacts of alternative strategies to address a transportation problem or opportunity in a given corridor, leading to the adoption of a locally preferred alternative.

(2) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative and at least one Very Small Start alternative.

(3) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan transportation plan.

(b) Project development. Consistent with 49 U.S.C. 5309(e)(6) and 49 U.S.C. 5328(a)(2), FTA will evaluate proposed Very Small Starts projects for approval into project development. For Very Small Starts projects, project development combines the goals and activities of preliminary engineering and final design into a single phase with a single FTA approval point. However, under NEPA regulations (23 CFR Part 771), final design activities may not commence prior to completion of the NEPA process.

(c) Project Development.

(1) The project development phase of Small Starts, including Very Small Starts, is the process of finalizing the project scope, cost, and the financial plan such that:

(i) All environmental and community impacts are identified and adequate provisions made for their mitigation in accordance with 49 U.S.C. 5324(b) and NEPA, which results in FTA's issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), unless the project is found to be categorically excluded from the NEPA process by FTA under 23 CFR 771.17;

(ii) All major or critical project elements are designed to the level that no significant unknown impacts relative to their costs will result; and

(iii) All cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the Small Starts program financial contribution needed to implement the project.

(iv) The project sponsor has used credible, relevant, identifiable and cost-effective industry or engineering practices that are uniformly and consistently applied in preparing for and making these determinations. The cost estimating process would specifically identify the main components of the project as identified in FTA's standardized cost categories, including all essential project elements, and add sufficient contingencies to cover unanticipated cost increases.

(v) Detailed specifications and bid documents are produced, all funding commitments needed to complete the project are finalized, and all remaining technical and regulatory issues relating to readiness to begin construction are completed.

(2) A proposed project can be considered for advancement into project development only if:

(i) Alternatives analysis has been completed;

(ii) The NEPA scoping process has been completed, or the project has been granted a categorical exclusion;

(iii) The proposed project has been adopted as the locally preferred alternative in the metropolitan transportation plan;

(iv) The proposed financial strategies, planned funding sources, and amounts have been independently endorsed by those agencies identified as responsible for providing or approving the funding. Where future State and/or local government action or public referendum is required to establish (and commit) the proposed funding source, a letter of endorsement and a timeframe for implementation and commitment is required from the appropriate policy-making or decision-making body responsible for providing or approving the proposed funding;

(v) Project sponsors have demonstrated adequate technical capability to carry out project development for the proposed project; and

(vi) All other applicable Federal and FTA program requirements have been met.

(3) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors shall submit a preliminary plan for collection and analysis of information to identify the ''before and after'' impacts of the Very Small Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit the initial information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during alternatives analysis, as well as a discussion of the key uncertainties that may affect achievement of the forecasts.

(4) FTA's approval will be based on the results of its evaluation as described in §§ 611.21 through 611.25.

(5) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into project development.

(6) This part does not in any way revoke prior FTA approvals to enter project development made prior to [the effective date of the final rule].

(7) Very Small Starts projects entering project development receive blanket pre-award authority to incur project costs for preliminary engineering prior to grant approval. Pre-award authority for final design, to acquire real estate and to relocate residents and businesses in accordance with the Uniform Relocation and Real Property Acquisition Policies Act, is automatically granted upon completion of the NEPA process as evidenced by FTA's issuance of a ROD or FONSI or FTA's concurrence in a categorical exclusion. All other activities must receive a Letter of No Prejudice (LONP) to be eligible for Federal reimbursement.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(d) Project Construction Grant Agreements (PCGAs).

(1) FTA will determine whether to execute a PCGA for Very Small Starts projects based on:

(i) The results of the evaluations and ratings process contained in this part;

(ii) The technical capability of the project sponsor to complete the proposed Very Small Starts project;

(iii) The NEPA process has been completed with FTA's issuance of a ROD or FONSI or FTA's concurrence in a categorical exclusion;

(iv) The project is reaffirmed in its final configuration and costs (after NEPA and project development) in the metropolitan transportation plan if significant changes have occurred in the project definition or cost compared to the project that was approved to enter into project development; and

(v) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed Small Starts project.

(2) FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding.

(3) A PCGA shall not be executed for a project that is not authorized for construction by Federal law.

(4) PCGAs may be executed only for those projects that:

(i) Have an overall rating of ''medium'' or better;

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize Small Starts funds, consistent with available program authorization.

(5) In any instance in which FTA decides to provide Section 5309 Capital Investment funding for construction of a Very Small Starts project, FTA will negotiate a PCGA with the grantee during project development. Pursuant to the terms and conditions of the PCGA:

(i) 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 with local or other non-Section 5309 Capital Investment funds;

(ii) FTA and the grantee will establish a schedule for anticipating Federal contributions; and

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

(6) The total amount of Federal obligations under PCGAs and potential obligations under Letters of Intent will not exceed the amount authorized for Small Starts under 49 U.S.C. 5309.

(7) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g)(B), 5338(c), and 5338(f).

(8) The PCGA will require implementation of the data collection plan prepared in accordance with paragraph 611.37(c)(3) of this section:

(i) Prior to the beginning of construction activities, the grantee shall collect the ''before'' data on the existing system if such data has not already been collected during project development, and document the predicted characteristics and performance of the project.

(ii) One year after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the Very Small Starts project, determine the impacts of the project, analyze the consistency of the ''predicted'' performance of the project with the ''after'' data, and report the findings and supporting data to FTA within eighteen months after the project opens for revenue.

(A) The Before-and-After Study will consist of a very simple analysis of: A post-construction cost summary in FTA standardized cost categories compared to the cost estimate at the time of entry into project development; a comparison of actual ridership (on's and off's) in the corridor provided in the application to enter project development and new counts done one year after opening; and a comparison of transit schedules and frequencies between the transit services in the corridor as it existed at the time of entry into project development and one year after opening. The results of this study shall be submitted within eighteen months after project opening.

(B) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

Appendix A to Part 611—Model Project Development Agreement

Project Development Agreement Between the Federal Transit Administration and the [Sponsor] for the [Name of Project]

1.0 Purpose

The Federal Transit Administration (FTA) and the [Sponsor] are executing this Project Development Agreement (''Agreement'') to set forth their intentions for compliance with NEPA, the Metropolitan Planning requirements, and the Major Capital Investment (''New Starts'') requirements that will govern the [name of project]. FTA and [Sponsor] acknowledge that this Agreement may be modified from time to time to accommodate statutory or regulatory changes, changes to the project, or changes to [the Sponsor's] project management or financing plans, as necessary or appropriate.

2.0 Applicable Statutes, Regulations, and Program Requirements

The [name of project] is a ''major federal action'' subject to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and FTA's regulations at 23 CFR Part 771; a ''major metropolitan transportation investment'' subject to the Metropolitan Planning requirements at 23 CFR Part 450; a ''new fixed guideway system or extension of an existing fixed guideway system'' subject to the Major Capital Investment (''New Starts'') requirements at 49 U.S.C. 5309 and 49 CFR Part 611; and a ''major capital project'' subject to the Project Management Oversight requirements at 49 U.S.C. 5327 and 49 CFR Part 633.

3.0 Project Readiness for Preliminary Engineering

As a prerequisite for FTA's approval of entry into Preliminary Engineering, [Sponsor] has identified an operable segment of fixed guideway that will be its candidate for Section 5309 New Starts funds under a Full Funding Grant Agreement. This operable segment is the product of an Alternatives Analysis that considered an appropriate range of alternative modes, alignments, and termini in terms of their likely costs, benefits, and environmental impacts. Specifically:

3.1 Alternatives Analysis

In [month and year] [Sponsor] completed an Alternatives Analysis (''AA'') [or title of the study] consistent with FTA guidance, good practice, and the requirements of 49 CFR part 611, for the purpose of [* * * describe the transportation problem and name the corridor]. This AA evaluated a range of reasonable alternatives for that purpose: [* * * describe the number of alternatives, the modes considered, their varying alignments and lengths, and the range of costs]. FTA is satisfied that this AA presents reliable information on the benefits, costs, and impacts of these alternatives. Further, FTA is satisfied that all interested parties and the general public had ample opportunity to participate in this AA.

3.2 The Candidate Project for New Starts Funds

As the result of this AA, [Sponsor] has identified a project that will be a candidate for Federal financial assistance for final design and construction under 49 U.S.C. 5309 (hereafter, [name of project] or the ''*candidate project*''). [Name of project] is a [* * * describe the project in terms of mode, length, location, and number of stations and rolling stock.] The *candidate project* is described in more detail in Attachment 8.1 to this Agreement (''Scope of the Project''). As of the date of this Agreement, the estimated total cost of the *candidate project* is $______, and [Sponsor] intends to seek $______ in Federal financial assistance under the Section 5309 New Starts program for Final Design and Construction of the *candidate project*. The estimated total cost is set forth in more detail in Attachment 8.2 to this Agreement (''Cost Estimate''). The anticipated sources of financing and relevant amounts of that financing are set forth in Attachment 8.3 to this Agreement (''Budget'').

3.3 Baseline Alternative

In accordance with the requirements of 49 CFR part 611, FTA has approved a baseline alternative for further study that will be used for purposes of comparison during the NEPA and New Starts processes: [describe the *baseline* alternative].

3.4 Metropolitan Planning Organization's Plan and TIP

The [name of MPO], the Metropolitan Planning Organization for metropolitan [name of city], has adopted a financially constrained long range metropolitan transportation plan (hereafter, the ''Plan'' or [name of the Plan]), and a four-year Transportation Improvement Program, (hereafter, the ''TIP'' or [name of the TIP]), in accordance with 23 CFR part 450. The [Sponsor's] [name of project] has been incorporated into [MPO's] Plan, and [describe the project activities to be accomplished during the four-year TIP] have been incorporated into [MPO's] TIP. Consistent with [MPO's] Plan, [Sponsor's] financial plan for the *candidate project* anticipates that [identify the funding sources other than the New Starts program and the relevant amounts].

3.5 Sponsor's Technical Capacity

As a prerequisite to the execution of this Agreement, [Sponsor] has demonstrated its technical capacity and capabilities to carry out Preliminary Engineering for the *candidate project* in accordance with the milestones identified in Section 5.0 of this Agreement. Specifically, [describe whether the Sponsor will perform Preliminary Engineering with its in-house staff and resources or procure the necessary engineering expertise from consulting contractors or some combination thereof.]

4.0 Approach Towards Project Development

As a prerequisite for FTA's approval of entry into Preliminary Engineering, [Sponsor] has agreed to take an approach towards project development that will ensure consistency in project scope and New Starts funding expectations throughout the successive phases of Preliminary Engineering, Final Design, and Construction. To expedite [Sponsor's] efforts, FTA will take a number of steps to help [Sponsor] comply with the pertinent Federal requirements. Specifically,

4.1 Environmental Impacts

[Option One: If the *candidate project* has been identified prior to the preparation of a DEIS, use the following paragraph.] FTA and [Sponsor] will prepare an Environmental Impact Statement (EIS) [or Environmental Assessment (EA] that will evaluate a No Build alternative, a Baseline alternative described in Section 3.3 of this Agreement, the *candidate project,* and the following modal or alignment alternatives deemed worthy of study as a result of the scoping meeting held on [date]: [Describe the other alternatives.] FTA and [Sponsor] agree that the EIS [or EA] may incorporate by reference the AA data and information that support the elimination of certain other alternatives from further study. Should [Sponsor] retain consultants to assist in the preparation of the EIS [or EA], [Sponsor] will obtain and retain a statement from each such consultant that the consultant has no financial or other interest in the outcome of the alternatives under study. The EIS [or EA] will cover [specify whether the document will cover only the *candidate project* or potential extensions to the *candidate project* that lie within the same corridor]. Consistent with both NEPA and Federal transit law, the public will be given every opportunity to assist in the preparation of the EIS [or EA]. [Sponsor] acknowledges, however, that the EIS [or EA] will not be published unless and until FTA determines that the information to be presented on the costs, benefits, and impacts of the various alternatives is reliable.

[Option Two: If the *candidate project* has been identified as the result of a combined AA/DEIS, use the following paragraph.]

FTA and [Sponsor] published a Draft EIS [or EA] on [date] that led to the selection of the *candidate project* as *the locally preferred alternative* in accordance with the requirements of 49 CFR Part 611. FTA and [Sponsor] will now prepare a Final EIS that will complete the evaluation of the No Build alternative, the Baseline alternative described in Section 3.3 of this Agreement, the *candidate project,* and [identify any other modal or alignment alternatives to be carried forward]. The Final EIS will cover [specify whether the document will be limited to the *candidate project* or potential extensions to the *candidate project* that lie within the same corridor]. Currently, FTA and [Sponsor] expect to publish the Final EIS in or about [month, year] and FTA expects to issue a Record of Decision [or Finding of No Significant Impact] for the *candidate project* in or about [month, year]. [Sponsor] acknowledges, however, that the Final EIS will not be published unless and until FTA determines that the information to be presented on the costs, benefits, and impacts of the various alternatives is reliable.

4.2 Project Scope, Cost Estimate, and Budget

The fundamental purpose of Preliminary Engineering will be [Sponsor's] development of a definitive project scope, a reliable estimate of total project costs, and a viable financing plan for the *candidate project* which will be used to strictly limits the amount of Section 5309 New Starts funds that will be available at the time the project is approved for entry into Final Design. Attached to this Agreement are a preliminary project scope, a preliminary estimate of total project costs, and a preliminary budget for the *candidate project* (Attachments 8.1, 8.2, and 8.3, respectively).

[Use the following paragraph if the NEPA document will cover both the *candidate project* and potential extensions to the *candidate project* that lie within the same corridor.]

[Sponsor] acknowledges that only the *candidate project* is being approved for entry into Preliminary Engineering pursuant to 49 CFR part 611. [Sponsor] will perform engineering for potential extensions to the *candidate project* so far as necessary for compliance with NEPA—including the study of cumulative impacts and necessary mitigation—to disclose the implications of those extensions for Federal and local decisions on the *candidate project* and allow for acquisition of right-of-way upon completion of compliance with NEPA.

At the conclusion of Preliminary Engineering—and as a condition precedent to FTA's approval of the *candidate project* for entry into Final Design—[Sponsor] will produce a Baseline Cost Estimate for the *candidate project* in Year Of Expenditure dollars in a level of detail sufficient for validation by FTA, its Project Management Oversight consultant, [MPO], and state and local agencies. [Sponsor] acknowledges that the maximum 5309 New Starts share will be set upon entry into final design.

4.3 Travel Forecasting

During the course of Preliminary Engineering [Sponsor] will continually revise its travel forecasts to reflect any changes to the project scope and the most recent information on any matter pertinent to travel demand, such as newly adopted population and employment forecasts. [Sponsor] will be expected to use the most recent model enhancements available for travel forecasting. Any revisions to [Sponsor's] forecasts will be made consistent with good professional practice and FTA guidance.

4.4 Project Management Plan

Critical to the success of [Sponsor's] further development of the *candidate project* will be [Sponsor's] own plan for managing that development, including, specifically, [Sponsor's] management of its contractors, budget, and schedule for Preliminary Engineering. [Sponsor's] draft Project Management Plan for Preliminary Engineering is set forth in Attachment 8.4 to this Agreement. [Sponsor] will revise and refine this Project Management Plan, as necessary or appropriate, throughout the course of Preliminary Engineering and again upon FTA's approval of the *candidate project* for entry into Final Design.

4.5 Project Financing Plan

Consistent with Sections 4.2 of this Agreement, during the course of Preliminary Engineering [Sponsor] will develop a financing plan that supports the award of a maximum amount of Federal financial assistance under the Section 5309 New Starts program for Final Design and Construction of the *candidate project.* This Financing Plan will specify a schedule for securing the commitment of additional State, local, and private funding for the *candidate project,* as necessary or appropriate. This Financing Plan will also reflect the endorsement of any State, local, or private entity whose approval is necessary for securing the commitment of the funding sources identified by that schedule.

4.6 FTA Oversight

As soon as practicable after the execution of this Agreement FTA will retain the services of a Project Management Oversight Contractor (PMOC) to assist FTA in its oversight of the *candidate project.* FTA will use the services of its PMOC during Preliminary Engineering and any subsequent phases of project development. In its discretion, FTA may also retain the services of a Financial Management Oversight Contractor (FMOC) during any phase of project development, for the purposes of obtaining an objective, independent evaluation of [Sponsor's] plans for financing both the capital costs of constructing the *candidate project* and the continuing operation and maintenance of [Sponsor's] bus and rail services.

Additionally, in its discretion, FTA may retain the services of consultants in land use, financing, procurement systems management, environmental mitigation and monitoring, and other fields related to the development of transportation infrastructure, for the purposes of evaluating the *candidate project* and the other alternatives under study. [Sponsor] pledges its utmost cooperation in enabling FTA and its PMOC and FMOC to monitor [Sponsor's] adherence to its project management and financing plans, and to provide FTA and its PMOC and FMOC all records, data, and access to property as may be reasonably required for that purpose.

4.7 Risk Assessments

Both [Sponsor] and FTA intend to assess the risks inherent in the *candidate project* during Preliminary Engineering and any subsequent phase of project development. Principally, [Sponsor] and FTA intend to assess the risks inherent in constructing the *candidate project* on schedule and within budget. Such risks may include, but are not limited to, property acquisitions, property and utility relocations, differing and unknown field and subsurface conditions, integration of pre-existing buildings and structures, availability of labor and materials, environmental impacts, adverse impacts on historic resources, and transactions of third party agreements. In its discretion, FTA may also choose to conduct baseline reviews of [Sponsor's] financial and procurement systems for the purpose of determining whether [Sponsor] has protocols in place to adequately manage the *candidate project* in compliance with applicable Federal law and regulation. [Sponsor] agrees that specific risks identified and prioritized by either [Sponsor] or FTA will be reported to FTA, mitigated, monitored, and updated on a continuous basis, as the *candidate project* progresses through Preliminary Engineering and any subsequent phase of project development. [Sponsor] also pledges its utmost cooperation in enabling FTA and its consulting contractors both to critique [Sponsor's] risk assessments and perform any separate risk assessments FTA may deem appropriate during the course of the *candidate project.*

4.8 Best Available Documents

The project scope, cost estimate, and budget and the draft Project Management Plan attached to this Agreement are the best available documents at this stage of the *candidate project.* [Sponsor] expects to continually revise and refine these documents, however, as the *candidate project* progresses through Preliminary Engineering and any subsequent phase of project development. [Sponsor] pledges to promptly provide FTA and its consulting contractors all successive iterations of each of these documents throughout the course of the *candidate project.*

4.9 Review and Comment

FTA and [Sponsor] will expedite one another's review and comment on the administrative drafts of NEPA documents, project management and financing plans, risk assessments, scopes of work, budgets, schedules, and the like by forwarding those documents to the appropriate persons in both agencies to allow for timely responses. FTA and [Sponsor] will make every reasonable effort to complete their reviews of study deliverables, technical reports, and the like, within thirty days of receiving the material for review.

4.10 Private Sector Participation

FTA recognizes that [Sponsor] may choose to seek private sector participation in the engineering, design, construction, operation, maintenance, or financing of the *candidate project.* FTA will make every effort to facilitate [Sponsor's] public-private partnerships in the development of the *candidate project.*

4.11 Pre-Award Authority

Upon the execution of this Agreement and FTA's approval of the *candidate project* for entry into Preliminary Engineering [Sponsor] will have pre-award authority for all reasonable and allocable costs of Preliminary Engineering for the *candidate project.* [Sponsor] acknowledges, however, that the pre-award authority to acquire real property that accompanies FTA's issuance of a Record of Decision is not an administrative, contractual, implied, or moral commitment of any kind towards the *candidate project,* nor is it any commitment to reimburse

[Sponsor] for any associated costs or to participate in any project on the acquired property. [Sponsor] will use its pre-award authority with discretion and with full knowledge of the risks in doing so.

4.12 Contacts

FTA and [Sponsor] will each designate a contact person who has the authority to speak for and represent that person during Preliminary Engineering on the *candidate project.* The contact persons will be available, upon adequate notice, to attend and participate in coordination meetings or otherwise provide timely input into the preparation and review of all documents necessary to the development of the *candidate project.*

5.0 Milestones

[Sponsor] intends to accomplish Preliminary Engineering as expeditiously as possible. FTA will measure [Sponsor's] progress in Preliminary Engineering against the following milestones:

- [Date]: FTA validation of [Sponsor's] travel demand and ridership forecast methodologies
- [Date]: Expected publication of a draft EIS or EA
- [Date]: Expected publication of a final EIS or EA
- [Date]: Expected issuance of a ROD or FONSI
- [Date]: FTA approval of [Sponsor's] Project Management Plan
- [Date]: PMO's completion of risk assessment
- [Date]: [Sponsor's] adoption of a definitive scope of work for the *candidate project* that will be the basis of [Sponsor's] request for entry into Final Design
- [Date]: [Sponsor's] adoption of a Baseline Cost Estimate for the *candidate project,* in Year of Expenditure dollars, which will be the basis for [Sponsor's] request for entry into Final Design
- [Date]: [Sponsor's] adoption of a Financing Plan for the *candidate project* that will be the basis of [Sponsor's] request for entry into Final Design
- [Date]: [State and local agency] commitments to help finance the *candidate project*
- [Date]: [Sponsor's] request for entry into Final Design

6.0 Rescission or Suspension of Preliminary Engineering

[Sponsor] acknowledges that, in its discretion, FTA may rescind or suspend the *candidate project's* status in Preliminary Engineering if [Sponsor] fails to make adequate progress towards a request for entry into Final Design; there is any significant change to the scope or cost estimate for the *candidate project*; or the *candidate project* is not rated or rated ''not recommended'' in FTA's Annual Report on New Starts for two consecutive years.

7.0 Modifications

Modifications to this Agreement may be proposed at any time during Preliminary Engineering on the *candidate project* and will become effective upon approval by both FTA and [Sponsor].

8.0 Attachments

Each and every Attachment to this Agreement is incorporated by reference and made a part of this Agreement.

Dated: ______________________

____

[Name]
Regional Administrator [Title]
Federal Transit Administration

Dated: ______________________

[Name]
[Title]
[Sponsor]

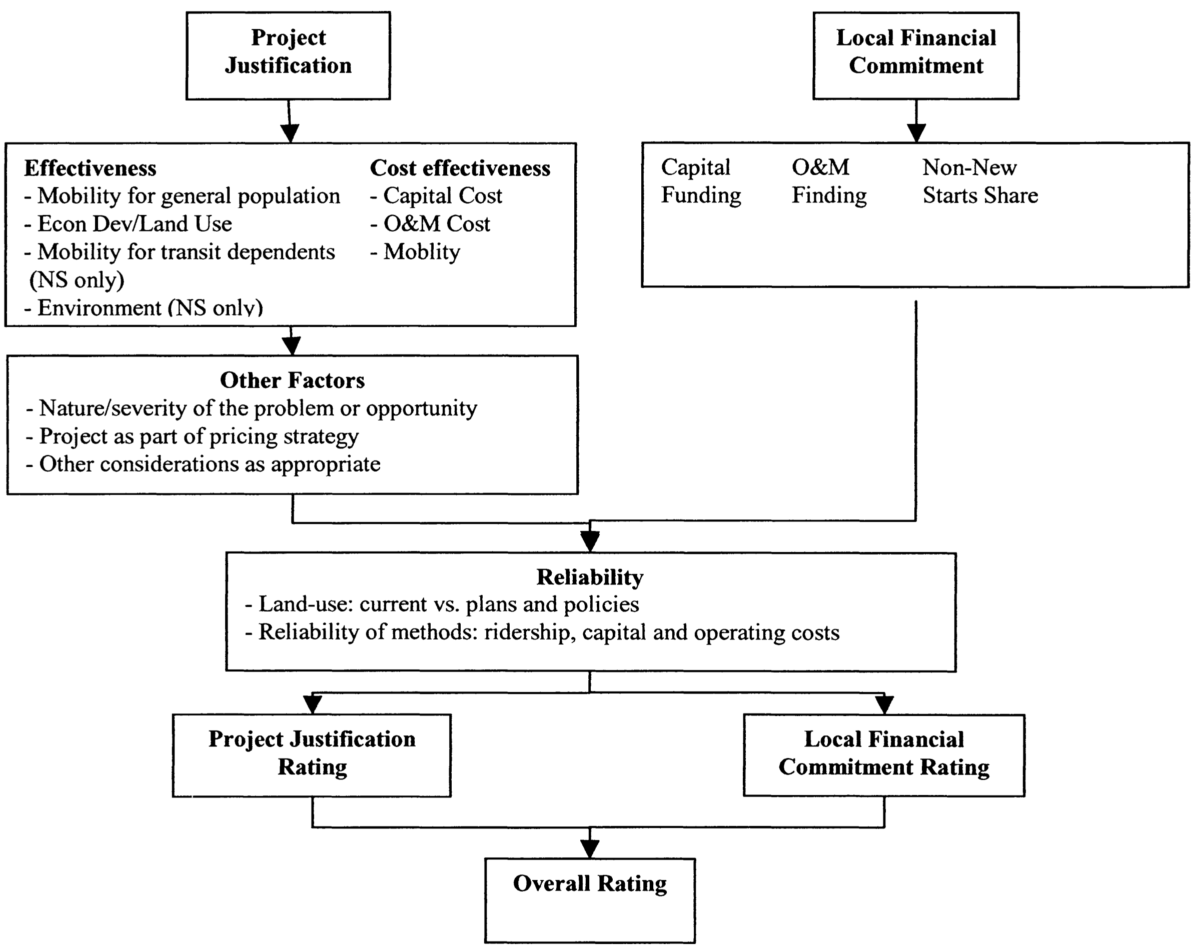
Attachment 8.1 Scope

Attachment 8.2 Cost Estimate

Attachment 8.3 Budget

Attachment 8.4 Draft Project Management Plan

Appendix B to Part 611—Project Evaluation Framework



Appendix C to Part 611: Section 5309 Capital Investment Program Categories

	New starts	Small starts	Very small starts
Project Cost	≥$250 million	<$250 million	<$50 million ($3 million/mile excluding vehicles).
New Starts Funding Amount	Or ≥$75 million	And <$75 million	<$40 million.
Eligible Project Types	New or expanded fixed guideway	New or expanded fixed guideway or arterial bus with: —Transit stations. —Signal priority/pre-emption. —Level boarding or low floor vehicles. —Branded service. —10 min peak/15 min off-peak service for at least 14 hours/day.	Small as Small Starts.
Minimum Benefiting Riders	None	None	3,000 per average weekday.
Project Development Steps	2-Steps —Preliminary Engineering. —Final Design.	1-Step —Project development.	1-Step —Project development.
Funding Mechanism	FFGA	PCGA	PCGA.

Issued in Washington, DC this 19th day of July, 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

[FR Doc. E7–14285 Filed 8–2–07; 8:45 am]

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