

Altus/Quartz Mountain Regional Airport; and within a 5.4-mile radius of Tipton Municipal Airport; and within a 7.2-mile radius of Frederick Municipal Airport; and within 2.5 miles each side of the 180° bearing from the Frederick Municipal Airport extending from the 7.2-mile radius to 7.7 miles south of Frederick Municipal Airport; and within a 12-mile radius of Altus AFB beginning at a point 3 miles west of the Altus VORTAC 019° radial, thence clockwise along the 12-mile radius of Altus AFB, ending at a point 3 miles west of the Altus VORTAC 185° radial.

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Issued in Fort Worth, TX, on August 27, 2009.

Ronnie L. Uhlenhaker,

Manager, Operations Support Group, ATO Central Service Center.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 633

[Docket No.: FTA–2009–0030]

RIN 2132–AA92

Capital Project Management

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: In an effort toward greater transparency and to ensure integrity in public investments, FTA today publishes an advance notice of proposed rulemaking on capital project management. The Federal Transit Administration (FTA) is considering a revision of its Project Management Oversight (PMO) rule, shifting its focus from project oversight only to project management and oversight. A revised Part would more clearly identify necessary project management skills needed to be demonstrated by project sponsors for all fixed guideway capital projects, as well as additional requirements that would apply only to the more complex major capital projects, and distinguish project characteristics that would require documentation of project plans and implementation strategies in a project management plan, as well as the use of FTA's Project Management Oversight Contractors (PMOCs). Beginning the rulemaking process to update its project management rule will aid some key agency priorities. It will help ensure integrity and accountability in its construction grant programs, and it will provide data the agency can use in its

efforts to streamline its discretionary capital project approval process. FTA seeks to elicit a broad array of comments from project sponsors, the industry, other stakeholders, and the public on a number of subjects.

DATES: Comments must be received by November 9, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number (FTA–2009–0030) by any of the following methods:

Federal eRulemaking Portal: Go to www.regulations.gov. Follow the online instructions for submitting comments.

U.S. Mail: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration), and docket number (FTA–2009–0030) or Regulatory Identification Number (RIN 2132–AA92) for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to www.regulations.gov and <http://dms.dot.gov>, where they will be available to internet users. *Please see the Privacy Act.*

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

For access to the DOT docket to read materials relating to this notice, please go to <http://dms.dot.gov> at any time or the Docket Management System.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Aaron C. James, Sr. at (202) 493–0107 or aaron.james@dot.gov, or Carlos M. Garay at (202) 366–6471 or carlos.garay@dot.gov. For legal questions, please contact Jayme L. Blakesley at (202) 366–0304 or

jayme.blakesley@dot.gov. The principal office of FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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I. Introduction, Background, and Purpose

A. Introduction

In this Advance Notice of Proposed Rulemaking (ANPRM), and to ensure integrity in its public investments through transparency and accountability, FTA begins the process of revising its Project Management Oversight rule at 49 CFR Part 633. The end result would be a Project Management rule governing all FTA-funded fixed guideway capital projects as well as additional requirements for major capital projects, emphasizing a set of standards and principles for sound project management. Specifically, FTA seeks to restructure the current Part 633 to incorporate the best practices in the transit industry with respect to reasonable project performance measures. When final, this project management rule should articulate the criteria and skills expectations necessary to assure a project sponsor's successful implementation of a fixed guideway capital project, including a major capital project. The new Part 633 also would be updated to reflect

oversight tools and methodologies that have been developed since the original rule went into effect.

Updating its project management rule at this time will aid FTA as it also considers streamlining its discretionary capital construction program. FTA seeks to establish methods that help ensure integrity and accountability in its capital grant programs before simplifying its competitive construction grant programs.

As a first step in this rulemaking process, and in the spirit of openness and transparency, FTA is publishing this ANPRM to get as broad input as possible before developing a Notice of Proposed Rulemaking. This ANPRM presents ideas and concepts and solicits comments and suggestions on FTA's proposed requirements that are meant to help ensure that grantees deliver capital projects on time, within budget, and with the promised scope, while assuring a quality product and the safety and security of the riding public. This ANPRM does not seek to alter existing New Starts guidance previously published by FTA but instead to enhance engineering and project management aspects of all major capital projects. Through this ANPRM FTA seeks to obtain the views of its project sponsors, the industry, other stakeholders, and the public on a number of subjects related to project management and project management oversight.

B. Background

FTA awards over \$10 billion annually for the purchase of all sizes and types of public transportation rolling stock, as well as the construction, rehabilitation, maintenance, and improvement of public transportation facilities and systems throughout the United States. Fixed guideway capital projects, including those traditionally defined as major capital projects, reflect significant investments by FTA, and typically are the largest and most challenging projects sponsored by FTA grantees.

FTA (as the Urban Mass Transit Administration (UMTA)) issued the original Project Management Oversight (PMO) rule on September 1, 1989, 49 CFR Part 633 (54 FR 36708). This rule prescribed the standards necessary at that time to carry out the responsibilities of UMTA's Project Management Oversight Contractors (PMOCs) program; set forth basic requirements for project management plans for major capital projects; and implemented section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, that permitted UMTA to use up to 1/2 of 1 percent of

the funds available in each fiscal year for the agency's capital programs for project management oversight of major capital projects. At the time the original rule was published, FTA's annual program was less than \$3 billion, and the PMO program had in effect 25 task orders for Project Management Oversight Contractors.

The basic oversight framework at 49 CFR Part 633 has served the agency well, focusing on the assignment of project management oversight contractors to major capital projects and requiring project sponsors to develop a comprehensive project management plan (PMP) to guide the planning and implementation of their major capital projects. The PMPs, combined with the PMOC deliverables have been critical to FTA for evaluating whether a project sponsor has the technical capacity and capability to execute a major capital project, verifying that projects proceed within schedule, scope, and budget, and mitigating problems as they arise.

Today, the dollar value of the Federal transit program has tripled, and the number of active PMOC task orders has doubled, indicating several things. First, there has been a significant increase in local decisions to invest in public transportation. Second, there has been a proliferation of project sponsors of major capital projects and an emerging need for more specific and systematic expectations for the industry in executing these types of projects. Third, FTA is participating in a larger number of "mega projects"—projects of a total cost of \$1,000,000,000 or more—which entail unique challenges to the agency as the steward of Federal tax dollars. Further, FTA research into the factors contributing to cost escalation in capital projects indicates that in many instances cost increases resulted from lack of management capabilities or project controls at the sponsor level.

Given the growth of the program, as well as the increasing number of relatively inexperienced transit agencies now seeking to execute complex infrastructure construction projects, FTA seeks to broaden the scope of its project management rule to include performance expectations for project sponsors seeking financial assistance in building major capital projects with significant FTA investment.

C. Purpose of This ANPRM

The purpose of this ANPRM is to provide general information about the direction, scope, and content of a possible revision to FTA's project management oversight rule contained in Part 633 of its regulations, and to seek answers to questions that will help the

agency make decisions about the appropriate direction to take in its future rulemaking. Ultimately, this rulemaking will help improve grantees' project delivery success rate by establishing an effective regulatory framework for the management of project scope, schedule, cost, and quality for all fixed guideway projects. The overriding goals of this ANPRM and any subsequent rulemaking are to encourage grantees to apply more effective means of project management and for FTA to provide more effective oversight to its grantees and guidance to its PMOCs.

With this ANPRM, FTA seeks comment and suggestions for alternative approaches on the specific topics discussed below that may be the subject of a proposed and final rule, including its applicability, the definition of "major capital project," the technical capacity and capability of project sponsors, the use of project management plans, requirements for successful implementation of fixed guideway capital projects, and FTA's project management oversight process.

II. Applicability

Anticipating a new project management rule generates several questions pertaining to the scope and applicability of the rule—i.e., what types of projects or project sponsors should the rule apply to and what aspects of project management should be subject to the more rigid requirements of a rule. FTA seeks comments on the approach described below. This approach would define two categories of projects—fixed guideway capital projects and major capital projects—with greater oversight being applied to major capital projects. We would apply 'baseline' competencies/skills requirements to all fixed guideway capital projects funded under the discretionary and formula programs at 49 U.S.C. 5309(b)(1) and (b)(2), based principally on the statutory requirements, with some focus on non-statutory areas that agency experience has identified as impediments to timely execution of fixed guideway grants. More extensive demonstrations of technical skills and project management expertise would be required for projects categorized as major capital projects under the new regulation.

A. Fixed Guideway Capital Project

A fixed guideway capital project would include any project funded with section 5309(b)(1) or (b)(2) funds. This would include all New Starts projects, Small Starts Projects (including Very Small Starts), and Fixed Guideway

Modernization formula projects. However, projects that also fall within the category of a major capital project would be subject to the more detailed requirements outlined below.

The fundamental distinction between a fixed guideway capital project and a major capital project are complexity, scale, and experience of the project sponsor. For example, some grants, despite exceeding \$100 million, may only be for a single purpose, such as running rail and rail ties. Thus, even though this grant may have a very large dollar value, the necessary elements of a high risk capital project (i.e., interdependent parts, schedules, resources, and finances) do not exist. On the other hand, there are circumstances in which a series of fixed guideway modernization improvements, which individually might be under \$100 million, would be managed together as a single investment with interdependent parts, thus falling within the definition of a major capital project.

Conversely, another project might qualify as a major capital project but be treated simply as a fixed guideway capital project because of certain characteristics that indicate lower risk. For instance, a small start project or extension of a small start, executed by an experienced grantee, using the same technology and veteran in-house staff that had completed a previous project on time and on budget would represent a higher probability that it already has the requisite management skills to complete the new project on time and on budget.

Regardless of the project specifics, a defined baseline of technical skills and products would apply to all fixed guideway capital projects, and are discussed in more detail below. In particular, FTA seeks comments and suggestions on exactly what baseline products and skills demonstration should be applied to all of these projects.

B. Major Capital Project

A major capital project would include the following types of fixed guideway capital projects: (1) New fixed guideway construction or extension of an existing fixed guideway at any cost, but for which the project sponsor seeks \$75 million or more in Section 5309 New Starts funds; or (2) fixed guideway construction, reconstruction, rehabilitation or modernization with a total project cost of \$100 million or more, using funds under 49 USC section 5309(b), that identifies a set of activities and tasks that are interdependent to accomplish a specific objective with specific time, cost, and performance

constraints; or (3) a project that the Administrator finds would benefit from the FTA project management oversight program, or presents certain characteristics that indicate the project would benefit from enhanced project management, engineering, and documentation of plans and processes. FTA seeks comment on what criteria it should use to determine whether a fixed guideway project should also be classified as a major capital project.

C. Questions

1. Is the distinction between a fixed guideway capital project and a major capital project clear enough? Please provide detail about how you would define any of the terms differently. Please explain your rationale.

2. Are there other characteristics—for either project category above—you believe should be called out? What are they and why?

3. Should a Project Management rule contain provisions that apply to non-fixed guideway capital projects, for example, bus projects under section 5309(b)(3)? Should the rule apply to projects above a certain dollar threshold only?

4. Under consideration is an expanded list of circumstances under which the Administrator could designate a project a “major capital project”, triggering additional skills demonstration and process planning and project implementation documentation. A list of examples follows. Please provide your opinion and regarding whether FTA should consider the following criteria for designating a project as a major capital project:

- The project sponsor has limited experience in design, construction, rehabilitation, or modernization of fixed guideways;
- The project sponsor has a history of exceeding project budget or schedule targets on other fixed guideway capital projects;
- The project involves acquisition, maintenance, or rehabilitation of vehicles or rolling stock that is not routine for the sponsor;
- The project is of significant expense or unique complexity for the sponsor;
- The success of the project will depend upon the sponsor's timely transaction of third-party agreements;
- The project involves new technology, design or construction elements that increase risk to the project cost or schedule.

III. Principles and Requirements for Fixed Guideway Capital Projects

A. Fixed Guideway Capital Projects

Following is a description of the existing baseline requirements for fixed guideway capital projects and how FTA proposes to modify the requirements.

1. Technical Capacity and Capability

By law, before FTA can award grant funds for a capital fixed guideway grant, the project sponsor must certify, consistent with 49 U.S.C. 5309(c)(1)(B), that it “has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program” throughout the life of the project. In many cases, FTA accepts the annual certification of the project sponsor as sufficient evidence that it possesses adequate technical capacity and capability. In some instances, however, FTA has reason to question the sponsor's technical capacity to manage the scale, expense, or complexity of the proposed project, thus, FTA must make an independent assessment of the sponsor. Through this rulemaking, FTA expects to set specific performance standards for technical capacity and capability. When assessing technical capacity, FTA may consider the results of its routine oversight reviews. Recurring and specialized reviews give FTA an opportunity to verify the grantee's Certifications and Assurances (see Circular C 5010.1D, Chapter II.3, Responsibilities of Grant Management). In cases where FTA finds that a project sponsor's certifications are inaccurate, FTA may withhold grant approval until it can verify the accuracy of the sponsor's certifications.

Technical capacity and capability is interpreted to mean evidence of an effective management approach, appropriate organizational structure, sufficient experienced staff, adequate internal and external controls and other resources (project partners, consultant support, and other non-sponsor agency) to administer the complexities of the capital project. FTA is seeking comment on what is the appropriate minimum demonstration of capacity and capability and whether there are times when FTA should seek more information to demonstrate capacity.

2. Satisfactory Continuing Control

A statutory requirement contained in 49 U.S.C. 5309(c)(1)(B) is that FTA must assure itself that the project sponsor will have satisfactory continuing control over the use of the equipment or facilities. In short, this means that the project sponsor must own the assets,

have a long-term lease, or otherwise be able to ensure that the federal investment will endure for the useful life of the investment. FTA's circulars contain guidance on satisfactory continuing control.

3. Maintenance of Facilities and Equipment

The section 5309(c)(1)(B) requirement concerning this provision requires not only that the project sponsor have the capability to maintain the equipment or facilities, but that the project sponsor demonstrates the willingness to do so. Again, the FTA has typically relied on a certification for this requirement, except in the case of New Starts, where there is a statutory requirement that the sponsor demonstrate adequate financial resources to maintain and operate the existing system while expanding its capacity. We are considering requiring project sponsors to develop and apply an asset management plan for all fixed guideway capital projects. FTA proposes to use its current state of good repair (SGR) initiative to further refine its definition of asset management plan. However, FTA believes that an asset management plan would assist grantees in project identification and prioritization by showing the condition of existing facilities, equipment, and rolling stock, and by producing schedules for major maintenance or replacement along with estimated replacement, rehabilitation, and repair costs.

4. Financial Plan

The statute currently requires an annual financial plan for all projects exceeding \$1 billion. FTA is considering whether to require some type of financial plan for all fixed guideway capital projects. Such a plan may include the identification of all Federal, State, and local resources anticipated to be used for the project. FTA invites comment on what should be the minimum expectations for financial plans of fixed guideway capital projects.

5. Grant Project Description, Budget and Milestones.

FTA Circulars require that a grant application contain sufficient project description, budget and milestones for both the sponsor and FTA to know what is included in the project and the timeframe for implementation. However, there is considerable disparity in the kind of information submitted and this can often cause delay in grant approvals. In order to assure consistency and transparency, FTA is considering enhancing the current grant project description, budget and

milestone information it collects for fixed guideway capital projects. The agency is further considering the best way to elicit adequate detail to provide valuable oversight of project planning and implementation. FTA has found that project implementation delays are often caused by poor or incomplete planning, which means issues get addressed during implementation usually with both a time and cost impact. By including a more detailed description of the planning aspects of the project, FTA could assure appropriate oversight of these activities and that the project experiences fewer implementation delays.

B. Major Capital Projects

The design and construction of a major capital project is a challenging undertaking from a variety of perspectives, including the large number of organizations involved in delivering the project, the diverse interests of the organizations and individuals that have a stake in the project, the potential imbalance between the quantity of human resources with the right skill sets required to deliver a project and the current organizational resources of the project sponsor, and the timing and cost of procuring goods and services in a competitive market. Additional challenges include integrated work flow processes and controls that are internal and external to the owner's organization, and management of the people, processes, physical and financial resources needed to successfully complete the project. Based on FTA's experience, projects that exceeded their budget or schedule forecast typically encountered problems obtaining experienced staff in a timely manner or failed to properly manage cost increases that were within their control, including contract change orders.

Therefore, FTA proposes to strengthen its requirements for major capital project sponsors by requiring them to demonstrate that they have sufficient staff in place to demonstrate the capacity and capabilities to successfully implement their proposed projects, as opposed to simply relying on a plan to acquire the needed personnel. Other changes would be aimed toward improving the effectiveness of the FTA-required project management plan by requiring processes to be in place, as described below, and proposing criteria to be used to measure grantees' success in achieving desired outcomes or output and reporting the results to FTA.

1. Technical Capacity and Capability

FTA's minimum expectations for a sponsor to demonstrate technical capacity and capability include a set of policies and procedures inclusive of resources and authority, defined, implemented, and maintained by the sponsor's project management organization that demonstrates its ability to: (1) Manage the project at each stage of development, including the transitions between stages of development and implementation; (2) conform to grant agreements, applicable statutes, codes, ordinances, and safety and security standards; (3) comply with FTA requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements; (4) maintain the project work schedule agreed to by FTA and the sponsor and constantly monitor grant activities to assure that schedules are met and other performance goals are being achieved; (5) keep expenditures within the latest approved project budget; (6) select and implement appropriate project delivery methods; (7) implement an effective communications program to assure that all project functions work effectively towards project delivery; (8) demonstrate continuous in-house administrative and management direction of project implementation; and (9) conduct adequate technical inspection and supervision by qualified professionals of all work in progress.

FTA would expect most, if not all, of the matters identified above to be addressed in the project management plan, or alternatively in a separate document that is clearly identified in the PMP and incorporated by reference.

2. Project Management Plan (PMP)

The project sponsor must submit a formal and documented management approach that embodies the agency's policies, practices and procedures. Ideally, the PMP should outline in detail the sponsor's plan for developing and implementing the project, including the monitoring that will take place to ensure that each major phase or stage in the project development process will be duly executed. The PMP should basically define what the project is, the person responsible for implementation, and when the work will be performed. The plans required should not be interpreted as "procedures." Procedures define how the work or functions are to be implemented in conformance to a plan that sets out the underlying philosophy and approach to each process. While the procedures might

identify who does something and when, the plan would describe why and what the action means.

FTA is considering placing additional emphasis on the PMP as a primary tool in the sponsor's management of the project. The PMP should demonstrate that the sponsor has thoroughly considered all phases of the project, giving careful thought, in particular, both to the methods used to execute the project and the interfaces between various participants. The PMP should explicitly define the objectives of the project and the methods and resources needed to meet those objectives. It should lay out the overall management strategy, including project controls, and the responsibilities, authorities, and measures of performance for all parties involved. Additionally, the PMP should reflect the unique characteristics of each project, such as the exact scope of work and specific resources, budget, and schedule. The PMP may be a compilation of associated plans or "sub" plans. Each sub plan should be incorporated into the PMP by reference and a copy appended, if practical, or as a minimum the signature page of the sub plan should be provided.

Additionally, FTA may require that the PMP and associated sub plans packaged in a single or separate volume be supported by individual procedures or references to existing procedures. For example, a Test and Inspection Plan would be supported by detailed test procedures and QA/QC procedures, but the procedures would be made available to FTA on request instead of being submitted with the PMP.

FTA envisions that project sponsors will submit a core PMP document for all major capital projects, tailored for the type of project for which it is used, and including, at a minimum, the following sections or stand-alone volumes or references to existing plans that serve the same purpose: (1) General Project Overview (description, objectives, performance measures, management approach, etc.); (2) Defined Scope, Budget and Project Master Schedule; (3) Quality Assurance/Quality Control (QA/QC) Plan; (4) Procurement Plan; (5) Safety and Security Management Plan; (6) Risk and Contingency Management Plan; (7) Staffing Plan (organizational chart, staff roles and responsibilities); and (8) Project Controls and Systems. FTA expects the project sponsor's responsible office supervisor/manager would approve the plan for his/her respective office prior to submittal to FTA for approval. For example, the head of QA/QC would approve the QA/QC Plan for the proposed major capital project. This allows an integrated

approach to developing the PMP and is expected to result in a more effective and efficient document. FTA would require each associated sub plan and the overall PMP to be updated as needed and resubmitted for FTA's approval.

In addition to the above core PMP and associated plans, the following sub plans are examples of what a project sponsor would develop and integrate into the PMP: (1) Real Estate Management Plan; (2) Fleet Management Plan; (3) Noise and Vibration Control Plan; (4) Rail Activation Plan; and (5) Geotechnical Risk Management Plan.

In the forthcoming Notice of Proposed Rulemaking (NPRM), FTA will provide further guidelines on when each plan within the PMP should be submitted for approval.

Currently for New Starts projects the sponsor establishes a PMP before entry into Preliminary Engineering and updates the PMP before advancing into the Final Design, construction, and start-up phases of a major capital project. FTA seeks comment on whether the requirement for Small Starts projects that are designated as major capital projects should establish a less detailed PMP than for New Starts projects. A less detailed PMP would be required before entry into project development and would be updated before advancing into construction.

FTA is also seeking comment on whether all or portions of the project management plan should apply to some or all fixed guideway capital projects or whether you would suggest a different approach to project management, keeping in mind that FTA must ensure that project sponsors manage their projects effectively and deliver projects on time and within budget, while at the same time achieving projected benefits and meeting quality standards.

3. Project Implementation

FTA may require project sponsors to demonstrate readiness to advance their projects to the next phase or stage in the project development process by successfully implementing the prerequisite requirements. Currently, a typical New Starts project moves through six major phases—Alternative Analysis, Preliminary Engineering, Final Design, Full Funding Grant Agreement, Construction, and Revenue Service Operations. A typical Small Starts project moves through five major phases, with Preliminary Engineering and Final Design being collapsed into a single phase called Project Development. FTA has developed checklists for grantees to use as a quick reference guide and to evaluate

readiness to move into the next phase of project implementation. To view existing checklists for Preliminary Engineering, Final Design, and Full Funding Grant Agreements (FFGA) go to: http://www.fta.dot.gov/planning/newstarts/planning_environment_218.html. If the proposals outlined in this ANPRM are implemented, FTA would create new checklists for all major capital projects as a guide to project implementation. FTA seeks your comments on whether this would be useful.

4. Performance Requirements

FTA would like project sponsors to use the PMP as a tool to create a series of performance measures that they could report against. FTA would use this information to report on the success of major capital projects.

5. Reporting

FTA intends to propose specific reporting requirements for recipients of federal funding for major capital projects, including but not limited to, value engineering reports, safety and security management reports, monthly progress reports, and cost updates for FTA's cost databases. We seek comments both as to the appropriateness of these reporting requirements as well as the potential content of such reporting requirements. Please make your comments specific to each of the suggested reports.

6. Exceptions for Past Performance

FTA is considering relaxing requirements for project sponsors who have successfully completed other major capital projects within the past 7 to 10 years if, for example, it can be demonstrated that the organization has retained critical resources like the project manager, the organization's business processes and procedures have not been significantly altered, and the project involves the same or similar technology. In the above context, determining the successful completion of a major capital project would be based on FTA-established criteria such as cost and schedule performance contained within a percentage of the baseline cost estimate or revenue service date. We seek comment on whether you agree with this approach. Are there other factors that might justify relaxing FTA's requirements?

C. Questions

1. If a project budget is under \$100 million, what is the appropriate demonstration of capacity and capability? Are there circumstances under which FTA should seek

additional demonstration of the project sponsor's technical capacity and capability for a project categorized as a fixed guideway capital project beyond what is described in this document?

2. What plans or requirements should FTA consider for a single purpose grant like a fixed guideway major capital project? Should a portion of the PMP apply?

3. Should the requirement for demonstrating satisfactory continuing control be different for a fixed guideway capital project than the regular FTA formula grant?

4. Are more detailed milestones and budget detail in a TEAM grant a feasible mechanism for managing and providing oversight to a fixed guideway capital grant? What other tools should be considered?

5. What minimum requirements should be contained in an asset management plan?

6. Would checklists for all fixed guideway capital projects be useful?

7. Should all or portions of the project management plan apply to some or all fixed guideway capital projects? What portions would apply to what specific types of fixed guideway capital projects? Please be as specific as possible.

8. Would you suggest a different approach to project management, keeping in mind that FTA must ensure that project sponsors manage their projects effectively and deliver projects on time and within budget, while at the same time achieving projected benefits and meeting quality standards?

9. Please comment on FTA's integrated project management plan approach discussed above. Do you think the integrated approach is more practical? If not, how would you structure the PMP to facilitate its usefulness?

10. Do you agree with FTA's plan to relax technical capacity and capability requirements for more experienced project sponsors that meet certain criteria? If you agree, are there other factors that FTA should consider?

11. Should FTA require all sponsors of major capital projects to develop and update PMPs for every project at corresponding stages in project development?

12. Other than the statutory evaluation process that applies to New Starts and Small Starts, should financial plans for all major capital projects meet the same minimum standards?

13. For major capital projects other than Section 5309 New Starts, should FTA specify a minimum number of years that a grantee's financial plan should cover? For example, is a financial plan covering three to five

years of sufficient length to determine a grantee's financial capacity? Or should FTA require that the financial plan extend through the time period required for completion of the major capital project?

IV. FTA Oversight of Fixed Guideway and Major Capital Projects

A. Fixed Guideway Capital Projects

Not all fixed guideway projects are major capital projects. Consequently, the oversight of many Fixed Guideway Capital Projects is performed primarily by FTA staff in its regional offices. PMOCs are currently utilized to assist FTA in providing oversight of Major Capital Projects only.

B. Major Capital Projects

In the early 1980's several FTA-funded transit projects suffered major setbacks due to problems with quality, cost overruns, and delays in schedules. Thus, FTA received its project management oversight program mandate and funding from Congress in the Surface Transportation and Uniform Relocation Act of 1987. Congress directed FTA (then UMTA) to establish the Project Management Oversight (PMO) Program. This program has grown correspondingly with the growth of the overall FTA program.

1. Roles and Responsibilities

Since the inception of its Project Management Oversight program in 1989, FTA has supplemented its own staff with Project Management Oversight Contractors (PMOCs) to provide oversight for major capital projects. The primary role and responsibility of the PMOC is to help FTA ensure that such projects are on time, within budget, and in conformance with Federal requirements; are constructed to grantees' approved plans and design specifications; and are efficiently and effectively implemented. An initial, important role of the PMOC is to review the project sponsor's project management plan on behalf of FTA, and to make recommendations concerning its adequacy.

During the design, construction, start-up and operational phases of a project, on behalf of FTA, the PMOC monitors and reports on the project's development and implementation, consistent with its approved project management plan and accepted engineering and project management practices.

The PMOC performs routine project management oversight monitoring through on-site reviews and off-site document reviews. FTA uses these

reviews to oversee the project and to conduct quarterly review meetings with the project sponsor. Periodic reports are submitted to FTA documenting project status, activities, and open issues including, but not limited to, the following:

- Timely management decisions.
- Delegations of authority.
- Management of project scope.
- Internal controls.
- Schedule analysis.
- Cost estimates and trends, including forecasting.
- Delivery of a quality product.
- Project security/safety.
- Continuing technical capacity.
- Risk assessment and contingency management.

FTA's primary objectives for providing Project Management Oversight of major capital projects are to assess grantees' technical capacity and capability and project management experience to successfully implement major capital projects and to monitor projects to ensure that they are progressing on time, within budget, and in accordance with the grantees' approved plans.

While FTA's program has grown significantly since 1989, its staff size has stayed the same. The PMOCs help to fill this resource gap as well as to provide specialized expertise when needed. While the oversight program has grown based on its percentage takedown of an expanding program, the need for oversight has increased even faster than the available funding because the larger program has generated both higher demand and more complex projects. FTA seeks comment on how it should best use its PMOCs to supplement its limited staff resources.

2. Risk-Informed Project Management Oversight Approach

Over the last five years, FTA has refined its approach to oversight to integrate risk analyses and transit specific databases to help the grantee deliver a successful project. By means of a Full Funding Grant Agreement (FFGA) for New Starts, or Project Construction Grant Agreement (PCGA) for Small Starts, both FTA and a grantee mutually agree on the scope, cost and schedule of a particular project. Management of the project to ensure that all three are delivered successfully begins early in the project development phase.

FTA has increased its use of risk assessment, management and mitigation strategies to ensure that Major Capital projects are constructed on-time and within budget. FTA relies on a portfolio of risk management tools to prevent project costs from escalating, to assess

the magnitude of risks in a project, and to help the project sponsor predict and establish a project budget and schedule. The most important objective of risk assessment and management protocols is to help the project sponsor predict the budget and schedule and to ensure that the sponsor can complete the project within the budget and schedule identified in the FTA grant award.

Project risks track the project development process. In general terms, they can be described as follows:

- **Requirements Risk.** The first step in project development is to identify the requirements—risks associated with definition of basic project needs and transit system requirements to meet those needs;

- **Design Risk.** The second step is project design—risks involving the adequacy of the information available at each stage of design and engineering, geotechnical conditions in particular, and the impact of redesign;

- **Market Risks.** The third step is to identify market risks—risks associated with both the procurement approach and the market conditions that can affect the cost of materials and the availability of bidders for construction services, materials, real estate, and manufactured products like vehicles; and

- **Construction Risks.** The final step is to identify construction risks—those risks associated with the actual construction and start-up of the system.

Once risks are identified, FTA and project sponsors must determine the best method for managing those risks. The preferred methods for managing risk are avoidance, reduction, and mitigation. Because they are really only ways of providing more up-front funding or reducing overall costs but do not reduce risk, less preferred risk management techniques include increasing contingency, reducing project scope, or reducing the level of service. FTA works with each project sponsor to determine the most feasible strategy for each project.

Project sponsors document this risk-informed management process in the project management plan. Including these strategies can help ensure that the project sponsor has the requisite technical capacity and capability to deliver the project on time and within budget by ensuring that the project sponsor understands methods for addressing risks and that it implements strategies to avoid future delays.

FTA can tailor these risk assessment and management tools to take into account the unique circumstances of a project, such as sponsor organization

and technical capacity and capability, and the project complexity or status.

C. Questions

1. Should FTA assign PMOCs to oversee projects other than Major Capital Projects? Please provide the rationale for your recommendations including how oversight of these projects should alternatively be provided if PMOCs are not utilized.

2. At what stage in the development process should FTA assign PMOCs to New Starts projects? Explain the basis for your recommendation.

3. Other than a detailed review of a grantee's financial plan, what other methods might FTA utilize to ensure a grantee has the financial capacity to construct and operate a major capital project?

4. Please comment on FTA's Risk Management approach. If you do not agree with FTA's approach, please recommend an alternative and provide a basis for your recommendation.

Following the close of the comment period on this ANRPM, FTA will summarize and respond to the comments and issue a Notice of Proposed Rulemaking that posits explicit text for a rewrite of the regulation at 49 CFR Part 633. We expect to publish such a Notice of Proposed Rulemaking in 2009.

Issued this 4th day of September, 2009.

Peter M. Rogoff,

Administrator, Federal Transit Administration.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2009-0006]
[MO 922105 0082-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List *Astragalus anserinus* (Goose Creek milkvetch) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to list *Astragalus anserinus* (Goose Creek milkvetch) as a threatened or endangered species under the

Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that listing *A. anserinus* under the Act is warranted. However, listing is currently precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We have assigned a listing priority number (LPN) of 5 to this species, because the threats affecting it have a high magnitude, but are non-imminent. Upon publication of this 12-month petition finding, *A. anserinus* will be added to our candidate species list. We will develop a proposed rule to list *A. anserinus* as our priorities allow. Any determinations on critical habitat will be made during development of the proposed rule.

DATES: The finding announced in this document was made on September 10, 2009.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R1-ES-2009-0006. Supporting documentation we used to prepare this finding is available for public inspection, by appointment during normal business hours at the U.S. Fish and Wildlife Service, Utah Field Office, 2369 West Orton Circle Suite 50, West Valley City, Utah 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at http://www.fw1srbccomments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES**); by telephone at 801-975-3330; or by facsimile at 801-975-3331. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from