

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

[Docket No. FTA 99-5474]

RIN 2132-AA63

**Major Capital Investment Projects****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Final rule.

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

**DATES:** This rule will become effective on February 5, 2001, except for paragraphs (a)(1)(i)-(ii) and (d) of Appendix A to Part 611 which will become effective on September 1, 2001. Affected parties do not have to comply with the information collection requirements until FTA publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements.

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

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Electronic access to this and other documents is available through FTA's home page on the World Wide Web, at <http://www.fta.dot.gov>.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, via the Docket Management System (DMS) on the DOT home page, at <http://dms.dot.gov>. The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's (GPO)

Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page, at <http://www.nara.gov/fedreg>, and the GPO database, at <http://www.access.gpo.gov/nara>.

**Table of Contents**

## I. Background

## II. History

- A. The First Policy Statement (1976)
  - B. Policy on Rail Transit (1978)
  - C. Statement of Policy on Major Urban Mass Transportation Capital Investments (1984)
  - D. Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)
  - E. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)
  - F. Executive Order 12893 (1994)
  - G. Policy Discussion Paper (1994)
  - H. The 1996 Statement of Policy
- III. Transportation Equity Act for the 21st Century (TEA-21)
- A. Significant Changes
  - B. Other Changes
- IV. Government Performance and Results Act of 1993
- V. Outreach
- VI. Section-By-Section Analysis
- VII. Response to Request for Comments on Particular Issues
- VIII. Other Comments
- IX. Regulatory Evaluation
- X. Regulatory Process Matters

**I. Background**

The Federal Transit Administration (FTA) is issuing this rule to carry out the requirements of section 3009(e)(5) of TEA-21. This rule defines the process FTA will use to evaluate candidate new starts projects proposed for funding under 49 USC § 5309.

The Notice of Proposed Rulemaking (NPRM) for this Rule was issued on April 7, 1999 (64 FR 17062). The period for public comment closed on July 6, 1999, though late-filed comments were accepted through July 19. See docket #FTA-99-5474.

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

This rule, together with the FTA/Federal Highway Administration (FHWA) planning and environmental regulations at 23 CFR parts 450 and 771, will flesh out the requirements of 49 USC 5309(e) under TEA-21. The statute now requires candidate projects to be "(A) based on the results of an alternatives analysis and preliminary engineering, (B) justified based on a

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

This rule describes the project evaluation and rating process; it does not define the process by which FTA determines annual project funding recommendations, nor does it define the process by which FTA enters into funding commitments through Full Funding Grant Agreements (FFGAs). These processes are beyond the scope of this rule. The ratings developed under this rule are intended to denote overall project merit, and will form the basis for such funding decisions; however, actual funding decisions will also involve consideration of the amounts of new starts funding available under section 5309 (both annually and over the authorization period), proposed projects' phase of project development, geographical factors, and any outstanding issues that may affect the viability of a proposed project. For purposes of annual budget recommendations to Congress, proposed new starts projects must also be likely to have completed enough of final design that cost estimates are firm and be likely to have in place a fully committed financial plan by the close of the fiscal year for which recommendations for new Full Funding Grant Agreements (FFGAs) are being made.

**II. History**

Since the early 1970's, the Federal government has provided a large share of the Nation's capital investment in urban mass transportation, particularly for "new starts" (major new fixed guideway transit systems or extensions to existing fixed guideway systems). By the mid-1970's, because of the magnitude of the new start commitments being proposed, the

Department found it useful to publish a statement of Federal policy to ensure that the available resources would be used in the most prudent and effective manner.

#### A. *The First Policy Statement (1976)*

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

#### B. *Policy on Rail Transit (1978)*

The original policy was supplemented in 1978 by a "Policy on Rail Transit" (43 FR 9428 (March 7, 1978)). This Statement reiterated the requirement for alternatives analysis, established requirements for local financial commitments to the project, established the concept of a contract providing for a multi-year commitment of Federal funds, with a maximum limit of Federal participation (the Full Funding Grant Agreement—FFGA), and required that local governments undertake supporting local land use actions. This was supplemented by a 1980 policy statement that linked the alternatives analysis requirement to the Environmental Impact Statement development process (45 FR 71986 (October 30, 1980)).

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

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

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

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

To effectuate the requirements set forth in STURAA, on April 25, 1989 FTA (then the Urban Mass Transportation Administration) issued a Notice of Proposed Rulemaking (54 FR 17878). This Proposed Rule would have codified the requirements of the 1984 Policy Statement and made the "Cost Per New Rider" Index and threshold values regulatory. However, in the FY 1990 and FY 1991 Appropriations Acts, Congress directed that this rulemaking not be advanced (See the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101-164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101-516)). Consequently, on February 3, 1993, this proposed rulemaking was withdrawn (58 FR 6948).

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

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

#### F. *Executive Order 12893 (1994)*

On January 26, 1994, the President issued Executive Order 12893 (59 FR 4233), describing the principles which Federal agencies are to apply in

determining how to invest in all forms of infrastructure, including transportation. The Executive Order requires a systematic analysis of the costs and benefits of proposed investments, and sets out the parameters for such analysis. It calls for efficient management of infrastructure, including a focus on the operation and maintenance of facilities, as well as the use of pricing to manage demand, and calls for comparison of a comprehensive set of options and consideration of quantifiable and qualitative measures of benefits for all programs.

#### G. *Policy Discussion Paper (1994)*

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

#### H. *The 1996 Statement of Policy*

On December 19, 1996, FTA issued a Notice in the **Federal Register** that formally adopted the ISTEA project justification criteria (61 FR 67093). This Notice defined the criteria, established the process, and described the measures that would be used to evaluate candidate projects for discretionary new starts funding. This Notice also established a multiple-measure method of project evaluation, in a manner consistent with Executive Order 12893.

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

### III. *Transportation Equity Act for the 21st Century (TEA-21)*

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

#### A. *Significant Changes*

- Integration of the Major Investment Study (MIS) requirement into the FTA/FHWA planning and environmental regulations (23 CFR part 450 and 23

CFR part 771), elimination of the MIS as a separate requirement (see section 1308 of TEA-21), and required streamlining of the environmental process (see section 1309 of TEA-21);

- The requirement for FTA to establish overall project ratings of “highly recommended,” “recommended,” or “not recommended;”
- The requirement for FTA approval for a project to advance to the final design stage of the project development process; and
- The requirement that FTA publish regulations on the manner in which proposed projects will be evaluated and rated (the purpose of this rule).

#### B. Other Changes

- Several additional statutory “considerations” have been added to the project evaluation process, including the cost of sprawl, infrastructure cost savings due to compact land use, population density and current transit ridership in a corridor, and the technical capacity of the grantee to undertake the project.
- TEA-21 expressly prohibits FTA from considering the dollar value of mobility improvements (see section 3010).
- The ISTEA exemptions from the FTA statutory project evaluation process, for proposed projects that require less than one-third of the project funding from 49 U.S.C. 5309 or are part of a State Improvement Plan for air quality, were eliminated. The exemption remains for projects requiring less than \$25 million in 49 U.S.C. 5309 funding.
- For evaluating local financial commitment, the consideration for local funding beyond the required non-Federal share has been incorporated into statute.
- A second annual report to Congress, in addition to the existing *Report on Funding Levels and Allocations of Funds*, is now required. This new “Supplemental New Starts Report,” due each August, will include updated ratings for projects that have completed the alternatives analysis and preliminary engineering stages of development since the date of the last *Report on Funding Levels and Allocations of Funds*.

#### IV. Government Performance and Results Act of 1993

The Government Performance and Results Act (GPRA) was enacted in 1993 to provide for the establishment of strategic planning and performance measurement in the Federal Government. It is primarily intended to

improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

In the NPRM for this rule, FTA indicated an intent to develop performance measures to evaluate our administration of the new starts program, and to measure the performance of Federal new starts investments. Both of these measures would be incorporated into FTA’s management of new starts projects. The NPRM invited specific comment on these issues, including recommendations as to which measures and indicators would be appropriate, as well as appropriate timeframes for evaluation.

*Comment.* FTA received a total of three comments on the GPRA issues, from two interest groups and one transit industry trade association. On the subject of FTA’s performance in administering the new starts program, two of the commenters recommended that performance be measured according to factors under FTA’s control, such as timeliness in responding to grantee inquiries, reporting to Congress, uniformity of guidance, approval actions, and the extent to which funding recommendations are based on project ratings. One commenter saw no benefit to evaluating FTA’s performance in this regard.

Only two of the three commenters addressed the subject of new starts follow-up evaluations, the industry trade association and one of the two interest groups. Both supported the general concept of follow-up evaluations, but provided little additional comment. The interest group recommended that reviews not occur until at least after the first year of revenue service, and not later than 15 years, suggesting ratings at 2 and 7 years. The trade association recommended that projects be evaluated against objectives set at time of the decision to implement the project; ratings should encompass a 5–10 year operating period, and should focus on overall performance, not ridership and cost.

*Response.* The wording of the section on GPRA in the preamble to the NPRM may have led to confusion regarding what FTA intends to measure, which may account for the fact that few comments were submitted on this issue. In evaluating FTA’s administration of the new starts program, the intent was to establish measures for determining the degree to which projects remain on schedule and on budget once a commitment to fund the project has been made (*i.e.*, an FFGA has been

executed), and to measure the success of new starts projects once they are in operation. This rule incorporates a two-step data collection process to meet both of these goals. For those new starts that are put under FFGAs, FTA will combine before-and-after data with planning projections to evaluate the project in terms of four areas of interest: Capital costs, operating costs, system utilization (including ridership levels, service levels, user characteristics, trip purposes, demographics, etc.), and external factors relevant to the project. These data collection activities will be considered an eligible part of the project for funding purposes. Prior to the execution of an FFGA, project sponsors, as part of their final design efforts, will have to submit a complete plan for collection of the “before” data to FTA. The actual collection of data by project sponsors will be required before construction begins. The FFGA will contain a requirement for the project sponsors to collect the “after” data, two years after the project opens for revenue service. FTA will then compare the “after” data with the “before” data, as well as with the projections of costs, ridership, and system utilization characteristics made during the project development process, to evaluate the success of the project. Project sponsors will also be asked to report on any external factors that might have influenced the costs, ridership, and utilization factors, such as unexpected increases or decreases in gasoline prices, employment trends, etc.

The intent of this evaluation process is to help to develop a greater understanding of the actual benefits of new starts, and support improvements to the forecasting process. FTA recognizes that this evaluation will provide only a short-term “snapshot” of the performance of a new fixed-guideway system, and that many of the benefits, particularly in terms of land use, are long-term in nature. Project sponsors are of course encouraged to continue their data collection efforts beyond the period two years after opening. However, given the nature of the appropriations and authorization process, there is also a need for short-term data to provide an initial indication of the benefits of a project.

#### V. Outreach

The development of this Rule began with a series of outreach sessions conducted during the months of September and October 1998. Three workshops were held around the country: One in Portland, Oregon, in conjunction with the RailVolution Conference on September 14, 1998; one

in Washington, DC on September 25, 1998; and one in New York City, in conjunction with the Annual Meeting of the American Public Transit Association (APTA) on October 8, 1998.

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

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

The NRPM for this rule was issued on April 7, 1999. The docket was open for public comment through July 6, 1999, though late-filed comments were accepted through July 19, 1999. Comments were received from a total of 41 individuals and organizations. During the comment period, FTA held three additional public outreach workshops to solicit comment on the proposed rule; one in Toronto, Ontario on May 24, 1999, in conjunction with the 1999 American Public Transit Association's Commuter Rail/Rapid Transit Conference; one in Oakland, California on June 3, 1999; and one in Washington, DC on June 8, 1999. Notes from these workshops have been placed in the docket for this rule (#FTA-99-5474-48).

## VI. Section-by-Section Analysis

### A. Section 611.1: Purpose and Contents

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

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

The results of this evaluation will be used by FTA to make the findings required by statute for proposed projects to advance into the preliminary engineering and final design stages of project development, and to develop funding recommendations for the President's annual budget request. They

will also be used to determine which projects are eligible for funding commitments under Full Funding Grant Agreements.

The information collected and ratings developed under this rule will form the basis for the annual Report on Funding Levels and Allocations of Funds, as required under 49 U.S.C. 5309(o)(1), and the "Supplemental Report on New Starts," as required by 49 U.S.C. 5309(o)(2). The NPRM to this Rule proposed cutoff dates for information to be included in these reports; however, FTA has reconsidered the need for dates, as we strive for more real-time information. Thus, the cutoff dates for these reports have been dropped from this rule.

### B. Section 611.3: Applicability

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

It also states that proposed projects are exempt from evaluation under this rule if the total amount of funding under 49 U.S.C. 5309 is less than \$25,000,000, or if they are specifically exempt by statute. Such projects must still meet the planning requirements under 23 CFR part 450 and environmental review requirements under 23 CFR part 771, as well as the project development process described in this rule.

Title 49, U.S.C. 5309(e)(7) requires new starts projects to be carried out through a Full Funding Grant Agreement (FFGA), and also requires FTA to base the decision to issue an FFGA on the results of the evaluations and ratings process. Thus, any proposed project that is not evaluated will not be eligible for an FFGA. Sponsors of proposed projects that they believe to be exempt are therefore strongly urged to submit project evaluation information to FTA. FTA will carefully review projects for which sponsors are claiming exemptions under this rule. Such projects will still be approved for entry into preliminary engineering and final design, based on planning and project development requirements. If the proposed share of project funding from the section 5309 new starts program passes the \$25 million level at any time, FTA will expect the project sponsor to develop the information required to be evaluated under this rule, and will require that such a project be funded using an FFGA.

This section also notes that projects for which an FFGA has already been executed are not subject to reevaluation under this rule. However, extensions

and/or modifications to projects with existing FFGAs will be subject to evaluation and rating under this rule.

*Comment.* FTA received six comments on the issue of project exemptions, expressing general confusion and opposition to FTA's position on exempt projects. One transportation consultant and one transit operator argued that all exempt projects should be assigned a default rating of "medium," which could be raised by the submission of data for evaluation; the transit operator also expressed the opinion that small projects (*i.e.*, <\$25 million in new starts funds) do not generate great benefits, and therefore should not be required to submit data for evaluation. One State DOT recommended that FTA simply set aside \$500 million annually for exempt projects.

Three commenters also expressed some degree of confusion regarding the treatment of exempt projects. One attendee at the Washington, DC workshop wondered whether project sponsors would attempt to "cheat" the process by claiming exemptions and another at the Oakland, CA workshop expressed confusion about continued eligibility of exempt projects for funding. One industry interest group commented that, since TEA-21 already contains language exempting projects under existing FFGAs from re-evaluation under the revised criteria, including the same language in the Final Rule would be confusing.

*Response.* FTA is not prepared to set aside half (or any amount) of the annual new starts funding authorization for exempt projects, and rejects the assertion that Congress intended such projects to be exempt from the evaluation process because they have no measurable benefits. The Final Rule retains the NPRM language strongly encouraging sponsors of projects they believe to be exempt to submit data for project evaluation. This encouragement does not and is not intended to eliminate the provisions in TEA-21 exempting certain projects from the evaluation process, as many of the commenters seem to have surmised. Any proposed project that meets these provisions is still exempt from the evaluation and rating process; however, submitting data will give FTA an empirical basis on which to make funding recommendations to Congress. It will also maintain a proposed project's eligibility for an FFGA. Indeed, 49 U.S.C. 5309(e)(7) requires new starts projects to be carried out through a Full Funding Grant Agreement, and also requires FTA to base the decision to execute an FFGA on the results of the

evaluations and ratings process. Thus, any proposed project that is not evaluated will not be eligible for an FFGA. FTA will of course allocate any funds appropriated by Congress for such projects. However, we believe project sponsors will find the more predictable and reliable funding provided through an FFGA to be to their advantage. Therefore, project sponsors are encouraged to submit data for evaluation to retain their eligibility for an FFGA.

Finally, FTA acknowledges that there may be a temptation to circumvent the project evaluation process, as noted during the Washington, D.C. workshop. For example, it is conceivable that project sponsors may officially maintain a low level of section 5309 new starts funds throughout a project's development, only to "discover" that additional funds will be needed as the development process draws to a close. FTA also recognizes that not all such instances will result from deliberate attempts to manipulate the process; occasionally, further engineering and design will uncover a legitimate need for additional funds during the project development process, or local funding may not materialize as initially proposed. However, due to the fact that project evaluation is a condition of eligibility for an FFGA, and that an FFGA offers more stability in terms of funding than relying on annual Congressional appropriations, FTA believes that deliberate attempts to evade project evaluation will be few and far between.

Although projects proposed as "exempt" are not subject to evaluation against the new starts project justification and local financial commitment criteria, such projects must still request FTA approval for entrance into preliminary engineering and final design. The decision to approve advancement in the project development process for such projects is based on compliance with basic planning, environmental, project management, and other requirements which apply to all projects pursuing section 5309 new starts funding, regardless of the amount. It is at the preliminary engineering and final design approval points that FTA works with the project sponsor to determine if the proposed "exempt" project appears to be at risk for requiring new starts funding at an amount greater than \$25 million, and to seek assurances that local or other Federal formula funds will be pursued if a project's cost or funding strategy changes. Once again, in order to preserve maximum funding flexibility, FTA strongly encourages the

sponsors of proposed projects that they believe to be exempt to nonetheless submit data for evaluation.

### C. Section 611.5: Definitions

This section defines key terms used in this part.

*Comment.* Four commenters to the proposed rule expressed concern that the definition of "fixed guideway" was unnecessarily narrow, and may perhaps exclude many bus rapid transit (BRT), ferry boat, commuter rail and light rail systems that would operate along a shared right-of-way.

*Response.* FTA has re-examined the definition used in the NPRM, and agrees that it could be read as excluding some BRT and ferry projects that would otherwise be eligible under the new starts program. The definition used in this rule has been modified to address this uncertainty. Definitions for "bus rapid transit" and "BRT" have also been added, consistent with the definition used in FTA's Request for Participation in the Bus Rapid Transit Demonstration Program (63 FR 68347 (December 10, 1998)).

FTA has also added a definition for "Transportation System User Benefits" and removed the definition for the "Transportation System Management alternative," as discussed later in the preamble to this Rule.

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

New start projects, like all transportation investments in metropolitan areas, must emerge from a regional multimodal transportation planning process in order to be eligible for Federal funding. In addition, 49 U.S.C. 5309(e)(1) specifies that discretionary grants or loans for new starts may only be approved if a proposed project is based on the results of alternatives analysis and preliminary engineering, and that certain project justification and financial criteria have been met.

As part of the metropolitan planning process, local project sponsors must perform a corridor-level analysis of mode and alignment alternatives in corridors for which projects may be proposed for section 5309 new starts funding. This alternatives analysis will provide information on the benefits, costs, and impacts of alternative strategies, leading to the selection of a locally-preferred alternative to the community's mobility needs.

The approach taken in this rule envisions alternatives analysis as a key planning tool to be undertaken within the multimodal metropolitan and statewide planning processes,

supplemented by subsequent project development analyses, for determining appropriate solutions to transportation issues. FTA and FHWA are currently modifying their joint planning and environmental regulations to better reflect the planning and project development provisions of TEA-21. To the extent possible, the development of these regulations has been coordinated with the development of this final rule on major transit capital investments. However, FTA may amend this rule, if necessary, when the joint planning and environmental Final Rule is issued.

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

The alternatives analysis study (also known as a major investment study—MIS—or multimodal corridor analysis) evaluates several modal and alignment options for addressing mobility needs in a given corridor. It is intended to provide information to local officials on the benefits, costs, and impacts of alternative transportation investments. Potential local funding sources for implementing and operating the investment are to be identified and studied, and information in response to the FTA new starts project evaluation criteria is to be developed. Involvement of a wide range of stakeholders—including the general public—in the alternatives analysis study process is strongly encouraged. At local discretion, the alternatives analysis may include the undertaking of a Draft Environmental Impact Statement (DEIS) or Environmental Assessment (EA). Alternatives analysis is considered

complete when a locally preferred alternative (LPA) is selected by local and regional decisionmakers and adopted by the metropolitan planning organization (MPO) in its financially-constrained metropolitan transportation plan.

At this point, the local project sponsor may submit a request to the FTA regional office to initiate the preliminary engineering phase of project development. The request must provide information that demonstrates the readiness of the project to advance into preliminary engineering, including the adoption of the project into the metropolitan transportation plan and the programming of the preliminary engineering study in the Transportation Improvement Plan (TIP), and information demonstrating the technical capability of project sponsors to undertake the preliminary engineering effort. The request must also address the project justification and local financial commitment criteria outlined below. (This information is normally developed as part of an alternatives analysis.) FTA will then evaluate the proposed project as required by 49 U.S.C. 5309(e)(6) and determine whether or not to advance the project into preliminary engineering. FTA approval to initiate preliminary engineering is not a commitment to fund final design or construction.

Where the sponsoring agency believes that a proposed project is exempt from evaluation under this rule, submission of project justification and financial commitment information to FTA is not required. However, exempt projects must still meet all planning, environmental, project management, and other requirements which demonstrate their readiness to advance into preliminary engineering. In addition, without information to support the justification of and local financial commitment to a proposed project, FTA will have no basis for decisions on whether to recommend Federal funding commitments. Therefore, sponsors of exempt projects are strongly encouraged to submit information on project justification and financial commitment.

During the preliminary engineering phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. Preliminary engineering results in estimates of project costs, benefits and impacts in which there is a much higher degree of confidence. A comprehensive preliminary engineering effort will also address the evaluation criteria described in this rule. In addition, NEPA requirements must be met (for new starts, this usually

includes the completion of a Final Environmental Impact Statement), project management plans and fleet management plans are finalized, and local funding sources are committed to the project (if they have not already been committed). Information on project justification and the degree of local financial commitment will be updated and reported as appropriate. As part of their preliminary engineering activities, localities are encouraged to consider policies and actions designed to enhance the benefits of the project and its financial feasibility.

Project sponsors should also ensure that safety considerations are weighed during the preliminary engineering phase. With regard to rail projects that will be subject to Federal Railroad (FRA) safety jurisdiction, FTA will notify FRA of pending new starts at the earliest date practicable, as important decisions affecting rail safety must be made at the outset of the planning and grant development process. FRA will forward any recommendations it has to FTA, which will forward them to the project sponsor.

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

Preliminary engineering is considered complete when FTA has issued a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), as required by NEPA.

Proposed projects that have completed preliminary engineering must request FTA approval to enter the final design phase of development. The request must provide information that demonstrates to FTA the technical capability and financial capacity of the local project sponsor to advance the project into final design. Like the approval to enter into preliminary engineering, this approval is based upon a review and evaluation of the costs, benefits, and impacts under the statutory project evaluation criteria. Final design is the last phase of project development, and includes right-of-way acquisition, utility relocation, and the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents. Final design is typically eligible for 49 U.S.C. 5309 new start funds.

*Comment.* In the NPRM to this rule, FTA asked for public comment on the relationship between the alternatives analysis requirement and the planning and project development processes. A total of nine comments addressed this

issue. Two respondents, a transit industry trade association and a large transit operator, objected to the fact that an alternatives analysis is required for transit new starts, but not for highway projects. Another transit operator objected to alternatives analysis as "outside" of the "normal" corridor study process, topheavy and burdensome, and inconsistent with planning regulations.

*Response.* It is in fact true that Federal highway programs do not require an analysis of alternatives in the same manner as the new starts program. However, this is a fact of law, not Departmental policy. The new starts program is a discretionary funding program; alternatives analyses are required to develop information for decisionmaking purposes. Conversely, the Federal highway program is a formula program; no Federal decisionmaking is required. Neither FTA nor DOT are at liberty to remove the requirement for alternatives analysis from the new starts program, or to impose a similar requirement on the Federal highway program. To do so would require a change in the law by Congress. As for the perceived inconsistency with planning regulations, the joint FTA/FHWA planning regulations are designed to be consistent for both agencies' major capital investment programs; they neither require FHWA-funded projects to undergo alternatives analysis, nor prevent FTA-funded new starts from meeting the statutory requirement that an alternatives analysis be conducted.

*Comment.* One transit operator commented that the issuance of this rule should be delayed until the revisions required by TEA-21 to the FTA/FHWA planning and project development regulations have been issued.

*Response.* This rule applies only to FTA's own evaluations of proposed new starts, which does not feed into the planning process; rather, FTA's new starts evaluations rely upon the data and information derived from the planning process. Therefore, FTA is not persuaded that formal implementation of the TEA-21 new starts provisions should be delayed further. Should the final planning rule require changes to the new starts project development process, however, this rule will be amended accordingly.

*Comment.* Two commenters expressed confusion regarding the "demise" of the Major Investment Study (MIS), and requested clarification.

*Response.* Section 1308 of TEA-21 eliminated the separate requirement for an MIS and integrated its basic concepts into the joint planning and

environmental regulations issued by FTA and FHWA (23 CFR parts 450 and 771). Existing MIS activities will still satisfy the requirement for an alternatives analysis, and project sponsors who wish to follow the principles of the multimodal MIS to conduct new alternatives analyses are encouraged to do so. The joint planning and environmental regulations will more fully describe how the MIS concepts will be integrated into the process.

*Comment.* The NPRM noted that FTA does not support the use of section 5309 new starts funds for initial planning activities, given the demands placed on the program and the availability of funds from other FTA programs for this purpose, and stated that FTA would consider this when evaluating local financial commitment. Six comments were received on this issue. Four commenters objected to what they viewed as "penalizing" project sponsors for using new starts funds for planning activities relating to proposed new starts projects; one commenter asked for clarification as to whether such projects would be penalized; and one (a transit operator) supported limiting the use of new starts funds for planning. One transit operator, citing the statutory 8 percent limit on program funding for activities other than final design and construction, noted that Congress "clearly intended" for section 5309 funds to be used for alternatives analysis and preliminary engineering. A local government entity claimed that there was no "statutory basis" for including the use of section 5309 funds for planning purposes as part of the project evaluation process, and noted that it would be inappropriate to "penalize" projects that Congress saw fit to earmark. This same commenter suggested measuring such uses of funds against the 8% limit established in TEA-21.

*Response.* The Final Rule retains the principle that FTA will consider the degree to which initial planning activities are conducted without funding from section 5309 as part of our evaluation of the local financial commitment. This is not intended as a "penalty" for project sponsors who seek and secure Congressional earmarks for these activities. Rather, it is intended to give a degree of recognition to the efforts of sponsors who make use of existing sources of Federal, State, and local planning funds, such as those noted above. Further, making such considerations is consistent with Congressional direction. The conference report to the FY 1999 appropriations act instructed FTA to consider the extent to

which new starts project sponsors make use of the appreciable increases in formula funding for alternatives analysis and preliminary engineering, when evaluating the local financial commitment of proposed new starts.

*Comment.* Twelve comments addressed the issue of the statutory requirement for FTA approval to advance into preliminary engineering and final design. Most expressed some degree of discomfort with the notion of such approvals, and noted a need for more guidance and better definitions of the stages of project development and the development process itself. The strongest objection was expressed by a transit operator who asserted the project development process is separate and distinct from the evaluation process, and that proposed new starts projects should therefore simply be permitted to proceed without FTA approval.

*Response.* In most cases, the "newness" of this approval requirement seems to be responsible for much of the confusion. The requirement for FTA approval to enter final design was added to the new starts program by TEA-21; this rule simply implements that requirement. FTA is not at liberty to change the law through this or any other rulemaking process. FTA approval has long been required to enter into preliminary engineering, though the role of the project ratings process was not as large.

*Comment.* Four of those commenting on the approval requirement, including a transit industry trade association, requested clarification of what is required to fulfill the requirements for completion of the various stages of development.

*Response.* The language concerning alternatives analysis, preliminary engineering, and final design has been revised in both the text of this rule and the preamble to better describe these activities. In addition, FTA issued guidance in September 1999 which clarifies the project development and approval process.

*Comment.* The industry trade association also suggested that local financial commitment not be considered for approval to enter the next stage, a comment echoed by a transit operator. Another transit operator and the trade association suggested that different requirements be established for approval to enter preliminary engineering than for final design. The apparent fear is that worthy projects may be denied approval to enter preliminary engineering simply because adequate information on costs and benefits is not available with a high

level of certainty so early in the development process.

*Response.* Section 5309(e)(6) clearly states that FTA may only approve the advancement of a proposed project to the next stage of development if it meets the statutory project evaluation criteria, and is likely to continue to do so. However, FTA recognizes that the level of information available and the degree of certainty varies according to the stage of project development; the earlier in the process a proposed project is, the less certain the forecasts and estimates. For this reason, FTA sets different standards for high, medium, and low ratings for preliminary engineering than for final design; the further a proposed project is in the process, the higher the standard. In the case of local financial commitment, for example, it may be sufficient to simply demonstrate a reasonable financial plan that identifies proposed sources of local funds needed to construct the project (*i.e.*, to show that the sponsors have considered how they intend to pay for it) when seeking approval to enter preliminary engineering. It is not reasonable to expect ballot measures to have passed and funds to have been programmed at this stage. However, by the time a proposed project is ready to enter final design, most or all of the local funds should be committed, including provisions for cost overruns. It has been a longstanding FTA practice in the management of the new starts program and the project evaluation process to make such distinctions among the stages of project development; this practice has been discussed in the Annual Report on New Starts and its predecessor, the annual Report on Funding Levels and Allocations of Funds, since the May 1991 edition. Further, FTA cannot assign project ratings during alternatives analysis, as there is essentially no project to evaluate until the locally-preferred alternative is selected. Project sponsors need not worry that they will "fail" the evaluation process simply because their proposed project is still in the early development stages.

*Comment.* The trade association and three other commenters also requested language clarifying that projects already in preliminary engineering at the time the final rule is issued have met the requirement for alternatives analysis, as have prior Major Investment Studies (MISs).

*Response.* This rule in no way revokes prior FTA approvals for preliminary engineering (or final design). Language to this effect has been added to § 611.7, Relation to planning and project development processes.

*Comment.* One commenter requested a regulation to define “major investment studies.”

*Response.* The discussion of alternatives analysis earlier in the preamble to this rule has been revised to better address this issue. The pending joint FTA/FHWA planning and environmental regulations will more fully describe the integration of the MIS into the planning and environmental process under TEA–21.

#### *E. Section 611.9: Project Justification Criteria*

Section 5309(e)(1)(B) requires the Secretary to determine that a proposed new starts project is justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies. To make this determination, FTA will evaluate information developed through the planning and project development processes. The method used to make these determinations is a multiple measure approach in which the merits of candidate projects will be evaluated against a set of measures. The ratings for each measure will be updated annually for purposes of the annual report on funding levels and allocations of funds required by section 5309(o)(1), the supplemental report required by section 5309(o)(2), and as required for FTA approvals to enter into preliminary engineering, final design, or FFGAs. As a candidate project proceeds through the stages of the project development process, a greater degree of certainty is expected with respect to these measures. Measures have been established for each of the following criteria:

1. Mobility improvements;
2. Environmental benefits;
3. Operating efficiencies;
4. Transportation System User Benefits (Cost Effectiveness);
5. Existing land use, transit supportive land use policies, and future patterns; and
6. Other factors, including:
  - (a) The degree to which the policies and programs (e.g., parking policies, etc.) are in place as assumed in the forecasts;
  - (b) Project management capability; and
  - (c) Additional factors relevant to local and national priorities and relevant to the success of the project.

For each proposed project, FTA will assign one of five descriptive ratings (“high,” “medium-high,” “medium,” “low-medium,” or “low”) for each of the first five criteria; information on

“other factors” will be reported as appropriate.

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

*Comment.* In the NPRM for this Rule, FTA proposed that in all cases, the proposed new start would be evaluated against both a no-build and Transportation System Management (TSM) alternative. The retention of the TSM was the subject of substantial comment in response to the NPRM. A total of 13 comments were submitted on this issue, all of them opposed. Most of the commenters felt that it was unnecessarily burdensome to maintain a TSM alternative for what they viewed as solely FTA’s purposes, noting that certain incremental system improvements will occur whether the new start is constructed or not; *i.e.*, it is no longer appropriate to view the no-build alternative as a “do nothing” scenario. The most common suggestion was that, if the TSM requirement is retained, it should be dropped after alternatives analysis has resulted in the selection of a locally-preferred alternative.

*Response.* FTA accepts the argument that it is no longer appropriate to assume that a no-build alternative presents a “do nothing” scenario. The realities of modern urban and suburban planning, transportation, and economic development make it virtually impossible to assume that no improvements will occur if a proposed new start is not implemented. At the same time, however, a consistent baseline is needed to ensure a fair evaluation of proposed new starts projects nationwide. The TSM alternative has served well in this regard.

In response to comments submitted on this issue and in recognition of the desire to simplify the new starts process, this Rule eliminates the requirement for separate no-build and TSM alternatives, and instead requires that the proposed new start be evaluated against a single “baseline alternative.” The baseline alternative is best described as transit improvements lower in cost than the proposed new start, which result in a better ratio of measures of transit mobility compared to cost than the no build alternative; the “best you can do” without the new start investment. The purpose of the baseline comparison is to isolate the costs and benefits of the proposed major transit investment. At a minimum, the baseline

alternative must include in the project corridor all reasonable cost-effective transit improvements short of investment in the new start project.

Depending on the circumstances and through prior agreement with FTA, the baseline alternative can be defined appropriately in one of three ways. First, where the adopted financially constrained regional transportation plan includes within the corridor all reasonable cost-effective transit improvements short of the new start project, a the no-build alternative that includes those improvements may serve as the baseline. Second, where additional cost-effective transit improvements can be made beyond those provided by the adopted plan, the baseline will incorporate those cost-effective transit improvements as well. Third, where the proposed new start project is part of a multimodal alternative that includes major highway components, the baseline alternative will be the preferred multimodal alternative without the new start project and associated transit services. Prior to submittal of a request to enter preliminary engineering for the new start project, grantees must obtain FTA approval of the definition of the baseline alternative.

Consistent with the requirement that differences between the new start project and the baseline alternative measure only the benefits and costs of the project itself, planning factors external to the new start project and its supporting bus service must be the same for both the baseline and new start project alternatives. Consequently, the highway and transit networks defined for the analysis must be the same outside the corridor for which the new start project is proposed. Further, policies affecting travel demand and travel costs, such as land use, transit fares and parking costs, must be applied consistently to both the baseline alternative and the new start project alternative.

The Final Rule has been rewritten to substitute “baseline alternative” wherever “no-build and TSM alternatives” appeared in the NPRM, and a definition for “baseline alternative” has been added.

“Existing land use, transit supportive land use policies, and future patterns” is not listed among the project justification criteria contained in 49 U.S.C. 5309(e)(1)(B), but is listed as one of the “considerations” under 49 U.S.C. 5309(e)(3) that FTA must take into account when determining a proposed project’s “justification.” Consistent with past practice, we have included land use among the project justification



criteria for a number of reasons. Transit-supportive land use, whether it is a factor of existing patterns, existing local policies, or planned future development which targets development around the Federally-assisted project, has been an important indicator of future project success. Additionally, TEA-21 added two new land-use-related considerations to the project evaluation process: The reduction in local infrastructure costs achieved through compact land use development (49 U.S.C. 5309(e)(3)(B)), and the cost of suburban sprawl (49 U.S.C. 5309(e)(3)(C)). This appears to be a clear intent by Congress to give additional attention to this issue. The NPRM for this Rule labeled the land use criteria as “transit supportive existing land use policies and future patterns.” This has been changed to “existing land use, transit supportive land use plans, and future patterns” in this Rule, to more accurately reflect FTA’s practices in evaluating land use issues relating to proposed new starts. The underlying factors described in paragraph (e) of Appendix A to this rule have been revised in response to this change.

In making the determination of project justification, 49 U.S.C. 5309(e)(3) requires the FTA to consider a variety of factors, as follows:

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

This represents a modest expansion of the “considerations” established by ISTEA. Specifically, section 3009(e) of TEA-21 added the consideration for the cost of suburban sprawl noted in (3) above; for population density and current transit ridership in the corridor in (5) above; and for the technical capacity of the grantee to carry out the proposed project in (6) above. The “considerations” serve to illustrate the project justification criteria, providing

further detail on specific information that should be collected and how the criteria should be evaluated. Much of the data required to consider these factors is already developed as part of the existing planning and project development processes, however, as required under 23 CFR part 450 and 23 CFR part 771. FTA believes these considerations are already adequately addressed by the current project justification criteria and measures.

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

*Comment.* FTA received 24 comments relating to the criteria for mobility improvements. Of these, 15 addressed the issue of mobility for low-income households. Ten commenters recommended revising the low-income mobility measure to include destinations, such as employment areas, within ½-mile of boarding points, in addition to the existing measure for households. Two commenters recommended expanding the low-income household measure to include other populations that tend towards transit-dependence, such as senior citizens, students, and persons with disabilities. One recommended accounting for discretionary riders, and another suggested eliminating the measure for low-income mobility, perceiving that it perpetuated an image of transit as a carrier of poor people that persons of middle-class status would not want to ride. One commenter suggested that low-income mobility be separated from the measure for mobility improvements.

Other comments on this measure included two recommendations to incorporate a consideration for congestion, two requests to incorporate a measure for delays and “incidents” on the transit system, various calls for “better measures,” and recommendations that different measures be applied to different modes of transit (*i.e.*, light rail versus commuter rail).

*Response.* FTA recognizes that a system that is located near low-income households is of little use to residents unless it can also provide access to employment centers and other activity centers. Therefore, a factor for destinations within a ½-mile radius of new stations has been added to the measure for mobility improvements.

FTA is required by section 5309(e)(3)(D) to “consider the degree to which the (proposed) project increases the mobility of the mass transportation dependent population, or promotes economic development.” For a variety of reasons, low-income households were chosen as a surrogate for measuring the transit dependent population. Chief among these is the fact that transit dependence is often a factor of income. Many people rely on transit service for basic mobility—some by necessity, and some by economic choice; many residents of upscale central city neighborhoods simply choose not to own an automobile. There is value in considering all of these people in the measure for basic mobility; however, were transit service suddenly eliminated, those riders with an economic choice would find other alternatives available to them. Further, many of those riders who ride transit by choice do so because it permits them to bypass congestion on highways and city streets. These benefits would already be accounted for in the measure for travel time savings. The focus on low income households provides a clearer—though still imperfect—assessment of how well the proposed project would serve those who do not have the ability to choose; *i.e.*, the mass transit dependent population specified in the statute.

The comments calling for better measures to assess the mobility improvements of a proposed project are well taken; unfortunately, no recommendations for new measures or methodologies accompanied those comments. FTA is as interested as the transit industry in advancing the state of the art of transit planning, and is conducting research into better ways to measure the various benefits of transit service, particularly high-quality rail systems. Beginning on September 1, 2001, this Rule employs a revised measure of travel benefits based on a multimodal measure of perceived travel times faced by all users of the transportation system. As new measures and methods become available, FTA may amend or modify this rule.

*Comment.* Ten comments were received on the criterion for environmental benefits; no two were alike. One interest group suggested that impacts on areas where energy is generated (*i.e.*, the location of a remote generating plant) be incorporated into the evaluation, and that energy comparisons be made on a passenger-mile basis. One transit operator recommended incorporating “non-scientific ‘quality of life’” factors. Two interest groups objected to the use of BTUs, with one suggesting the use of

vehicle miles traveled (VMT) instead and the other suggesting that if it is retained, the measure should be limited to non-renewable energy sources and should include energy used in construction. Two commented that greater weight should be given to proposed projects in nonattainment areas, and one individual commenter recommended that other benefits should be included, such as reduced parking demand which would reduce parking lot runoff. One local government recommended that the evaluation consider wetlands and endangered species habitats.

*Response.* It should be noted that this evaluation does not represent the only relationship between the new starts process and environmental considerations. All proposed new starts projects must meet NEPA requirements as a condition of eligibility for funding. Thus, factors such as runoff, wetlands, and the habitat of endangered species are already considered. In addition, EPA classifications for attainment/nonattainment are also considered as part of the evaluation of environmental benefits for all proposed new starts projects.

To the extent that "greater weight" can be given to proposed projects in nonattainment areas, 49 USC 5309(e)(8)(B) provides expedited procedures for FTA decisionmaking and prohibits any limitations on the simultaneous evaluation of proposed projects in at least two corridors in such cases. This is reflected in paragraph (c) under § 611.3 of this rule. It should be noted that previously, these projects were also exempt from evaluation under the new starts criteria; this provision was among those eliminated by TEA-21.

Quality of life issues, to the extent that they can be identified and defined for individual projects, are more appropriately addressed in the "other factors" criteria than as part of the measures for environmental benefits.

BTUs were chosen as the measure for reporting energy consumption because they represent a universal and universally-accepted measure of energy. While it may be possible to evaluate changes in energy consumption in terms of gallons of gasoline, gallons of diesel fuel, barrels of crude oil, kilowatt-hours of electricity, or tons of coal, a universal measure is needed to compare these energy sources to each other and to evaluate the benefits of one project in comparison to others.

*Comment.* Three comments were submitted on the measures for evaluating operating efficiencies. One operator of a major northeastern transit

system commented that the change in operating cost per passenger mile would give high marks for crowding and penalize proposed projects that would mitigate crowding, a topic that was raised by others in comments relating to the measure for cost effectiveness. One interest group recommended no changes to the measure, but suggested that the TSM alternative be dropped after entry into preliminary engineering and proposed language for incorporation into the rule. One individual commenter opined that cost per passenger mile is easily manipulated, costs vary across the country, and recommended the establishment of thresholds for number of peak and off-peak passengers, with a pass/fail rating.

*Response.* Concerns regarding the "ease" with which information for this measure might be "manipulated" are noted, but they are ultimately not relevant to the process. Project sponsors are required to certify to FTA that the information submitted under the project evaluation criteria is developed in compliance with FTA's technical guidance. Any attempt at manipulation of data would likely be discovered during the evaluation and approval process. This measure is but one of the many criteria under which proposed new starts are evaluated, and will not by itself "make or break" a project. The other comments are addressed elsewhere in the preamble to this rule.

*Comment.* FTA received a total of 32 comments on the measure for cost effectiveness. The NPRM for this rule solicited comment on the retention of FTA's historical "cost per new rider" (or more properly, incremental cost per incremental rider) measure to indicate cost effectiveness, and asked if there were other measurements. Twenty-three comments were submitted in response to this request. An additional nine commenters addressed this issue as part of their general comments on the NPRM. All were unanimous in their assertion that the cost effectiveness measure should "roll up" additional benefits beyond incremental cost per incremental rider. The consensus was that focusing on new riders alone ignores benefits to other riders, and thus biases the measure against older cities with "mature" transit systems where the focus of a proposed new start would be on improving service, not attracting new riders. Most recommended a measure based on "cost per benefiting rider" or simply "cost per rider." The most common examples of benefits given in comments were reductions in crowding and travel time savings. A trade group representing the transit industry recommended the formation of a

committee to study the issues. One transit operator recommended a "full-cost accounting approach" incorporating the full range of societal impacts, including local policy decisions on land use and parking; another operator recommended a measure based on transit system throughput. Others recommended including cost per new trip, new riders attracted to the existing system by the new start, total annualized cost per rider, travel time savings, and accounting for the conversion of multimodal trips to transit trips, and single-occupant vehicle (SOV) trips to multimodal trips.

*Response.* It is important to note that the measure for cost effectiveness is not intended to be a single, stand-alone indicator of the merits of a proposed new starts project. It is but one part of the multiple measure method that FTA uses to evaluate project justification under the statutory criteria. While cost effectiveness is an important consideration, so are mobility improvements, environmental benefits, and the other factors described both in TEA-21 and elsewhere in this rule.

However, FTA is aware that the cost effectiveness measure is often interpreted by project sponsors, State and local decisionmakers, and even elsewhere within the Executive and Legislative branches of the Federal government as "the" measure that will "make or break" a proposed new start. In light of this, and in response to the unanimous call by commenters for a "better" measure of cost effectiveness, FTA has developed a measure of "transportation system user benefits" to more accurately address the criteria for cost effectiveness. In simple terms, the basic goal of any major transportation investment is to reduce the amount of travel time and out-of-pocket costs that people incur for taking a trip; the cost of mobility. The new Transportation System User Benefits measure of cost effectiveness measures the change in these costs, and accounts for changes to transit, highway, and other modes of travel.

This new cost effectiveness measure replaces the current "dollars per new rider" figure that can be—and often is—perceived as "subsidy per new rider." This approach de-emphasizes new riders and measures not only the benefits to people who change modes, but also accounts for benefits within modes (*i.e.*, benefits to existing riders and highway users).

The Transportation System User Benefits measure is not new to FTA or to the new starts project evaluation process. A similar combination of cost

and travel time savings for new and existing riders was identified as a measure for cost effectiveness in the 1984 Statement of Policy on Urban Mass Transportation Major Capital Investments.

User benefits are a good measure of the effectiveness of a major transit investment; however, the Transportation System User Benefits measure should not be interpreted as a single measure of all of the expected benefits of a new starts project. Those in search of a single measure that “rolls up” the overall benefits expected of a proposed new start should direct their attention towards the overall rating for project justification; the Transportation System User Benefits measure of cost effectiveness is but a single component.

This rule has been revised to reflect this new approach. In addition, FTA will publish guidance describing how project sponsors should calculate and report the new cost effectiveness measure for evaluation purposes. The new Transportation System User Benefits measure of cost effectiveness will be phased in over time, becoming effective on September 1, 2001.

*Comment.* FTA received a total of 19 comments relating to the land use criterion. In general, the comments reflected a general concern over how land use will be measured and used as a factor for project evaluation.

While there was no clear pattern to the comments, a number of recurring themes were apparent. One of these themes was “flexibility.” A transit industry trade association and a new starts interest group supported the measure in general, but noted that its application should be flexible enough to account for regional differences, and that guidance would be essential; one recommended that FTA undertake a study of the “cost of sprawl” and suggested alternative language for the final rule. One transit operator submitted comments in support of the trade association.

The second theme that arose from the comments concerned the application of the land use measure. Five commenters expressed confusion or concern over a perceived vagueness of the land use criterion, terming it “nebulous,” “vague” and “ambiguous.” Two commenters noted that land use issues would already be captured by other project justification measures or through the modeling process, and two others expressed concerns over a perceived reporting burden. Two more commented that land use would vary greatly by alternative and alignment. One transit operator in a major northeastern city and one commenter at the Oakland, CA

workshop expressed concern that the measure for land use would bias the new starts process in favor of suburban projects. One transit operator in a southwestern city that does not have zoning ordinances recommended incorporating a consideration for voluntary actions by the community to coordinate station area development, and objected to the elevation of land use considerations to the “status” of the other statutory criteria. An operator in another southwestern city in the same State commented that ratings should be based only on factors over which transit operators have control, and noted that similar evaluation criteria should be applied to FHWA funds. In contrast, a council of governments from a city in the Pacific Northwest recommended that FTA give significant weight to regions with a history of containing sprawl.

The final common theme among some of the commenters was to question the connection between land use and transportation planning. One commenter noted that the criterion assumes coordination between transportation and planning, and two questioned or flatly rejected any correlation between transportation and land use.

*Response.* This rule does not represent a substantial change from existing FTA policy or practice. Even prior to TEA-21, FTA included land use among the primary evaluation criteria. As noted earlier in this preamble, while land use is not one of the project justification criteria specified in Federal transit law, it is included among the factors that FTA is to consider when applying those criteria. Additionally, TEA-21 added two new land use considerations to the evaluation process; a clear intent by Congress to give additional attention to this issue. Contrary to those comments that questioned the link between transportation and land use, FTA has found that transit supportive local land use policies have been an important indicator of the future success of Federally-assisted new starts projects.

In response to the comment that highway projects should be subject to a similar evaluation of land use, FTA is tempted to agree. However, as noted in response to a similar comment on the alternatives analysis requirement, highway projects are funded under a formula program and are not subject to the same evaluation process as transit new starts, which are funded under a discretionary program, and FTA is not at liberty to change the law or otherwise impose such a requirement.

Finally, in terms of flexibility in the application of the land use criteria, FTA finds that the existing process, which will continue under this rule, offers an acceptable balance between the need for comparability among proposed projects and the desire to permit project sponsors in each region to highlight their own successes in linking transit and land use planning. This can and often does include privately-sponsored transit-oriented development. A new starts investment requires a regional commitment by a variety of State and local agencies, as well as the community at large; those who have a stake in the financing and construction of a new start also have a stake in its ultimate success. Thus, it is not unreasonable to expect the same degree of commitment to regional planning as to project funding.

Reflecting that same concept of local commitment, this Rule also incorporates an element for pedestrian mobility into the land use measure. Pedestrian mobility has been a component of FTA’s land use evaluation, as described in guidance issued each year at the beginning of the data collection process. This Rule formalizes that approach. Pedestrian facilities represent the basic, common link among all modes of transportation; therefore, a regional emphasis on pedestrian facilities and systems as part of land use planning will enhance the mobility of the population and the utility of the planned transit investment. Language has been added to appendix A of this Rule to specify that the land use measure will include consideration of existing and planned pedestrian facilities, which are expected to reflect curb ramp transition plans and milestones as required under 28 CFR 35.150(d)(2).

#### *F. Section 611.11: Local Financial Commitment*

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

1. The proposed share of total project costs from sources other than the section 5309 new starts program, including Federal formula and flexible funds, the local match required by Federal law, any additional capital funding (“overmatch”), and the degree to which initial planning activities have

been carried out without relying on funds from § 5309.

*Comment.* Three commenters expressed confusion over whether “non-5309 funds” included only local funds, or whether other Federal funds would be counted as part of “local” funding.

*Response.* Paragraph (a) under the heading, “Local Financial Commitment” in Appendix A to this rule has been revised to specify that the proposed local share of project costs is defined as the percentage of capital costs to be met using funds from sources other than the new starts program under 49 U.S.C. 5309. Thus, the use of flexible funds from other Federal sources will not be considered as part of the “Federal share” for purposes of evaluation under this Rule (though for purposes of funding eligibility the statutory ratio of at least 20 percent local funding must still be met using other than Federal funds).

2. The stability and reliability of the proposed capital financing plan (rated “high,” “medium-high,” “medium,” “low-medium,” or “low”).

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

The measures for these criteria are carried over intact from those used previously, and are more fully explained in Appendix A. The only changes are that “overmatch” was added as a statutory consideration by TEA-21, and an acknowledgement was added that FTA will consider whether adequate provisions have been made to fund the capital needs of the entire transit system as planned, including key station plans and milestones as required by the Americans with Disabilities Act.

*Comment.* Eleven commenters expressed varying opinions and made numerous recommendations on the local financial commitment criteria, but no clear theme emerged. A transit industry trade group urged FTA to consider not only the strength of the funding plan, but also the degree of commitment, the level of policy commitment to the project and funds already secured, and recommended addressing the level of commitment to the overall capital program. One transit operator from the mid-Atlantic region expressed support for the trade association’s position. An industry interest group requested more detailed, prescriptive requirements. One State DOT that is also a Statewide transit operator wrote in support of their trust-

fund-supported Statewide intermodal system, and stated that projects in such States should not be judged inferior to those that rely on project-specific ballot measures.

*Response.* The existing project evaluation and rating process, already accounts for factors such as the strength of the local commitment, the level of policy commitment to the proposed project, the level of commitment to the overall capital program. This practice would continue under this rule. Contrary to the comment implying that Statewide trust funds would be judged “inferior” to other financing plans, such dedicated funding sources offer a distinct advantage in the rating process. It should be noted, however, that the mere existence of a dedicated Statewide funding source is not sufficient to achieve a high rating; as a project proceeds through preliminary engineering and final design, evidence that sufficient funds have been committed and programmed to the project will also be required. The comment that this Rule is not prescriptive enough is puzzling; Federal agencies are more often criticized for being too prescriptive and inflexible. This Rule is intended to strike a balance between the need to apply a consistent standard, and the need to allow for the differences inherent in locally-derived projects.

#### *G. Section 611.13: Overall Project Ratings*

Perhaps the most significant change to this process brought by TEA-21 is the requirement that FTA establish summary recommendations for each project, in addition to the ratings for each of the project justification criteria. Section 5309(e)(6) requires FTA to “evaluate and rate (each) project as ‘highly recommended,’ ‘recommended,’ or ‘not recommended,’” based on the results of the project evaluation process. It also requires that ratings be assigned to each of the individual evaluation criteria.

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

“medium” in both finance and justification will be rated as “not recommended.” These ratings will be used both to approve entry into preliminary engineering and final design, as input to recommend proposed projects for Federal funding commitments, and for purposes of the Annual and Supplemental Reports on New Starts under section 5309(o)(1) and (2). A proposed project must receive a rating of at least “recommended” in order to be approved for any of these purposes.

*Comment.* A total of 14 comments addressed the overall project ratings. Virtually all of them expressed discomfort with the terms, particularly the term, “not recommended.” The most common concern was that a meritorious project would be rated “not recommended” simply because it had not been sufficiently developed to be rated. Nine commenters suggested renaming the “not recommended” rating or creating a separate rating such as “not ready for recommendation,” “not rated,” “not ready,” “incomplete,” or “not currently recommended.” One commenter at the Washington, DC workshop noted that proposed projects that “fail” should be provided with information explaining the rationale for the ratings. There was also substantial discussion at all three workshops concerning the permanence of the ratings, opportunities to change ratings, and so forth.

*Response.* The terms used for the overall project ratings—“highly recommended,” “recommended” and “not recommended” “are established in law by TEA-21, and FTA is not at liberty to change them. We can, however, elaborate. While the names used for the overall ratings will continue to be given as “highly recommended,” “recommended” and “not recommended,” in the case of the “not recommended” rating we will indicate the reason for the rating. In order to be rated at least “recommended,” a proposed new starts project must be rated at least “medium” for both project justification and local financial commitment. In order to be rated at least “medium” for local financial commitment, a proposed project must be rated at least “medium” in terms of the stability and reliability of operating funds, and the stability and reliability of capital funding. When a proposed project is rated “not recommended,” FTA will indicate which of these areas requires improvement: “J” for project justification, “O” for the operating funding plan, and “C” for the capital funding plan. Thus, a proposed new

start that was found to need improvement in the capital plan would be rated "not recommended (C)." This will provide project sponsors, State, local, and Federal decisionmakers, and the public at large with a simple means to identify the basis for the project rating. In addition, the Annual and Supplemental Reports on New Starts, as well as all project-specific FTA correspondence, will contain language that discusses the reasoning behind the rating and note that all ratings are subject to change.

*Comment.* Three commenters recommended that the ratings be tied to a proposed project's stage of development; *i.e.*, different standards for preliminary engineering and final design.

*Response.* FTA has historically applied different rating standards for different stages of project development, recognizing that it is not possible to expect the same level of detail or degree of certainty for proposed projects that are in preliminary engineering as for those nearing the end of final design and contemplating FFGAs. Each edition of the Annual Report on New Starts contains tables describing the standards applied for each of the criteria at each stage of development. This Rule does not change FTA's historical approach.

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

*Comment.* A transit industry trade association expressed concern that proposed projects in the early stages of development would be rated "not recommended" because sufficient information has not been developed to address the justification criteria, and/or local funding is not in place. This, they advise, would compromise the future of such projects. They therefore suggested that the statutory ratings of "highly recommended," "recommended," and "not recommended" be used only in the context of annual funding recommendations to Congress.

*Response.* The distinction between a rating of "recommended" and a funding recommendation continues to be the subject of much confusion. The comments submitted by the trade association are most illustrative of this

confusion. They are concerned that projects that are "not ready" to be rated will be unfairly given a "not recommended" rating simply because they are still early in the development process. They therefore suggest that the overall ratings be used only for purposes of FTA's annual funding recommendations to Congress, and not as an indicator of overall merit. Were FTA to adopt this suggestion, however, it would guarantee that all projects for which FTA did not recommend funding in the President's budget request would receive a summary rating of "not recommended," regardless of merit; *i.e.*, it would actually cause the effect the trade association wishes to avoid, and would increase, not decrease, the degree of confusion over these ratings. FTA is convinced that Congress intended for the overall ratings to be used to denote project merit, and that FTA's practice of applying different rating standards at different stages of project development already prevents the difficulties imagined by the trade association. Further, FTA would like to remind the transit industry, Federal, State and local decisionmakers, and the public at large that proposed new starts projects are re-rated at least annually for the Annual Report on New Starts, as well as at the time approval is sought for entry into preliminary engineering, final design, and entry into an FFGA. The overall ratings are not permanent judgements of project worth.

*Comment.* One transit operator objected to the statutorily-required approval to enter preliminary engineering and final design, urging that proposed projects be permitted to proceed regardless of funding recommendations. This same operator also objected to the requirement that proposed projects be rated at least "medium" for both finance and justification, claiming that one category should be sufficient.

*Response.* This comment also reflects confusion regarding the annual funding recommendations versus a rating of "recommended." Neither FTA's project funding recommendations nor annual appropriations earmarks have any bearing on FTA's approval for a proposed project to enter the next phase of development. FTA is not persuaded by the argument that a rating of at least "medium" for either justification or finance is sufficient, and will continue to require both. To do otherwise would be to suggest that enough money can offset a poorly justified project, or that the inability of project sponsors to secure adequate funding would not be a barrier if the proposed project is "good enough." Clearly neither is the case. It

takes a worthy project with a sound local financial commitment to ensure a successful new start.

## VII. Response to Request for Comments on Particular Issues

The NPRM specifically solicited comment on four issues: (1) Should FTA establish "threshold" or "pass/fail" values for evaluating each of the project evaluation criteria, and if so, what values would be appropriate; (2) Are there other means for measuring cost effectiveness than the current "cost per new rider" measure; (3) How should FTA evaluate the "technical capability" of project sponsors, and what "other factors" might be appropriate; and (4) How much relative attention should be given to each of the criteria in establishing the overall project ratings. A total of 31 individuals or organizations submitted comments on one or more of these questions.

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

*Comment.* Of the 16 responses received on this issue, 12 opposed the establishment of any type of threshold or pass/fail values for the criteria. One interest group and one local government entity dissented, supporting such requirements. One transit operator supported thresholds, but only on the condition that FTA revise the cost effectiveness measure to account for additional benefits such as travel time savings. One commenter at the Oakland, CA workshop commented that any thresholds would have to account for geographic differences. One operator noted that if thresholds are deemed necessary, they should be based on the mean or lowest value for prior "recommended" projects, or ranges should be established.

*Response.* This rule does not establish threshold values for rating purposes.

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

*Comment.* The 23 comments that specifically addressed this question were unanimous in the assertion that the cost effectiveness measure should “roll up” additional benefits beyond incremental cost per incremental rider. The consensus was that focusing on new riders alone ignores benefits to other riders, and thus biases the measure against older cities with “mature” transit systems where the focus of a proposed new start would be on improving service, not attracting new riders. Most recommended a measure based on “cost per ‘benefiting’ rider” or simply “cost per rider.” The most common examples of benefits given in comments were reductions in crowding and travel time savings. A trade group representing the interests of the transit industry recommended the formation of a committee to study the issues. One transit operator recommended a “full-cost accounting approach” incorporating the full range of societal impacts, including local policy decisions on land use and parking; another operator recommended a measure based on transit system throughput.

*Response.* In response to the near-universal call for a new measure of cost effectiveness, FTA has developed a new Transportation System User Benefits measure. This measure is described more fully in the section of the preamble to this rule that discusses comments to the cost effectiveness measure. It should be repeated, however, that the Transportation System User Benefits Measure will be used to evaluate cost effectiveness; the overall measure for project justification represents the “roll-up” of anticipated benefits.

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

*Comment.* Of the 18 commenters who responded to this question, 14 recommended that technical capacity be based on factors related to the project sponsor’s experience or “track record” with prior new starts, the strength of the project’s management plan, or some combination of these factors. One interest group and one transit operator

noted that most project sponsors lack the technical expertise to implement a new start, which is why they hire contractors; one of these commenters asserted that any technical capacity measure would therefore favor existing systems with their own technical staff. However, seven commenters recommended that the experience of contractors, management teams, and/or other agency resources be considered. Two commenters recommended an evaluation including sponsors’ prior success in obtaining local funds. One commenter at the Oakland workshop expressed confusion regarding the difference between a measure for technical capacity and the triennial review process.

*Response.* FTA intends to use the technical capacity factor as an indicator of the ability of the project sponsor(s) to successfully implement a proposed new start, as well as an indicator of project “readiness.” To successfully implement a new starts project, the project sponsor(s) must meet the same basic legal, financial, and eligibility requirements for all FTA grants; have an adequate project management plan in place, and have adequate resources available to carry out the project management plan. By “readiness,” we mean that there are no outstanding issues that remain to be resolved before a funding commitment can be considered. Such outstanding issues might include unresolved environmental or mitigation issues, outstanding engineering or right-of-way issues, upcoming referenda or board actions that are crucial to the financing plan, and issues relating to other basic requirements including Title IV of the Civil Rights Act; Environmental Justice; key station, fleet accessibility, complimentary paratransit, and other requirements under the Americans with Disabilities Act of 1990; and consistency with National Intelligent Transportation Systems Architecture.

*Comment.* Six commenters offered suggestions regarding “other factors” that should be considered. Two of these recommended incorporating a factor for “smart growth” or “livable communities,” with one further recommending that forecasts used for such a measure be grounded in MPO forecasts and that “extra credit” be given to projects which support national priorities. One transit industry trade group recommended that “other factors” be open-ended. Other recommendations included measures for new ridership, “willingness to commit funds,” and advancement of multimodal choice.

*Response.* Many of the suggestions submitted by commenters to the NPRM,

such as smart growth, livable communities, and “willingness to commit funds,” are already captured in the primary criteria. FTA intends for the “other factors” category to be used as a means of portraying factors about a proposed project that the other evaluation criteria do not adequately address. Each new start is unique, each has its own “story;” the “other factors” category will permit project sponsors and FTA to consider elements of the proposed project that may otherwise be ignored in the evaluation process. FTA has therefore taken a more “open-ended” approach to the use of “other factors” in this Rule, and has not defined specific factors for this category.

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

*Comment.* Of the 16 comments received on this issue, nine supported some kind of weighting of the criteria in general, but few were specific as to which should be weighted more or less, or what those specific weights should be. Two commenters noted that the relative importance of the criteria should vary over time, either over the course of project development or as national priorities change. Three indicated that different weights should apply according to geographic area or local conditions; the citizens’ advisory committee from a transit operator in a major northeastern city recommended that cost effectiveness not be considered at all in that city. Only two comments, one from a State DOT and one from an individual member of the public, recommended specific weights for specific criteria. Four comments specifically stated that there should be no weighting at all, with one major northeastern transit operator stating that the “weights” already used by FTA, as reported in a recent GAO report, be discontinued.

*Response.* This rule does not establish specific weights for specific project evaluation criteria.

## VIII. Other Comments

Additional comments were submitted to the docket concerning a variety of issues that are not easily categorized. These included issues such as concerns regarding definitions of terms used in the NPRM, to regional concerns, to the relationship with the pending FTA/FHWA joint planning rule, to objections

regarding the differences between FTA and FHWA capital programs.

*Comment.* Four commenters expressed concerns that the FTA new starts process complicates the design-build or "turnkey" approach. Two additional, related comments recommended that FTA approve FFGAs as early as possible in final design, or perhaps late in preliminary engineering.

*Response.* Nothing in this rule prevents project sponsors from proceeding with a new start under a design-build approach. No existing FFGA requirements will be changed or waived to accommodate the design-build process. FTA will provide guidance to project sponsors to clarify how the design-build process can be integrated with the new starts project development process and the FFGA requirements.

*Comment.* Two transit operators, one large and one small, commented that the approach proposed in the NPRM biases the process against "established systems in mature cities," calling again for more emphasis on benefits to existing riders and "preservation of high market shares."

*Response.* The Transportation System User Benefits measure for cost effectiveness moves away from the perceived emphasis on new riders and takes a much broader view of the benefits of transit. In addition, project sponsors are reminded that the cost effectiveness measure was not and is not intended as a single indicator of project merit. Established systems in mature cities may not be able to claim as many new riders as a brand-new system may expect, for example, but they have a distinct advantage under the land use criteria.

*Comment.* One large operator objected to the evaluation of "segments" as separate projects, recommending that segments also be considered in relation to an entire proposed system. Another operator recommended consideration of how well a proposed new start would complement other Federal investments.

*Response.* In many cases, local project sponsors propose an extensive regional fixed guideway transit system that must be implemented in phases over time, as Federal, State, and local funding permits. To ascribe all of the projected benefits of an entire such system to an initial segment overstates the benefits of that segment and prevents equitable comparison with other proposed new starts. Taken to its logical conclusion, it could be argued that measuring the same systemwide benefits for subsequent segments would double-count those benefits. FTA will continue to evaluate new starts projects as they

have been proposed to us for funding. This Rule retains the existing requirement that segments be evaluated as individual projects.

*Comment.* One interest group claimed that alternatives analyses lack independence and objectivity, recommending that the process instead require a vote on options or an independent poll upon circulation of the Draft Environmental Impact Study (DEIS).

*Response.* Alternatives analysis is intended to be a means whereby the local community identifies a transportation problem and evaluates alternative solutions, eventually selecting one that best meets local needs—the locally-preferred alternative. It is incumbent upon the community to ensure that adequate opportunity for public involvement is provided, and to take advantage of those opportunities to be part of the process.

*Comment.* One small transit operator recommended that the final rule include a schedule of deadlines for approval of proposed projects to advance, and a list of FTA contacts.

*Response.* The comment regarding schedules and deadlines for approval assumes that all proposed new starts projects in TEA-21 will be implemented, will all be found to be justified and rated as "recommended" or higher, and will all proceed at the same rate of progress. FTA understands the desire by one commenter for a list of FTA contacts to be published as a part of this rule. However, to do so would require an amendment to this rule, including issuance of an NPRM and a minimum 60-day period for public comment, for each change in personnel. Project sponsors are instead encouraged to contact the appropriate FTA Regional Office for their area, as follows:

- Region 1 (ME, VT, NH, MA, RI, CT): Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093. Phone 617-494-2055.

- Region 2 (NY, NJ): One Bowling Green, Room 429, New York, NY, 10004-1415. Phone 212-668-2170.

- Region 3 (PA, MD, WV, VA, DC): 1760 Market Street, Suite 500, Philadelphia, PA, 19103-4124. Phone 215-656-7100.

- Region 4 (KY, TN, NC, SC, GA, FL, AL, MS, PR): Atlanta Federal Center, 61 Forsyth Street, SW, Suite 17T50, Atlanta, GA, 30303. Phone 404-562-3500.

- Region 5 (MN, WI, MI, IL, IN, OH): 200 West Adams Street, 24th Floor, Suite 2410, Chicago, IL, 60606-5232. Phone 312-353-2789.

- Region 6 (NM, TX, OK, AR, LA): Fritz Lanham Federal Building, 819 Taylor Street, Room 8A36, Fort Worth, TX, 76102. Phone 817-978-0550.

- Region 7 (NE, IA, KS, MO): 901 Locust Street, Suite 404, Kansas City, MO, 64106. Phone 816-329-3920.

- Region 8 (MT, ND, SD, WY, UT, CO): Columbine Place, 216 16th Street, Suite 650, Denver, CO, 80202-5120. Phone 303-844-3242.

- Region 9 (CA, NV, AZ, HI, AS, GU): 201 Mission Street, Suite 2210, San Francisco, CA, 94105-1831. Phone 415-744-3133.

- Region 10 (WA, OR, ID, AK): Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA, 98174-1002. Phone 206-220-7954.

*Comment.* An advisory committee to a large northeastern transit operator recommended that the criteria account for "Congressional funding anomalies."

*Response.* "Congressional funding anomalies," such as annual appropriations for new starts projects that do not follow the amounts committed under the FFGA for a particular project in a given year, are only a factor in the case of projects for which FFGAs have already been issued. The execution of an FFGA represents the conclusion of the project rating process. Therefore, appropriations shortfalls do not affect the project rating process. When making annual funding recommendations for new starts, FTA attempts to adjust its funding requests to account for prior year shortfalls, but this requires no changes to the project rating criteria, measures, or process. No change to this rule has been made in response to this comment.

## IX. Regulatory Evaluation

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

**X. Regulatory Process Matters**

**A. Executive Order 12688**

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

FTA estimates the costs associated with this Rule to be minimal. This Rule implements specific changes required under TEA-21 in the administration of the new starts program under 49 U.S.C. 5309.

The following tables show the costs associated with this Rule. The first table indicates the costs associated with the collection, reporting and analysis of data for the project evaluation and

rating process. These costs are associated with activities that are already required as part of the new starts project development process; they do not represent new costs associated with this Rule. Costs are based on estimates of the number of proposed new starts projects that are expected to perform each task listed in the table below.

New starts data submission, evaluation and ratings  Task	Estimated total cost		Total project sponsor cost		
	Hours	\$	Avg. hrs per	Hours	\$
(A) PE Request .....	7,590	\$632,028	450	6,750	\$337,500
(B) Annual New Starts Report .....	8,480	622,416	150	6,000	300,000
(C) Supplemental Report .....			0		
(D) Final Design Request .....	2,424	204,221	150	1,800	90,000
(E) FFGA Approval .....	370	16,004	50	250	12,500
Subtotal .....	18,864	1,474,669		14,800	740,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

The second table indicates the costs associated with the GPRA data collection requirements contained in this rule. As these requirements are new to the new starts process, the associated costs represent additional costs to FTA

and to new starts project sponsors. The estimated total costs include costs to both FTA and to new starts project sponsors who enter into FFGAs. The total project sponsor costs are based on projections that five new FFGAs will be

issued per year, and represents the total of the costs to all five project sponsors (i.e., the average cost to each project sponsor is expected to be \$1,670,000 / 5, or \$334,000).

GPRA-FFGA data collection  Task	Estimated total cost		Total project sponsor cost		
	Hours	\$	Avg. hrs per	Hours	\$
(A) Data Collection Plan .....	480	\$42,336	80	400	\$40,000
(B) Before Data Collection .....	15,200	755,840	3000	15,000	750,000
(C) Documentation of Forecasts .....	880	42,336	160	800	40,000
(D) After Data Collection .....	15,200	755,840	3000	15,000	750,000
(E) Analysis and Reporting .....	1,600	101,680	240	1,200	90,000
Subtotal .....		1,698,032		32,400	1,670,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

The third table sums the total costs for both the project evaluation and rating data collection and analysis process,

and the GPRA data collection and analysis process.

All data collection and analysis activities  Task	Estimated total cost		Total project sponsor cost		
	Hours	\$	Avg. hrs per	Hours	\$
New Starts Data Submission, Evaluation and Ratings .....	18,864	\$1,474,669		14,800	\$740,000
GPRA-FFGA Data Collection .....		1,698,032		32,400	1,670,000
Total .....		3,172,701		47,200	2,410,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

**B. Departmental Significance**

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures. Because the purpose of this rule is to establish how the Secretary will rate

various major capital investment projects, it concerns an important departmental policy and will likely generate a great deal of public interest.

**C. Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, the FTA has evaluated the effects of this rule on small entities. Based on this evaluation, the FTA hereby certifies that



this action will not have a significant economic impact on a substantial number of small entities because this rule concerns only major capital investments in new fixed-guideway transit systems and extensions, which are not typically undertaken by small entities.

#### D. Paperwork Reduction Act

FTA will publish an estimate of the paperwork burden required by this Rule in the **Federal Register**, providing a sixty-day period for interested parties to submit comments on FTA's proposed information collection methods. Upon completion of the sixty-day period, FTA will submit its summary of the comments received and any resulting change in the information collection methods to OMB. Upon submission to OMB, FTA will provide an additional thirty days to provide comments on FTA's finalized methods to OMB. Once OMB has reviewed this data for compliance with the Paperwork Reduction Act, OMB will provide FTA with a control number authorizing FTA to collect the requested information. Affected parties will not have to comply with the information collection requirements of this Rule until FTA publishes the OMB control number in the **Federal Register**.

#### E. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 and it has been determined that the proposed rule will not have federalism implications that impose substantial direct compliance costs on state and local governments.

#### F. National Environmental Policy Act

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

#### G. Energy Act Implications

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

#### H. Unfunded Mandates Reform Act

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

#### List of Subjects in 49 CFR Part 611

Government contracts; Grant programs—Transportation; Mass transportation

A new part 611 is added to read as follows:

#### PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Sec.

- 611.1 Purpose and contents.
- 611.3 Applicability.
- 611.5 Definitions.
- 611.7 Relation to planning and project development processes.
- 611.9 Project justification criteria for grants and loans for fixed guideway systems.
- 611.11 Local financial commitment criteria.
- 611.13 Overall project ratings.

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

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

#### § 611.1 Purpose and contents.

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

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

(1) Approve entry into preliminary engineering and final design, as required by 49 U.S.C. 309(e)(6);

(2) Rate projects as "highly recommended," "recommended," or "not recommended," as required by 49 U.S.C. 5309(e)(6);

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

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

(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(o)(1), Funding Levels and Allocations of Funds, Annual Report, and 5309(o)(2), Supplemental Report on New Starts.

(c) The information collected and ratings developed under this part will form the basis for the annual reports to Congress, required by 49 U.S.C. 5309(o)(1) and (2).

#### § 611.3 Applicability.

(a) This part applies to all proposals for Federal capital investment funds

under 49 U.S.C. 5309 for new transit fixed guideway systems and extensions to existing systems.

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

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

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

(3) This part does not apply to projects for which a Full Funding Grant Agreement (FFGA) has already been executed.

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

(1) Located in a nonattainment area;

(2) Transportation control measures as defined by the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

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

#### § 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. In addition, the following definitions apply:

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

*Baseline alternative* is the alternative against which the proposed new starts project is compared to develop project justification measures. Relative to the no build alternative, it should include transit improvements lower in cost than the new start which result in a better ratio of measures of transit mobility compared to cost than the no build alternative.

*BRT* means bus rapid transit.

*Bus Rapid Transit* refers to coordinated improvements in a transit

system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on fixed guideways and urban roadways. The intention of Bus Rapid Transit is to reduce bus travel time, improve service reliability, increase the convenience of users, and ultimately, increase bus ridership.

*Extension to existing fixed-guideway system* means a project to extend an existing fixed guideway system.

*FFGA* means a Full Funding Grant Agreement.

*Final Design* is the final phase of project development, and includes (but is not limited to) the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents.

*Fixed guideway system* means a mass transportation facility which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed catenary system and a right of way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and fixed-guideway facilities for buses (such as bus rapid transit) and other high occupancy vehicles. A *new fixed guideway system* means a newly-constructed fixed guideway system in a corridor or alignment where no such system exists.

*FTA* means the Federal Transit Administration.

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

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

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

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

*Preliminary Engineering* is the process by which the scope of the proposed project is finalized, estimates of project costs, benefits and impacts are refined, NEPA requirements are completed, project management plans and fleet

management plans are further developed, and local funding commitments are put in place.

*Secretary* means the Secretary of Transportation.

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

#### **§ 611.7 Relation to Planning and Project Development Processes**

All new start projects proposed for funding assistance under 49 USC 5309 must emerge from the metropolitan and Statewide planning process, consistent with 23 CFR part 450. To be eligible for FTA capital investment funding, a proposed project must be based on the results of alternatives analysis and preliminary engineering.

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

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

(3) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative, a baseline alternative, and an appropriate number of build alternatives. Where project sponsors believe the no-build alternative fulfills the requirements for a baseline alternative, FTA will determine whether to require a separate baseline alternative on a case-by-case basis.

(4) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan planning organization's financially-constrained long-range regional transportation plan.

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

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

(i) Alternatives analysis has been completed

(ii) The proposed project is adopted as the locally preferred alternative by the Metropolitan Planning Organization into its financially constrained metropolitan transportation plan;

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

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

(2) FTA's approval will be based on the results of its evaluation as described in §§ 611.9–611.13.

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

(4) This part does not in any way revoke prior FTA approvals to enter preliminary engineering made prior to February 5, 2001.

(5) 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 this 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) *Final Design*. Consistent with 49 USC 5309(e)(6) and 5328(a)(3), FTA will approve/disapprove entry of a proposed project into final design within 120 days of receipt of a formal request from the project sponsor(s).

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

(i) The NEPA process has been completed;

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

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

(2) FTA's approval will be based on the results of its evaluation as described in Parts §§ 611.9–611.13 of this Rule.

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

(4) Consistent with the Government Performance and Results Act of 1993, project sponsors seeking FFGAs shall submit a complete plan for collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during development of the project.

(i) The plan shall 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 two years after opening of the new start 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 obtain analogous information on transit service levels and ridership patterns, plus information on the as-built scope and capital costs of the new start project.

(iii) The analysis of this information shall describe the impacts of the new start 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.

(5) Project sponsors shall collect data on the current system, according to the plan required under § 611.7(c)(4) as approved by FTA, prior to the beginning of construction of the proposed new start. Collection of this data is an eligible part of the proposed project for funding purposes.

(6) This part does not in any way revoke prior FTA approvals to enter final design that were made prior to February 5, 2001.

(7) Projects approved to advance into final design receive blanket pre-award authority to incur project costs for final design activities prior to grant approval.

(i) This pre-award authority does not extend to right of way acquisition or construction, nor does it constitute a commitment by FTA that future Federal funds will be approved for this 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) *Full funding grant agreements.* (1) FTA will determine whether to execute an FFGA based on:

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

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

(3) FFGAs will be executed only for those projects which:

(i) Are rated as "recommended" or "highly recommended;"

(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 Federal new starts funds, consistent with available program authorization.

(4) In any instance in which FTA decides to provide financial assistance under section 5309 for construction of a new start project, FTA will negotiate an FFGA with the grantee during final design of that project. Pursuant to the terms and conditions of the FFGA:

(i) A maximum level of Federal financial contribution under the section 5309 new starts program will be fixed;

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

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

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

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

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

(7) Consistent with the Government Performance and Results Act of 1993 (GPR), the FFGA will require implementation of the data collection plan prepared in accordance with § 611.7(c)(4):

(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 start 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.

(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.

(8) This part does not in any way alter, revoke, or require re-evaluation of existing FFGAs that were issued prior to February 5, 2001.

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

In order to approve a grant or loan for a proposed new starts project under 49 U.S.C. 5309, and to approve entry into preliminary engineering and final design as required by section 5309(e)(6), FTA must find that the proposed project is justified as described in section 5309(e)(1)(B).

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

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

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

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

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

(b) The criteria are as follows:

(1) Mobility Improvements.

(2) Environmental Benefits.

(3) Operating Efficiencies.

(4) Transportation System User Benefits (Cost-Effectiveness).

(5) Existing land use, transit supportive land use policies, and future patterns.

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

(i) The degree to which the programs and policies (e.g., parking policies, etc.) are in place as assumed in the forecasts,

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

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

(c) In evaluating proposed new starts projects under these criteria:

(1) As a candidate project proceeds through preliminary engineering and

final design, 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 land use.

(2) For the criteria under § 611.9(b)(1)–(4), the proposed new start will be compared to the baseline alternative.

(d) In evaluating proposed new starts projects under these criteria, the following factors shall be considered:

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

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

(3) Existing land use, mass transportation supportive land use policies, and future patterns;

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

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

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

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

(8) Other factors as appropriate.

(e) FTA may amend the measures for these criteria, pending the results of ongoing studies regarding transit benefit evaluation methods.

(f) The individual ratings for each of the criteria described in this section will be combined into a summary rating of “high,” “medium-high,” “medium,” “low-medium,” or “low” for project justification. “Other factors” will be considered as appropriate.

#### **§ 611.11 Local financial commitment criteria.**

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

(a) The proposed share of project capital costs to be met using funds from sources other than the section 5309 new starts program, including both the non-Federal match required by Federal law and any additional capital funding (“overmatch”), and the degree to which planning and preliminary engineering activities have been carried out without funding from the section 5309 new starts program;

(b) The stability and reliability of the proposed capital financing plan for the new starts project; and

(c) The stability and reliability of the proposed operating financing plan to fund operation of the entire transit system as planned over a 20-year planning horizon.

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

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

#### **§ 611.13 Overall project ratings.**

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

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

(1) These ratings will indicate the overall merit of a proposed new starts 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 section 5309(o)(1), and as required for FTA approvals to enter into preliminary engineering, final design, or FFGAs.

(c) These ratings will be used to:

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

(2) Approve projects for FFGAs;

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

(4) For purposes of the supplemental report on new starts, as required under section 5309(o)(2).

(d) FTA will assign overall ratings for proposed new starts projects based on the following conditions:

(1) Projects will be rated as “recommended” if they receive a summary rating of at least “medium” for both project justification (§ 611.9) and local financial commitment (§ 611.11);

(2) Projects will be rated as “highly recommended” if they receive a

summary rating higher than “medium” for both local financial commitment and project justification.

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

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

#### **Project Justification**

FTA will use several measures to evaluate candidate new starts projects according to the criteria established by 49 U.S.C.

5309(e)(1)(B). These measures have been developed according to the considerations identified at 49 U.S.C. 5309(e)(3) (“Project Justification”), consistent with Executive Order 12893. From time to time, FTA has published technical guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may well choose to amend these measures, pending the results of ongoing studies regarding transit benefit evaluation methods. The first four criteria listed below assess the benefits of a proposed new start project by comparing the project to the baseline alternative. Therefore, the baseline alternative must be defined so that comparisons with the new start project isolate the costs and benefits of the major transit investment. At a minimum, the baseline alternative must include in the project corridor all reasonable cost-effective transit improvements short of investment in the new start project. Depending on the circumstances and through prior agreement with FTA, the baseline alternative can be defined appropriately in one of three ways. First, where the adopted financially constrained regional transportation plan includes within the corridor all reasonable cost-effective transit improvements short of the new start project, a no-build alternative that includes those improvements may serve as the baseline. Second, where additional cost-effective transit improvements can be made beyond those provided by the adopted plan, the baseline will add those cost-effective transit improvements. Third, where the proposed new start project is part of a multimodal alternative that includes major highway components, the baseline alternative will be the preferred multimodal alternative without the new start project and associated transit services. Prior to submittal of a request to enter preliminary engineering for the new start project, grantees must obtain FTA approval of the definition of the baseline alternative. Consistent with the requirement that differences between the new start project and the baseline alternative measure only the benefits and costs of the project itself, planning factors external to the new start project and its supporting bus service must be the same for both the baseline and new start project alternatives. Consequently, the highway and transit networks defined for the analysis must be the same outside the corridor for which the new start project is proposed. Further, policies affecting travel demand and travel costs, such as land use, transit fares and parking costs,

must be applied consistently to both the baseline alternative and the new start project alternative. The fifth criterion, "existing land use, transit supportive land use policies, and future patterns," reflects the importance of transit-supportive local land use and related conditions and policies as an indicator of ultimate project success.

(a) **Mobility Improvements.**

(1) The aggregate travel time savings in the forecast year anticipated from the new start project compared to the baseline alternative. This measure sums the travel time savings accruing to travelers projected to use transit in the baseline alternative, travelers projected to shift to transit because of the new start project, and non-transit users in the new start project who would benefit from reduced traffic congestion.

(i) After September 1, 2001, FTA will employ a revised measure of travel benefits accruing to travelers.

(ii) The revised measure will be based on a multi-modal measure of perceived travel times faced by all users of the transportation system.

(2) The absolute number of existing low income households located within 1/2-mile of boarding points associated with the proposed system increment.

(3) The absolute number of existing jobs within 1/2-mile of boarding points associated with the proposed system increment.

(b) **Environmental Benefits.**

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

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

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

(c) **Operating Efficiencies.** The forecast change in operating cost per passenger-mile (forecast year), for the entire transit system. The new start will be compared to the baseline alternative.

(d) **Transportation System User Benefits (Cost-Effectiveness).**

(1) The cost effectiveness of a proposed project shall be evaluated according to a measure of transportation system user benefits, based on a multimodal measure of perceived travel times faced by all users of the transportation system, for the forecast year, divided by the incremental cost of the proposed project. Incremental costs and

benefits will be calculated as the differences between the proposed new start and the baseline alternative.

(2) Until the effective date of the transportation system user benefits measure of cost effectiveness, cost effectiveness will be computed as the incremental costs of the proposed project divided by its incremental transit ridership, as compared to the baseline alternative.

(i) Costs include the forecast annualized capital and annual operating costs of the entire transit system.

(ii) Ridership includes forecast total annual ridership on the entire transit system, excluding transfers.

(e) Existing land use, transit supportive land use policies, and future patterns. Existing land use, transit-supportive land use policies, and future patterns shall be rated by evaluating existing conditions in the corridor and the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies. The following factors will form the basis for this evaluation:

(1) Existing land use;

(2) Impact of proposed new starts project on land use;

(3) Growth-management policies;

(4) Transit-supportive corridor policies;

(5) Supportive zoning regulations near transit stations;

(6) Tools to implement land use policies;

(7) The performance of land use policies; and

(8) Existing and planned pedestrian facilities, including access for persons with disabilities.

(f) Other factors. Other factors that will be considered when evaluating projects for funding commitments include, but are not limited to:

(1) Multimodal emphasis of the locally preferred investment strategy, including the proposed new start as one element;

(2) Environmental justice considerations and equity issues,

(3) Opportunities for increased access to employment for low income persons, and Welfare-to-Work initiatives;

(4) Livable Communities initiatives and local economic activities;

(5) Consideration of alternative land use development scenarios in local evaluation and decision making for the locally preferred transit investment decision;

(6) Consideration of innovative financing, procurement, and construction techniques, including design-build turnkey applications; and

(7) Additional factors relevant to local and national priorities and to the success of the project, such as Empowerment Zones,

Brownfields, and FTA's Bus Rapid Transit Demonstration Program.

**Local Financial Commitment**

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

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

(i) The use of innovative financing techniques, as described in the May 9, 1995, **Federal Register** notice on *FTA's Innovative Financing Initiative* (60 FR 24682);

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

(iii) The degree to which alternatives analysis and preliminary engineering activities were carried out without funding from the § 5309 new starts program; and

(iv) The actual percentage of the cost of recently-completed or simultaneously undertaken fixed guideway systems and extensions that are related to the proposed project under review, from sources other than the section 5309 new starts program (FTA's intent is to recognize that a region's local financial commitment to fixed guideway systems and extensions may not be limited to a single project).

(b) The stability and reliability of the proposed capital financing plan, according to:

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

(ii) Whether adequate provisions have been made to cover unanticipated cost overruns and funding shortfalls; and

(iii) Whether adequate provisions have been made to fund the capital needs of the entire transit system as planned, including key station plans as required under 49 CFR 37.47 and 37.51, over a 20-year planning horizon period.

(c) The stability and reliability of the proposed operating financing plan to fund operation of the entire transit system as planned over a 20-year planning horizon.

Issued: November 29, 2000.

**Nuria I. Fernandez,**  
*Acting Administrator.*

[FR Doc. 00-30921 Filed 12-6-00; 8:45 am]

**BILLING CODE 4910-57-P**