DEPARTMENT OF TRANSPORTATION **4910-57-P**

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA-2010-0009]

RIN 2132-AB02

Major Capital Investment Projects

AGENCIES: Federal Transit Administration (FTA), DOT.

ACTION: Advance Notice of Proposed Rulemaking; request for comments.

SUMMARY: This advance notice of proposed rulemaking (ANPRM) seeks public comment regarding the Federal Transit Administration's (FTA) New Starts and Small Starts project justification criteria. In particular, FTA seeks public input on how to improve its calculation of "cost effectiveness," including whether FTA should measure quantifiable benefits other than reduced travel time. In addition, FTA seeks comment on how it should evaluate environmental benefits and economic development effects. Information gathered from this ANPRM will inform FTA's broader effort, next year, to amend the regulations that govern its New Starts and Small Starts programs.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable. The public should know the dates, times, and locations of the first two public outreach sessions are as follows: (1) Monday, June 7, 4:30 p.m. to 6:30 p.m., EST, 500 South Salisbury Street, Raleigh, North Carolina (Raleigh Convention Center); (2) Tuesday, June 8, 2:30 p.m. to 4:30 p.m., PST, 655 Burrard Street, Vancouver, British Columbia, Canada V6C 2R7 (Hyatt Regency Hotel).

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, Office of Planning and Environment, (202) 366-5159; for questions of a legal nature, Christopher Van Wyk, Office of Chief Counsel, (202) 366-1733. FTA is located at 1200 New Jersey Avenue, S.E., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

ADDRESSES: You may submit comments identified by the docket number FTA-2010-0009 by any of the following methods:

1. Federal eRulemaking Portal: Go to www.regulations.gov. Follow the online instructions for submitting comments on the U.S. Government electronic docket site.

2. Fax: 202-493-2251.

43 Mail: U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2010-0009) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without

change to www.regulations.gov including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477). Docket: For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Introduction

This ANPRM seeks new ideas through public comment on a funding program for new or expanded transit systems that involves a large amount of technical information and analysis. As such, this document is being issued to provide a general overview of FTA's current approach to evaluating and rating major capital investment projects ("New Starts" and "Small Starts") in support of its funding decisions, and, to ask questions that will assist FTA in its development of a Notice of Proposed Rulemaking. Because this document avoids technical terminology and detailed discussion, it is necessary to refer to other sources where additional information can be obtained for commenters who would like to know more of the details behind FTA's current process. To aid in that effort, FTA will place all of the documents cited in this notice in the public docket at www.regulations.gov under the docket number for this rulemaking effort (FTA-2010-

0009). Interested persons may also consult the FTA public website, www.fta.dot.gov, for further information on these subjects.

Background

The New Starts and Small Starts programs, established in Section 5309(d) and (e) of Title 49, U.S. Code, are FTA's primary capital funding programs for new or extended transit systems across the country, including rapid rail, light rail, commuter rail, bus rapid transit, and ferries. Under this discretionary program, proposed projects are evaluated and rated as they seek FTA approval for a multi-year federal funding commitment to finance project construction. Currently, overall ratings for New Starts and Small Starts proposed projects are based on summary ratings for two categories of criteria – project justification and local financial commitment. Within these two categories, projects are evaluated and rated against several individual criteria specified in statute. Details on how projects are currently evaluated and rated are set forth in the FTA regulations at 49 CFR Part 611, which can be found at the following web address: http://edocket.access.gpo.gov/cfr_2008/octqtr/49cfr611.htm.

Several statutory changes since 49 CFR Part 611 was first written have modified the evaluation process, including the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted on August 10, 2005, and the SAFETEA-LU Technical Corrections Act of 2008, signed on June 6, 2008. FTA's most recent policy guidance on the evaluation process (issued to address the SAFETEA-LU Technical Corrections Act), was announced on July 29, 2009 and is available in the Federal Register at 74 FR 37763; it is also set forth in Appendix B of

FTA's "FY 2011 Annual Report on Funding Recommendations" available at www.fta.dot.gov/publications/reports/reports_to_congress/publications_11092.html.

This ANPRM seeks comment on three of the evaluation criteria under the project justification category: cost effectiveness, environmental benefits, and economic development benefits. Although FTA also evaluates other statutory criteria for projects, those other criteria will be addressed in the notice of proposed rulemaking following this ANPRM.

Cost Effectiveness

Since April of 2005, FTA has had in place a budget decision approach that required at least a Medium rating on cost effectiveness for a project to be considered for funding in the President's annual budget.

Members of the transit community criticized FTA's approach on the cost effectiveness criterion, and questioned the methodology FTA uses to calculate cost effectiveness. Specifically, the transit community expressed concern that receiving a Low or Medium-low cost effectiveness rating "trumped" other project justification criteria established by law. Critics also noted that sometimes projects were designed to achieve a Medium cost effectiveness rating to remain in the funding pipeline while sacrificing other potentially important considerations, such as station locations and/or design features to accommodate ridership growth.. On January 13, 2010, Secretary Ray LaHood announced the end of that approach. This new direction presents FTA with an opportunity to rethink how it evaluates cost effectiveness for projects seeking New Starts and Small Starts funding.

While the other project justification criteria characterize the effectiveness of projects in addressing the objectives identified by the statute, cost effectiveness characterizes the extent to which benefits are in scale with project costs. In its current cost effectiveness measure, FTA includes the direct mobility benefits of the project, expressed as time savings. FTA defines mobility benefits as any measurable change in travel times, walking, waiting, transfers, and other attributes of travel on the transportation system. FTA's definition of mobility benefits includes time savings to highway users caused by congestion relief but FTA has not as yet been able to accept projections of highway time savings because of their unreliability and inconsistency. Instead, in determining cost effectiveness ratings, FTA credits all projects with an allowance for highway time savings that is equal to 20 percent of the project-specific transit time savings. FTA is sponsoring research on better methods to predict highway time savings so that project-specific highway time savings can be included in the mobility benefits that are compared to project costs.

FTA has not included other impacts among the project-specific benefits used to compute the current cost effectiveness measure because of the difficulties in summing, in a common unit of measurement, the broad range of other benefits. Instead, in determining cost effectiveness ratings, FTA credits all projects with an allowance for other benefits that is equal to 100 percent of the project-specific time savings. FTA is seeking comment in this ANPRM on ways to quantify and value other benefits so that they can be included as project-specific benefits, rather than a general allowance, in the comparison against project costs.

For more information how FTA calculates cost effectiveness, see Appendix B of FTA's "FY 2011 Annual Report on Funding Recommendations" available at www.fta.dot.gov/publications/reports/reports_to_congress/publications _11092.html.

In general, quantitative measures require evaluating the incremental (or added) benefits of implementing a proposed project against some alternative. FTA is seeking comment on what the basis for comparison should be. Currently, New Starts and Small Starts projects are evaluated against a "baseline alternative," which is defined as the "best that can be done" to address identified transportation needs in the corridor without a major capital investment in new infrastructure. The baseline alternative generally includes lower cost actions such as traffic engineering, enhanced bus service and other transit operational changes, and modest capital improvements such as reserved lanes, park-and-ride lots, and transit terminals. Although less expensive than the proposed project, the baseline alternative may still result in substantial costs, particularly in complex study areas with significant transportation problems.

Consistent with current law, FTA will continue to use cost effectiveness as one of the principal criteria for project justification. FTA is open to new ideas, however, regarding the direction the agency should take to improve how it evaluates cost effectiveness, including whether and how non-mobility benefits should be measured and how they could be calculated on a project-specific basis as part of that criterion, as well as how determinations of a baseline alternative could be improved if one continues to be used.

Questions on Cost Effectiveness

FTA seeks specific comment on the following questions:

1. How might FTA better evaluate cost effectiveness?
2. What, if any, additional benefits such as environmental benefits, equity considerations (e.g., the social benefits of low income ridership), and benefits of economic development attributed to a specific project could FTA include in the measure of cost effectiveness? What specific benefits should be included in the calculation of cost effectiveness?
3. If you believe that FTA should include other benefits in the measure of cost effectiveness, how can FTA best quantify those benefits? Please include specifics on how FTA would quantify and measure these benefits.
4. Are there simpler measures of cost effectiveness that FTA could use? If so, what are they? Please be specific.
5. How should FTA evaluate projects across cities with varying levels of transit service? In other words, should FTA continue to compare projects against a "baseline alternative"? Should FTA consider additional benefit categories such as convenience for riders, reduced congestion, reduced travel time as a result of reduced congestion, reduction in the number of accidents due to reduced congestion, fuel costs (or other variable cost) savings for individuals who would be using the projects and/or the benefit to national security of additional transportation options? If so, how should these be measured?
6. Should FTA measure the benefits of projects based on the opening year of those projects or retain the current methodology which is based on the planning forecast

year (which is approximately 20 years in the future)? Please explain the rationale for your response. If 20-year estimates are used, should FTA require project sponsors to support the reasonableness of their land use forecasts 20 years into the future? If so, how might project sponsors support their conclusions? Should FTA consider using forecasting periods other than opening year or 20-year? If so, what forecast year should FTA consider, and why?

Environmental Benefits

Since the environmental benefits criterion was first added as a project justification criterion in the Intermodal Surface Transportation Efficiency Act of 1991, FTA has attempted through various methods, with limited success, to meaningfully measure and compare the environmental benefits of transit projects in different environmental settings throughout the country.

For a number of years, FTA used an air quality approach based on a regional forecast of the changes in vehicle miles of travel (VMT) for the proposed project compared to the New Starts baseline alternative in the forecast year. (See Appendix A in 49 CFR Part 611 for more explanation of the baseline alternative.) The results of that approach proved unsatisfactory because any one project has only a minor effect on total regional air quality. The results also did not take into account the severity of the metropolitan area's air quality problems or the size of the population exposed to polluted air.

Although FTA has focused solely on air quality for environmental benefits, the statute is written broadly enough to allow FTA to take into account other factors such as

noise pollution, energy consumption, reductions in local infrastructure costs achieved through compact land use development, and the cost of suburban sprawl.

To gain a sharper perspective on the issue of environmental benefits, FTA convened a two-day colloquium in October 2008 in which a number of experts discussed different types of environmental benefits associated with transit projects. The record of that meeting ("Comparing the Environmental Benefits of Transit Projects: Proceedings from a Colloquium – October 28 & 29, 2008") is available at www.fta.dot.gov/documents/FTA_EnvironmentalBenefitProceedings.pdf and on compact disc through the Volpe National Transportation Systems Center. FTA is also actively participating in a Transit Cooperative Research Program study on the environmental benefits of transit projects. This work has helped to inform the questions posed below.

Moreover, the President recently signed Executive Order 13514 ("Federal Leadership in Environmental, Energy, and Economic Performance"; October 5, 2009), which is germane to evaluating and rating the environmental benefits of New Starts and Small Starts projects. As part of a broad strategy, E.O. 13514 obliges Federal agencies to advance integrated planning of infrastructure at regional and local levels; align Federal policies to promote sustainable technologies and opportunities for locally generated renewable energy; and take a leadership role in reducing greenhouse gas emissions. FTA seeks to incorporate the goals and objectives of E.O. 13514 into the New Starts and Small Starts programs to maximize the land use efficiencies created through locating transit projects in areas that facilitate sustainable development. The text of E.O. 13514 is available at http://edocket.access.gpo.gov/2009/pdf/E9-24518.pdf.

Questions on Environmental Benefits:

FTA seeks specific comment on the following questions:

1. How might FTA better measure environmental benefits?
2. In measuring environmental benefits, should FTA consider a broad definition of environment, as does the National Environmental Policy Act, which includes consideration of both the human and natural environment? Or, should FTA focus on the environmental performance in specific areas such as air quality emissions, energy use, greenhouse gas emissions, or water quality? Should FTA look at project-specific environmental benefits such as change in energy use and/or pollutant emissions? Should FTA consider other characteristics such as assessing the degree to which a proposed New Starts project fits into a State or Regional Sustainability Plan or whether a transit agency's capital program is operating under an official Environmental Management System (EMS) or has attained the EMS certification of the International Standards Organization (ISO 14001)? Would it be best to have a combination? Please be specific in what metrics you think should be considered.
3. Should the environmental benefits evaluation consider the steps a project sponsor takes to mitigate the construction impacts of New Starts projects in addition to the environmental effects of their operation? Should the origin and methods to obtain construction or vehicle materials; energy type and use; and

water consumption be considered in the overall evaluation of environmental benefits?

4. Should FTA consider the reduction in single occupant vehicle usage as part of its evaluation of environmental benefits? What method should be used to measure the changes in vehicle miles travelled resulting from implementation of a project? Please be specific about how FTA should measure this.
5. Should FTA consider certification of the planned facility through the Leadership in Energy and Environmental Design (LEED) Green Building Rating System; low impact development of transit facilities; or energy production with windmills or solar panels?
6. In measuring the environmental benefits of a project, how might FTA take into account the goals and objectives of Executive Order 13514? Should a project be evaluated and rated on how well it maximizes the land use efficiencies created through locating the project in areas that facilitate sustainable development?
7. To what extent, if any, can technology improvements—lower carbon transport technologies, the use of emerging light weight materials, improved engine designs, or bio-fuel applications, for example—be said to reflect environmental benefits of transit proposals? How would such improvements be measured and compared?

8. Should environmental benefits be included in the cost effectiveness measure? How can environmental benefits be compared across projects, and incorporated into FTA funding decisions?

Economic Development Benefits

FTA has defined economic development as the extent to which a proposed New Starts or Small Starts project is likely to enhance additional, transit-supportive development. Currently, FTA rates the economic development effects of major transit investments on the basis of the transit-supportive plans and policies in place and the demonstrated performance and impact of those policies. These "on the ground" indicators characterize the environment in which a project would be built and are not intended to predict future development outcomes.

In order to guide future research in this area, FTA convened a panel of experts in late 2007 to consider the potential methodologies available for measuring the economic development effects of New Starts and Small Starts projects. Some experts on the panel noted that FTA may be able to achieve this goal in two ways: (1) through the use of quantitative models to estimate the impacts of transit projects on land values; and (2) through the use of integrated transportation/land-use models to predict changes in land-use patterns that might result from transit projects and the various benefits associated with those changes. The record of that meeting ("Measuring the Economic Development Benefits of Transit Projects: Proceedings of an Expert Panel Workshop," March 2008) is available at www.fta.dot.gov/documents/Econ_Dev_Expert_Panel_Report.pdf. FTA is sponsoring two ongoing Transit Cooperative Research Program (TCRP) projects (Reference numbers H-39 and SH-12) to study the impact of transit on economic development.

FTA also issued a discussion paper on new, alternative ways of evaluating economic development effects in a Federal Register notice published on January 26, 2009. This paper ("Discussion Paper on the Evaluation of Economic Development," October 2008) is available at www.fta.dot.gov/planning/newstarts/planning_environment_5615.html. FTA received comments on the discussion paper from eleven respondents and has considered those comments in formulating the questions listed below.

Questions on Economic Development Effects

FTA seeks specific comment on the following questions:

1. How might FTA better measure the impact of transit on local land use patterns and/or economic development?
2. Should FTA continue to use its current approach for evaluating the economic development effects of major transit investments?
3. Should FTA define economic development differently? If so, how?
4. Should FTA use either a qualitative or a quantitative approach (or both) for evaluating the economic development effects of New Starts and Small Starts projects? Should FTA consider a qualitative approach for evaluating land use policies or a quantitative approach for predicting changes in land use values and patterns (or both) as a proxy for evaluating economic development benefits?
5. What scale should be used to measure economic development? At a corridor level or at the metropolitan area level?

6. How should FTA distinguish between the land use effects and the economic development effects of a proposed project? How should they be measured?
7. Can a New Starts or Small Starts project generate new economic development that would otherwise not have occurred in the surrounding area? If so, how might that economic development be measured? Should FTA consider the overall economic health of a metropolitan area when estimating the potential for a New Starts or Small Starts project to foster economic development?
8. How should FTA assess whether the plans, policies, and incentives intended to promote economic development would lead to transit oriented development that provides jobs and services within the corridor? Should FTA consider the economic development effects of the project on adjacent corridors? Should FTA consider commitments by developers or funding offered by developers as evidence of future economic development benefits? What time horizon should be used for considering economic development effects?
9. Should FTA consider changes in land values as evidence of potential economic growth in a station area or project corridor? How would FTA quantify recent and future changes in land values? How can FTA avoid double counting benefits given that changes in land values may be caused in part by the improved accessibility from the project that FTA already measures as part of cost effectiveness? Should FTA consider the extent to which existing affordable housing and commercial space can be maintained in the corridor after implementation of a transit project there?

10. Should economic development be a part of the cost effectiveness measure?

Public Outreach Sessions

The meetings listed below are the first two in a series of outreach sessions that will provide a forum for FTA staff to make oral presentations on this ANPRM and allow meeting attendees an opportunity to pose questions to the speakers. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions found in the ADDRESSES section of this notice. Further outreach sessions, once scheduled, will be announced in a subsequent Federal Register notice.

The dates, times, and locations of the first two public outreach sessions are: (1) Monday, June 7, 4:30pm to 6:30pm, EST, 500 Fayetteville Street, Raleigh, NC 27601 (Marriott City Center Hotel), concurrent with the conference on "Environment and Energy: Better Delivery of Better Transportation Solutions," sponsored by the Transportation Research Board; (2) Tuesday, June 8, 2:30pm to 4:30pm, PST, Vancouver, British Columbia, Canada, 655 Burrard Street, Vancouver, British Columbia, Canada V6C 2R7 (Hyatt Regency Hotel), concurrent with the "2010 Rail Conference" sponsored by the American Public Transportation Association. All locations are ADA-accessible. Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, should call Elizabeth Day, Office of Planning and Environment, at (202) 366-5159.

Regulatory Notices

All comments received on this ANPRM will be available for examination in the docket at www.regulations.gov.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is a significant regulatory action pursuant to section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). This ANPRM was reviewed by the Office of Management and Budget.

Executive Order 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." Because this ANPRM does not contain specific proposals, it is not possible at this time to perform a cost-benefit analysis.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Because this ANPRM does not contain specific proposals, it is not possible to perform that analysis at this time. This ANPRM does, however, seek input from the public, including small entities, on the implementation of the New Starts and Small Starts programs, including what, if any, significant economic impacts might result.

Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This ANPRM asks questions about FTA's implementation of the New Starts and Small Starts programs, and FTA specifically invites State and local governments with an interest in this rulemaking to provide feedback on those questions.

Regulation Identifier Number (RIN)

The U.S. DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, this 1st day of June, 2010.

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Peter Rogoff
Administrator

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