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Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2005–22841]

RIN 2132–AA81

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice of proposed rulemaking provides interested parties with the opportunity to comment on the characteristics and requirements proposed by the Federal Transit Administration (FTA) for a new capital investment program. This new program, ''Small Starts'', is a discretionary grant program for public transportation capital projects that run along a dedicated corridor or a fixed guideway, have a total project cost of less than $250 million, and are seeking less than $75 million in Small Starts program funding.

This Small Starts program is a component of the existing New Starts program, but will offer project sponsors an expedited and streamlined application and review process.

Consistent with the intent and provisions of the new public transit statute, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), FTA hopes to simplify the planning and project development process for proposed Small Starts projects in a number of ways. In addition to the reduced number of evaluation measures specified in SAFETEA–LU, the process may be further simplified by allowing small projects to conduct alternatives analysis with a reduced set of alternatives, allowing evaluation measures for mobility and cost-effectiveness to be developed without having to rely on complicated travel demand modeling procedures in some cases, and possibly defining some classes of low-cost improvements that are pre-approved as effective and cost-effective in certain contexts.

DATES: Comments must be received by March 10, 2006.

ADDRESSES: *Written Comments:* Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

Comments. You may submit comments identified by the docket number (FTA–2005–22841) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2478.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5:30 p.m. for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). Section 3011 of SAFETEA–LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA's) fixed guideway capital investment program known as ''New Starts''. In addition to the changes made to the New Starts program, for which FTA intends to issue separate policy guidance and a revised regulation, section 5309 has been amended to add a new subsection (3) containing a new capital investment program category for projects requesting federal funding of less than $75,000,000 with a total project cost of less than $250,000,000. That new capital investment program, which will be referred to as the ''Small Starts'' program, is the subject of this ANPRM. FTA plans to issue a Notice of Proposed Rulemaking (NPRM) in the near future that will address changes to the existing New Starts program made by section 3011 of SAFETEA–LU, as well as a proposal for the Small Starts program based on comments received in response to this ANPRM.

SAFETEA–LU created the new Small Starts program category by amending section 5309(e) of Chapter 53 of Title 49, United States Code. At the same time, the current process for larger new fixed guideway and extension (''New Starts'') projects was continued (with some modifications) under section 5309(d). The conference report accompanying SAFETEA–LU indicates the expectation that projects in this new ''Small Starts'' category would be ''advanced through an expedited and streamlined evaluation and rating process.''

The New Starts process now required under section 5309(d) for larger new fixed guideway and extension projects has been in place for some time and we believe represents the point of departure from which the new Small Starts category should be developed. The New Starts process was first outlined by a Statement of Policy in 1976 and was refined in subsequent Statements of Policy in 1978, 1980, and 1984. In the Surface Transportation and Uniform Relocation Assistance Act of 1987, the process called for in the Statements of Policy was enacted into law, and was subsequently modified by the Intermodal Surface Transportation Efficiency Act of 1991. A Statement of Policy in 1997 and further amendments in the Transportation Equity Act for the 21st Century, enacted in 1998, culminated in the current Final rule on Major Capital Investments (Title 49; Vol. 6 CFR611.1), issued in December 2000 and went into effect in April 2001.

Under the process laid out in statute and in the December 2000 Final Rule, New Starts projects, like all transportation investments in metropolitan areas, must emerge from a

regional, multi-modal transportation planning process. Under the process, local project sponsors are required to perform an alternatives analysis that evaluates the mode and alignment options in the community. Once local and regional decision makers select a locally preferred alternative, and it is adopted by the Metropolitan Planning Organization (MPO) into its long-range transportation plan, this phase is complete and the project is ready to be approved by FTA to enter the next phase—Preliminary Engineering (PE). During PE, local project sponsors consider their design options to refine the locally preferred alternative and complete the National Environmental Policy Act (NEPA) process. Upon approval by FTA, the project may undertake Final Design, which includes the preparation of final construction plans, detailed specifications, construction cost estimates, and bid documents. A project which meets the statutory criteria for funding is constructed using a ''full funding grant agreement'' which defines the scope of the project to be constructed, the schedule and costs, the source and commitment of funds, and the amount and timing of Federal funds committed to the project.

Section 5309(d) requires that larger New Starts projects (seeking greater than $75 million in New Starts funds or greater than $250 million in total project costs) be evaluated and rated in terms of project justification and local financial commitment. For project justification, section 5309(d) requires an assessment of mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, and transit supportive land use and future patterns. (The SAFETEA–LU amendment to section 5309(d) added economic development effects to the justification criteria. As noted above, this and other changes made by SAFETEA–LU will be the subject of a subsequent rulemaking.) For local financial commitment, assessments include the proposed share of total project costs from sources other than New Starts under section 5309, including federal transit formula and flexible funds, the local match required by Federal law, and any additional capital funding; the stability and reliability of the proposed capital financing plan; and the ability of the sponsoring agency to fund the operations and maintenance of the entire transit system (including existing service) as planned, once the project is built. To assign overall project ratings to each proposed New Starts project, FTA considers the individual ratings for each of the project justification and local financial commitment measures. FTA combines this information into summary ''finance'' and ''project justification'' ratings for each prospective New Starts project. Individual measures and summary ratings are designated as ''High,'' ''Medium-High,'' ''Medium,'' ''Medium-Low'' or ''Low.'' These are then combined into a single overall rating, which prior to enactment of SAFETEA–LU, was either ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended;'' under the changes made by SAFETEA–LU, the summary ratings will range from ''High'' to ''Low.''

The statutory language in section 5309(e) for Small Starts projects provides for some significant differences for the Small Starts program in comparison to the requirements for larger New Starts projects in section 5309(d). First, the eligibility for funding is broader, including certain ''corridor-based bus capital projects,'' rather than only new fixed guideway systems and extensions. Projects are limited to those with a proposed section 5309 amount of less than $75,000,000 and a total project cost of less than $250,000,000. The project justification criteria are simplified, focusing on three criteria—cost-effectiveness, public transportation supportive land use policies, and effect on local economic development—rather than the more extensive list provided for in section 5309(d). The criteria for local financial commitment have been simplified to focus only on a shorter term financial plan. The project development process has three steps—alternatives analysis, project development, and construction—rather than the four steps—alternatives analysis, preliminary engineering, final design, and construction—in the section 5309(d) process. Finally, the instrument used for implementing these Small Starts projects is a ''project construction grant agreement'' which is to be structured as a streamlined version of the ''full funding grant agreement'' required for larger New Starts projects under section 5309(d).

II. Purpose of This ANPRM

While we believe that the New Starts process represents a good starting point for the development of the new Small Starts program, it is clear from the statutory and report language that significant simplification is contemplated. Indeed, the concept of Small Starts was included in the Administration's reauthorization proposal because of our belief that it is appropriate to apply a simpler process and more streamlined evaluation approach for smaller projects seeking a more limited amount of Federal assistance. While FTA believes a considerable body of experience with the New Starts can be applied to enhance development of the Small Starts program we believe that a fresh look and early examination of key issues related to the process and criteria is warranted before we develop a Notice of Proposed Rulemaking. First, the expanded definition of eligibility raises a number of questions. Second, tailoring the project rating and evaluation process to the smaller scale and different nature of the projects, which are likely to be proposed for funding in this program deserves further attention. Finally, the project development process should also be scaled to properly reflect the size and nature of these projects.

Each of these issues is discussed below, in turn. In each section, we describe the nature of the specific program issues which must be addressed in a Final Rule, and we pose a series of questions, the answers to which will help us frame our approach to the Notice of Proposed Rulemaking. In addition to accepting written comments on these issues, FTA plans to hold listening sessions in the following cities to solicit input on the Small Starts and New Starts programs:

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

For more information, please contact Tonya Holland at 202–493–0283 or *Tonya.Holland@fta.dot.gov.*

III. Small Starts Eligibility

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

The eligibility provisions of the statute raise several issues: how to define ''substantial portion in a separate right-of-way''; how to define ''substantial investment''; the possibility

that project sponsors could divide traditional New Starts projects into two or more Small Starts projects; and the possibility that a Small Starts project might be proposed as the initial transit service in a corridor.

(a) ''Separate Right-of-Way''

The characteristics that qualify a project as having ''a substantial portion'' in separate right-of-way are not self-explanatory. We might define ''substantial'' either as some minimum fraction of the project length or as a performance based determination of whether the separate right-of-way is substantial. We believe that the purpose of a separate right-of-way is generally to reduce trip times and improve reliability for transit passengers. Therefore, a ''substantial'' separate right-of-way could be defined as one that results in a significant travel time reduction along the physical extent of the project. For example, if end-to-end trip time is reduced by some percentage, say 20 percent, the separate right-of-way could be considered ''substantial'' and the project would be eligible no matter what percent of the project was in a separate right-of-way.

(b) ''Substantial Investment''

It seems clear from the language of SAFETEA–LU, referring to a ''substantial investment'' and ''corridor'' that the Small Starts program is not intended to fund single stations or buy a few additional transit vehicles, but to fund corridor-based projects that are more comprehensive in nature. A thoughtful definition here will be important to prevent the Small Starts program from becoming an adjunct to the bus and rail capital-grants programs that agencies use for routine reinvestment in and expansion of transit systems. In response, ''substantial investment—might be defined as some minimum project cost or cost per mile of the proposed project. An alternative strategy would be to define it in terms of a minimum scope of the project—providing for elements that together represent a comprehensive package of improvements.

The statutory language specifically references a variety of project features including park-and-ride lots, transit stations, bus arrival and departure signage, traffic signal priority/pre-emption, off board fare collection, and advanced bus technologies, among others, that could indicate that a project constitutes a ''substantial'' investment. One approach would be to determine whether a project contains several of these project elements that have the effect of constituting a comprehensive package of physical and service improvements in a defined corridor, the project would be considered eligible. Since each of these potential project elements has a different purpose and effect, we do not believe that all Small Starts projects need to have all of the specified elements. Rather, the mix of project elements should respond specifically to the problems or opportunities presented in the corridor. For instance, a project that is intended to speed up peak period bus service in a congested corridor might be required to include several improvements, such as signal priority/pre-emption, queue jumpers, multi-door boarding and fare pre-payment, that effectively result in faster bus speeds. Projects with other goals could have a different mix of project elements as long as they represent a comprehensive attempt to solve the problems or respond to the opportunities presented in the corridor.

Another potential way to ensure that Small Starts projects contain a comprehensive package of improvements would be to impose a multi-year period from the date the project requests entry into project development, in which the project sponsor could not request additional Small Starts funds for the same corridor. This would prevent projects from using the Small Starts program for miscellaneous bus system improvements that do not represent a ''substantial'' corridor investment and would also prevent the subdividing of New Starts projects as discussed below.

A ''defined corridor'' might be defined as narrowly as a single street or as broadly as a geographic section of the metropolitan area. A more comprehensive definition might be derived from the travel patterns established on the current transit system—as in ''the travel corridor connecting residents of the northeastern suburbs to downtown.'' Still another definition might be based on the bus route(s) operating on a single arterial street or highway, or the rail line(s) operating on a single right of way, along with their branches.

(c) Subdividing New Starts Projects

Project sponsors might elect to subdivide a traditional New Starts project into two or more Small Starts projects in order to qualify for the simplified evaluation and rating process. This possibility is not addressed in the language of SAFETEA–LU, but the possibility clearly exists for larger projects to be segmented or phased into development as separate Small Starts projects. This may or may not be desirable. It may be sensible to build some Small Starts projects in phases over a longer period of time. If each of those phases represents a valid Small Starts project, it may be justified that the Small Starts funding be utilized. However, it is probably undesirable for large projects that would otherwise be built entirely at the same time to be redefined as several Small Starts projects. At least three reasons suggest that this subdividing strategy is undesirable. First a small number of subdivided New Starts projects could quickly deplete the Small Starts funding allocation, thereby making the Small Starts option unavailable to projects more consistent with the purpose of the Small Starts allocation. Second, costly New Starts projects ought to undergo the full New Starts evaluation rather than the simpler evaluation reserved for smaller projects with lower costs and less risk. Third, FTA oversight resources would be stretched even further by the proliferation of artificially subdivided projects.

If it is determined that separate phases of larger projects should not be able to use Small Starts funds, we could introduce an eligibility requirement that all potential Small Starts projects in a single corridor be considered simultaneously for eligibility. We could ensure that even if a Small Starts project is to be built in stages, the comprehensive plan for the corridor meets the eligibility criteria for a Small Starts project and be evaluated and rated as a comprehensive program of improvements. If the comprehensive corridor improvement plan exceeds the Small Starts cost criterion, the project should then be evaluated and rated as a traditional New Starts project.

(d) Small Starts as the Initial Service Offering

Given the relatively low cost of Small Starts projects, some project sponsors might propose a Small Starts project as a way of initiating transit service in previously unserved areas. That strategy increases risk, however, if the transit market has not yet been sufficiently developed in the planned service area. Further, the strategy seems inconsistent with the purpose of the Small Starts program—to provide higher-quality service than is available from conventional bus routes. Consequently, we might establish a minimum-current-ridership requirement—say 1,000 riders per average weekday in the immediate corridor—to screen out proposals for corridors where transit markets are not yet sufficiently developed.

Questions

We invite comment on our current thinking regarding the project eligibility for the Small Starts category of the New Starts program:

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

2. How might we interpret the requirement that a project represent a ''substantial investment''?

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

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

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

IV. Evaluation and Ratings

SAFETEA–LU section 3011(e)(2) requires that the Secretary of Transportation provide funding assistance to a proposed project under this new Small Starts category only if the Secretary finds that the project is:

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

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

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

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

- The degree to which the project is consistent with local land use policies and is likely to achieve local development goals;
- The cost effectiveness of the project at the time of the initiation of revenue service;
- The degree to which a project will have a positive effect on local economic development;
- The reliability of the forecasting methods used to estimate costs and ridership associated with the project; and
- Any other factors that the Secretary determines appropriate to make funding decisions.

The SAFETEA–LU provisions for the evaluation of proposed Small Starts projects raise several issues. These include the framework for the evaluation; the specific measures used in the evaluation; and scaling of the evaluation approach for Small Starts projects of different size, cost, and complexity.

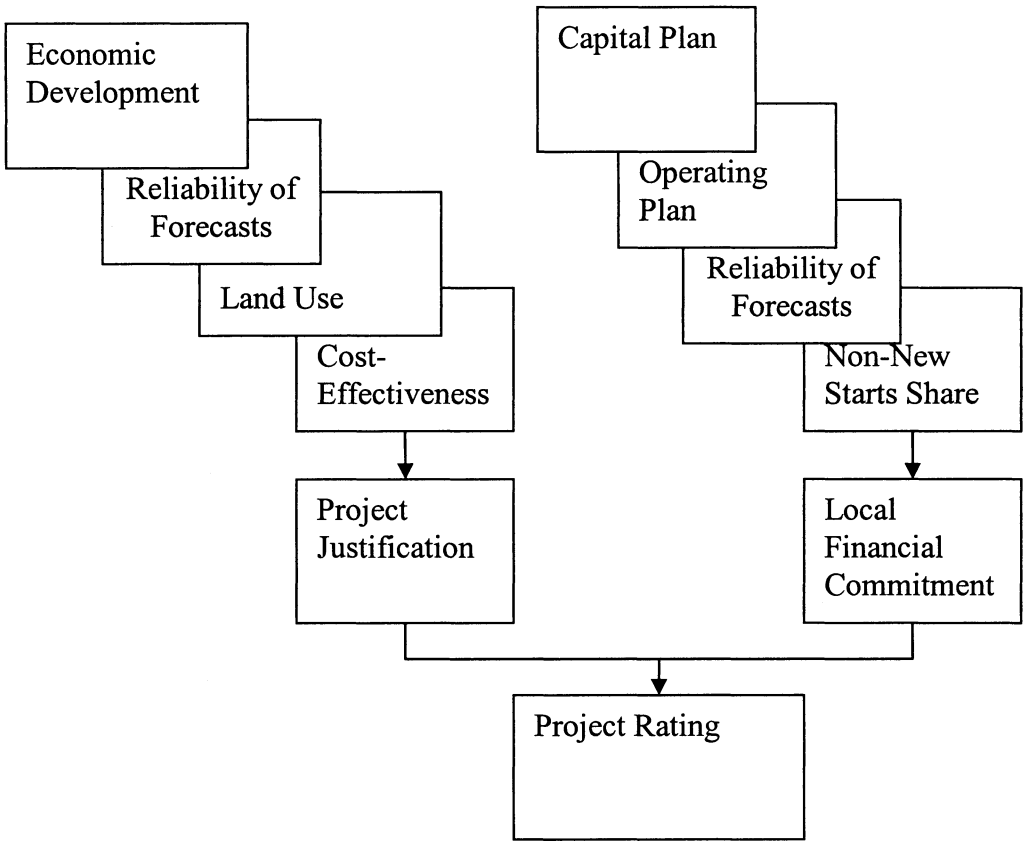
(a) Evaluation Framework

At least two options exist for the framework used to organize the evaluation measures and synthesize the findings for individual projects. The first would be an extension of the framework used for New Starts projects described in the December 2000 Final Rule on Major Capital Investment Projects (Title 49; Vol 6; 49 CFR 611.1), adjusted to add and delete the specific measures listed in SAFETEA–LU. The second would adopt a framework designed both to implement the Small Starts evaluation criteria specified by SAFETEA–LU and to organize the measures in a way which we believe supports an informative, analytical discussion of the project and its merits for Small Starts funding.

Option 1—Extension of the Evaluation Framework for New Starts

The framework that we currently use to evaluate New Starts projects considers each candidate project from two separate perspectives: the project's ''justification'' and local financial commitment proposed by its sponsor. Figure 1 illustrates one way in which the current framework could be adapted to the evaluation of Small Starts. Currently, ''justification'' considers a broad array of criteria but is based chiefly on two: cost effectiveness (50 percent of the justification rating) and land use (50 percent). Cost effectiveness addresses the trade-off between the capital, operating, and maintenance costs of the project and the mobility benefits that it is expected to produce. Land use addresses the extent to which the land-use setting for the project would promote a successful project—both in terms of the transit orientation of current land use and the policies adopted locally to foster transit orientation in future development. For Small Starts, we might respond to SAFETEA–LU direction by simply adding an economic-development criterion and a forecast-reliability criterion to the existing definition of the justification perspective. As we do currently for New Starts projects, we could assign a rating for each of the now four components (cost effectiveness, land use, economic development, and forecast reliability) and compute an overall justification rating as a weighted average of the individual ratings. Given that we expect far more applications than awards and the intense scrutiny and interest in cost-effectiveness of recommended projects among various participants in federal funding recommendations (*e.g.*, Congress, the Office of Management and Budget (OMB), the General Accounting Office (GAO), and others), it may be desirable to continue to assign roughly half of the ''justification'' weighting to the cost-effectiveness component, perhaps allocating the other half equally across the land use, economic development, and reliability criteria.

Figure 1: Small Starts Evaluation Framework, Option 1



Currently, local financial commitment is defined for New Starts in terms of the strength of the financial plan for the capital costs of the proposed project (50 percent of the financial rating), the strength of the financial plan for operating and maintaining the entire transit system including the proposed project (30 percent), and the level of non-New-Starts funding proposed by the sponsor (20 percent). We compute an overall rating on local financial commitment as the weighted average of the individual ratings on these three criteria. Application of these three criteria, augmented by a new measure to reflect the reliability of the revenue and cost forecasts, might provide a sufficient framework for the evaluation of Small Starts as well.

Option 2—Development of a Broader Framework

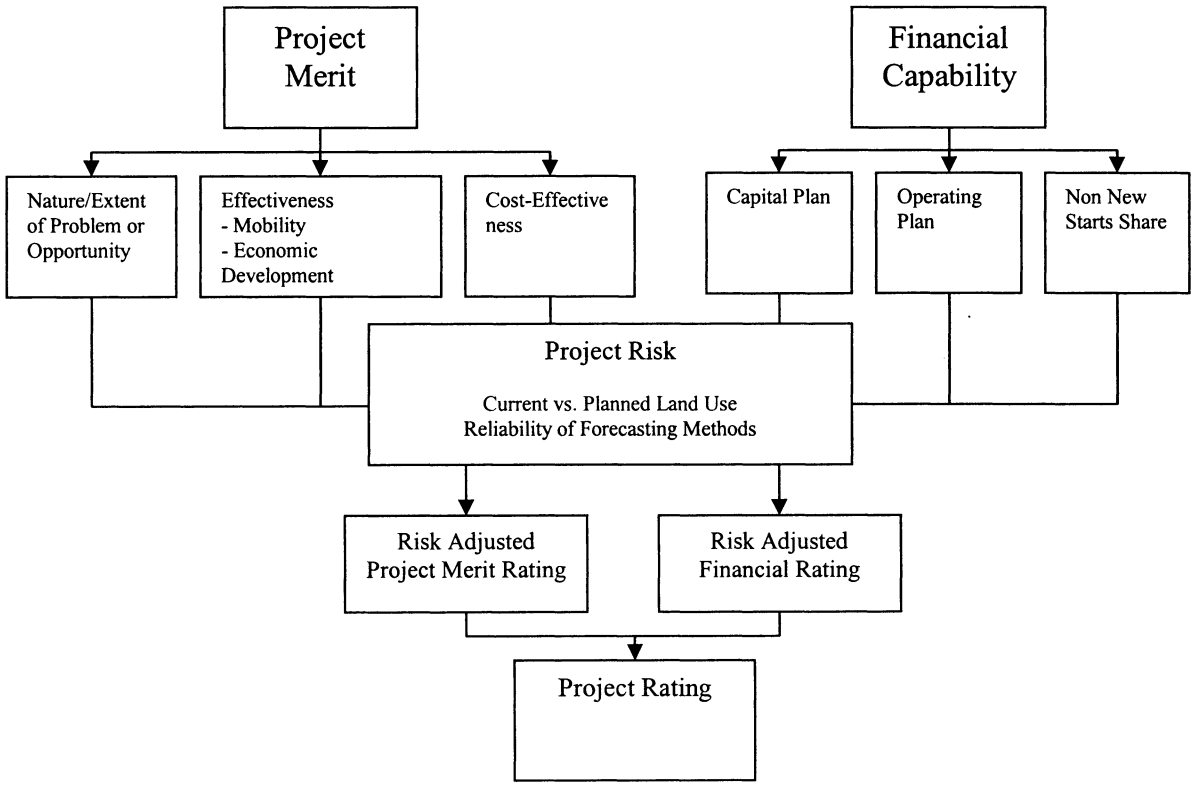
For some time, we have been considering ways to provide a better framework for the assessment of major investment projects. The current approach, while consistent with current laws, tends to focus attention on the measures themselves, rather than promoting a thoughtful consideration of project merit. To address these concerns, a second option would be to broaden the perspectives we use to evaluate proposed projects, re-organize the evaluation criteria within these perspectives, and add a brief, clearly written narrative that synthesizes the insights available from various measures into the best possible case for the project as a candidate for Small Starts funding. Together, the evaluation measures and the narrative case for the project might consider:

- The nature of the problem/opportunity—because meritorious transit projects emerge from efforts to solve transportation problems and respond to important opportunities to improve mobility and support economic development;
- The effectiveness of the project as a response—because meritorious transit projects increase mobility for existing and new transit riders, preserve and expand mobility for transit dependents, and support economic development;
- The cost-effectiveness of the required investment—because meritorious projects generate benefits that are commensurate with their capital, operating, and maintenance costs;
- The strength of the local financial commitment—because financially sound projects draw on capital and operating funding sources that are readily available given reasonable expectations of revenue streams and acknowledgment of competing uses for the funds; and
- Risk in the forecasts and in the evaluation measures—because informed decision-making requires an understanding of any major uncertainties in information used to evaluate the project including land use forecasts, land use policy intentions, ridership forecasts, cost estimates, and other assumptions and forecasts.

We believe that an evaluation framework comprising these five perspectives would provide a natural and logical place for each of the criteria specified in SAFETEA–LU. Cost effectiveness and local financial commitment are themselves two of the perspectives. Economic development would be a principal component of the effectiveness perspective. Land use policies and the reliability of ridership and cost forecasts would be central elements of the uncertainties perspective.

Figure 2 provides an overview of the framework presented as Option 2 for the evaluation of Small Starts projects. The framework could examine separately the merits and the financial plan for the proposed project, as well as factor in the risks associated with the reliability of the data. Project merit could depend on the weighted results of project evaluation from three distinct perspectives: The nature of the problems/opportunities, the effectiveness of the project in addressing the problems/opportunities, and the cost-effectiveness of the necessary investment in capital, operating, and maintenance costs. Given that we expect far more applications than awards and the intense scrutiny and interest at the federal level in funding cost-effective projects, it may be desirable to continue to assign roughly half of the project-merit weighting to the cost-effectiveness component, perhaps allocating the other half equally across the problems/opportunities and effectiveness criteria.

Figure 2: Small Starts Evaluation Framework, Option 2



In the evaluation of effectiveness and cost effectiveness, the basis for comparison for a proposed project might appropriately depend on the nature of the proposal. For projects that do not involve construction of a new guideway, the baseline might be current transit services in the corridor. For projects that include a new guideway, the baseline might be similar service levels provided by buses operating on the same or nearby streets and/or highways, and serving a comparable set of stations. Regardless of the specifics, the timeframe for the comparison of ridership, mobility benefits, and cost-effectiveness would be the year of opening of the proposed Small Starts project.

Financial capacity could depend on the weighted results of financial analysis from three perspectives—the soundness of the capital funding plan, the soundness of the operating/maintenance funding plan, and the proposed non-New-Starts share of the project—with weights equal to those used currently for New Starts evaluations.

Risk could reflect the levels of uncertainty present in the information used to develop each of the component ratings for project merit and local financial commitment. Consequently, each component rating would be accompanied by an indicator of its reliability. The risk measures might be based on (1) the comparability of cost estimates and ridership forecasts to peer projects both locally and nationally, (2) the steps that the project sponsor has taken—including data collection, sensitivity testing, and peer reviews—to identify and minimize uncertainties, and (3) the performance of the project sponsor in delivering previous transit projects that met forecasts of costs and ridership.

The evaluation framework might include an analytical discussion of the project and its performance against the evaluation criteria, providing direct answers to several key questions:

- What is the problem?
- What project is proposed in response?
- What are its costs?
- How well does it address the problem?
- Is it worth the investment?
- Can the project sponsor and other funding sources afford it?
- What are the trade-offs versus other alternatives?
- Where are the large uncertainties?

This discussion would ensure that the evaluation rested as much on well stated insights into the merits of the project as on the mechanics of the evaluation measures themselves. We

might use the case for the project to support project advancement or funding decisions for marginally rated projects.

Baseline Alternative

Virtually from the beginning of the New Starts program, FTA has required that the benefits and costs of the proposed New Starts project be assessed versus a baseline alternative defined as the best that can be done without building a new fixed guideway. The purpose of the baseline alternative has been to distill the benefits (and costs) of the proposed New Starts project from the benefits achieved through low-cost improvements such as route realignments, increases in service frequency, park-and-ride lots, signal preemption and other low-cost improvements that could have significant benefits, but which could be achieved without the significant cost of a New Starts project's infrastructure. The baseline alternative has proven to be essential in properly accounting for benefits and costs of traditional New Starts projects. A secondary benefit is that it allows FTA to better evaluate projects fairly. In essence, a consistently defined baseline alternative prevents regions with good existing transit service from being disadvantaged relative to areas with poor existing service in the competition for New Starts funds.

For the Small Starts program, a baseline alternative may be less important in both accurately determining the costs and benefits of some projects and establishing a level playing field for evaluations across the country. History has shown the need for a baseline for larger projects now eligible for Small Starts funding, but a baseline alternative may not be necessary for certain kinds of projects based on their costs or other characteristics.

(b) Specific Evaluation Measures

Regardless of the framework that emerges, each criterion will require specific evaluation measures. In principle, the measures should be accurate indicators of the performance of proposed projects, be readily computed by project sponsors, be transit-mode-neutral, and be free of inherent biases that would distort the level playing field that we try to maintain for all project sponsors.

A particular challenge is the appropriate inclusion of land use in the evaluation. Land use might usefully play a role in two parts of the evaluation framework: as part of the economic-development criterion and as part of the risk assessment. Our current evaluation of New Starts projects employs land use measures (current land use, plans and policies, and the track record of those plans and policies) that effectively address the risk perspective: The measures indicate the transit-friendliness of the project corridor, both now and in the future, to indicate the extent to which the proposed project would be implemented in a setting conducive to its success. However, because current land use and plans/policies do not measure the benefits generated by the proposed project, they do not address the anticipated development benefits from the project. The absence of measures of economic-development benefits is the result of our continuing difficulties in finding methods for predicting development impacts with sufficient reliability for use in New Starts evaluation. These difficulties extend to Small Starts evaluation as well. Further, because SAFETEA–LU introduces a separate economic-development criterion, the potential role for land use as a measure of development benefits becomes even less evident. A distinction between land-use development and economic development seems elusive. Consequently, an appropriate strategy might be to define ''land-use/economic development'' as a measure of project effectiveness and to define ''transit-orientation of land use'' as a measure of risk inherent in both the mobility benefits and the land-use/economic development benefits.

Nature of the Problem/Opportunity

New Starts projects are almost always intended to solve specific transportation problems, or take advantage of opportunities to improve transportation services, or support economic development. For this reason, the most useful starting point for evaluation of proposed transportation investments may be the nature and severity of the problems/opportunities the proposed projects are designed to address. Such a criterion might rate very highly projects designed to address clearly identifiable and particularly severe mobility problems, while rating more moderately those projects that take advantage of specific opportunities to improve service, but are not in corridors with a particular mobility problem.

An immediate question, then, is what kinds of problems/opportunities is the Small Starts program intended to address. Both the New Starts program and the SAFETEA–LU provisions for Small Starts both emphasize cost effectiveness and support for economic/land use development. Mobility benefits are implicit in cost effectiveness because our cost effectiveness measure has, since its inception, compared costs with some indicator of mobility benefits (initially new transit trips and, since 2001, user benefits). Consequently, measures to represent the nature of the problem or opportunity addressed by a proposed Small Starts project ought to reflect economic development and mobility. Useful measures for economic development might include vacancy rates, the value of land parcels compared to the value of current improvements on those parcels, and similar measures of development conditions in the corridor of interest. Useful measures for mobility might include current bus travel speeds in the immediate corridor, current highway speeds on principal arterials in the corridor, and projected speeds in the future—perhaps in 10 years.

Effectiveness

Small Starts projects are likely to produce a wide variety of benefits that are candidate measures of their performance. SAFETEA–LU calls out two kinds of benefits: economic/land-use development specifically and mobility improvement implicitly through cost-effectiveness.

Predicting economic development impacts of transit improvements—particularly the types of improvements anticipated to be funded through the Small Starts program—is a particular challenge. No predictive tools are available in standard practice and development of new tools is infeasible in the short run. Consequently, the best-available measures of likely economic development/land-use benefits may be derived from the circumstances in which the projects would be implemented rather than from forecasts of their specific development impacts. A survey of available research on the development impacts of transit suggests that increased accessibility and permanence of the transit investment are the primary transit-related drivers of development. Those project-related characteristics, plus indicators of the availability of land for development or redevelopment, may provide a workable representation of likely development benefits. Specific measures might be (1) current land-use conditions, (2) development plans and policies, (3) the economic development climate in the corridor and region, (4) the project-related change in transit accessibility for developable areas in the corridor, and (5) the economic lifespan of new transit facilities proximate to those developable areas.

The measure of mobility benefits ought to capture as many benefits as

possible. Currently for New Starts projects, we define ''user benefits'' to include all changes in mobility that are measured by local ridership-forecasting methods and define the scope of those benefits to include both existing and new transit riders. (The definition also includes benefits to users of the highway system but measurement of those benefits has been precluded by the insufficient state of the practice for predicting changes in highway speeds.) Consequently, the user-benefits measure credits transit projects with reductions in transit travel times (including time spent walking, waiting, transferring, and riding in transit vehicles), any other service characteristics (such as the number of transfers) included in local forecasting methods, and the availability of multiple competitive travel options, again as represented by local forecasting methods. The user-benefits measure is also defined to give appropriate credit for other project characteristics that improve the quality of transit service including changes in reliability, span of service, safety and security, passenger stations, passenger information, permanence of the facilities, and other characteristics not represented by travel times and costs. Unfortunately, these harder-to-measure impacts of transit improvements are rarely measured explicitly in local travel models and are instead represented—very roughly—as lump-sum differences (transit-mode-specific ''constants'') in the attractiveness of different transit modes (bus, light rail, express bus, commuter rail, and so forth). Further, the state of the practice in ridership forecasting makes difficult the task of quantifying these effects in urban areas where a variety of transit modes exists today and provides no information on these effects in urban areas where the transit system includes bus service only. Most unfortunately, these hard-to-measure effects may be central to the merits of smaller projects that may not produce large changes in travel times. For example, we may specify standard values for the benefits generated by the various non-travel-time improvements introduced by a proposed Small Starts project. For example, we might define passenger stations to provide the equivalent of M minutes of travel time savings for each rider, an exclusive guideway N minutes per passenger-mile of equivalent savings, and all-day high-quality service P minutes per rider. We would then employ these standard values as default measures of benefits for metropolitan areas introducing a new transit mode. To maintain a level playing field for project evaluation, we might also use the standard values as limits on the estimated values of these benefits in metropolitan areas that already have the mode in question. FTA's ''Dear Colleague'' letter dated April 29, 2005, which addressed changes in New Starts ratings, stated that FTA had decided to postpone the introduction of mode-specific constants for new guideway modes to an area. The creation of the Small Starts program has prompted reconsideration of the application of these constants.

Given the key role that transit plays in the lives of travelers who rely on it for basic mobility, we might also include an indicator of the extent to which a proposed project improves mobility for transit dependent residents of the urban area. A straightforward measure might be the fraction of total mobility benefits that accrues to travelers in the lowest economic stratum (usually household income or auto-ownership) used in the local ridership-forecasting methods, normalized by the fraction of all trips made by residents of that stratum.

Cost-Effectiveness

Since the inception of the transit major capital investment program, we have employed a cost effectiveness measure and have translated its computed value for a project into a cost-effectiveness rating for that project using a set of breakpoints (that is, a computed value between X and Y obtains a ''Medium'' rating). Traditionally, we have computed the cost-effectiveness of New Starts projects as annualized capital, operating, and maintenance costs of the project per unit of transportation benefits, all compared to a non-guideway baseline alternative. We currently use the transit-user-benefits measure to capture the full range of quantifiable transportation benefits of proposed projects. A broader cost-effectiveness measure might add non-transportation benefits—economic development/land-use and mobility benefits to transit dependents, for Small Starts—to the effectiveness side of the calculation. In addition to the difficulty in quantifying non-transportation benefits such as economic development and land use, another complication is the need to avoid double-counting in the calculation of benefits applied in the cost effectiveness measure.

Its role is to compare a careful accounting of costs with a careful accounting of benefits. The inclusion of measures that represent different manifestations of the same benefit would distort the benefits accounting. This problem occurs for mobility improvements and economic development/land-use: a review of the available research shows that transit-related changes in land values and consequent increases in development are largely the result of the accessibility improvements and apparent degree of permanence of a transit project. We contend that these impacts are already counted in the user benefits measure of mobility improvements and that they should not be counted a second time in the form of consequent economic development/land-use impacts. To the extent that some economic development/land-use benefits are independent of mobility and permanence, large uncertainties would occur in attempts to include those benefits in the cost-effectiveness calculation while avoiding double-counting of the main effects. Consequently, a more tractable approach might be to make allowances for these uncounted development benefits in the way that we translate values of the cost-effectiveness measure into cost-effectiveness ratings for projects. For example, if adding a new class of benefits to the cost-effectiveness measure proves unworkable, we could adjust the cost-effectiveness breakpoints to account for the existence and likely magnitude of those benefits.

Local Financial Commitment

The financial evaluation measures currently used for New Starts projects provide a useful starting point for consideration of possible Small Starts measures. The New Starts measures include the strength of the financial plan for non-New Starts funding of the project's capital costs, the strength of the financial plan for non-New Starts funding of the entire local transit system once the project is in place, and the non-New Starts funding proposed by the project sponsor. SAFETEA–LU specifies that financial commitment for Small Starts projects shall be evaluated ''within the project timetable.'' Therefore, a possible adaptation of the current measures might be to adjust the New Starts financial evaluation measures for Small Starts to reflect the shorter timeframe ending with the opening year of the proposed project.

Risk

There is inherent risk and uncertainty in project evaluation. The ratings assigned to a project are based on information, assumptions and forecasts that often include uncertainty in the predictions of eventual project performance. The statutory language makes it clear that the evaluation of Small Starts projects is to consider the reliability of the forecasting methods

used to estimate costs and ridership (note that SAFETEA–LU also included this language for New Starts projects). Since SAFETEA–LU requires that the financial and cost-effectiveness measures be evaluated based on near term forecasts for Small Starts projects, some of the forecasting risk may be reduced. Uncertainties clearly remain, however. Therefore, in principle, the evaluation framework would include a specific risk indicator for each evaluation criterion. Some options for incorporating risk and uncertainty are described below.

The risk associated with measures related to the nature and severity of the problem or opportunity could be based on an evaluation of peer projects—projects that have been implemented in similar conditions and their apparent success in addressing similar problems and/or seizing the opportunities that motivated project sponsors.

The risk inherent in measures of project merit could be evaluated based on (1) the current land use and land-use policies, (2) the soundness of forecasting tools and data used to predict ridership and mobility benefits including steps to reduce uncertainty through peer reviews and other quality control procedures, (3) comparisons of ridership forecasts against peer projects—similar projects in similar settings, with particular risk assigned to projects without any peers, and (4) the track record of the project sponsor with benefits forecasts for previous transit projects.

The risk associated with a cost-effectiveness measure would necessarily include the uncertainties in both the project-effectiveness measures and the cost estimates. The effectiveness risk could be quantified with the measures outline above. The cost risk could be based on (1) the soundness of cost-estimating procedures including steps to reduce risk through peer reviews and other quality-control efforts, (2) comparisons of the cost estimates against peer projects, and (3) the track record of the project sponsor with cost estimates for previous transit projects.

A project finance risk measure could be based on apparent availability of non-federal funds and the ability of the financial plan to withstand a specific percentage increase in capital costs of the project. This type of evaluation is currently included within the financial evaluation of New Starts projects, but may be better as a separate financial risk measure.

(c) Project Ratings

SAFETEA–LU specifies that projects are to be rated as high, medium-high, medium, medium-low, and low, based on the analysis of both project merit and local financial commitment and that to receive a funding recommendation, projects should be both meritorious and have an acceptable degree of local financial commitment.

Currently for New Starts projects, we develop separate ratings for project merit (''justification'') and local financial commitment, and then derive from these component ratings an overall project rating using decision rules. These decision rules ensure that a project does not get a very high or an acceptable rating unless the ratings for both project merit (''justification'') and financial commitment are high or acceptable respectively. A similar rating process could be developed for Small Starts.

Because risk may be an important element of ratings for Small Starts projects, a strategy may be needed to incorporate risk measures into the ratings process. It seems clear that each risk measure ought to be associated as directly as possible with the evaluation measure to which it applies; uncertainties in the cost estimate, for example, ought to affect whichever evaluation criteria rely on measures computed from the cost estimate. A variety of strategies might be used to adjust the rating for each criterion to reflect the risk measure—including probability weightings and Monte Carlo simulations analogous to those used currently in FTA-sponsored ''risk assessments'' of the capital cost estimates for New Starts projects. A simpler strategy, however, might be to use the risk indicators to decide the outcome for ratings at the margins: a project rating whose measures produce a result at the breakpoint between Medium and Medium-High, for example, might be rated Medium if the associated risk indicator suggests large uncertainties and Medium-High if the risk indicator suggests minimal uncertainties.

(d) Scaling the Evaluation for Projects of Different Size

Small Starts projects may range in size from non-guideway improvements costing $20 million, or perhaps less, to new guideways costing just under $250 million. Given this relatively wide range of cost and potential for complexity and risk, different approaches might be appropriate for projects of different scale. We recognize that the effort expended by project sponsors to develop the necessary information—and by FTA to ensure the reliability of that information—should be matched to the size and complexity of the proposed project. Sponsors of relatively simple projects with very low costs—particularly those with no guideway construction like arterial BRT or commuter rail service on an existing high quality rail line, for example—should be able to make the case for their projects with less effort than sponsors of relatively more complex and expensive Small Starts projects. Lower levels of effort should result from lower levels of complexity, detail, and rigor but not from a reduced ability to address the full range of evaluation criteria.

Given the relatively straightforward nature of the financial measures, most of the differences in evaluation methods might occur in the evaluation of project merit (justification)—particularly in the methods used to compute mobility benefits and, therefore, cost-effectiveness. Several options are available for evaluation of project merit for Small Starts proposals: (1) Application of the same evaluation methods for all projects regardless of scale; (2) development of simplified analytical procedures for smaller projects; and (3) defining for small projects a set of conditions—effectively ''warrants'' based on project scope and implementation setting—within which proposals are automatically deemed to have acceptable levels of project merit.

Option 1—Same Methods, Regardless of Scale

A travel forecasting capability is available in most metropolitan areas, usually including a forecasting component for transit ridership. In many urban areas with recent experience in forecasting for New Starts projects, these forecasting procedures are ready for use in ridership forecasting for Small Starts planning. The procedures consider project impacts on all travelers in the region, predict changes in both travel mode and transit routing, and provide forecasts for individual travel markets. In areas that do not have ridership forecasting procedures of acceptable quality, the necessary refinements can be done with appropriate data within a year or so. Therefore, one available option is to require that the benefits of all Small Starts proposals, regardless of cost or complexity, are forecast with traditional methods that attempt to capture the full range of impacts that a project would have on the quality of transit service in a corridor.

Option 2—Simplified Methods Where Possible

At least some Small Starts proposals are likely to affect only a very specific set of travelers and may therefore not require the comprehensive analysis of

transportation impacts provided by traditional ridership forecasting methods. For these proposals, a simplified analysis may be sufficient to quantify the mobility benefits and provide insights into the merits of the project. A simplified analysis might rest on data rather than models, spreadsheet computations rather than sophisticated software, and limited geographic scope rather than region-wide analysis. For example, a very simple Small Starts project might be the conversion of an existing bus route into a streetcar line with passenger stations, dynamic passenger information, off-board fare collection, traffic signal priorities, some reservation of existing traffic lanes, and headway improvements. A sufficient analysis of the mobility benefits of this project might be based on on/off counts, a limited on-board survey, an estimate of stop-to-stop reductions in wait times and travel times, and a spreadsheet-based calculation of travel-time savings (and whatever representation we determine is appropriate of the hard-to-quantify benefits of better passenger facilities, schedule information, and other project elements). To the extent that this limited analysis identifies mobility benefits sufficient for the project to compete well for Small Starts funding, the approach may be all that is needed to quantify those benefits. To the extent that another project has a broader set of impacts—because of service changes on a large number of bus routes throughout a corridor, for example—then the project sponsor might elect to use the traditional forecasting methods to capture the broader set of benefits.

Option 3—Development of ''Warrants'' for Smaller Projects

We are considering specifying a class of low-cost improvements that are ''warranted'' to be cost effective based on their definition and the environment in which they are to be applied. This strategy would be for us to distinguish and evaluate differently those projects that are very low cost and that employ only those elements that are demonstrably effective and cost-effective within specified maximum prices and minimum usage (ridership). Justification for these ''Very Small Starts'' would be based simply on the scope/cost of the project and salient characteristics of the setting in which it would be implemented. Justification would require documentation only of (1) the scope elements of the project, (2) the unit costs for each scope element, (3) total cost, and (4) existing ridership in the immediate corridor. This strategy would avoid a requirement that project sponsors attempt to quantify benefits for low-cost projects comprising only those elements that have been demonstrated elsewhere to be effective and cost-effective transit improvements.

This concept might be extended to Small Starts projects that add a new guideway along with the low-cost elements that would otherwise qualify a project for Very Small Starts treatment. A low-cost guideway project, for example, might also include the stations, signal pre-emption, ''branding,'' and other elements whose benefits are difficult to quantify. Again, this strategy would avoid the substantial difficulties inherent in attempting to calculate the benefits of low-cost project elements with real but hard-to-quantify impacts on the quality and attractiveness of transit services.

Questions

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

7. How should the baseline alternative be defined?

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

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

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

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

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

13. What weights should FTA apply to each measure?

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

V. Procedures for Planning and Project Development

SAFETEA–LU specifies some different procedures to be used by Small Starts projects in the planning and project development process compared to New Starts projects. Similar to the requirement for traditional New Starts, funding for Small Starts requires the Secretary to find that the project has been based on the results of planning and an alternatives analysis. Unlike traditional New Starts, Small Starts need only be approved to advance from planning and alternatives analysis to project development and construction; no approval to enter final design is required. A project construction grant agreement can be used to provide funding for the Small Start for future years. The main issues addressed in this section include defining alternatives analysis in a way that is appropriate to the scale of small projects, the basis for our decision to allow entry into project development, and linking alternatives analysis and the environmental process.

Alternatives Analysis

While larger projects require a number of alternatives to be considered in an alternatives analysis to assess the numerous tradeoffs in costs, benefits, and impacts, the consideration of Small Starts often implies that fewer useful alternatives exist and in some cases, there may only be two alternatives, one representing the Small Start and the other today's service levels. Nevertheless, the number of alternatives considered must continue to meet the requirements of NEPA, good planning practices, and proper identification of project costs and benefits for funding recommendations.

Just as there could be a simpler evaluation approach applied to simpler projects described as Very Small Starts in the evaluation section above, a very simple alternatives analysis and subsequent evaluation process could be used when Very Small Starts are being considered. Projects that are Very Small Starts could be able to utilize a very simple project definition-based alternatives analysis process. The key elements of the highly simplified AA report could be:

- Clear description and assessment of the opportunity to improve transportation service in the corridor.
- Clearly defined proposed project description designed to take advantage of the opportunity to improve transit service in the corridor, including a clearly defined scope, list of project elements, their associated costs and expected effect on transit service in the corridor.
- Comparison of the Very Small Start only to conditions today for a subset of the required measures. Mobility benefits and cost-effectiveness could be assumed to be met if the proposed project only includes pre-approved elements.
- A determination of whether or not the project sponsor can afford the capital and operating costs of the alternatives.
- A well supported explanation for the choice of a proposed project that includes an analysis of the likelihood of the proposed project achieving the project goals and any risks.
- A plan for implementing and operating the proposed project that

addresses the project sponsor's technical capability to build, operate and maintain the proposed project.

Where the proposed New Starts project fits the eligibility criteria for a Small Start but cannot qualify as a Very Small Starts project, a simplified alternatives analysis could be allowed. Compared to Very Small Starts this type of alternatives analysis would include a more detailed analysis of the mobility benefits and cost-effectiveness of the proposed project. They could also entail consideration of a broader range of alternatives because project alternatives could cost as much as $250 million. As costs rise, considerations of different length alternatives may give insights into what could be significant differences in the tradeoffs of costs, benefits and impacts. Even without other build alternatives, examination of an alternative other than existing system service could be required if the Small Starts project is proposed where no transit service currently exists, so that the benefits of the investment itself can be distinguished from the simple realignment of service. Similarly, assessing a third alternative with the non-fixed-guideway elements of a fixed guideway project would permit the proper identification of the benefits and costs accruing from the guideway investment itself.

The features of this simplified AA report could be:

- Clear description and assessment of the opportunity to improve transportation service in the corridor.
- Clearly defined set of transportation alternatives to take advantage of the opportunity to improve transit service. In cases where the proposed project does not involve a new fixed guideway, the alternatives analysis could consider a minimum of two alternatives as follows: (1) The no-build (existing conditions), (2) a Very Small Starts alternative if the proposed project includes a guideway or there is no existing service in the corridor, (3) the proposed Small Start, and (4) any useful length alternatives to the proposed project.
- Analysis of the effectiveness of the alternatives.
- Comparison of the benefits and costs of the alternatives.
- A determination of whether or not the project sponsor can afford the costs of the alternatives.
- A well supported choice of a proposed project that includes an analysis of the likelihood of the proposed project achieving the project goals and any risks.
- A plan for implementing and operating the proposed project that addresses the project sponsor's technical capability to build, operate and maintain the proposed project.

We would use the alternatives analysis report or subsequent AA/DEIS to rate and evaluate the proposed Small Starts projects.

Another type of alternatives analysis could occur when a traditional New Starts project is one of the alternatives and the locally preferred alternative is eligible for Small Starts funds. Projects that result from a traditional alternatives analysis will have to adjust their evaluation measures to reflect opening year rather than the forecast year.

Entry Into Project Development

We currently envision reviewing the following items soon after they are developed during the alternatives analysis in order to support a decision to allow entry into project development:

- Alternatives analysis initiation report that includes a clear and concise description of the problem or opportunity to improve service in the corridor, the initial list of alternatives and their key elements, and the proposed approach to evaluating the alternatives.
- Interim report that specifies the alternatives to be evaluated and the methods that were used to forecast the mobility benefits.
- Final report and choice of locally preferred alternative.
- Local adoption of the proposed project and financial plan into the fiscally constrained, conforming (if in a non-attainment or maintenance area) plan and Transportation Improvement Program (TIP).

Projects that are eligible for Small Starts funds and achieve acceptable ratings for the Small Starts criteria could be admitted into project development. We are considering including the before and after study requirement in the construction grant agreement as a pre-requisite for receiving funding for Small Starts projects. Like traditional New Starts, documenting the predicted and actual scope, cost, and ridership of projects built using Small Starts funds will allow us as well as project sponsors to evaluate this information and develop in the future better approaches to forecast the costs and benefits of Small Starts. The results of before and after studies would also assist us in responding to the requirement in SAFETEA–LU that we consider the reliability of forecasting methods used to estimate ridership and costs when we consider funding proposed Small Starts projects.

Linking Alternatives Analysis to the Environmental Process

Currently alternatives analyses can be conducted concurrently with NEPA or in advance of formal NEPA activities that begin with a Notice of Intent. Problems have arisen when alternatives analyses are conducted in advance of formal NEPA processes for a variety of reasons, including the lack of proper consideration of environmental factors and lack of response by resource agencies. Alternatives analyses conducted concurrently with NEPA sometimes do not have the level of detail necessary for mitigation of impacts, requiring a supplemental document. An option that we are considering that could address these problems by efficiently and effectively linking alternatives analyses to NEPA is a recognized procedure known as ''early scoping.'' The concept of early scoping was explained by the President's Council on Environmental Quality in its ''40 Questions'' guidance, as follows:

> ''Use of Scoping Before Notice of Intent to Prepare EIS. Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?
>
> A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.
>
> The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.
>
> However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.''
>
> Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026, 18030 (1981) (Answer to Question No. 13).

Projects developed through the Small Starts program are not likely to generate significant effects on the quality of the human environment. Nevertheless, potential environmental effects associated with Small Starts proposals cannot be overlooked. In order to

accommodate applicable environmental review requirements and to integrate such requirements efficiently into Small Starts proposals, we are considering requiring the use of ''early scoping'' as an adjunct to Alternatives Analysis. Although early scoping is not a substitute for the standard scoping process, in combination with required notification initiating the environmental review process, early scoping would serve to signal the beginning of the NEPA process and provide a forum in which participating and cooperating agencies, as well as the public, could be actively and purposefully engaged.

Early scoping links transportation planning (Alternatives Analysis) with the National Environmental Policy Act process in a way that promotes consideration of required environmental factors without pre-determining the kind of documentation that has to be prepared. This approach is entirely consistent with regulations implementing the National Environmental Policy Act, as well as the planning and environmental review provisions of SAFETEA–LU.

It is likely that many Very Small Starts proposals will qualify as Categorical Exclusions, in which case sponsors may petition to be exempted from the early scoping requirement. A Small Starts sponsor may still choose to avail itself of the practice of combining traditional ''scoping'' (following issuance of a Notice of Intent) with Alternatives Analysis when preparation of an Environmental Impact Statement is anticipated.

Questions

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

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

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

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

19. Should Small Starts projects also be required to perform a Before and After study?

20. Should FTA mandate an early scoping approach for those alternatives analyses that are not being conducted concurrently with the formal NEPA process? Are there other approaches that should be considered for better linking alternatives analysis and NEPA?

VI. Regulatory Notices

A. 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. We invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific Small Starts proposals may have on State or local governments.

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

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

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we 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. If your business or organization is a small entity and if adoption of specific small starts proposals could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

D. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. Interested parties are invited to address the potential environmental impacts of the small starts proposals contained in this ANPRM. We are particularly interested in comments about the costs and benefits that specific small starts proposals may have on the human and natural environment, or on alternative actions the agency could take that would provide beneficial impacts.

E. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of section 3011 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which requires the Secretary of Transportation to prescribe regulations for capital investment projects funded under 49 U.S.C. § 5309 with a federal share of less than $75,000,000 and a total cost of less than $250,000,000.

F. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking will likely be considered a significant regulatory action under 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.

E.O. 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.'' We therefore request comments, including specific data if possible, concerning the costs and benefits of the specific small starts proposals contained in this ANPRM.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This ANPRM does not propose any new information collection burdens.

H. Regulation Identifier Number (RIN)

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

I. Privacy Act

Anyone is able to search the electronic form for all comments

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

Issued in Washington, DC this 24th day of January, 2006.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

[FR Doc. 06–870 Filed 1–27–06; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 060111007–6007–01; I.D. 010906A]

RIN 0648–AT56

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to update the tribal season in the Plan to reflect recent IPHC season date-setting trends. NMFS also proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A, the flexible inseason management provisions in Area 2A, fishery election in Area 2A, and Area 2A non-treaty commercial fishery closed areas. NMFS proposes to codify all but the sport fishery management measures for Area 2A, at 50 CFR part 300, subpart E. These actions are intended to enhance the conservation of Pacific halibut, to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries, and to provide greater angler opportunity where available.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 14, 2006.

ADDRESSES: Copies of the Plan, Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and/or Categorical Exclusion (CE) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Electronic copies of the Plan, including proposed changes for 2006, and of the CE and draft RIR/IRFA are also available at the NMFS Northwest Region Web site: *http://www.nwr.noaa.gov*, click on ''Groundfish & Halibut.''

You may submit comments on the proposed Plan and domestic Area 2A halibut management measures or supporting documents, identified by 010906A, by any of the following methods:

- E-mail: *PHalibut2006.nwr@noaa.gov*. Include the I.D. number

010906A in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region,

NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

- Fax: 206–526–6736, Attn: Jamie Goen.

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SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act) of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act authorizes the regional fishery management councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) had developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC plus 25,000 lb (11.3 mt) to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent minus 25,000 lb (11.3 mt) to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30′ N. lat.), Oregon, and California. North of 46°53.30′ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry longline sablefish fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

The Area 2A TAC will be set by the IPHC at its annual meeting on January 16–20, 2006, in Bellevue, WA. NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the proposed domestic fishing regulations by February 14, 2006. This allows the public the opportunity to consider the final Area 2A TAC before submitting comments on the proposed rule. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for the Area 2A Pacific halibut fisheries concurrent with the IPHC regulations for the 2006 Pacific halibut fisheries.