

certify that the State (Commonwealth) is in compliance with all requirements of 23 U.S.C. 505 and its implementing regulations with respect to the research, development, and technology transfer program, and contemplate no changes in statutes, regulations, or administrative procedures which would affect such compliance.”

(d) The FHWA Division Administrator shall periodically review the State DOT's management process to determine if the State is in compliance with the requirements of this subpart. If the Division Administrator determines that a State DOT is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State DOT. The notice will set forth the reasons for the proposed determination and inform the State DOT that it may reply in writing within 30 calendar days from the date of the notice. The State DOT's reply should address the deficiencies cited in the notice and provide documentation as necessary. If the State DOT and the Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State DOT may appeal to the Federal Highway Administrator whose action shall constitute the final decision of the FHWA. An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for the State DOT's RD&T activities until the State DOT is in full compliance.

(The information collection requirements in § 420.209 have been approved by the OMB and assigned control number 2125–0039.)

PART 450—PLANNING ASSISTANCE AND STANDARDS

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AUTHORITY: 23 U.S.C. 134, 135, 217(g), and 315; 42 U.S.C. 7410 et seq.; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

SOURCE: 58 FR 58064, Oct. 28, 1993, unless otherwise noted.

Subpart A—Planning Definitions**§ 450.100 Purpose.**

The purpose of this subpart is to provide definitions for terms used in this part which go beyond those terms defined in 23 U.S.C. 101(a).

§ 450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 450.104 Definitions.

Except as defined in this subpart, terms defined in 23 U.S.C 101(a) are used in this part as so defined.

Consultation means that one party confers with another identified party in accordance with an established process and, prior to taking action(s), considers that party's views and periodically informs that party about action(s) taken.

Cooperation means that the parties involved in carrying out the planning, programming and management systems processes work together to achieve a common goal or objective.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies or entities with legal standing, and adjustment of plans, programs and schedules to achieve general consistency .

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Maintenance area means any geographic region of the United States designated nonattainment pursuant to the CAA Amendments of 1990 (Section 102(e)), 42 U.S.C. 7410 et seq., and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act as amended (CAA), 42 U.S.C. 7410 et seq.

Major metropolitan transportation investment means a high-type highway or transit improvement of substantial cost that is expected to have a significant effect on capacity, traffic flow, level of service, or mode share at the transportation corridor or subarea scale. Consultation among the MPO,

State department of transportation, transit operator, the FHWA and the FTA may lead to the designation of other proposed improvements as major investments beyond the examples listed below. Examples of such investments could generally include but are not limited to: Construction of a new partially controlled access (access allowed only for public roads) principal arterial, extension of an existing partially controlled access (access allowed only for public roads) principal arterial by one or more miles, capacity expansion of a partially controlled access (access provided only for public roads) principal arterial by at least one lane through widening or an equivalent increase in capacity produced by access control or technological improvement, construction or extension of a high-occupancy vehicle (HOV) facility or a fixed guideway transit facility by one or more miles, the addition of lanes or tracks to an existing fixed guideway transit facility for a distance of one or more miles, or a substantial increase in transit service on a fixed guideway facility. For this purpose, a fixed guideway refers to any public transportation facility which utilizes and occupies a designated right-of-way or rails including (but not limited to) rapid rail, light rail, commuter rail, busways, automated guideway transit, and people movers. Projects that generally are not considered to be major transportation investments include but are not limited to: Highway projects on principal arterials where access is not limited to public roads only, small scale improvements or extensions (normally less than one mile) on principal arterials with the primary goal of relieving localized safety or operational difficulties, resurfacing, replacement, or rehabilitation of existing principal arterials and equipment, highway projects not located on a principal arterial, and changes in transit routing and scheduling.

Management system means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency and safety of, and protect the investment in the nation's infrastructure. A management system includes:

identification of performance measures; data collection and analysis; determination of needs; evaluation, and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area. MPOs designated prior to the promulgation of this regulation remain in effect until redesignated in accordance with § 450.106 and nothing in this part is intended to require or encourage such redesignation.

Metropolitan transportation plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area.

Nonattainment area means any geographic region of the United States that the Environmental Protection Agency (EPA) has designated as a nonattainment area for a transportation related pollutant(s) for which a National Ambient Air Quality Standard (NAAQS) exists.

Non-metropolitan area means the geographic area outside designated metropolitan planning areas, as designated under 23 U.S.C. 134 and 49 U.S.C. 5303.

Non-metropolitan local official means elected and appointed officials of general purpose local government, in non-metropolitan areas, with jurisdiction/responsibility for transportation.

Regionally significant project means a project (other than projects that may be grouped in the STIP/TIP pursuant to § 450.216 and § 450.324) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the

modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

State Implementation Plan (SIP) means the portion (or portions) of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under sections 110, 301(d) and 175A of the Clean Air Act (42 U.S.C. 7409, 7601, and 7505a).

Statewide transportation improvement program (STIP) means a staged, multiyear, statewide, intermodal program of transportation projects which is consistent with the Statewide transportation plan and planning processes and metropolitan plans, TIPs and processes.

Statewide transportation plan means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects which is consistent with the metropolitan transportation plan.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

[58 FR 58064, Oct. 28, 1993, as amended at 68 FR 3181, Jan. 23, 2003; 68 FR 7419, Feb. 14, 2003]

Subpart B—Statewide Transportation Planning

§ 450.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a continuing, comprehensive, and intermodal statewide transportation planning process,

including the development of a statewide transportation plan and transportation improvement program, that facilitates the efficient, economic movement of people and goods in all areas of the State, including those areas subject to the requirements of 23 U.S.C. 134.

§ 450.202 Applicability.

The requirements of this subpart are applicable to States and any other agencies/organizations which are responsible for satisfying these requirements.

§ 450.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

§ 450.206 Statewide transportation planning process: General requirements.

(a) The statewide transportation planning process shall include, as a minimum:

- (1) Data collection and analysis;
- (2) Consideration of factors contained in § 450.208;
- (3) Coordination of activities as noted in § 450.210;
- (4) Development of a statewide transportation plan that considers a range of transportation options designed to meet the transportation needs (both passenger and freight) of the state including all modes and their connections; and
- (5) Development of a statewide transportation improvement program (STIP).

(b) The statewide transportation planning process shall be carried out in coordination with the metropolitan planning process required by subpart C of this part and shall consider coordination with planning activities in non-metropolitan areas.

(c) In carrying out statewide transportation planning, the State shall consider, with respect to non-metropolitan areas, the concerns of local elected officials representing units of general purpose local government.

[58 FR 58064, Oct. 28, 1993, as amended at 68 FR 3181, Jan. 23, 2003]

§ 450.208 Statewide transportation planning process: Factors.

(a) Each State shall, at a minimum, explicitly consider, analyze as appropriate and reflect in planning process products the following factors in conducting its continuing statewide transportation planning process:

(1) The transportation needs (strategies and other results) identified through the management systems required by 23 U.S.C. 303;

(2) Any Federal, State, or local energy use goals, objectives, programs, or requirements;

(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in appropriate projects throughout the State;

(4) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations;

(5) The transportation needs of non-metropolitan areas (areas outside of MPO planning boundaries) through a process that includes consultation with local elected officials with jurisdiction over transportation;

(6) Any metropolitan area plan developed pursuant to 23 U.S.C. 134 and section 8 of the Federal Transit Act, 49 U.S.C. app. 1607;

(7) Connectivity between metropolitan planning areas within the State and with metropolitan planning areas in other States;

(8) Recreational travel and tourism;

(9) Any State plan developed pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (and in addition to plans pursuant to the Coastal Zone Management Act);

(10) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities (including consideration of all transportation modes);

(11) The overall social, economic, energy, and environmental effects of transportation decisions (including housing and community development effects and effects on the human, natural and manmade environments);

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(12) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel;

(13) Methods to expand and enhance appropriate transit services and to increase the use of such services (including commuter rail);

(14) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decision-making and the provisions of all applicable short-range and long-range land use and development plans (analyses should include projections of economic, demographic, environmental protection, growth management and land use activities consistent with development goals and transportation demand projections);

(15) Strategies for identifying and implementing transportation enhancements where appropriate throughout the State;

(16) The use of innovative mechanisms for financing projects, including value capture pricing, tolls, and congestion pricing;

(17) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, identification of those corridors for which action is most needed to prevent destruction or loss (including strategies for preventing loss of rights-of-way);

(18) Long-range needs of the State transportation system for movement of persons and goods;

(19) Methods to enhance the efficient movement of commercial motor vehicles;

(20) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavements;

(21) The coordination of transportation plans and programs developed for metropolitan planning areas of the State under 23 U.S.C. 134 and section 8 of the Federal Transit Act with the statewide transportation plans and programs developed under this subpart, and the reconciliation of such plans

and programs as necessary to ensure connectivity within transportation systems;

(22) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development; and

(23) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

(b) The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation problems, land use, employment, economic development, environmental and housing and community development objectives, the extent of overlap between factors and other circumstances statewide or in subareas within the State.

§ 450.210 Coordination.

(a) In addition to the coordination required under § 450.208(a)(21), in carrying out the requirements of this subpart, each State, in cooperation with participating organizations (such as MPOs, Indian tribal governments, environmental, resource and permit agencies, public transit operators) shall, to the extent appropriate, provide for a fully coordinated process including coordination of the following:

(1) Data collection, data analysis and evaluation of alternatives for a transit, highway, bikeway, scenic byway, recreational trail, or pedestrian program with any such activities for the other programs;

(2) Plans, such as the statewide transportation plan required under § 450.214, with programs and priorities for transportation projects, such as the STIP;

(3) Data analysis used in development of plans and programs, (for example, information resulting from traffic data analysis, data and plans regarding employment and housing availability, data and plans regarding land use control and community development) with land use projections, with data analysis on issues that are part of public

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involvement relating to project implementation, and with data analyses done as part of the establishment and maintenance of management systems developed in response to 23 U.S.C. 303;

(4) Consideration of intermodal facilities with land use planning, including land use activities carried out by local, regional, and multistate agencies;

(5) Transportation planning carried out by the State with transportation planning carried out by Indian tribal governments, Federal agencies and local governments, MPOs, large-scale public and private transportation providers, operators of major intermodal terminals and multistate businesses;

(6) Transportation planning carried out by the State with significant transportation-related actions carried out by other agencies for recreation, tourism, and economic development and for the operation of airports, ports, rail terminals and other intermodal transportation facilities;

(7) Public involvement carried out for the statewide planning process with public involvement carried out for the metropolitan planning process;

(8) Public involvement carried out for planning with public involvement carried out for project development;

(9) Transportation planning carried out by the State with Federal, State, and local environmental resource planning that substantially affects transportation actions;

(10) Transportation planning with financial planning;

(11) Transportation planning with analysis of potential corridors for preservation;

(12) Transportation planning with analysis of social, economic, employment, energy, environmental, and housing and community development effects of transportation actions; and

(13) Transportation planning carried out by the State to meet the requirements of 23 U.S.C. 135 with transportation planning to meet other Federal requirements including the State rail plan.

(b) The degree of coordination should be based on the scale and complexity of many issues including transportation problems, land use, employment, economic, environmental, and housing and

community development objectives, and other circumstances statewide or in subareas within the State.

§ 450.212 Public involvement.

(a) Public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement. The processes shall provide for:

(1) Early and continuing public involvement opportunities throughout the transportation planning and programming process;

(2) Timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects;

(3) Reasonable public access to technical and policy information used in the development of the plan and STIP;

(4) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to action on the plan and STIP;

(5) A process for demonstrating explicit consideration and response to public input during the planning and program development process;

(6) A process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households which may face challenges accessing employment and other amenities;

(7) Periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all and revision of the process as necessary.

(b) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in § 450.322(c) or § 450.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(c) During initial development and major revisions of the statewide transportation plan required under § 450.214,

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the State shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation and other affected agencies, private and public providers of transportation, and other interested parties a reasonable opportunity to comment on the proposed plan. The proposed plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. Likewise, the official statewide transportation plan (see § 450.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(d) During development and major revision of the statewide transportation improvement program required under § 450.216, the Governor shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation or other affected agencies, private providers of transportation, and other interested parties, a reasonable opportunity for review and comment on the proposed program. The proposed program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. The approved program (see § 450.220(c)) if it differs significantly from the proposed program, shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(e) The time provided for public review and comment for minor revisions to the statewide transportation plan or statewide transportation improvement program will be determined by the State and local officials based on the complexity of the revisions.

(f) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process. As a minimum, the State shall publish procedures and allow 45 days for public review and written comment before the procedures and any major revisions to existing procedures are adopted.

(g) The public involvement processes will be considered by the FHWA and the FTA as they make the planning finding required in § 450.220(b) to assure that full and open access is provided to the decision making process.

(h) The State shall provide for non-metropolitan local official participation. The State shall have a documented process(es) that is separate and discrete from the public involvement process for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that provides an opportunity for their participation in the statewide transportation planning process and development of the statewide transportation improvement program.

(i) The State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 days regarding the effectiveness of the consultation process and proposed modifications within 2 years of process implementation, and thereafter at least once every 5 years. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials. The State, at its discretion, shall be responsible for determining whether to adopt any proposed modifications. If a proposed modification is not adopted, the State shall make publicly available its reasons for not accepting the proposed modification, including notification to non-metropolitan local officials or their associations.

[58 FR 58064, Oct. 28, 1993, as amended at 68 FR 3181, Jan. 23, 2003]

§ 450.214 Statewide transportation plan.

(a) The State shall develop a statewide transportation plan for all areas of the State.

(b) The plan shall:

(1) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity

travel) and statewide in scope in order to facilitate the efficient movement of people and goods;

(2) Be reasonably consistent in time horizon among its elements, but cover a period of at least 20 years;

(3) Contain, as an element, a plan for bicycle transportation, pedestrian walkways and trails which is appropriately interconnected with other modes;

(4) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134;

(5) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation need studies, management system reports and any statements of policies, goals and objectives regarding issues such as transportation, economic development, housing, social and environmental effects, energy, etc., that were significant to development of the plan; and

(6) Reference, summarize or contain information on the availability of financial and other resources needed to carry out the plan.

(c) In developing the plan, the State shall:

(1) Cooperate with the MPOs on the portions of the plan affecting metropolitan planning areas;

(2) Cooperate with the Indian tribal government and the Secretary of the Interior on the portions of the plan affecting areas of the State under the jurisdiction of an Indian tribal government;

(3) Provide for public involvement as required under § 450.212;

(4) Provide for substantive consideration and analysis as appropriate of specified factors as required under § 450.208; and

(5) Provide for coordination as required under § 450.210.

(d) The State shall provide and carry out a mechanism to establish the document, or documents, comprising the plan as the official statewide transportation plan.

(e) The plan shall be continually evaluated and periodically updated as appropriate using the procedures in this section for development and establishment of the plan.

(f) In developing the statewide transportation plan, affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in non-metropolitan areas of the State.

[58 FR 58064, Oct. 28, 1993, as amended at 68 FR 3181, Jan. 23, 2003]

§ 450.216 Statewide transportation improvement program (STIP).

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. In case of difficulties in developing the STIP portion for a particular area, e.g., metropolitan area, Indian tribal lands, etc., a partial STIP covering the rest of the State may be developed. The portion of the STIP in a metropolitan planning area (the metropolitan TIP developed pursuant to subpart C of this part) shall be developed in cooperation with the MPO. To assist this process, the State will need to provide MPOs with estimates of available Federal and State funds which the MPO can utilize in developing the metropolitan TIP. Metropolitan planning area TIPs shall be included without modification in the STIP, directly or by reference, once approved by the MPO and the Governor and after needed conformity findings are made. Metropolitan TIPs in non-attainment and maintenance areas are subject to the FHWA and the FTA conformity findings before their inclusion in the STIP. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The State shall notify the appropriate MPO, local jurisdictions, Federal land agency, Indian tribal government, etc. when a TIP including projects under the jurisdiction of the agency has been included in the STIP. All title 23 and Federal Transit Act fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for public involvement in development of the STIP as required by § 450.212. In addition, the STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first 3 years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate

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STIP priorities for each individual metropolitan area. As a minimum, the lists shall group the projects that are to be undertaken in each of the years, e.g., year 1, year 2, year 3;

(2) Cover a period of not less than 3 years, but may at State discretion cover a longer period. If the STIP covers more than 3 years, the projects in the additional years will be considered by the FHWA and the FTA only as informational;

(3) Contain only projects consistent with the statewide plan developed under § 450.214;

(4) In nonattainment and maintenance areas, contain only transportation projects found to conform, or from programs that conform, to the requirements contained in 40 CFR part 51;

(5) Be financially constrained by year and include sufficient financial information to demonstrate which projects are to be implemented using current revenues and which projects are to be implemented using proposed revenue sources while the system as a whole is being adequately operated and maintained. In nonattainment and maintenance areas, projects included in the first two years of the current STIP/TIP shall be limited to those for which funds are available or committed. In the case of proposed funding sources, strategies for ensuring their availability shall be identified;

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under the Federal Transit Act (49 U.S.C. app. 1602, 1607a, 1612 and 1614) and/or title 23, U.S.C. excluding:

(i) Safety projects funded under section 402 of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. app. 2302);

(ii) IVHS planning grants funded under section 6055(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914);

(iii) Transit planning grants funded under section 8 or 26 of the Federal

Transit Act (49 U.S.C. app. 1607 and 1622);

(iv) Metropolitan planning projects funded under 23 U.S.C. 104(f);

(v) State planning and research projects funded under 23 U.S.C. 307(c)(1) (except those funded with NHS, STP and minimum allocation (MA) funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(vi) Emergency relief projects (except those involving substantial functional, locational or capacity changes);

(7) Contain all regionally significant transportation projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with title 23, U.S.C. or Federal Transit Act funds, e.g., addition of an interchange to the Interstate System with State, local and/or private funds, demonstration projects not funded under title 23, U.S.C., or the Federal Transit Act. (The STIP should, for information purposes, include all regionally significant transportation projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. It should also include, for information purposes, if appropriate and cited in any TIPs, all regionally significant projects, to be funded with non-Federal funds);

(8) Include for each project the following:

(i) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total cost;

(iii) The amount of Federal funds proposed to be obligated during each program year;

(iv) For the first year, the proposed category of Federal funds and source(s) of non-Federal funds;

(v) For the second and third years, the likely category or possible categories of Federal funds and sources of non-Federal funds;

(vi) Identification of the agencies responsible for carrying out the project; and

(9) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the project selection requirements in § 450.222(c).

(b) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117 (c) and (d) and/or 40 CFR part 51.

(c) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP subject to the project selection requirements of § 450.222.

(d) The STIP may be amended at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 450.212 (for public involvement) and in § 450.220 (for the FHWA and the FTA approval).

(e) In developing the statewide transportation improvement program, affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in non-metropolitan areas of the State.

[58 FR 58064, Oct. 28, 1993, as amended at 68 FR 3181, Jan. 23, 2003]

§ 450.218 Funding.

Funds provided under sections 8, 9, 18, and 26(a)(2) of the Federal Transit Act and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f)(3) and 307(c)(1) may be used to accomplish activities in this subpart.

§ 450.220 Approvals.

(a) At least every two years, each State shall submit the entire proposed STIP, and amendments as necessary, concurrently to the FHWA and the FTA for joint approval. The State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 135, section 8(q) of the Federal Transit Act and this part;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(3) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects

(sec. 105(f), Pub. L. 97-424, 96 Stat. 2100; 49 CFR part 23);

(4) The provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(5) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities; and

(6) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act as amended (42 U.S.C. 7504, 7506 (c) and (d)).

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal lands agencies, will review the STIP or amendment and jointly make a finding as to the extent the projects in the STIP are based on a planning process that meets or substantially meets the requirements of title 23, U.S.C., the Federal Transit Act and subparts A, B and C of this part.

(c) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment meet, to an acceptable degree, the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will approve the STIP. Approval action will take one of the following forms, as appropriate:

(1) Joint approval of the STIP;

(2) Joint approval of the STIP subject to certain corrective actions being taken;

(3) Joint approval of the STIP as the basis for approval of identified categories of projects; and/or

(4) Under special circumstances, joint approval of a partial STIP covering only a portion of the State.

(d) The joint approval period for a new STIP or amended STIP will not exceed two years. Where the State demonstrates that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, FHWA and FTA will consider and take appropriate action on requests to extend the approval beyond two years for all or part of the STIP for a limited period of time. Where the request involves projects in a metropolitan planning area(s), the affected

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MPO(s) must concur in the request and if the delay was due to the development and approval of the TIP, the affected MPO(s) must provide supporting information for the request. If non-attainment and/or maintenance areas are involved, a request for an extension cannot be granted if the conformity determination on the TIP is no longer valid under EPA's conformity regulations (40 CFR part 51).

(e) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and this part for any identified categories of projects, they will not approve the STIP.

(f) The FHWA and the FTA will notify the State of actions taken under this section.

(g) Where necessary in order to maintain or establish operations, the Federal Transit Administrator and/or the Federal Highway Administrator may approve operating assistance for specific projects or programs even though the projects or programs may not be included in an approved STIP.

§ 450.222 Project selection for implementation.

(a) Except as provided in §§ 450.220(f) and 450.216(a)(7), only projects included in the Federally approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects requiring title 23 or Federal Transit Act funds administered by the FHWA or the FTA shall be selected in accordance with procedures established pursuant to the project selection portion of the metropolitan planning regulation in subpart C of this part.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with title 23 funds and under the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials. Federal lands highway projects shall be selected in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected

by the State in cooperation with the affected local officials, and projects undertaken with Federal Transit Act funds shall be selected by the State in cooperation with the appropriate affected local officials and transit operators.

(d) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further project selection action is required for the implementing agency to proceed with these projects except that if appropriated Federal funds available are significantly less than the authorized amounts, § 450.332(c) provides for a revised list of "agreed to" projects to be developed upon the request of the State, MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used. Expedited selection procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection.

§ 450.224 Phase-in of new requirements.

(a) The State shall, by January 1, 1995, identify the official statewide transportation plan, described under § 450.214, to be used as a basis for subsequently approved STIPs. Until such a plan is identified, but no later than January 1, 1995, the State may identify existing plans and policies which can serve as the official interim plan. STIP development shall be based upon a transportation plan which serves as the official plan (including an interim plan, if appropriate, prior to January 1, 1995, provided that all factors identified in § 450.208 are considered).

(b) The State has a period of one year after February 24, 2003 to document and implement the consultation process discussed in § 450.212(h).

[58 FR 58064, Oct. 28, 1993, as amended at 68 FR 3181, Jan. 23, 2003]

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134 and section 8 of the Federal Transit Act, as amended, which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area and that the metropolitan area has a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. These plans and programs shall lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods.

§ 450.302 Applicability.

The provisions of this subpart are applicable to agencies involved in the transportation planning, program development, and project selection processes in metropolitan planning areas.

§ 450.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C 101(a) are used in this part as so defined.

§ 450.306 Metropolitan planning organization: Designations and redesignation.

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be by agreement among the Governor(s) and units of general purpose local governments representing 75 percent of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. To the extent possible, only one MPO shall be designated for each UZA or group of contiguous UZAs. More than one MPO may be designated within an UZA only if the Governor(s) determines that the size and complexity of the UZA make designation of more than one MPO appropriate.

(b) The designation shall clearly identify the policy body that is the forum for cooperative decisionmaking that will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated should be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Redesignation (designation of a new MPO(s) to replace an existing MPO) shall occur by agreement of the Governor and affected local units of government representing 75 percent of the population in the entire metropolitan area. The central city(ies) must be among the units of local government agreeing to the redesignation.

(e) Nothing in this subpart shall be deemed to prohibit the MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(f) Existing MPO designations remain valid until a new MPO is redesignated, unless revoked by the Governor and local units of government representing 75 percent of the population in the area served by the existing MPO (the central city(ies) must be among those desiring to revoke the MPO designation), or as otherwise provided under State or local procedures. If the Governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO remains in effect until a new MPO is formally designated.

(g) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75 percent of the population in the entire metropolitan planning area. The local officials in the central city(ies) must be among those agreeing to the redesignation.

(h) Redesignation of an MPO covering more than one UZA requires the approval of the Governor and local officials representing 75 percent of the population in the metropolitan planning area covered by the current MPO; the local officials in the central city(ies) in each urbanized area must

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be among those agreeing to the redesignation.

(i) The voting membership of an MPO policy body designated/re-designated subsequent to December 18, 1991, and serving a TMA, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, e.g., transit operators, sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where agencies that operate other major modes of transportation do not already have a voice on existing MPOs, the MPOs (in cooperation with the States) are encouraged to provide such agencies a voice in the decisionmaking process, including representation/membership on the policy body and/or other appropriate committees. Further, where appropriate, existing MPOs should increase the representation of local elected officials on the policy board and other committees as a means for encouraging their greater involvement in MPO processes. Adding such representation to an MPO will not, in itself, constitute a redesignation action.

(j) Where the metropolitan planning area boundaries for a previously designated MPO need to be expanded, the membership on the MPO policy body and other committees, should be reviewed to ensure that the added area has appropriate representation.

(k) Adding membership (e.g., local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. To the extent possible, it is encouraged that this be done without a formal redesignation. The Governor and MPO shall review the previous MPO designation, State and local law, MPO bylaws, etc., to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated or the existing designation is formally re-

voked in accordance with the procedures of this section.

§ 450.308 Metropolitan planning organization: Metropolitan planning area boundaries.

(a) The metropolitan planning area boundary shall, as a minimum, cover the UZA(s) and the contiguous geographic area(s) likely to become urbanized within the twenty year forecast period covered by the transportation plan described in § 450.322 of this part. The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. For geographic areas designated as nonattainment or maintenance areas (as created by the Clean Air Act Amendments of 1990 (CAAA)) for transportation related pollutants under the CAA, the boundaries of the metropolitan planning area shall include at least the boundaries of the nonattainment or maintenance areas, except as otherwise provided by agreement between the MPO and the Governor under the procedures specified in § 450.310(f) of this part. In the absence of a formal agreement between the Governor and the MPO to reduce the metropolitan planning area to an area less than the boundaries of the nonattainment or maintenance area, the entire nonattainment or maintenance area is subject to the applicable provisions of this part. Where a portion of the nonattainment or maintenance area is excluded from the metropolitan planning area boundary, the STP funds suballocated to urbanized areas greater than 200,000 in population shall not be utilized for projects outside the metropolitan planning area boundary.

(b) The metropolitan planning area for a new UZA served by an existing or new MPO shall be established in accordance with these criteria. The current planning area boundaries for previously designated UZAs shall be reviewed and modified if necessary to comply with these criteria.

(c) In addition to the criteria in paragraph (a) of this section, the planning areas currently in use for all transportation modes should be reviewed before establishing the metropolitan planning

area boundary. Where appropriate, adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(d) Approval of metropolitan planning area boundaries by the FHWA or the FTA is not required. However, metropolitan planning area boundary maps must be submitted to the FHWA and the FTA after their approval by the MPO and the Governor.

§ 450.310 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning (including corridor and sub-area studies) and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) There shall be an agreement between the MPO and operators of publicly owned transit services which specifies cooperative procedures for carrying out transportation planning (including corridor and subarea studies) and programming as required by this subpart.

(c) In nonattainment or maintenance areas, if the MPO is not designated for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) To the extent possible, there shall be one cooperative agreement containing the understandings required by paragraphs (a) through (c) of this section among the State, MPO, publicly owned operators of mass transportation services, and air quality agencies.

(e) Where the parties involved agree, the requirement for agreements specified in paragraphs (a), (b), and (c) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process

in the unified planning work program or a prospectus as defined in § 450.314(c).

(f) If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the metropolitan planning area but within the nonattainment or maintenance area. The agreement also must indicate how the total transportation related emissions for the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity in accordance with the U.S. EPA conformity regulation (40 CFR part 51). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the metropolitan planning area and the portion of the nonattainment or maintenance area outside the metropolitan planning area. Proposals to exclude a portion of the nonattainment or maintenance area from the planning area boundary shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final decision is made.

(g) Where more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for the metropolitan planning area. In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include State and local air quality agencies. The agreement shall address policy mechanisms for resolving potential conflicts that may arise between the MPOs, e.g., issues related to the exclusion of a portion of the nonattainment area from the planning area boundary.

(h) For all requirements specified in paragraphs (a) through (g) of this section, existing agreements shall be reviewed for compliance and reaffirmed

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or modified as necessary to ensure participation by all appropriate modes.

§ 450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.

(a) The MPO in cooperation with the State and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process. The MPO, the State and transit operator(s) shall cooperatively determine their mutual responsibilities in the conduct of the planning process, including corridor refinement studies, described in §§ 450.316 through 450.318. They shall cooperatively develop the unified planning work program, transportation plan, and transportation improvement program specified in §§ 450.314 through 450.318. In addition, the development of the plan and TIP shall be coordinated with other providers of transportation, e.g., sponsors of regional airports, maritime port operators, rail freight operators, etc.

(b) The MPO shall approve the metropolitan transportation plan and its periodic updates. The MPO and the Governor shall approve the metropolitan transportation improvement program and any amendments.

(c) In nonattainment or maintenance areas, the MPO shall coordinate the development of the transportation plan with the SIP development process including the development of the transportation control measures. The MPO shall develop or assist in developing the transportation control measures.

(d) In nonattainment or maintenance areas for transportation related pollutants, the MPO shall not approve any transportation plan or program which does not conform with the SIP, as determined in accordance with the U.S. EPA conformity regulation (40 CFR Part 51).

(e) If more than one MPO has authority in a metropolitan planning area (including multi-State metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area (including the twenty year

planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the State(s) to assure the preparation of integrated plans and transportation improvement programs for the entire metropolitan planning area. An individual MPO plan and program may be developed separately. However, each plan and program must be consistent with the plans and programs of other MPOs in the metropolitan planning area. For the overall metropolitan planning area, the individual MPO planning process shall reflect coordinated data collection, analysis and development. In those areas where this provision is applicable, coordination efforts shall be initiated and the process and outcomes documented in subsequent transmittals of the UPWP and various planning products (the plan, TIP, etc.) to the State, the FHWA, and the FTA.

(f) The Secretary must designate as transportation management areas all UZAs over 200,000 population as determined by the most recent decennial census. The Secretary designated TMAs by publishing a notice in the FEDERAL REGISTER. Copies of this notice may be obtained from the FHWA Metropolitan Planning Division or Office of Planning FTA. The TMAs so designated and those designated subsequently by the FHWA and the FTA (including those designated upon request of the MPO and the Governor) must comply with the special requirements applicable to such areas regarding congestion management systems, project selection, and certification. The TMA designation applies to the entire metropolitan planning area boundary. If a metropolitan planning area encompasses a TMA and other UZA(s), the designation applies to the entire metropolitan planning area regardless of the population of constituent UZAs.

(g) As required by 23 CFR part 500, the required management systems shall be developed cooperatively by the State, the MPOs and transit operators for each metropolitan planning area. In TMAs, the congestion management system will be developed as part of the

metropolitan transportation planning process.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans. The relationship of the statewide transportation plan and the metropolitan plan is specified in subpart B of this part.

(i) Where a metropolitan planning area includes Federal public lands and/or Indian tribal lands, the affected Federal agencies and Indian tribal governments shall be involved appropriately in the development of transportation plans and programs.

§ 450.314 Metropolitan transportation planning process: Unified planning work programs.

(a) In TMAs, the MPO(s) in cooperation with the State and operators of publicly owned transit shall develop unified planning work programs (UPWPs) that meet the requirements of 23 CFR part 420, subpart A, and:

(1) Discuss the planning priorities facing the metropolitan planning area and describe all metropolitan transportation and transportation-related air quality planning activities (including the corridor and subarea studies discussed in § 450.318) anticipated within the area during the next one or two year period, regardless of funding sources or agencies conducting activities, in sufficient detail to indicate who will perform the work, the schedule for completing it and the products that will be produced;

(2) Document planning activities to be performed with funds provided under title 23, U.S.C., and the Federal Transit Act.

(b) Arrangements may be made with the FHWA and the FTA to combine the UPWP requirements with the work program for other Federal sources of planning funds.

(c) The metropolitan transportation planning process may include the development of a prospectus that establishes a multiyear framework within which the UPWP is accomplished. The prospectus may be used to satisfy the requirements of § 450.310 and paragraph (a)(1) of this section.

(d) In areas not designated as TMAs, the MPO in cooperation with the State and transit operators, with the ap-

proval of the FHWA and the FTA, may prepare a simplified statement of work, in lieu of a UPWP, that describes who will perform the work and the work that will be accomplished using Federal funds. If a simplified statement of work is used, it may be submitted as part of the Statewide planning work program, in accordance with 23 CFR part 420.

§ 450.316 Metropolitan transportation planning process: Elements.

(a) Section 134(f) of title 23, U.S.C., and Federal Transit Act section 8(f) (49 U.S.C. app. 1607(f)) list 15 factors that must be considered as part of the planning process for all metropolitan areas. The following factors shall be explicitly considered, analyzed as appropriate, and reflected in the planning process products:

(1) Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently;

(2) Consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives;

(3) The need to relieve congestion and prevent congestion from occurring where it does not yet occur including:

(i) The consideration of congestion management strategies or actions which improve the mobility of people and goods in all phases of the planning process; and

(ii) In TMAs, a congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operation management strategies (e.g., various elements of IVHS) shall be developed in accordance with § 450.320;

(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans (the analysis should include projections of metropolitan planning area economic, demographic, environmental protection, growth management, and land use activities consistent with

metropolitan and local/central city development goals (community, economic, housing, etc.), and projections of potential transportation demands based on the interrelated level of activity in these areas);

(5) Programming of expenditures for transportation enhancement activities as required under 23 U.S.C. 133;

(6) The effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the source of funding (the analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing, and employment);

(7) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations (supporting technical efforts should provide an analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to, addressing interconnected transportation access and service needs of intermodal facilities);

(8) Connectivity of roads within metropolitan planning areas with roads outside of those areas;

(9) Transportation needs identified through the use of the management systems required under 23 U.S.C. 303 (strategies identified under each management system will be analyzed during the development of the transportation plan, including its financial component, for possible inclusion in the metropolitan plan and TIP);

(10) Preservation of rights-of-way for construction of future transportation projects, including future transportation corridors;

(11) Enhancement of the efficient movement of freight;

(12) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement (operating and main-

tenance costs must be considered in analyzing transportation alternatives);

(13) The overall social, economic, energy, and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on the human, natural and man-made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of the requirements of 23 U.S.C. 109(h), and section 14 of the Federal Transit Act (49 U.S.C. 1610), section 4(f) of the DOT Act (49 U.S.C. 303) and section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)));

(14) Expansion, enhancement, and increased use of transit services;

(15) Capital investments that would result in increased security in transit systems; and

(16) Recreational travel and tourism.

(b) In addition, the metropolitan transportation planning process shall:

(1) Include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and meets the requirements and criteria specified as follows:

(i) Require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised;

(ii) Provide timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs and projects (including but not limited to central city and other local jurisdiction concerns);

(iii) Provide reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the Federal-aid

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highway and transit programs are being considered;

(iv) Require adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs (in nonattainment areas, classified as serious and above, the comment period shall be at least 30 days for the plan, TIP and major amendment(s));

(v) Demonstrate explicit consideration and response to public input received during the planning and program development processes;

(vi) Seek out and consider the needs of those traditionally underserved by existing transportation systems, including but not limited to low-income and minority households;

(vii) When significant written and oral comments are received on the draft transportation plan or TIP (including the financial plan) as a result of the public involvement process or the interagency consultation process required under the U.S. EPA's conformity regulations, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP;

(viii) If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available;

(ix) Public involvement processes shall be periodically reviewed by the MPO in terms of their effectiveness in assuring that the process provides full and open access to all;

(x) These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decisionmaking processes;

(xi) Metropolitan public involvement processes shall be coordinated with statewide public involvement processes wherever possible to enhance public consideration of the issues, plans, and

programs and reduce redundancies and costs;

(2) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation;

(3) Identify actions necessary to comply with the Americans With Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals With Disabilities" (49 CFR parts 27, 37, and 38);

(4) Provide for the involvement of traffic, ridesharing, parking, transportation safety and enforcement agencies; commuter rail operators; airport and port authorities; toll authorities; appropriate private transportation providers, and where appropriate city officials; and

(5) Provide for the involvement of local, State, and Federal environment resource and permit agencies as appropriate.

(c) In attainment areas not designated as TMAs simplified procedures for the development of plans and programs, if considered appropriate, shall be proposed by the MPO in cooperation with the State and transit operator, and submitted by the State for approval by the FHWA and the FTA. In developing proposed simplified planning procedures, consideration shall be given to the transportation problems in the area and their complexity, the growth rate of the area (e.g., fast, moderate or slow), the appropriateness of the factors specified for consideration in this subpart including air quality, and the desirability of continuing any planning process that has already been established. Areas experiencing fast growth should give consideration to a planning process that addresses all of the general requirements specified in this subpart. As a minimum, all areas

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employing a simplified planning process will need to develop a transportation plan to be approved by the MPO and a TIP to be approved by the MPO and the Governor.

(d) The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and update of the transportation plan. The reports shall be reasonably available to interested parties, consistent with § 450.316(b)(1).

[58 FR 58064, Oct. 28, 1993, as amended at 61 FR 67175, Dec. 19, 1996]

§ 450.318 Metropolitan transportation planning process: Major metropolitan transportation investments.

(a) Where the need for a major metropolitan transportation investment is identified, and Federal funds are potentially involved, major investment (corridor or subarea) studies shall be undertaken to develop or refine the plan and lead to decisions by the MPO, in cooperation with participating agencies, on the design concept and scope of the investment. Where the studies have not been completed prior to plan approval, the provisions of § 450.322(b)(8) apply.

(b) When any of the implementing agencies or the MPO wish to initiate a major investment study, a meeting will be convened to determine the extent of the analyses and agency roles in a cooperative process which involves the MPO, the State department of transportation, public transit operators, environmental, resource and permit agencies, local officials, the FHWA and the FTA and where appropriate community development agencies, major governmental housing bodies, and such other related agencies as may be impacted by the proposed scope of analysis. A reasonable opportunity, consistent with § 450.316(b)(1), shall be provided for citizens and interested parties including affected public agencies, representatives of transportation agency employees, and private providers of transportation to participate in the cooperative process. This cooperative process shall establish the range of alternatives to be studied, such as alternative modes and technologies (including intelligent vehicle and highway systems), general

alignment, number of lanes, the degree of demand management, and operating characteristics.

(c) To the extent appropriate as determined under paragraph (b) of this section, major investment studies shall evaluate the effectiveness and cost-effectiveness of alternative investments or strategies in attaining local, State and national goals and objectives. The analysis shall consider the direct and indirect costs of reasonable alternatives and such factors as mobility improvements; social, economic, and environmental effects; safety; operating efficiencies; land use and economic development; financing; and energy consumption.

(d) These major investment studies will serve as the “alternatives analyses” required by section 3(i)(1)(A) of the Federal Transit Act (49 U.S.C. app. 1602(i)) for certain projects for which discretionary section 3 “New Start” funding is being sought. The studies will also be used as the primary source of information for the other section 3(i)(1)(A) Secretarial findings on cost-effectiveness, local financial commitment and capacity, mobility improvements, environmental benefits, economic development, operating efficiency, etc.

(e) These major investment studies also will, when appropriate, serve as the analysis of demand reduction and operational management strategies pursuant to 23 CFR 500.109(b).

(f) A major investment study will include environmental studies which will be used for environmental documents as described in paragraphs (f)(1) and (2) of this section:

(1) As a minimum the participating agencies will use the major investment study as input to an environmental impact statement or environmental assessment prepared subsequent to the completion of the study. In such a case, the major investment study reports shall document the consideration given to alternatives and their impacts; or

(2) The participating agencies may elect to develop a draft environmental impact statement or environmental assessment as part of the major investment study. At any time after the completion of the study and the inclusion of the major transportation investment

in the plan and the TIP the participating agencies may request the development of final environmental decision documents required under NEPA for such major transportation investments, culminating in the execution of a Record of Decision or Finding of No Significant Impact by the FHWA and/or the FTA.

(g) Major investment studies may lead to decisions that modify the project design concept and scope assumed in the plan development process. In this case, the study shall lead to the specification of a project's design concept and scope in sufficient detail to meet the requirements of the U.S. EPA conformity regulations (40 CFR part 51).

(h) Major investment studies are eligible for funds authorized under sections 8, 9 and 26 of the Federal Transit Act (49 U.S.C. app. 1607, 16072, and 1622) and planning and capital funds apportioned under title 23, U.S.C., and shall be included in the UPWP. If CMAQ, STP, NHS, or other capital funds administered by the FHWA are utilized for this purpose, the study must also be included in the TIP.

(i) Where the environmental process has been completed and a Record of Decision or Finding of No Significant Impact has been signed, § 450.318 does not apply. Where the environmental process has been initiated but not completed, the FHWA and the FTA shall be consulted on appropriate modifications to meet the requirements of this section.

[58 FR 58064, Oct. 28, 1993, as amended at 61 FR 67175, Dec. 19, 1996]

§ 450.320 Metropolitan transportation planning process: Relation to management systems.

(a) Within all metropolitan areas, congestion, public transportation, and intermodal management systems, to the extent appropriate, shall be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. 5303-5305.

(b) In TMAs designated as nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity

for single occupant vehicles (a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks) unless the project results from a congestion management system (CMS) meeting the requirements of 23 CFR part 500. Such projects shall incorporate all reasonably available strategies to manage the SOV facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies, as appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall be committed to by the State and the MPO for implementation in a timely manner, but no later than the completion date for the SOV project. Projects that had advanced beyond the NEPA stage prior to April 6, 1992, and which are actively advancing to implementation, e.g., right-of-way acquisition has been approved, shall be deemed programmed and not subject to this provision.

(c) In TMAs, the planning process must include the development of a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies and meets the requirements of 23 CFR part 500.

(d) The effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the metropolitan area's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan planning process.

[58 FR 58064, Oct. 28, 1993, as amended at 61 FR 67175, Dec. 19, 1996]

§ 450.322 Metropolitan transportation planning process: Transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty-year planning horizon. The plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated intermodal

transportation system that facilitates the efficient movement of people and goods. The transportation plan shall be reviewed and updated at least triennially in nonattainment and maintenance areas and at least every five years in attainment areas to conform its validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period, except that the transportation plan for the New York Metropolitan Transportation Council that was reviewed and updated on September 30, 1999, shall be reviewed and updated no later than September 30, 2005. The transportation plan must be approved by the MPO.

(b) In addition, the plan shall:

(1) Identify the projected transportation demand of persons and goods in the metropolitan planning area over the period of the plan;

(2) Identify adopted congestion management strategies including, as appropriate, traffic operations, ridesharing, pedestrian and bicycle facilities, alternative work schedules, freight movement options, high occupancy vehicle treatments, telecommuting, and public transportation improvements (including regulatory, pricing, management, and operational options), that demonstrate a systematic approach in addressing current and future transportation demand;

(3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(4) Reflect the consideration given to the results of the management systems, including in TMAs that are nonattainment areas for carbon monoxide and ozone, identification of SOV projects that result from a congestion management system that meets the requirements of 23 CFR part 500;

(5) Assess capital investment and other measures necessary to preserve the existing transportation system (including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities) and make the most efficient use of existing transportation facilities to relieve vehicular

congestion and enhance the mobility of people and goods;

(6) Include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in nonattainment and maintenance areas to permit conformity determinations under the U.S. EPA conformity regulations at 40 CFR part 51. In all areas, all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) Reflect a multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan, including all major transportation investments in accordance with § 450.318;

(8) For major transportation investments for which analyses are not complete, indicate that the design concept and scope (mode and alignment) have not been fully determined and will require further analysis. The plan shall identify such study corridors and subareas and may stipulate either a set of assumptions (assumed alternatives) concerning the proposed improvements or a no-build condition pending the completion of a corridor or subarea level analysis under § 450.318. In nonattainment and maintenance areas, the set of assumed alternatives shall be in sufficient detail to permit plan conformity determinations under the U.S. EPA conformity regulations (40 CFR part 51);

(9) Reflect, to the extent that they exist, consideration of: the area's comprehensive long-range land use plan and metropolitan development objectives; national, State, and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; local, State, and national goals and objectives such as linking low income households with employment opportunities; and the area's overall social, economic, environmental, and energy conservation goals and objectives;

(10) Indicate, as appropriate, proposed transportation enhancement activities as defined in 23 U.S.C. 101(a); and

(11) Include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. The estimated revenue by existing revenue source (local, State, and Federal and private) available for transportation projects shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, and maintenance costs. All cost and revenue projections shall be based on the data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

(c) There must be adequate opportunity for public official (including elected officials) and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of § 450.316(b)(1). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, and private providers of transportation) to be involved in the early stages of the plan development/update process. The procedures shall include publication of the proposed plan or other methods to make it readily available for public review and comment and, in nonattainment TMAs, an opportunity for at least one formal public meeting annually to review planning assumptions and the plan development process with interested parties and the general public. The procedures also shall include publication of

the approved plan or other methods to make it readily available for information purposes.

(d) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new/revised plan in accordance with the Clean Air Act and the EPA conformity regulations (40 CFR part 51).

(e) Although transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to each agency.

[58 FR 58064, Oct. 28, 1993, as amended at 61 FR 67175, Dec. 19, 1996; 67 FR 62373, Oct. 7, 2002]

§ 450.324 Transportation improvement program: General.

(a) The metropolitan transportation planning process shall include development of a transportation improvement program (TIP) for the metropolitan planning area by the MPO in cooperation with the State and public transit operators.

(b) The TIP must be updated at least every two years and approved by the MPO and the Governor. The frequency and cycle for updating the TIP must be compatible with the STIP development and approval process. Since the TIP becomes part of the STIP, the TIP lapses when the FHWA and FTA approval for the STIP lapses. In the case of extenuating circumstances, FHWA and FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the STIP in accordance with § 450.220(d). Although metropolitan TIPs, unlike statewide TIPs, do not need to be approved by the FHWA or the FTA, copies of any new or amended TIPs must be provided to each agency. Additionally, in nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new or amended TIPs (unless the amendment consists entirely of exempt projects) in accordance with the Clean Air Act requirements and the EPA conformity regulations (40 CFR part 51).

(c) There must be reasonable opportunity for public comment in accordance with the requirements of § 450.316(b)(1) and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process. This public meeting may be combined with the public meeting required under § 450.322(c). The proposed TIP shall be published or otherwise made readily available for review and comment. Similarly, the approved TIP shall be published or otherwise made readily available for information purposes.

(d) The TIP shall cover a period of not less than 3 years, but may cover a longer period if it identifies priorities and financial information for the additional years. The TIP must include a priority list of projects to be carried out in the first three years. As a minimum, the priority list shall group the projects that are to be undertaken in each of the years, i.e., year 1, year 2, year 3. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the U.S. EPA conformity regulation (40 CFR part 51) and shall provide for their timely implementation.

(e) The TIP shall be financially constrained by year and include a financial plan that demonstrates which projects can be implemented using current revenue sources and which projects are to be implemented using proposed revenue sources (while the existing transportation system is being adequately operated and maintained). The financial plan shall be developed by the MPO in cooperation with the State and the transit operator. The State and the transit operator must provide MPOs with estimates of available Federal and State funds which the MPOs shall utilize in developing financial plans. It is expected that the State would develop this information as part of the STIP development process and that the estimates would be refined through this process. Only projects for which construction and operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial

analysis, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., and the Federal Transit Act, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included for the first two years of the current TIP shall be limited to those for which funds are available or committed.

(f) The TIP shall include:

(1) All transportation projects, or identified phases of a project, (including pedestrian walkways, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., (including Federal Lands Highway projects) and the Federal Transit Act, excluding safety projects funded under 23 U.S.C. 402, emergency relief projects (except those involving substantial functional, locational and capacity changes), and planning and research activities (except those funded with NHS, STP, and/or MA funds). Planning and research activities funded with NHS, STP and/or MA funds, other than those used for major investment studies, may be excluded from the TIP by agreement of the State and the MPO;

(2) Only projects that are consistent with the transportation plan;

(3) All regionally significant transportation projects for which an FHWA or the FTA approval is required whether or not the projects are to be funded with title 23, U.S.C., or Federal Transit Act funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, demonstration projects not funded under title 23, U.S.C., or the Federal Transit Act, etc.;

(4) For informational purposes and air quality analysis in nonattainment and maintenance areas, all regionally significant transportation projects proposed to be funded with Federal funds, including intermodal facilities, not covered in paragraphs (f)(1) or (f)(3) of this section; and

(5) For informational purposes and air quality analysis in nonattainment and maintenance areas, all regionally significant projects to be funded with non-Federal funds.

(g) With respect to each project under paragraph (f) of this section the TIP shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(2) Estimated total cost;

(3) The amount of Federal funds proposed to be obligated during each program year;

(4) Proposed source of Federal and non-Federal funds;

(5) Identification of the recipient/sub-recipient and State and local agencies responsible for carrying out the project;

(6) In nonattainment and maintenance areas, identification of those projects which are identified as TCMs in the applicable SIP; and

(7) In areas with Americans with Disabilities Act required Paratransit and key station plans, identification of those projects which will implement the plans.

(h) In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with the U.S. EPA conformity requirements (40 CFR part 51).

(i) Projects proposed for FHWA and/or FTA funding that are not considered by the State and MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, and work type using applicable classifications under 23 CFR 771.117 (c) and (d). In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements (40 CFR part 51).

(j) Projects utilizing Federal funds that have been allocated to the area pursuant to 23 U.S.C. 133(d)(3)(E) shall be identified.

(k) The total Federal share of projects included in the TIP proposed for funding under section 9 of the Federal Transit Act (49 U.S.C. app. 1607a) may not exceed section 9 authorized funding levels available to the area for the program year.

(l) Procedures or agreements that distribute suballocated Surface Trans-

portation Program or section 9 funds to individual jurisdictions or modes within the metropolitan area by predetermined percentages or formulas are inconsistent with the legislative provisions that require MPOs in cooperation with the State and transit operators to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the planning process.

(m) For the purpose of including Federal Transit Act section 3 funded projects in a TIP the following approach shall be followed:

(1) The total Federal share of projects included in the first year of the TIP shall not exceed levels of funding committed to the area; and

(2) The total Federal share of projects included in the second, third and/or subsequent years of the TIP may not exceed levels of funding committed, or reasonably expected to be available, to the area.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP shall:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including intermodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects;

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, including the reasons for any significant delays in the planned implementation and strategies for ensuring their advancement at the earliest possible time; and

(4) In nonattainment and maintenance areas, include a list of all projects found to conform in a previous TIP and are now part of the base case for the purpose of air quality conformity analyses. Projects shall be included in this list until construction or acquisition has been fully authorized, except when a three-year period has

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elapsed subsequent to the NEPA approval without any major action taking place to advance the project.

(o) In order to maintain or establish operations, in the absence of an approved metropolitan TIP, the FTA and/or the FHWA Administrators, as appropriate, may approve operating assistance.

§ 450.326 Transportation improvement program: Modification.

The TIP may be modified at any time consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation related pollutants if the TIP is amended by adding or deleting projects which contribute to and/or reduce transportation related emissions or replaced with a new TIP, new conformity determinations by the MPO and the FHWA and the FTA will be necessary. Public involvement procedures consistent with § 450.316(b)(1) shall be utilized in amending the TIP, except that these procedures are not required for TIP amendments that only involve projects of the type covered in § 450.324(i).

§ 450.328 Transportation improvement program: Relationship to statewide TIP.

(a) After approval by the MPO and the Governor, the TIP shall be included without modification, directly or by reference, in the STIP program required under 23 U.S.C. 135 and consistent with § 450.220, except that in nonattainment and maintenance areas, a conformity finding by the FHWA and the FTA must be made before it is included in the STIP. After approval by the MPO and the Governor, a copy shall be provided to the FHWA and the FTA.

(b) The State shall notify the appropriate MPO and Federal Lands Highways Program agencies, e.g., Bureau of Indian Affairs and/or National Park Service, when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

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§ 450.330 Transportation improvement program: Action required by FHWA/FTA.

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is based on a continuing, comprehensive transportation process carried on cooperatively by the States, MPOs and transit operators in accordance with the provisions of 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607). This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.334 and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the FHWA and the FTA must also jointly find that the metropolitan TIP conforms with the adopted SIP and that priority has been given to the timely implementation of transportation control measures contained in the SIP in accordance with 40 CFR part 51. As part of their review in nonattainment areas requiring TCMs, the FHWA and the FTA will specifically consider any comments relating to the financial plans for the plan and TIP contained in the summary of significant comments required under § 450.316(b). If the TIP is found to be in nonconformance with the SIP, the TIP shall be returned to the Governor and the MPO with the joint finding. If the TIP is found to conform with the SIP, the Governor/MPO shall be notified of the joint finding. After the FHWA and the FTA find the TIP to be in conformance, the TIP shall be incorporated, without modification, into the STIP, directly or by reference.

§ 450.332 Project selection for implementation.

(a) In areas not designated as TMAs and when § 450.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or Federal Transit Act funds shall be selected by the State and/or the transit operator, in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highways

program projects shall be selected in accordance with 23 U.S.C. 204.

(b) In areas designated as TMAs where §450.332(c) does not apply, all title 23 and Federal Transit Act funded projects, except projects on the NHS and projects funded under the bridge, interstate maintenance, and Federal Lands Highways programs, shall be selected by the MPO in consultation with the State and transit operator from the approved metropolitan TIP and in accordance with the priorities in the approved metropolitan TIP. Projects on the NHS, and projects funded under the bridge and Interstate maintenance programs shall be selected by the State in cooperation with the MPO, from the approved metropolitan TIP. Federal Lands Highway Program projects shall be selected in accordance with 23 U.S.C. 204.

(c) Once a TIP that meets the requirements of §450.324 has been developed and approved, the first year of the TIP shall constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts. In this case, a revised "agreed to" list of projects shall be jointly developed by the MPO, State, and the transit operator if requested by the MPO, State, or the transit operator. If the State or transit operator wishes to proceed with a project in the second or third year of the TIP, the specific project selection procedures stated in paragraphs (a) and (b) of this section must be used unless the MPO, State, and transit operator jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(d) Projects not included in the Federally approved STIP will not be eligible for funding with title 23, U.S.C., or Federal Transit Act funds.

(e) In nonattainment and maintenance areas, priority will be given to the timely implementation of TCMS contained in the applicable SIP in accordance with the U.S. EPA conformity regulations at 40 CFR part 51.

§ 450.334 Metropolitan transportation planning process: Certification.

(a) The State and the MPO shall annually certify to the FHWA and the FTA that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of:

(1) Section 134 of title 23, U.S.C., section 8 of the Federal Transit Act (49 U.S.C. app. 1607) and this part;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(4) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded planning projects (sec. 105(f), Pub. L. 97-424, 96 Stat. 2100; 49 CFR part 23); and

(5) The provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38).

(b) The FHWA and the FTA jointly will review and evaluate the transportation planning process for each TMA (as appropriate but no less than once every three years) to determine if the process meets the requirements of this subpart.

(c) In TMAs that are nonattainment or maintenance areas for transportation related pollutants, the FHWA and the FTA will also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with procedures contained in 40 CFR part 51.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, if the FHWA and the FTA jointly determine that the transportation planning process in a TMA meets or substantially meets the requirements of this part, they will take one of the following actions, as appropriate:

(1) Jointly certify the transportation planning process;

(2) Jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(3) Jointly certify the planning process as the basis for approval of only those categories of programs or projects that the Administrators may jointly determine and subject to certain specified corrective actions being taken.

(e) A certification action under this section will remain in effect for three years unless a new certification determination is made sooner.

(f) If, upon the review and evaluation conducted under paragraph (b) or (c) of this section, the FHWA and the FTA jointly determine that the transportation planning process in a TMA does not substantially meet the requirements, they may take the following action as appropriate, if after September 30, 1993, the transportation planning process is not certified:

(1) Withhold in whole or in part the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under section 9 of the Federal Transit Act, and section 3 funds under the Federal Transit Act (49 U.S.C. 1607(a)); or

(2) Withhold approval of all or certain categories of projects.

(g) If a transportation planning process remains uncertified for more than two consecutive years after September 30, 1994, 20 percent of the apportionment attributed to the metropolitan planning area under 23 U.S.C. 133(d)(3) and capital funds apportioned under the formula program of section 9 of the Federal Transit Act (49 U.S.C. app. 1607a) will be withheld.

(h) The State and the MPO shall be notified of the actions taken under paragraphs (f) and (g) of this section. Upon full, joint certification by the FHWA and the FTA, all funds withheld will be restored to the metropolitan area, unless they have lapsed.

§ 450.336 Phase-in of new requirements.

(a) Except for reflecting the consideration given the results of the manage-

ment systems, the planning process and plans in nonattainment areas requiring TCMs shall comply, to the extent possible, with the requirements of this subpart by October 1, 1994. All other metropolitan areas shall comply to the extent possible with the requirements of this subpart by December 18, 1994. Where time does not permit a quantitative analysis of certain factors, a qualitative analysis of those factors will be acceptable. If a forecast period of less than twenty years is acceptable for SIP development and air quality conformity purposes, that same time period will be acceptable for transportation planning. The initial plan update shall be financially feasible, taking into account capital costs and the funds reasonably available for capital improvements, as well as addressing to the extent possible the costs of and revenues available for operating and maintenance of the transportation system. Where TCMs are required, the plan update process shall be coordinated with the process for developing TCMs. The planning process for subsequent updates of the plan and the updated plans shall comply with the requirements of this subpart. Plan updates performed in all areas must consider the results of the management systems (specified in 23 CFR part 500) as they become available. The plan shall reflect this consideration.

(b)(1) During the period prior to the full implementation of the CMS in a TMA, the MPO in cooperation with the State, the public transit operators, and other operators of major modes of transportation shall identify the location of the most serious congestion problems in the metropolitan area and proceed with the development of actions to address these problems.

(2) Prior to the full implementation of a CMS, an adequate interim CMS in a TMA designated as nonattainment for carbon monoxide and/or ozone shall, as a minimum, include a process that results in an appropriate analysis of all reasonably available (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in SOV capacity is proposed. This analysis must demonstrate how

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far such strategies can go in eliminating the need for additional SOV capacity in the corridor. If the analysis demonstrates that additional SOV capacity is warranted, then all reasonable strategies to manage the facility effectively (or to facilitate its management in the future) shall be incorporated into the proposed facility. Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself must be committed to by the State and the MPO for implementation in a timely manner but no later than completion of construction of the SOV facility. If the area does not already have a traffic management and carpool/vanpool program, the establishment of such programs must be a part of the commitment.

(3) In TMAs that are nonattainment for carbon monoxide and/or ozone, the MPO, a State and/or transit operator may not advance a project utilizing Federal funds that provides a significant capacity increase for SOVs (adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks, or a new highway on a new location) beyond the NEPA process unless an interim CMS is in place that meets the criteria in paragraphs (b)(1) and (b)(2) of this section and the project results from this interim CMS.

(4) Projects that are part of or consistent with a State mandated congestion management system/plan are not subject to the requirements in paragraphs (b)(1) and (b)(2) of this section.

(5) Projects advanced beyond the NEPA process as of April 6, 1992 and which are being implemented, e.g., right-of-way acquisition has been approved, will be deemed to be programmed and not subject to this requirement.

[58 FR 58064, Oct. 28, 1993, as amended at 61 FR 67175, Dec. 19, 1996]

PART 460—PUBLIC ROAD MILEAGE FOR APPORTIONMENT OF HIGHWAY SAFETY FUNDS

Sec.

460.1 Purpose.

460.2 Definitions.

460.3 Procedures.

AUTHORITY: 23 U.S.C. 315, 402(c); 49 CFR 1.48.

SOURCE: 40 FR 44322, Sept. 26, 1975, unless otherwise noted.

§ 460.1 Purpose.

The purpose of this part is to prescribe the policies and procedures followed in identifying and reporting public road mileage for utilization in the statutory formula for the apportionment of highway safety funds under 23 U.S.C. 402(c).

§ 460.2 Definitions.

As used in this part:

(a) *Public road* means any road under the jurisdiction of and maintained by a public authority and open to public travel.

(b) *Public authority* means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality thereof, with authority to finance, build, operate or maintain toll or toll-free highway facilities.

(c) *Open to public travel* means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

(d) *Maintenance* means the preservation of the entire highway, including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

(e) *State* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, *State* and *Governor of a State* include the Secretary of the Interior.

§ 460.3 Procedures.

(a) *General requirements.* 23 U.S.C. 402(c) provides that funds authorized to