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Part III

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Parts 450 and 1410

49 CFR Parts 613 and 621

Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE62; FTA RIN 2132–AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA and the FTA are jointly issuing this document which proposes revisions to the regulations governing the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs. These revisions are a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) enacted on June 9, 1998, and generally would revise existing regulatory language to make it consistent with current statutory requirements. In addition, the proposed regulatory language addresses the implementation of Presidential Executive Order 12898 regarding Environmental Justice. These changes are being proposed in concert with revisions to regulations regarding environmental impact and related procedures which are published separately in today's **Federal Register**. The two rules are linked in terms of their working relationship and the FHWA and the FTA are soliciting comments on each rule individually, as well as their intended functional and operational interrelationships.

DATES: Comments must be received on or before August 23, 2000. For dates of public information meetings see ''Supplementary Information.''

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see ''Supplementary Information.''

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon M. Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL–12) (metropolitan planning), (202) 366–1944, Mr. Paul Verchinski, Statewide Planning Division (TPL–11)(statewide planning), (202) 366–6385, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Public Information Meetings

We will hold a series of seven public briefings within the comment period for the NPRM. The purpose of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the environmental (National Environmental Policy Act of 1969 (NEPA)) process, and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Further information and any changes in addresses, dates and other logistical information will be made available after the publication of this NPRM through the FHWA and the FTA websites, and through other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information, but without access to these sources, may contact the individuals listed in the above caption **FOR FURTHER INFORMATION CONTACT**.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30 , 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1–4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at *kpm@unity.ncsu.edu.* The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852, implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is

generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Background

Sections 1203, 1204, and 1308 of the TEA–21, Public Law 105–178, 112 Stat. 107, amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. Similar changes were made by sections 3004, 3005, and 3006 of the TEA–21 to 49 U.S.C. 5303–5306 which address the metropolitan planning process in the context of the FTA's responsibilities. We are proposing revisions to our current metropolitan and statewide planning regulations and are inviting comments on the proposed revisions.

General Information Concerning Development of Regulation

Approach to Structure of Proposed Regulation

Revisions to the current regulation at 23 CFR part 450 are being proposed to reflect the impacts of the TEA–21. We have adopted an approach to the proposed revisions that will rely heavily on guidance and good practice. The proposed regulatory language attempts to respond to legislative mandates and changes with minimal amplification where feasible. In some cases, other factors, *e.g.,* court cases, presidential directives, etc., have provided a stimulus for change and amplification. In these instances, the agencies have tried to keep regulatory language to a minimum except where clarification would assist appropriate agencies and groups in complying.

In a separate document in today's **Federal Register**, we propose to remove 23 CFR part 771 and add parts 1420 and 1430 in its stead. This regulation implements the FTA and the FHWA processes for complying with the Council on Environmental Quality's (CEQ) regulations for implementing the NEPA, Public Law 91–190, 83 Stat. 852. Jointly administered by the FTA and the FHWA, part 771 was last revised in 1987. The passage of the TEA–21 and its predecessor, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, have contributed legislative impetus to a revision. To facilitate compliance with section 1308 of the TEA–21 dealing with major investment studies and section 1309 addressing environmental streamlining and twelve years of court rulings and experience, we propose to revise the regulations regarding environmental impact and related procedures in conjunction with those for metropolitan and statewide transportation planning. In general, the intent is to more effectively link the two regulations to facilitate integration of decisions, reduce paperwork and analytical activity where feasible, and to refine procedures and processes to achieve greater efficiency of decision making. In addition, we believe that an integrated approach to planning and project development (NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

In preparing this proposed rule, we have attempted to maintain or reduce the level of data collection and analyses that is currently required. We solicit comment on the extent to which this strategy has been achieved. Comments suggesting that the strategy has not been successful should identify specific requirements and/or provisions that increase burdens and provide specific reasons for this increase. The degree or extent of the increase should be identified also. Suggestions to lessen burdens are welcome.

In the proposed rule, we revised the section headings to utilize more commonplace language and for clarity. The substance of the sections is modified in some cases as described below. The organization of each section and overall flow of organization remains predominantly unchanged, except as indicated in the section-by-section discussion.

In addition, we are proposing a new numbering scheme. Current part 450 would be redesignated as part 1410.

Input to Development of Proposed Regulation

As noted above, the TEA–21 was signed into law on June 9, 1998. Subsequently, the DOT initiated a series of national meetings to solicit input regarding possible approaches to implementing the new legislation. The results of the principal public sessions in this outreach effort are summarized in ''Listening to America: TEA–21 Outreach Summary, 1998.'' This document was published by the Office of the Secretary, U.S. Department of Transportation. It is currently available online through the following website: *www.fhwa.dot.gov/tea21/listamer.htm.* Additionally, on February 10, 1999, we issued a discussion paper (Federal Highway Administration and Federal Transit Administration, TEA–21 Planning and Environmental Provisions: Options for Discussion) to further solicit public comments regarding previously provided suggestions. This discussion paper was designed to reflect comments from stakeholder groups and encourage all interested parties to provide additional detailed comments on approaches to implementing the statutory provisions for the planning and environmental sections of the law. The Options Paper is available online at *www.fhwa.dot.gov/environment/tea21imp.htm.*

Overall Strategy for Regulatory Development

Our strategy for regulatory development has three principal elements: (1) Outreach and listening to stakeholders, (2) developing improvements that will allow the FHWA, the FTA, the States and metropolitan areas to demonstrate measurable progress toward achieving congressional objectives, and (3) looking internally, with our Federal partner agencies, at how we collectively can improve coordination and performance.

As indicated above, the FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the DOT, developed and implemented an extensive public outreach process on all elements of the TEA–21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The DOT heard from over 3,000 people, including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape our implementation strategy, guidance and regulations. Those comments will be placed in this docket as informational background.

With respect to the planning and environmental provisions of the TEA–21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing an Options Paper for discussion on the Planning and Environmental Streamlining Provisions of the TEA–21. The contents of the Options Paper

reflected input received up to that time and built upon the existing statewide and metropolitan planning regulations and our implementing regulation for the NEPA. We released the Options Paper on February 10, 1999, and received comments through April 30, 1999.

More than 150 different sets of comments were received from State Departments of Transportation (State DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this notice of proposed rulemaking.

Another element of outreach included meetings between the FHWA and the FTA and key stakeholder groups, other Federal agencies, and the regional and field staff within the FHWA and the FTA. These sessions also helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation on statewide and metropolitan planning under the TEA–21.

The Options Paper comments are contained in the docket and are summarized below. This general summary is structured around the issues as presented in the Options Paper and seeks to provide an overall perspective on the range of opinions submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

These proposed rules were developed by an interagency task force of planners and environmental specialists of the FHWA and the FTA, with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The task force reviewed all input received from the outreach process and through other sources which communicate regularly with the DOT. In addition, comments were solicited from the field staff of the FHWA and the FTA.

Summary of Comments Received on Options Paper

The following discussion summarizes the comments received on the Options Paper and the response we are generally taking in structuring this proposed rule. This summary focuses only on the comments directly related to planning. The comments regarding environmental provisions, generally, are treated in the preamble to the proposed revision to 23 CFR 771. Cross-cutting issues as discussed in the Options Paper appear in both preambles, as appropriate. Since many commenters included both planning and environmental topics in their correspondence, an exact count of planning versus environment issues in the 150 comments received is not easy or useful. The summary is not intended to be complete or comprehensive. Rather, it is provided to give the public a general sense of the issues addressed in the comments received. The views of individual commenters can be obtained by consulting the docket as indicated above.

Planning Factors

We were offered a number of options on how to ensure that the seven new planning factors added by the TEA–21 are addressed in the metropolitan and statewide planning processes. One option is to include the TEA–21 statutory language in the planning regulation and provide maximum flexibility to States and MPOs to tailor approaches to local conditions. In addition, it was suggested that we amplify the basic statutory language in this regulation by providing information to States and MPOs, including best practices on approaches to considering the factors, and technical assistance on planning practices which integrate consideration of the seven factors. A third possibility was to develop specific criteria for the consideration of each of the seven factors, include the criteria in this regulation, and require that State DOTs and MPOs demonstrate compliance through the planning certification process.

The vast majority of comments received on the planning factors, including those from the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the Association of Metropolitan Planning Organizations (AMPO), and the American Association of State Highway and Transportation Officials (AASHTO), supported a twofold approach: (1) To include the TEA–21 statutory language in the planning regulation without further regulatory requirements, and (2) to provide technical assistance and information on current practices to States and MPOs to aid them in consideration of the planning factors. An additional point raised, by State DOTs and MPOs in particular, was that guidance, if issued by the FHWA and the FTA, should not be construed as constituting new, binding requirements on State DOTs and MPOs.

Systems Operation and Management and Integration of Intelligent Transportation Systems Into the Planning Process

The TEA–21 directs that operation and management of the transportation system requires greater attention during planning. Capital investment, especially for new capacity but also for system preservation, has dominated traditional transportation planning analyses and decisions. Continuing fiscal constraint, growing sensitivity to environmental impacts of infrastructure and the need for prudent management of infrastructure all lead to a heightened consideration of systems management and operational strategies as part of systems planning. The emergence of various Intelligent Transportation System (ITS) technologies as useful tools in the operation and management of the transportation system has also highlighted the need to focus increased attention in this area. An additional factor in treating ITS as part of system operation and management are the requirements of section 5206(e) of the TEA–21 regarding the consistency of federally funded ITS projects (funded with highway trust fund dollars) with the National ITS Architecture.

Many individual State DOTs, MPOs, and their national associations (AMPO and AASHTO) expressed the view that the planning factor requiring consideration of strategies to promote efficient system management and operation is sufficient to direct States and MPOs to consider operations and management issues as an integral part of their planning efforts. They indicated that the seven factors are all important and that to highlight consideration of any one factor above all others is inappropriate. Further, they felt that treating operations and management issues with any additional emphasis would be duplicative and is not necessary.

Only one commenter, the Maricopa Association of Governments, explicitly addressed the ITS matter. This agency suggested that we implement a requirement for federally funded ITS projects to be in accord with a regional ITS plan that is developed through a cooperative process.

Cooperative Development of Revenue Forecasts

The TEA–21 retained the basic requirement for financially constrained metropolitan plans and statewide and metropolitan transportation improvement programs (STIPs/TIPs).

The TEA–21 clarifies the requirement for cooperative development by States, MPOs, and transit agencies of estimated future levels of funding from local, State, or Federal sources that may reasonably be expected to be available to metropolitan areas.

In general, many State DOTs and the AASHTO seek the greatest flexibility while MPOs and local governments seek provisions which would ensure that they get a ''fair share'' of Federal funding. The NACE, the AMPO, the National Association of Counties (NACO), and the Surface Transportation Policy Project (STPP) observe that a formal process should be required based upon consensus of the State, MPO, and transit agencies (where applicable) and that the process should be documented and implemented with an adequate phase-in period provided. The national associations and many of their constituent members commented that the process which has evolved over the past several years is inadequate for MPO and local agency needs, and that the Congress intended that this be rectified through the TEA–21 clarifying language. Both the NACE and the AMPO support the development of formal procedures, including decision rules for allocating funds and the development of internal and external dispute resolution and appeals processes to ensure that revenue forecasting is a truly collaborative process. The NACE also suggests that the FHWA and the FTA serve as ''honest brokers'' between State transportation agencies and MPOs when there is disagreement on revenue forecasts and allocation.

Illustrative Projects

Organizations and agencies, including the Indian Nation Council of Governments, the Public Policy Institute of California, the AMPO, and the EPA raised concerns about the need for coordination between States and MPOs in cases where illustrative projects are proposed to be added to metropolitan area plans or TIPs. Specifically, it was suggested that in metropolitan areas, MPOs should have explicit approval authority for the inclusion of such projects in transportation plans and TIPs and for the implementation of illustrative projects.

On the whole, respondents supported a position that illustrative projects are important to them, but that such projects should not be included in the transportation plan or TIP conformity analysis until formally amended into the Plan/TIP. In addition, there was considerable support for an approach which requires MPO concurrence on projects that are proposed to be advanced to an MPO plan and/or TIP. The Texas Natural Resources Conservation Commission and the Colorado DOT expressed concern that illustrative projects would be allowed to circumvent the planning process. State DOTs, in particular, advocated allowing illustrative projects to be included in the conformity analyses for plans and TIPs in order that it may be demonstrated that they will not jeopardize the conformity of plans and TIPs.

The AASHTO and several State DOTs felt that we are being too restrictive in our definition of a financially constrained plan. In short, these commenters request more flexibility. Some State DOTs, including the Texas, New Jersey, Missouri, and Virginia DOTs point out that they feel it entirely appropriate to conduct NEPA related project development activities and studies on such projects, outside of the fiscal constraint requirements. They endorse amending such projects into the plan and TIP when appropriate, and at that time trigger fiscal constraint and conformity requirements.

Annual Listing of Projects

During the outreach process, the Missouri DOT, and the Denver Regional Council of Governments (DRCOG) remarked that MPOs do not have the authority to obligate Federal funds and that States and transit agencies are the authorized recipients of Federal funds. Therefore, they suggest, the States, transit agencies, and/or the Federal government need to provide the necessary information to the MPOs in order that they may comply with the TEA–21 requirement for an annual listing of projects.

The AMPO recommended that we establish and maintain a project monitoring system for the purpose of tracking Federal highway and transit obligations and that we make this system accessible to the MPOs in order that it might provide the basis for the annual listing of projects. These stakeholders are concerned that there be clear direction to the implementing agencies (States and transit agencies) for meeting this TEA–21 requirement. Further, they are concerned that MPOs, without the assistance of implementing agencies, do not have the necessary information to comply with this requirement. The American Road and Transportation Builders Association (ARTBA) felt the annual list should include all obligated funds, rather than just projects with Federal funding.

The U.S. EPA believes a nationally uniform format for these lists should be developed and that such lists should be sent to State and Federal environmental agencies, the interagency consultation groups under the transportation conformity regulation, and others.

The Transportation Equity Network and the Center for Community Change advocate the preparation of this list on a zip-code basis and cited a U.S. Department of Housing and Urban Development (HUD) model. They suggest a zip-code based list is easily understandable by members of the public.

Many of those who commented supported an approach which would provide easy public access to information, through a wide means of communication, as noted above. Many stakeholders, including the AMPO and the Kentucky Transportation Cabinet, opposed a process which would require the development of such a list through the public involvement process of the MPO. However, the American Planning Association, the Surface Transportation Policy Project, the Urban Habitat Program, the Tri-State Transportation Campaign, and the National Association to Defend NEPA, among others, supported the dissemination of the list, once developed, through easily accessed public distribution channels.

Coordination With Local Elected Officials in Non-Metropolitan Areas

The NACO, the National Association of Development Organizations, the STPP, the York County Planning Commission (Pennsylvania), the Minnesota DOT, and the Georgia DOT all suggested that where regional planning organizations or councils of government exist, they be considered as an entity that States could work with to facilitate the engagement of elected officials. The NACE, U.S. House of Representative Bob Ney and others supported a two-phased approach: the FHWA and the FTA would provide the flexibility to States and local elected officials to develop a process, and then be provided ample time to document and formalize the process pursuant to the TEA–21. These commenters felt that the flexibility to tailor approaches is needed, but that documentation of the agreed upon approach is also needed to ensure it is implemented on a continuing basis.

The National Association of Towns and Townships suggested more formal processes, like those that are in place in some States, where local governments form development districts or regional development commissions, modeled to some extent after the MPO process. The Land-of-the-Sky Regional Council indicated that this approach is necessary to ensure rural officials have

a voice in decision making and that rural area needs are addressed. In addition, they suggest that such an approach ensures the coordination of a broad array of objectives relating to economic development, land use, and transportation. State DOTs in Idaho, Montana, North Dakota, South Dakota, Wyoming, New York, Virginia and Oklahoma suggested that existing local official consultation arrangements are adequate and that compliance with the TEA–21 provision merely requires documentation of existing arrangements.

20-Year Forecast Period in Transportation Plans

Commenters, including AASHTO, ITE, Virginia DOT, Texas DOT, Washington DOT, and Kansas DOT supported a clarification which reiterates that transportation plans must be for a 20-year minimum forecast period at the time of plan adoption. Further, the Capital District Transportation Authority, the Regional Transit Agency in Denver, the Central Puget Sound Regional Transit Agency, the Texas Natural Resources Conservation Commission, the Lackawanna County Regional Planning Commission and others felt that so long as metropolitan TIP updates and amendments (required every two years) are consistent with the metropolitan plan, then, a metropolitan plan update with a new 20-year forecast period should not be required. The STIP amendments and updates (also required every two years) would be governed by the State plan and its unique update schedule.

Transportation Conformity Related Issues

There are several issues related to the EPA conformity regulation in 40 CFR parts 51 and 93 that could be addressed in the revised planning regulations. These issues relate to clarifying requirements and definitions, and could lead to better integration of transportation and air quality planning, a principal objective of the EPA's regulation. These include:

1. Consistency between metropolitan plan update cycle and the point at which a conformity determination is required.

During the outreach process, and in many of the comments to the Options Paper, stakeholders indicated that they interpret the three-year clock for a plan (and required conformity analysis) as starting from the date the MPO approves the metropolitan plan. Agencies, including the Utah DOT, the New York DOT, and others commented that this provides certainty about the exact time frame in which the plan needs to be updated and that this is the preferred approach to clarifying this issue.

In nonattainment and maintenance areas, however, this approach is complicated by required MPO and Federal conformity findings. The AASHTO, and the Virginia DOT supported making the effective date of the plan the date of the Federal conformity finding. The AMPO indicated that it has no certainty as to when the FHWA and the FTA will approve a conformity determination on a metropolitan plan and thus, tying the effective date of the plan to an approval over which they feel they have no control does not, in its view, facilitate the planning process.

2. Transportation Control Measures (TCMs) in State Implementation Plans (SIPs).

Stakeholders, including the Bicycle Federation of America, the AASHTO, and the AMPO, observed that TCMs, for which Federal funding or approvals are required, must meet the TEA–21 planning requirements (i.e., come from a conforming and financially constrained transportation plan and TIP) and that attempting to circumvent this process, in order to place these measures in SIPs, undermines the transportation planning process.

3. Definitions: TIP Amendments, Conformity Lapse, TIP Extensions.

The FHWA and the FTA have considered clarifying ambiguous terms used in the ISTEA and the EPA's conformity regulation 40 CFR parts 51 and 93. The New Jersey DOT, the AMPO, the Utah DOT, the Texas Natural Resources Conservation Commission, the Wisconsin DOT, and the DRCOG have endorsed the concept of clarification of definitions and terms and want an opportunity to comment on proposed definitions.

Cross Cutting Issues

There are a number of options for implementing the cross-cutting planning and environmental provisions of the TEA–21. Both regulatory and non-regulatory approaches were suggested to us. The concepts discussed in the proposed rule have been coordinated with other administrations within the DOT and with other Federal agencies.

A. Public Involvement

Some State and local agencies have expressed interest in ways to integrate the public involvement process related to plan and TIP development with public involvement process related to the project development. Several stakeholder groups have noted the difficulties in getting public input on long-range plans and TIPs and the tendency for the public to be more inclined to participate in project-specific opportunities for input. They indicated that this tends to frustrate the public involvement efforts of State and MPO planners to obtain input on long-range transportation plans. During the public outreach process, we sought input in this area, as well as examples of successful techniques and approaches to engage the public on both project-level proposals and long-range plans and TIPs.

Comments from stakeholders were varied. However, there were a substantial number of comments that preferred the following two-fold approach: retaining the public involvement approach included in the planning regulation and modifying the NEPA regulation public involvement requirements to make our procedures the same (based on the FHWA, rather than the FTA, approach). This, they suggest, would allow States and MPOs to design processes that work best given local conditions and needs, yet would simplify the NEPA public involvement process by consolidating the FHWA and the FTA processes into one.

In arguments supporting this option, a considerable number of commenters, including State DOTs in Montana, Washington, New Jersey, Idaho, Wyoming, North Dakota, South Dakota, and the AASHTO, pointed out distinctions between the type of public involvement that must occur in the planning process and that which is sought in the NEPA process. They point out that these two processes, tailored according to each need, can serve two different purposes and can work without conflict.

There were a number of comments on whether freight interests and representatives of transit users should be represented with voting membership on MPO boards. These commenters, including the NACE, all opposed this idea and observed that putting persons representing particular interests on voting boards with elected officials would dilute the representation of duly elected officials. Yet, the Bicycle Federation of America supported putting representatives of bicyclists and pedestrians on voting boards of MPOs to ensure that they have an opportunity to comment on transportation plans and programs. The Texas Natural Resources Conservation Commission, the Orange County Transportation Authority, the Arkansas DOT, and the Minnesota DOT supported a consistent approach to public involvement for both planning activities and the NEPA project

development activities and suggested basing this approach on the current FHWA NEPA regulation (23 CFR part 771). The EPA suggested that the DOT needs to assist community leaders, MPOs, and the public in establishing performance goals and local accountability for public participation.

B. Environmental Justice and Equity

There were a considerable number of commenters, including the AASHTO and many State DOTs, that opposed any suggestion that equity in the distribution of resources should be a factor used to assess whether environmental justice issues are being adequately addressed. These comments ranged from claims that such language, if included in regulation, would contradict the hard-fought TEA–21 provisions on the allocation of transportation funds to claims that such language would result in preempting States and MPOs from selecting the transportation projects and programs in their respective jurisdictions. Deep concern about this option and opposition to this approach was widespread and shared by MPOs and transit agencies who feel that geographic sub-allocation of funding based on demographics is short-sighted, and an inappropriate way to ensure the principles of environmental justice are honored.

Many commenters indicated that they believe the Executive Order 12898, Title VI of the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 241, as amended, and current NEPA requirements are sufficient to ensure that environmental justice concerns are addressed. The New Jersey DOT noted that benefits that accrue to users of investments should be a consideration in planning, and that this could possibly be measured in terms of mobility.

The Fulton County and Georgia Department of Environment and Community Development focused on the composition of appointed officials on regional authorities. This agency suggested that such authorities or decision making bodies should reflect the demographics of the region. This agency also suggested that all elements of the population affected by a particular decision should be sought out for their input. In addition, this commenter suggested that controversial project decisions should be analyzed to ensure that they conform to the Environmental Justice Presidential Executive Order. Finally, the commenter suggested that all decisions should be analyzed to ensure that no particular geographic sub-area is being over-burdened with adverse conditions resulting from transportation investments.

The U.S. Forest Service pointed out that lumping environmental justice and equity together is, in its view, a mistake. It suggested that the best option for public involvement, especially on issues concerning environmental justice, would be those procedures that incorporate collaboration processes early and often in the process.

One agency made the case that we should consider requiring environmental justice analyses of plans, programs and processes, and of major projects. The commenting agency suggested that we could adopt a set of requirements for recipients of our funding. Requirements would include: (1) Community group or nonprofit organization inclusion as equal and full partners in proposed projects; (2) applications for funding include community input in project development; and (3) external reviewers would make project selection decisions.

C. Elimination of Major Investment Study as Separate Requirement

Section 1308 of the TEA–21 eliminates the major investment study (MIS), described in 23 CFR 450.318, as a separate requirement and calls for integration of the MIS, as appropriate, into the planning and NEPA analyses required under 23 CFR parts 450 and 771. Proponents supporting this legislative action cited instances where major investment studies were said to duplicate NEPA requirements, were time consuming and costly, and importantly, that results were not usefully integrated into the project development activities under NEPA.

The Options Paper articulated four general concepts (distilled from earlier stakeholder comments) focusing on strengthening the linkage between systems planning and project development. We thought this would facilitate broader consideration of transportation system development although, in some cases, commenters had other views as discussed below.

In all of the options, the intent was to faithfully implement the TEA–21 provision that exempts plans and programs from consideration under NEPA. The MPOs would not be required to conduct NEPA analyses on plans. However, they could more effectively utilize the analyses conducted during planning activities to facilitate compliance with NEPA requirements at a project level. If an MPO, as part of its planning process, chose to conduct a NEPA analysis on a plan, it would be a permissible, voluntary decision. In addition to the four options presented for input, the Options Paper included a number of questions to solicit a better understanding of stakeholders' needs and concerns.

There were a wide range of comments on the elimination of the MIS and on the options presented. The AASHTO felt that we should restrict regulatory language and allow States and MPOs to integrate the principles of the MIS, as appropriate, into planning and programming activities at their discretion. The AMPO suggested that we should allow States the flexibility to do the NEPA analysis in the planning process, as an option, but not as a requirement. In fact, many stakeholders were firmly opposed to any regulatory language integrating NEPA requirements into the planning process.

Most of the commenters supported better linkages between planning and project development and many commenters, including the Minnesota DOT, supported the development of purpose and need during planning studies and sub-regional analysis, but only with the proviso that resource agencies and others allow the use of this information in the NEPA process. On the other hand, the Virginia DOT, for example, was opposed to developing project purpose and need during planning if there is a lack of participation of resource agencies and other parties to the NEPA process who could then require that analysis be redone or revisited during the formal NEPA process. There was near unanimous support for streamlining through reducing duplicative requirements and practices, such as, revisiting issues during project development that were, in commenters views, fully explored during planning.

Many commenters supported options that offer the most flexibility to States and MPOs. The Florida DOT suggested blending the two most flexible options and developing regulatory language that ensures the principles of MIS not already addressed by other Federal regulations and statutes are included in the metropolitan planning and programming requirements. They also suggested that the planning regulation should include requirements for proactive agency coordination and public involvement, collaborative and multi-modal planning analysis of alternatives, and financial capacity analysis of alternatives. The Florida DOT also felt that the States should take the lead on these processes.

The City of Irvine, Texas, suggested that the MIS process served as a good check on the system planning process and was a good way to build consensus and gain public input. Its traffic and

transportation director suggested that expanding the purpose and need statement would help narrow down alternatives prior to the NEPA process. The same individual also suggested looking at the entire process to identify what environmental information could be both practical and useful at each level of analysis.

Additionally, and echoing earlier comments, stakeholders felt that the key to success in whatever approach is taken or required in regulation, is that Federal agencies participate early in the process and that they stay involved throughout the development of, and elimination of, alternatives. Consistent with this suggestion, the EPA commented that the only way they would give standing to previously conducted planning analyses during the NEPA project development stage is if there had been full opportunity for consultation in the metropolitan planning process, and if the resource agencies had ''confidence that those plans were developed with environmentally desirable alternatives being considered.''

D. Cumulative and Secondary Impacts

The Options Paper presented two scenarios which would help promote the consideration and evaluation of the cumulative and indirect effects of projects at a regional or large sub-regional scale, rather than on a project-by-project basis. In metropolitan areas, the former MIS requirement provided an opportunity for appropriate consideration of such effects across a sub-regional area where major, multiple transportation actions might be needed. With the elimination of the separate MIS requirement, the most logical venue for the consideration of such effects may be in the systems planning processes that support the development of metropolitan or statewide transportation plans.

One approach to implementing cumulative and secondary impact consideration would require an appropriate evaluation of these effects in a regional or sub-regional analysis, thus obviating the need for repetitious, project-by-project review. Such an approach might also provide an opportunity for more effective and efficient mitigation of cumulative impacts and the enhancement of adversely affected resources. Another possibility is to rely on a systems planning analysis of cumulative and indirect effects. In the absence of a robust planning-level review of these impacts, the project-by-project review as part of each NEPA evaluation would be required.

Some commenters, including the AASHTO and the Bicycle Federation of America, interpreted the first option as a requirement for enhancement projects whenever there are cumulative or indirect effects identified. A large number of commenters opposed this approach, but for two different reasons. The Bicycle Federation of America felt that using transportation enhancement funding to counterbalance the adverse impacts of projects is unacceptable and that such mitigation should be part of the project cost and implementation from the outset. Others, including State DOTs in Utah, New York, and Virginia, believed that a regional or subregional analysis is unrealistic, excessively costly, and of no value unless the study results were accepted by State and Federal environment and resource agencies.

The Oregon DOT observed that the appropriate level to consider cumulative and indirect impacts is at a regional or sub-regional planning level, but not as an analysis *per se;* rather, as a plan to preserve and enhance habitat and preserve resources for future generations. A few examples of plans that accomplish this objective were provided. The New Jersey DOT, Texas DOT, and the American Road and Transportation Builders Association stated that the ''science'' for evaluating the impacts is not available and that we should provide funding, education, and tools to assist MPOs and States to develop the appropriate analysis tools.

Finally, the Lubbock and Byron College Station MPOs (both from Texas) indicated that cumulative and indirect impacts are, and should be, adequately addressed in consideration of the planning factors and that additional regulatory requirements are unnecessary and redundant.

Distribution Table

For ease of reference, a distribution table is provided for the current sections and the proposed sections as follows:

Old section	New section
450.100.	1410.100.
450.102.	1410.102.
450.104.	1410.104.
Definitions	Definitions.
None	Conformity lapse.
None	Conformity rule.
Management System	Congestion management system [Revised].
Consultation	Consultation [Revised].
Cooperation	Cooperation [Revised].
Coordination	Coordination [Revised].
None	Design concept.
None	Design scope.
None	Federally funded non-emergency transportation services.
None	Financial estimate.
None	Freight shipper.
None	Illustrative project.
None	Indian tribal government.
None	Interim Plan.
None	Interim Transportation Improvement Program.
None	ITS integration strategy.
Maintenance area	Maintenance area [Revised].
None	Management and operation.
Metropolitan planning area	Metropolitan planning area.
Metropolitan planning organization	Metropolitan planning organization.
Metropolitan transportation plan	Metropolitan transportation plan.
Nonattainment area	Nonattainment area.
None	Non-metropolitan local official.
None	Plan update.

Old section	New section
None	Provider of freight transportation services.
None	Purpose and need.
Regionally significant project	Regionally significant project [Revised].
State	State.
State implementation plan	State implementation plan.
Statewide transportation improvement program (STIP)	Statewide transportation improvement program (STIP).
None	Statewide transportation improvement program (STIP) extension.
Statewide transportation plan	Statewide transportation plan.
None	TIP update.
None	Transportation control measures.
Transportation improvement program	Transportation improvement program [Revised].
Transportation management area	Transportation management area.
Transportation plan update	Transportation plan update.
None	Twenty year planning horizon.
None	Urbanized area.
None	User of public transit.
450.200	1410.200.
450.202	1410.202.
450.204	1410.204.
450.206(a)(1)	Removed.
450.206(a)(2) through (a)(5)	1410.206(a)(1) through (a)(4).
None	1410.206(a)(5)[Added].
450.206(b)	Removed
450.208(a)	1410.208(a) [Revised].
450.208(b)	1410.208(b) [Revised].
450.210(a)	1410.210(a) [Revised].
450.210(b)	1410.210(e) [Revised].
450.212(a) through (f)	1410.212(b) [Revised].
None	1410.212(c) [Added].
450.212(g)	1410.212(e).
450.214	1410.214 [Revised].
450.216(a) introductory paragraph	1410.216(a).
450.216(a)(1) through (a)(7)	1410.216(c)(1) through (c)(7).
None	1410.216(c)(8).
450.216(a)(8)	1410.216(c)(9).
450.216(a)(9)	1410.216(c)(10).
None	1410.216(b) [Added].
450.216(b)	1410.216(d).
450.216(c)	1410.216(e) [Revised].
None	1410.216(f) [Added].
450.216(d)	1410.216(g) [Revised].
None	1410.218 [Added].
450.218	1410.220 [Revised].
450.220(a) introductory paragraph	1410.222(a) introductory paragraph.
450.220(a)(1)	1410.222(a)(1) [Revised].
450.220(a)(2)	1410.222(a)(2) [Revised].
None	1410.222(a)(3) through (a)(6) [Added].
450.220(a)(3)	Removed.
450.220(a)(4)	1410.222(a)(7).
450.220(a)(5)	1410.222(a)(8).
450.220(a)(6)	1410.222(a)(9).
None	1410(a)(10) [Added].
450.220(b) and (c)	1410.222(b) [Revised].
450.220(d)	1410.222(c) [Revised].
450.220(e)	1410.222(b)(3) [Revised].
450.220(f)	1410.222(d).
450.220(g)	1410.222(e).
450.222(a) through (d)	1410.224(a) through (d) [Revised].
None	1410.224(e) [Added].
450.224	Removed.
None	1410.226 [Added].
450.300	1410.300 [Revised].
450.302	1410.302 [Revised].
450.304	1410.304 [Revised].
450.306(a)	1410.306(a) [Revised].
450.306(b) and (c)	1410.306(b) and (c) [Revised].
450.306(d) and (g)	1410.306(f) [Revised].
450.306(e)	1410.306(d).
450.306(f)	1410.306(e).
450.306(h) through (k)	1410.306(g) through (j) [Revised].
450.308(a) through (d)	1410.308(a) through (d) [Revised].
450.308(e)	1410.308(e) [Added].
450.310(a)	1410.310(a) [Revised].

Old section	New section
450.310(b)	Removed.
None	1410.310(b) [Added].
450.310(c)	1410.310(c) [Revised].
450.310(d)	1410.310(h) [Revised].
450.310(e)	1410.310(d) [Revised].
450.310(f)	1410.310(e) [Revised].
450.310(g)	1410.310(f).
None	1410.310(g) [Added].
450.310(h)	1410.310(i).
450.312(a)	1410.312(a) [Revised].
450.312(b)	1410.312(b).
450.312(c)	1410.312(c) [Revised].
450.312(d)	1410.312(d).
450.312(e) through (i)	1410.312(e) through (i) [Revised].
None	1410.312(j) [Added].
450.314(a), (b) and (d)	1410.314(a), (b) and (c) [Revised].
450.314(c)	Removed
450.316(a)	1410.316(a) [Revised].
450.316(b)(1)	1410.316(b) [Revised].
450.316(b)(2)	1410.316(c) [Revised].
450.316(b)(3)	1410.316(d) [Revised].
450.316(b)(4)	1410.316(e) [Revised].
450.316(b)(5)	1410.316(f) [Revised].
None	1410.316(g) [Added].
450.316(c)	1410.316(h) [Revised].
450.316(d)	1410.316(i).
None	1410.316(j) [Added].
450.318	1410.318 [Revised].
450.320(a)	Removed.
450.320(b), (c) and (d)	1410.320(a), (b) and (c) [Revised].
450.322(a)	1410.322(a) [Revised].
450.322(b)(1) through (b)(7)	1410.322(b)(1) through (b)(7) [Revised].
450.322(b)(8)	Removed.
450.322(b)(9) through (b)(11)	1410.322(b)(8) through (b)(10) [Revised].
None	1410.322(b)(11) [Added].
450.322(c) and (d)	1410.322(c) and (d) [Revised].
None	1410.322(e) [Added].
450.322(e)	1410.322(f).
None	1410.322(g) [Added].
450.324(a) through (e)	1410.324(a) through (e) [Revised].
450.324(f)(1) through (f)(3)	1410.324(f)(1) through (f)(3) [Revised].
None	1410.324(f)(4) [Added].
450.324(f)(4) and (f)(5)	1410.324(f)(5) and (f)(6) [Revised].
450.324(g) through (o)	1410.324(g) through (o) [Revised].
None	1410.324(p) [Added].
450.326	1410.326 [Revised].
450.328	1410.328 [Revised].
450.330(a) and (b)	1410.330(a) and (b) [Revised].
None	1410.330(c) [Added].
450.332(a)	1410.332(b) [Revised].
450.332(b)	1410.332(c) [Revised].
450.332(c)	1410.332(a) [Revised].
450.332(d) and (e)	1410.332(d) and (e).
450.334(a)(1) through (a)(5)	1410.334(a)(1) through (a)(5) [Revised].
None	1410.334(a)(6) through (a)(8) [Added].
450.334(b) through (f)	1410.334(b) through (f) [Revised].
450.334(g)	Removed.
None	1410.334(g) [Added].
450.334(h)	1410.334(h) [Revised].
450.336	Removed.

Section-by-Section Discussion

Section 1410.100 Purpose

Current § 450.100 would be redesignated as § 1410.100 and a technical correction would be made for a legislative citation.

Section 1410.102 Applicability

Current § 450.102 would be redesignated as § 1410.102. The text of this section is unchanged.

Section 1410.104 Definitions

Current § 450.104 would be redesignated as § 1410.104. The definition of ''conformity lapse'' and ''transportation control measure'' would be added and would have the meaning given it in the EPA conformity regulation provided at 40 CFR 93.101, as follows:

The term ''lapse'' means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

The term ''congestion management system'' would replace the previous definition of ''management system'' and would have the meaning given in the management system rule (23 CFR part 500).

The term ''consultation'' would have minor wording changes, but no substantive changes.

The word ''programming'' would be dropped from the definition of ''coordination'' to reflect the fact that programming is a subset of the planning process. The project development processes reference would be added to reflect the provisions of proposed § 1410.318.

Definitions are proposed for ''design concept,'' ''design scope,'' ''federally funded non-emergency transportation services,'' ''financial estimate,'' and ''freight shipper'' for clarification of legislative terminology.

The term ''Governor'' remains the same.

The terms ''illustrative project'' and ''ITS integration strategy'' would be added to reflect new legislative provisions. The term ''Indian Tribal Government'' is added for clarification.

The terms ''Interim Plan'' and ''Interim Transportation Improvement Program'' are added to clarify the basis for advancing exempt and existing and new TCM projects during a conformity lapse. Interim plans and TIPs must be developed in a manner consistent with 23 U.S.C. 134. They must be based on previous planning assumptions and goals; appropriately adjusted for currently available projections for population growth, economic activity and other relevant data. The public must be involved consistent with the regular transportation plan and program development processes. Financial planning and constraint, and, as appropriate, congestion management systems requirements must be satisfied, and interim TIPs must be approved by the MPO and the Governor.''

The term ''maintenance area'' would be revised to reflect the EPA definition used in the conformity regulation at 40 CFR parts 51 and 93.

A definition is proposed for ''management and operation'' to reflect the new legislative policy direction from the TEA–21.

The terms ''metropolitan planning area,'' ''metropolitan planning organization,'' ''metropolitan transportation plan,'' and ''nonattainment area'' would remain unchanged, except for legislative references.

A definition of ''non-metropolitan local official'' would be added to reflect the provisions of the TEA-21 regarding consultation between the State and these officials.

The terms ''plan update,'' ''provider of freight services,'' and ''purpose and need'' would be added to provide clarification of terminology.

The definition of ''regionally significant'' reflects the US EPA conformity rule (40 CFR parts 51 and 93).

The terms ''State,'' ''State implementation plan,'' ''statewide transportation plan,'' and ''statewide transportation improvement program'' would be unchanged.

A definition for ''statewide transportation improvement program extension'' would be added for clarification.

The term ''transportation improvement program'' would be revised slightly. The term ''TIP update'' would be added to provide information and direction on when a TIP must be updated . Anytime a non-exempt project is added to a TIP, the TIP must be updated. In attainment areas, the TIP must be updated whenever a regionally significant project is added to the TIP.

The definition of ''transportation management area'' would be unchanged. The terms ''twenty year planning horizon, ''urbanized area,'' and ''user of public transit'' would be added to clarify legislative terminology.

Subpart B—Statewide Planning and Programming

Section 1410.200 Purpose of Regulations

Current § 450.200 would be redesignated as § 1410.200. The statement of purpose would be amplified by reflecting the declaration of purpose articulated in the TEA–21. This amplification also supports greater consistency of purpose between metropolitan and statewide planning.

Section 1410.202 Applicability of Regulation

Current § 450.202 would be redesignated as § 1410.202. The text would be revised to add ''project sponsors'' as agencies affected by the provisions of this section.

Section 1410.204 Definitions

Current § 450.204 would be redesignated as § 1410.204. This section would remain the same.

Section 1410.206 Statewide Transportation Planning Process: Basic Requirements

Current § 450.206 would be redesignated as § 1410.206.

A new § 1410.206(a)(5) would be added. This section articulates the need for the State to develop and implement a process for demonstrating the consistency of plans and programs with the provisions of Title VI of the Civil Rights Act of 1964 and related legislation. We believe that such processes are already in place and that the clarification of minimum required information and analysis would benefit States and other agencies in meeting the existing requirement in the self-certification statement included in the STIP.

Current § 450.206(b) would be eliminated since it is redundant with § 450.210(a).

Section 1410.208 Consideration of Statewide Transportation Planning Factors

Current § 450.208 would be redesignated as § 1410.208. Paragraph (a) would be revised by substituting the seven planning factors identified in the TEA–21 for those previously identified by the ISTEA. All parenthetical amplification has been deleted and the wording is that used by the statute. We plan to issue guidance regarding interpretation and application of the planning factors. We welcome suggestions on exemplary State and MPO procedures already in place or under development, and how those might be replicated in other State or MPO planning processes. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, we will work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

We are proposing to revise paragraph (b) to focus on other considerations that the TEA–21 states should be addressed in the planning process. Specifically, the concerns of non-metropolitan local officials and Indian Tribal Governments and Federal land managing agencies are spelled out as a source of concerns that shall be considered.

Section 1410.210 Coordination of Planning Process Activities

Current § 450.210 would be redesignated as § 1410.210. Reflecting the simplification of language provided by the change in planning factors, paragraph (a) would be revised to focus on required planning coordination efforts. This general approach would eliminate the need to spell out in detail all of the specific coordination efforts previously articulated. We believe that the substance of coordination and the process overall remain intact even though the language is vastly simplified. References to the air quality planning process in § 1410.210(b) reflect the

general role afforded the State transportation planning agency in the air quality planning process under 42 U.S.C. 7504 and the desirability of ensuring coordination of the air quality and transportation planning processes. The current wording of paragraph (b) would be retained as § 1410.210(e) with the addition of ''safety concerns'' to the list of issues to be coordinated.

Section 1410.212 Participation by Interested Parties

Current § 450.212 would be redesignated as § 1410.212. Overall, current § 450.212 (public involvement) would be broadened to focus on all facets of participation in the statewide planning process. For example, the newly articulated provisions regarding consultation with non-metropolitan officials would be added to this section. In addition, the paragraphs would be redesignated.

Current §§ 450.212(a) through (f) would become § 1410.212(b) and be revised slightly to reflect increased emphasis for public involvement by minorities and low-income populations. The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase ''and other interested parties'' reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants. A new § 1410.212(d) would be added to encourage the participation of state air quality and other agencies in the transportation planning process. The existing § 450.212(g) would become § 1410.212(e).

Section 1410.212(b)(2)(vii) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings, in addition to the generally applicable requirements for public involvement processes under § 1410.212(b)(2) and § 1410.316(b).

A new § 1410.212(c) focusing on participation by Federal agencies and Indian Tribal Governments would be added to support early involvement by these agencies and governments. Such involvement will facilitate streamlining of environmental decisions and ensure adequate consideration of key interests and viewpoints. The proposed wording for the involvement of Indian Tribal Governments reflects current deliberations within the Executive Branch regarding ways to more fully inform and engage Indian Tribal Governments in Federal decision making processes.

Section 1410.214 Content and Development of Statewide Transportation Plan

Current § 450.214 would be redesignated as § 1410.214. Two new sections would be added to reflect legislative changes. Proposed § 1410.214(a)(3) would reflect the intelligent transportation system consistency requirement provided under section 5206(e) of the TEA–21. A separate rulemaking process will address the overall policy and procedures for architecture consistency. The wording reflects that portion of the consistency process that would be started in the statewide planning process for non-metropolitan area projects. We are interested in comments and observations regarding the feasibility of this process. In our view, the basic structure would reflect the activities normally conducted during transportation plan development. Proposed minor information collection additions to reflect utilization of electronic information sharing do not appear to be a major burden addition for planning.

In addition, proposed § 1410.214(d) would implement a provision, added by TEA–21, for an optional financial plan for statewide transportation plans. The TEA–21 did not impose a new requirement on the States. Rather, it offers up the option of a financial plan if decided upon by the statewide planning process participants. This section would spell out how this option would be approached through a statewide planning process.

Section 1410.216 Content and Development of Statewide Transportation Improvement Program

Current § 450.216 would be redesignated as § 1410.216. The provisions of former § 450.216(a)(1) through (a)(9) would be redesignated and revised as § 1410.216(c) providing detailed information on the STIP. A new § 1410.216(b) would spell out the need to involve certain interests in the development of the STIP. The parties identified are the same as those identified for the development of the plan.

Regarding the detailed information requested for projects identified in a STIP in § 450.216(c), a new element (§ 1410.216(c)(8)) regarding ITS projects funded with highway trust funds would be added. This section reiterates the earlier planning level discussion and would direct that projects meeting the definition in § 1410.322(b)(11) would be included in a regional architecture as indicated in the rulemaking on ITS architecture consistency.

The new wording proposed in § 1410.216(f) articulates the legislative provision of an optional financial plan for STIPs.

Section 1410.218 Relation of Planning and Project Development Processes

A new § 1410.218 would address an optional approach to linking statewide planning and project development processes in non-metropolitan areas. It mirrors proposed § 1410.318 which would apply to the metropolitan planning process. The intent of this section is to provide States with an option to more effectively rely on planning processes as a foundation for subsequent environmental and other project level analyses. Nothing in this section would mandate that a State adopt the option provided. If a State chose to take advantage of the option, the language lays out a framework to support the State's actions. This section also would make clear that project level actions shall be consistent with the State plan and program (see proposed § 1410.218(e)). For further information, please see the preamble section related to metropolitan planning, proposed § 1410.318.

Section 1410.220 Funding of Planning Process

The content of the current § 450.218 would be moved here with changes made to the references and the section heading.

Section 1410.222 Approvals, Self-certification and Findings

Current § 450.220 would be redesignated as § 1410.222. Current § 450.220(a)(2) would be revised slightly. Proposed § 1410.222(a)(3) through (a)(5) would articulate the existing legislative and regulatory authorities. Subsequent paragraphs would be redesignated and remain

generally unchanged. A new § 1410.222(a)(10) would be added.

We are proposing to modify existing § 450.220(b) slightly to indicate the relationship of the planning finding to self-certifications by the State. In addition, current language provided at § 450.220(c) would be redesignated and combined with a new § 1410.222(b) to clarify the relationship of findings with possible Federal actions.

Proposed § 1410.222(c) that details the approval period for a STIP would modify the text of current § 450.220(d). STIP extensions (and by their inclusion, TIP extensions) would be limited to 180 days. Further, no STIP extension would be granted in nonattainment and maintenance areas. We believe that this policy eliminates substantial confusion regarding application of the Clean Air Act (CAA) conformity provisions in nonattainment and maintenance areas. We also believe that the focus should be on ensuring regular STIP updates, rather than finding a way to maintain funding flows that may conflict with the provisions of the CAA. The overall limit on extensions serves the same general purpose for attainment areas of ensuring that updates are accomplished rather than continuing to rely on out of date documents.

Section 1410.224 Project Selection

Current § 450.222 would be redesignated as § 1410.224 and the references to funding categories updated. Generally, however, it would remain unchanged. Proposed new paragraph (e) would provide the option for expedited procedures where agreed to by the planning participants. The current topic of this section (§ 450.224 phase-in requirements) would be eliminated.

Section 1410.226 Applicability of NEPA to Transportation Planning and Programming

This section simply proposes to restate the provisions of the TEA–21 which direct that decisions by the Secretary regarding plans and programs are not Federal actions subject to the provisions of the NEPA.

Subpart C—Metropolitan Transportation Planning and Programming

Section 1410.300 Purpose of Planning Process

Current § 450.300 would be redesignated as § 1410.300. This statement would remain essentially unchanged. The exceptions are a minor wording change for clarity of Federal expectations with regard to plan content and the addition of the word ''management'' to reflect the revised declaration of policy in 23 U.S.C. 134(a) as revised by the TEA–21.

Section 1410.302 Organizations and Processes Affected by Planning Requirements

Current § 450.302 would be redesignated as § 1410.302. The principal change would be to add organizations charged with ''project development'' in metropolitan areas to the affected organizations. This would reflect the general emphasis of the revised rule on more efficiently and effectively linking planning and project development as a means to streamlining decision making and towards ensuring that projects are based on the planning process. The statutory authorizing language reference would be added also.

Section 1410.304 Definitions

Current § 450.304 would be redesignated as § 1410.304. This section would remain unchanged with the exception of referencing definitions in 49 U.S.C. Chapter 53.

Section 1410.306 What is a Metropolitan Planning Organization and How Is It Created

Current § 450.306 would be redesignated as § 1410.306. Minor changes are proposed for existing § 450.306(a) to provide clarity regarding the designation of multiple MPOs serving a single metropolitan area. The wording would more clearly emphasize a preference for not designating more than one MPO in metropolitan areas. We believe that this is consistent with the intent of legislative language changes and the principles of comprehensive transportation planning for metropolitan areas.

Current §§ 450.306(b) and (c) would remain unchanged. Current § 450.306(d) and (g) would be combined and redesignated as § 1410.306(f), § 450.306(e) would be redesignated as § 1410.306(d) and § 450.306(f) would be redesignated as § 1410.306(e). Editing for clarity of intent would simplify the language. Current § 450.306(e) would be redesignated as § 1410.306(d). Sections 450.306(h) through (k) would be redesignated as §§ 1410.306 (g) through (j), respectively, and revised.

Section 1410.308 Establishing the Geographic Boundaries for Metropolitan Transportation Planning Areas.

Current § 450.308 would be redesignated as § 1410.308. Revisions made by the TEA–21 to 23 U.S.C. 134 require the modification of existing § 450.308, which also would be edited for clarification of language. Boundaries in effect as of June 9, 1998, the date of presidential signature for the TEA–21, would remain in effect unless modified by the policy board of the MPO in cooperation with the Governor. The provisions of 23 U.S.C. 134, as modified by the ISTEA, required planning area boundaries to be extended to the limits of the nonattainment area where that area was larger than the transportation planning area.

New MPOs designated after June 9, 1998, would have to take into account the existence of non-attainment and maintenance areas and reflect them as agreed to by the Governor and local officials in the proposed metropolitan planning area boundaries.

In either case, the existing MPO or new MPO, non-attainment and maintenance areas left outside the metropolitan planning areas would have to be addressed in an agreement between the State and the MPO as proposed at paragraph § 1410.310(f).

The option of extending the metropolitan planning area boundary to the limits of the metropolitan statistical area would be retained as provided in the statute. This continuation and the changes discussed in the preceding paragraphs are captured in proposed revisions included in § 1410.308(a).

The wording of current § 450.308(b) would remain unchanged. The provisions of current § 450.308(c) would be slightly modified for clarification. No changes are proposed for § 450.308(d).

A new § 1410.308(e) proposes to address the expenditure of Surface Transportation Program funds attributable to a Transportation Management Area (TMA). The intent of the section is to more clearly state, what has been the FHWA and the FTA policy since 1992, that these funds cannot be expended outside the boundaries of the metropolitan area. They may be expended anywhere inside the metropolitan area including areas outside the urbanized area.

Section 1410.310 Agreements Among Organizations Involved in the Planning Process

Current § 450.310 would be redesignated as § 1410.310. Current § 450.310(a) would be retained in its current form except for the elimination of a reference to corridor and subarea studies. A new proposed § 1410.310(b) would state the overall relationship between planning and project development activities. This section would support the option for conducting project development activities as planning activities under the general relationship between

planning and project development as established under the proposed new § 1410.318.

Current § 450.310(c) would be redesignated as § 1410.310(c) and the text would remain unchanged except for minor wording revisions for clarification. Section 450.310(d) would be redesignated as § 1410.310(h) and revised for clarity. Current § 450.310(e) would be revised by dropping the reference to a definition of a prospectus in § 450.104. A definition is not required since the nature of prospectus is well established in practice as a statement of ongoing planning activities that continue from year-to-year as a foundation for producing transportation plans and programs.

The current § 450.310(f) would be redesignated as § 1410.310(e) and modified slightly by a wording change to support the revisions to the air quality and transportation planning area boundary relationship. The change is intended to suggest that actions that would leave portions of nonattainment and maintenance areas outside a metropolitan transportation planning area, but contiguous to such an area, should be addressed in consultation with the FHWA, the FTA, and the EPA. The decision to leave such areas outside a metropolitan planning area is the responsibility of the Governor and the MPO acting cooperatively.

A proposed new § 1410.310(g) has been added to reflect the impact of section 5206(e) of the TEA–21. The proposed section requires an agreement among agencies planning and implementing ITS projects and is intended to ensure that the planning and operating agencies specifically agree on an approach to integrated ITS implementation consistent with the options provided in the National ITS Architecture. This provision would direct that this relationship should be covered by agreement within the metropolitan planning area and addresses the policy and operational issues affecting ITS implementation. Where current agreements do not already address these relationships, they would be modified to reflect the provisions of this section. Where possible, existing agreements, per the provisions of § 1410.310(i), would be modified to incorporate the ITS integration strategy required under proposed § 1410.322(b)(11).

A new proposed § 1410.310(h) would permit a single agreement for all activities under § 1410.310 where agreed to by the participants. The wording in current § 450.310(h) remains unchanged from its current text and would be included in a redesignated § 1410.310(i).

Section 1410.312 Planning Process Organizational Relationships

Current § 450.312 would be redesignated as § 1410.312. Existing § 450.312(a) would be redesignated as § 1410.312(a) and modified in several places to reflect wording changes in the subsequent provisions of §§ 1410.314 through 1410.322. A phrase would be made to reflect international border planning with Canada and Mexico.

The text of current § 450.312(b) would be redesignated as § 1410.312(b) and remain unchanged.

The organization of current § 450.312(c) and some of the previous content would be modified and redesignated as § 1410.312(c). The content modifications are intended to clarify how MPO transportation planning activities and planning products are related to air quality planning activities and products. Under 42 U.S.C. 7504, MPOs and State transportation planning organizations are expected to have a formal role in air quality planning. At another level, the transportation and air quality planning processes would work more efficiently if the responsible agencies were more actively engaged in each other's processes. Hence, the proposed rule would more explicitly direct MPOs to participate in air quality planning activities. We would expect that the air quality planning agencies, under the U.S. EPA's conformity regulation (40 CFR parts 51 and 93), would be actively engaged in the transportation planning process. The development of transportation control measures is specifically revised to clarify that new TCMs proposed for funding with FHWA and/or FTA transportation funds or requiring an FHWA or FTA approval can occur during a conformity lapse, if new TCMs are included in an interim plan and interim TIP that satisfy the provisions of this part and are approved into a SIP with identified emission reduction benefits (specified but not necessarily credited in the applicable SIP). The proposals herein implement and clarify the planning regulations consistent with the ''National Memorandum of Understanding between the US Department of Transportation and the US Environmental Protection Agency,'' which was signed on April 19, 2000. This memorandum of understanding outlines procedures for advancing new TCMs during a conformity lapse.

Current § 450.312(d) would be redesignated as § 1410.312(d) and remain unchanged.

Minor wording changes would be made to current § 450.312(e) [proposed § 1410.312(e)] to clarify required coordination in circumstances where more than one MPO is involved in transportation planning for a contiguous metropolitan area, including multi-state areas.

Proposed § 1410.312(f) (current § 450.312(f)) would be revised for text clarity. Proposed § 1410.312(g) (current § 450.312(g)) would be revised to remove a specific reference to cooperative development of the congestion management system (CMS) since it is incorporated in the management system regulation provided at 23 CFR part 500.

Current § 450.312(h) is redesignated as § 1410.312(h) and revised. Proposed § 1410.312(i) (current § 450.312(i)) would be revised by replacing the words ''involved appropriately'' with ''consulted'' to more accurately reflect the statutory intention.

A new § 1410.312(j) is proposed to reflect the legislative changes of the TEA–21 which added several new discretionary grant programs. This section asserts that the projects (other than planning and research activities) funded through these programs must be addressed through the transportation planning process and included, as appropriate, in transportation plans and programs. Planning and research activities funded under the referenced programs are addressed in the Unified Planning Work Programs (UPWP) for each metropolitan planning area.

Section 1410.314 Planning Tasks and Work Program

Current § 450.314(a) would be redesignated as § 1410.314(a). The provisions of this overall section remain largely unchanged except for wording revisions for clarity or to reflect modifications in other sections, e.g., elimination of the MIS proposed under § 1410.318. One change to § 450.314(a) proposes to drop the reference to TMAs. This is intended to suggest that all MPOs have a responsibility to meet the requirements of this section. It does not prevent a smaller, attainment area MPO from proposing a prospectus or a simplified work program. Paragraph (c) of current § 450.314 would be revised and redesignated as § 1410.314(c). A new paragraph (d) will be added as § 1410.314(d).

Section 1410.316 Transportation Plan Development

Current § 450.316 would be redesignated as § 1410.316. Overall this section has extensive proposed revisions for several reasons. The

metropolitan planning factors were revised by the TEA–21; reduced in number from 16 to 7. The wording in § 450.316(a) would be revised by substituting the seven planning factors identified in the TEA–21 for those previously identified by the ISTEA. All parenthetical amplification would be removed and the wording would be the same as that used in the statute. We plan to issue guidance regarding interpretation and application of the planning factors. This will be especially true of new planning goals, such as safety, environmental considerations, and operations and management, which have been added to the list.

The US EPA has suggested that the FTA and the FHWA amplify and elaborate the detail in the regulation regarding the meaning of the planning factors. The agencies have kept the language as stipulated in the statute. However, the agencies believe that substantial benefits can be realized by States and MPOs in applying the planning factors, under §§ 1410.214 and 1410.316(a), aggressively, most notably in supporting the provisions of § 450.318 below. The planning factors can serve as a key focal point for developing plans and programs and MPOs and States may develop specific rationales to guide their utilization in the plan development process. Indeed, where States and MPOs choose to develop their own performance criteria to monitor the results of planning, they may be well served by utilizing the planning factors as a base for those criteria. The FTA and the FHWA will support efforts by States and MPOs to utilize such criteria by addressing them in Federal reviews and assessments. In addition, the agencies will seek to develop specific examples of how the planning factors can support effective plan development and environmental streamlining. Streamlining, as an activity to reduce project level burden and delay, could be more readily achieved if the planning process provides an early consideration of the planning factors.

The FHWA and the FTA welcome suggestions on exemplary State and MPO procedures or data collection efforts already in place or under development and how those might be replicated in other State or MPO planning processes. We are interested also in specialized training efforts, e.g., safety, that may have been developed or needed by States and MPOs. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, it is our intent to work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

The public involvement provisions would be modified for clarity and would reflect the provisions of Presidential Executive Order 12898 on Environmental Justice and implementing DOT and FHWA orders. Similar changes have been made regarding references to compliance with the provisions of Title VI of the Civil Rights Act of 1964. The organization of § 450.316 would be modified slightly to reflect these changes and to provide clarity in understanding them.

The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase ''and other interested parties'' reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants.

Section 1410.316(b)(9) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings.

Relatively small scale modifications to the public involvement provisions are proposed as follows: (1) The provision of timely information will be modified to encourage engagement of the public during the early stages of plan and TIP development; (2) demonstration of timely response to comments received would be revised to highlight response to input from minority and low-income populations; and (3) periodic MPO evaluations of public involvement effectiveness would now include an emphasis on the success obtained in engaging minority and low-income populations.

Current § 450.316(b)(2) is proposed to be redesignated as § 1410.316(c). Additional attention is drawn to the provisions of Executive Order 12898 and implementing DOT and FHWA orders. Specifically, data necessary for the purposes of conducting planning analyses for plan development are identified as contributors to the demonstration of compliance with the Executive Order. We are required to assure compliance with the Executive Order and will rely on the data identified under this section for that purpose. In addition, the statutory and regulatory requirements identified in this section apply to State DOTs, MPOs, and transit operators. Consequently, additional data and analyses are proposed as a basis for demonstrating that plans and resulting programs will be consistent with the referenced statutory requirements. Additional guidance will be issued to refine and amplify the basic framework established by these provisions. We believe, however, that much of the proposed data specification was previously required for assertions of compliance with Title VI and related statutory authorities and, hence, should not require a major new data collection effort.

In addition to the revised requirements of this section, the FHWA and the FTA continue to encourage attention to the selection of members of boards and committees that represent the demographic profile of the metropolitan planning area served. The ability to meet the needs of the community is enhanced by efforts designed to provide voice to as many segments of its membership as possible. The FHWA and the FTA solicit comments regarding additional strategies that may be effective in serving the interests of inclusiveness in transportation decision making.

Current §§ 450.316(b)(3) through 450.316(b)(5) would be redesignated as § 1410.316(d) through (f). Current § 450.316(c) would be redesignated as § 1410.316(g) and revised for clarity. Current § 450.316(d) is proposed to be redesignated as § 1410.316(h).

Proposed § 1410.316(i) is offered to encourage the coordination of federally funded non-emergency transportation services per the requirements of section 1203(d)(4) of the TEA–21. The section simply restates the legislative language.

Section 1410.318 Relation of Planning and Project Development Processes

The TEA–21 eliminates the major investment study (MIS) as a separate requirement as set forth in the planning regulations and calls for integration of the requirement, as appropriate, into the planning and NEPA analyses required under proposed 23 CFR parts 1410 and 1420. Accordingly, current § 450.318

would be revised to focus on the relationship between the planning and project development processes.

Section 1308 of the TEA–21 directs the US DOT Secretary to eliminate the separate MIS and its elements and integrate the remaining aspects of the MIS into the planning and NEPA regulations. The FHWA and FTA have attempted to do this by focusing on the fundamental basics of the MIS process, i.e., the cooperative relationship of planning and project development agencies, the early engagement of permit and resource agencies, flexible definition of the need to do analyses as decided by the participants and an appropriate level of public involvement. The MIS process did not require a specific methodology for studying alternatives, a specific set of alternatives to study, a particular format for reports, a specific public involvement or analytical process, or a specific set of projects to which the MIS applied. The US EPA has specifically suggested that the MIS process required and should require the use of cost benefit, costs effectiveness analysis and/or other related analytical techniques. The logic of this proposal is that early, effective consideration of social, environmental and economic considerations in planning analyses should permit more expedited consideration of these same issues, at a more micro level of detail, for subsequent NEPA analyses. By linking the planning and project development processes more effectively, the participants can reduce time required, analytical redundancy and process requirements by utilizing previously conducted work as a basis for subsequent analyses and efforts. It is the belief of the FTA and the FHWA that an aggressive utilization of the options provided here can strengthen the planning process and streamline the project development process substantially. The agencies are specifically interested in comments that address the extent to which the remaining aspects of the MIS process have been included in this proposal and suggestions for encouraging States and MPOs to more effectively take advantage of the options provided herein.

The overall structure of the relationship emphasizes alternatives for planning and sponsor agencies to integrate decision processes to take advantage of potential streamlining opportunities and for early consultation among the MPOs, State DOTs, and transit operators. The planning process is charged with providing an initial statement of purpose and need for proposed transportation improvements, identifying and evaluating alternatives (including, but not limited to, design concept and scope) and selecting an alternative and including it in the plan. This statement would not necessarily lead to a determination of purpose and need on a project-by-project basis for transportation improvements normally grouped (not specified individually) in a plan. An alternative could be a programmatic statement of purpose and need that identifies the basis for investing resources in a given transportation area such as safety or pavement resurfacing.

The consideration of alternatives and other planning level analyses done in support of plan development do not eliminate the need for considering all reasonable alternatives during the NEPA process. However, to the extent that the planning participants anticipate the required consideration of all reasonable alternatives in the planning process, they will significantly enhance, in our view, the efficiency of the NEPA process. Well documented, thorough planning analyses should permit the NEPA process to accept this information as a sound basis for reducing the alternatives considered and the detail required for others in the NEPA process. Provision also is made for policy preferences and guidance from planning policy bodies to be included on the record for consideration in subsequent decision steps.

Examples of issues that might be covered in the planning level consideration of alternatives include: the consideration of alternatives that in the past have been rejected for not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternatives analysis that examines ''no-build'' alternatives that use transportation demand strategies; and, flexibility to encourage the selection of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings. The FHWA and the FTA will work with the US EPA on guidance and training in this regard.

A number of alternative sources of information are identified as a basis for the development of purpose and need, a planning level analysis of alternatives (primarily at the level of concept and scope) and specification of a project for inclusion in the transportation plan. These information sources are utilized at the discretion of participating agencies (MPO, State DOT, and transit agency) acting jointly. The underlying logic of the proposal is that if the options to document thoroughly and analyze fully are chosen, this effort will lead to expedited analytical efforts in subsequent NEPA analyses. Less robust analytical and documentation efforts would force elaboration and analysis of alternatives during the NEPA process.

The utilization of planning analyses as a basis for project development actions is explained. In particular the regulatory language specifies that the results of planning analyses shall serve as input to the environmental process under proposed 23 CFR part 1420 (current part 771), and other project level actions. Proposed § 1410.318(c) references the contents of proposed § 1420.201 to provide a frame of reference to data and analytical expectations in subsequent NEPA process steps, *i.e.,* the standard of analysis expected by the NEPA process for projects. Planning, systems level, analyses that address these data and analytical requirements can improve the efficiency of the NEPA process and reduce data and analytical efforts required.

The ability to streamline the planning and environmental relationship is dependent, in part, on appropriate decisions made by the planning participants. They can choose to develop a rigorous basis for establishing transportation purpose and need, identifying alternatives for evaluation, and assessing these alternatives through the planning process. Alternatively, they can choose to apply minimal analytical techniques. At the time the NEPA analyses are undertaken for project development, the agencies participating in that process will review the materials provided by the planning process. Minimal analyses in planning will have to be supplemented and elaborated to satisfy the needs of the NEPA process. More robust planning analyses should allow the NEPA process to reduce the need for revisiting and re-evaluating planning level studies and instead proceed to focus on project level considerations of location and design. Consequently, the consideration of alternatives should be more quickly and efficiently accomplished.

A similar option exists with regard to documentation of planning results. A set of planning activities to be documented to facilitate this linkage is specified in § 1410.318(a)(2). The option to document is a discretionary option of the planning participants in cooperation with appropriate project sponsors. The focus is not on the details of documents but rather on the act of documenting the results of analyses and studies. Robust analyses coupled with sound documentation will permit more effective linkage and utilization of

planning analyses and data collection in subsequent NEPA analyses.

The early involvement of Federal and State environmental and permit agencies is encouraged under proposed § 1410.318(d) to facilitate linking planning and environmental processes. The involvement of the FTA is required where planning studies are proposed to satisfy requirements of the Major Capital Investment Program administered by the FTA under 49 CFR part 611. The TEA–21 directive that Federal decisions on plans and programs are not considered a Federal action for NEPA purposes is restated in proposed § 1410.318(f) (the FHWA and the FTA do not approve plans but they do approve the State TIP which is not subject to NEPA). Finally, the basis for Federal project actions in plans and TIPs is specifically stated. The intent of this latter provision, in proposed § 1410.318(g), is to clearly substantiate the need for projects to be in plans before Federal actions can be taken on them. A particular point is made that project actions and the appropriate phase of a project must be in a plan and TIP before project actions can be taken.

Section 1410.320 Congestion Management System and Planning Process

Current § 450.320 would be redesignated as § 1410.320 and would be revised to reflect the impact of the issuance of the Management System rule (23 CFR part 500) and the National Highway System Act of 1995, Public Law 104–59, 109 Stat. 568. The latter made management systems optional, except for the congestion management system in transportation management areas (TMA). Hence, the proposed language focuses on the continuing provisions of the congestion management system in TMAs, including the limitation on single occupant vehicle capacity increases which remains unchanged under the TEA–21. With the exception of current § 450.320(a) which would be removed, the remainder of the overall section is generally unchanged.

One option considered, but not included in this proposal, is to revise 23 CFR part 500 by transferring the provisions dealing with the congestion management system to the metropolitan planning rule. The FHWA and the FTA would welcome comments on this idea with regard to its utility and appropriateness.

Section 1410.322 Transportation Plan Content

Current § 450.322 would be redesignated as § 1410.322. Current § 450.322(a) would be modified by adding a discussion of data assumptions for plan updates. Specifically, the language would clarify what must be considered in preparing a plan update, as a minimum. It also would reaffirm that the MPO must approve the content of a new plan or reaffirm existing plan content in conducting an update. We have chosen to provide this clarification in response to requests from stakeholders and to emphasize that a plan is a critical document. Piecemeal revisions that incrementally revise plans do not constitute an appropriate, accurate or meaningful basis for plan development, implementation, and/or subsequent decision making.

A proposed minor revision would be made to § 450.322(b)(2) to reflect the emphasis on management and operation of the transportation system.

Current §§ 450.322(b)(3) through (b)(6) would remain unchanged with the exception of minor edits for clarity. Current § 450.322(b)(7) would be revised to reflect the elimination of the MIS and redesignated as § 1410.322(b)(7). Current § 450.322(b)(8) would be removed. Current §§ 450.322(b)(9) and (10) would be redesignated as §§ 1410.322(b)(8) and (9), respectively.

Current § 450.322(b)(11) would be redesignated as § 1410.322(b)(10) and remain generally unchanged except for the addition of the reference to ''illustrative projects.'' Illustrative projects have no standing for transportation or air quality purposes until such time as a financing source has been identified and they have been formally amended into the plan by action of the MPO. At that point they could be added to a TIP as a project to be advanced. We expect that the MPO would coordinate its actions with the State DOT and transit operator and vice versa. Once formally added to a plan and TIP, these projects may be included in regional conformity findings, advanced, and subject to appropriate project level actions by the FHWA and the FTA.

The remainder of § 450.322(b)(10) would remain generally unchanged since the TEA–21 either did not change key provisions or reenforced previous provisions required through regulation (*e.g.,* cooperative estimates of revenue for plan development). With regard to estimated revenues, we have opted to rely on a cooperative process of State, MPO and transit operator estimation based on local preferences and arrangements. We would support the cooperative process through the provision of guidance and identification of good practices for emulation.

A new § 1410.322(b)(11) proposes to focus on intelligent transportation systems (ITS) and the National ITS Architecture. As provided in section 5206(e) of TEA–21, we have issued interim guidance on compliance with this new legislative requirement. This proposed wording is intended to be an integral element of the proposed regulatory issuance on compliance with this requirement. A companion NPRM issuance will be made for project development and national policy on consistency with the National ITS Architecture. It will support planning as the initial stage at which this consistency must begin. We are issuing the planning component through this NPRM and solicit comments on this proposal.

The existing wording of § 450.322(c) would be redesignated as § 1410.322(c) and would be modified to add users of public transit and freight shippers as directed by the TEA–21. A minor modification would be made to § 450.322(d) (proposed § 1410.322(d)) to clarify that if either the MPO or we fail to make a conformity determination, the Governor or the Governor's designee must be notified.

A new § 1410.322(e) would refine the operating approach to plan changes and updates. The question of a 20-year horizon has received substantial discussion as indicated previously. As part of the clarification of the meaning of the term ''20-year horizon,'' we are proposing that a plan is valid for transportation purposes if it has a twenty year horizon at the time of adoption. If no major changes are made to the plan, *e.g.,* the addition of a non-exempt project, then the plan would remain valid as a basis for Federal actions until its next regularly scheduled update. This proposal also indicates that it is our intent that conformity determinations by the FHWA/FTA be made as close as possible to the MPO plan conformity finding, *i.e.,* as soon as possible after MPO plan adoption and conformity determination actions are taken. The three year period and the twenty year horizon would start at the point a Federal conformity determination is made on the plan for a nonattainment or maintenance area. This will eliminate confusion over the validity of the transportation plan in relation to air quality conformity determination. A new conformity determination would be required within eighteen months of certain SIP actions according to 40 CFR 93.104, even if the three year period had not expired at the time. In an attainment area, the plan would be valid for five

years from MPO approval so long as no regionally significant projects are added.

The current requirement of § 450.322(e) that new plans and plan updates be provided to us would be included in proposed § 1410.322(f).

A new § 1410.322(g) would be added to authorize utilization of an interim plan during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded during a conformity lapse when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the applicable SIP). Inclusion in the SIP would have to occur before such TCMs can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim plan may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

Section 1410.324 Transportation Improvement Program Content

Existing §§ 450.324(a) through (e) would have minor modifications to the text and be redesignated as §§ 1410.324(a) through (e). Please note, however, that an addition to proposed § 1410.324(b) would reflect the changes in proposed § 1410.222(c) to limit STIP/TIP extensions to 180 days in attainment areas. The prohibition against STIP/TIP extensions in nonattainment and maintenance areas is present also in proposed § 1410.324(b). Additionally, the current wording reflects TEA–21's confirmation of the previous regulatory provisions; most notably, the cooperative estimate of available funds. As indicated above, the estimation process would be achieved through locally identified processes.

In existing § 450.324 (proposed § 1410.324), proposed paragraph (f)(1) would be unmodified. Paragraph (f)(2) would be modified to reflect changes in funding categories (*e.g.,* minimum guarantee, etc.) and the elimination of the exemption for Motor Carrier State Assistance Program and 23 U.S.C. 402 safety program projects from being included in a TIP. The exemption for these two categories would be removed to reflect the ITS consistency requirement discussed above and the requirement that transportation projects funded with Federal-aid funds must satisfy the requirements of 23 U.S.C. and, where appropriate, be found conforming for air quality purposes.

In current § 450.324(f)(3) (redesignated as § 1410.324(f)(3)), ''approval'' would be changed to ''action'' to reflect a broader concept regarding the range of our activities taken with regard to projects, *i.e.,* not all of them are labeled ''approvals'' but, yet, they must still be based on plans and programs.

Current §§ 450.324(f)(4) and (f)(5) would be modified and redesignated as §§ 1410.324(f)(5) and (f)(6), respectively. The changes are intended to clarify that all regionally significant projects in air quality non-attainment and maintenance areas, whether funded federally or otherwise, would be included in the metropolitan TIP. This allows full consideration of all projects in a regional conformity determination and ensures that the provisions of the CAA are met.

The three year conformity period for a TIP would start from the date of the conformity determination by the FHWA and the FTA. It is our expectation that the time period from the point of a Federal conformity determination on the TIP and its inclusion by the Governor's action in the STIP and the subsequent gubernatorial approval of the STIP and planning finding and STIP approval by the FHWA and the FTA would be monitored to ensure efficient and expeditious processing by all parties.

With the exception of proposed minor changes for clarification regarding fiscal constraint, § 450.324(g) (proposed § 1410.324(g)) would be unchanged. The changes would reiterate the need for specification of funding sources for projects included in a TIP. The wording of existing § 450.324(h) (proposed § 1410.324(h)) would be unchanged. The content of § 450.324(i) (proposed § 1410.324(i)) would be modified to indicate that only regionally significant projects funded under Chapter 2 of 23 U.S.C. need be specifically identified in a TIP. These projects are typically ''Federal Lands'' projects, *e.g.,* Indian Reservation Roads, National Park Service Road, etc. The existing §§ 450.324(j) through (m) (proposed § 1410.324(j) through (m)) would be generally unchanged except for statutory reference modifications.

Existing § 450.324(n) (proposed § 1410.324(n)) would be modified to include an indication that projects are to be included on the TIP until fully authorized. A new § 1410.324(n)(5) is proposed to require that the TIP shall serve as the basis for an annual listing of projects, supplemented as appropriate, to ensure adequate public information regarding projects funded with Federal monies. Both changes are geared at ensuring greater clarity as to what projects must be included on a TIP.

The second change to proposed § 1410.324(n) serves another purpose—encouraging greater public knowledge regarding which projects have been advanced. In this case, we are opting to allow the planning participants the flexibility to design a process to comply with the legislative directive provided in section 134(h)(7)(B) of title 23 U.S.C. for an annual listing of projects. While the statute focuses on the MPO, we believe that the State DOT, transit operator, and the MPO operating jointly can produce the required information.

The MPO, in cooperation with its planning partners would, under this proposal, utilize the TIP as the basis for the annual listing. Each year the participating agencies would identify the projects that advanced (or did not) and publish the ''list'' jointly, in a fashion consistent with the public involvement provisions for the metropolitan area. Changes to the TIP would be acknowledged and reflected in modifications to the annual listing as appropriate.

Current § 450.324(o) would be redesignated as § 1410.324(o) with no other changes.

In general, we believe that it may be possible to further streamline the information and procedural requirements expected of TIPs, particularly with regard to financial information. We would be interested in any possible information reduction options that may be possible while maintaining the principles and practices of sound public involvement and fiscal constraint.

A new § 1410.324(p) would be added to authorize utilization of an interim TIP during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the

applicable SIP). These TCMs would have to be included in the SIP before they can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim TIP may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

Section 1410.326 Transportation Improvement Program Modification

Current § 450.326 would be redesignated as § 1410.326. The only change to this section would be to clarify when a new conformity determination is necessary. The addition of non-exempt projects, or replacement of an existing TIP by a new TIP, requires a new conformity determination. Similarly, moving a project or a phase of a project from year four, five, or later of a TIP to the first three years would be an amendment and require a new conformity determination. We believe that frequent modification of TIPs through the addition of non-exempt projects is inconsistent with the principles of fiscal constraint and public involvement. Hence, we intend to make it clear that a new conformity determination is necessary unless the changes to TIPs are minor, i.e., addition or deletion of exempt projects.

Section 450.328 Transportation Improvement Program Relationship to Statewide TIP

Current § 450.328 would be redesignated as § 1410.328. The text would remain unchanged.

Section 1410.330 Transportation Improvement Program Action by FHWA/FTA

Current § 450.330 would be redesignated as § 1410.330. The provisions of current §§ 450.330(a) and (b) would be redesignated as §§ 1410.330(a) and (b). There would be very minor wording changes for clarification or technical corrections. A new § 1410.330(c) would be added to address the addition of ''illustrative projects'' to TIPs. This paragraph makes it clear that no Federal action may be taken on these projects until they become formally included in the TIP as indicated previously.

Consistent with the overall purposes of the planning process and the need for Federal actions on planning processes and products as appropriate as described in this proposed regulation, project funding is contingent on the existence of a plan and TIP. If a plan and TIP are not updated as required herein, new funding actions cannot be taken.

Section 1410.332 Selecting Projects from a TIP

Current § 450.332 would be redesignated as § 1410.332. Current §§ 450.332(a), (b) and (c) would be redesignated as §§ 1410.332((b), (c) and (a), respectively, with only citation corrections to the text. Proposed §§ 1410.332(d) and (e) (current §§ 450.332(d) and (e), respectively) would include citation corrections and in paragraph (e) the word ''will'' would become ''shall'' to reflect the force of law under the CAA. Consistent with previous program practice by the FHWA and the FTA, selecting a project for advancement from year two or three of a TIP does not require a TIP amendment.

Section 1410.334 Certifications

Current § 450.334 would be redesignated as § 1410.334. Current § 450.334(a) would have three new paragraphs (a)(6) through (a)(8) under this proposal. These paragraphs add references to compliance with additional Federal statutes but do not represent new compliance requirements. These requirements previously existed and the regulations would be revised to point out their existence.

Paragraph (d) would be revised to clarify the basis for Federal certification actions in relation to Federal findings during the review process. The wording of current paragraph (e) would be the same as the sanctions specified in paragraph (f). Current paragraph (g) would be eliminated to reflect changes made by the TEA–21 (related to the failure to remain certified for two years after October 1994). A new proposed § 1410.334(g) would focus on the new statutory requirement for public involvement during a certification review. We previously required this through administrative directive. Hence, there would be no change in practice, other than to further encourage broad public outreach as part of certification reviews.

Phase-in of New Requirements

No phase-in period for any requirements under the TEA–21 is proposed. Current § 450.336 would be removed. Comments on the desirability of such requirements and the specific areas for which they are warranted are welcome.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, we will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies

We have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. This rulemaking is a revision to an existing regulation for which the costs of compliance have previously been addressed. The modifications proposed herein are intended to reduce current regulatory requirements (*e.g.,* simplification of planning factors, elimination of separate MIS requirement, simplification of planning area boundary establishment, etc.) and to add some additional data analysis requirements (*e.g.,* elaboration of environmental justice data analyses, preparation of an Intelligent Transportation Systems Integration Strategy, addition of operations and management responsibility, etc.). In preparing this proposal, the agencies have sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities. As a result, we believe that the economic impact of this rulemaking in comparison to the existing regulation should be the same or less.

The marginal additional costs associated with these proposed rules are attributable to the streamlining

provisions of the TEA–21. Achieving the goals of these provisions more efficiently and effectively warrants the regulatory changes proposed herein. Furthermore, we provide substantial financial assistance to States and MPOs to support compliance with the regulatory requirements of this part. Funding for the planning process increased substantially under the TEA–21 and should, we believe, off-set much of the economic impact on entities complying with these requirements.

This proposed rule would revise existing metropolitan planning regulations of the FHWA and the FTA and conform those regulations to requirements of the TEA–21. While they incorporate some new requirements, the bulk of them have been in place for many years and States and metropolitan planning organizations have been implementing them. In the past, we have provided funding to support planning activities and production of required transportation documents, *e.g.*, transportation plans and improvement programs. During Fiscal Year 1999, the FHWA will provide in excess of $187 million for metropolitan planning and $492 million for State planning and research activities. The FTA provided $42 million for metropolitan planning. For both agencies, there is a statutory matching grant requirement which stipulates that recipients must match Federal funds at least on an 80 percent Federal, 20 percent recipient basis. To meet the State planning funds matching requirement, States will expend approximately $98 million. The MPOs will have to provide approximately $46 million of non-Federal funds to match the Federal metropolitan planning funds (the FHWA and the FTA funds combined). If the States and other recipient's choose not to accept Federal support for transportation they would not have to develop the plans and programs stipulated in this proposed rule. Hence, the Federal government provides a substantial economic incentive to encourage State and metropolitan planning. In addition, these rules support the EPA conformity regulation at 40 CFR parts 53 and 91 which establishes requirements for MPOs to perform regional transportation and emissions modeling and to document the regional air quality impacts of transportation improvements contained in plans and programs.

The impacts on the States and MPOs result mainly from modified data collection and analysis activities that may be necessary to implement the TEA–21 planning provisions. A single new provision in § 1410.322(b)(11) focuses on the requirements for satisfying section 5206(e) of the TEA–21 regarding demonstrating consistency of Intelligent Transportation Systems projects funded with highway trust fund dollars with the provisions of the National ITS Architecture. The economic impacts of this provision are addressed in the regulatory analysis being prepared for the specific rulemaking on ITS architecture consistency. We anticipate that the elements required in the planning process for ITS consistency would generally be undertaken anyway as a part of the plan development activities and do not require significant new processes or requirements of MPOs and States.

In general, we believe that the rule changes proposed here have added limited regulatory requirements. The impact of complying with the changes can be minimized by States and MPOs by using the flexibility provided in the proposed rule to reduce data collection and analysis costs. While there may be additional costs to some States and MPOs, the TEA–21 significantly increased the mandatory set-aside in Federal funds that must be used for transportation planning, and in addition, gives the States and MPOs the flexibility to use Federal capital dollars for transportation planning if they so desire. We are interested in the costs to States and MPOs of complying with the proposed requirements, including the expenditure of State and MPO funds above the required matching amounts. Comments on this matter are welcome.

The agencies welcome comment on the economic impacts of these proposed regulations. Comments, including those from the States and MPOs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of this ongoing planning process requirement. Hence, we encourage comments on all facets of this proposal regarding its costs, burden, and impact.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601–612), we have evaluated the effects of these rules on small entities, such as, local governments and businesses. The proposed metropolitan and statewide planning regulations modify existing planning requirements. These modifications are substantially dictated by the statutory provisions of the TEA–21. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial number of small entities.

We are interested in any comments regarding the potential economic impacts of these proposed rules on small entities and governments. Of specific concern are the additional costs of the incremental changes in our regulatory requirements. The agencies believe that these costs have been off-set largely by reduced statutory requirements and the flexibility built into the regulations. The agencies are requesting comments on these issues.

Executive Order 13132 (Federalism Assessment)

This proposed action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA–21 and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA–21. Comments on these conclusions are welcomed and should be submitted to the docket.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. We have determined that this proposal contains a requirement for minor additional data

collection to satisfy the provisions of the TEA–21 associated with ITS and environmental justice. The FHWA and the FTA believe that this burden increase has been off-set by decreases in requirements associated with the seven planning factors and related matters.

The reporting requirements for metropolitan UPWPs, transportation plans and transportation improvement programs are currently approved under OMB control number 2132–0529. An extension request was filed with OMB on January 28, 2000, and a Notice of Request for Extension was published in the **Federal Register** on April 7, 2000 (65 FR 18421). The analysis supporting this approval was conducted by the FTA on behalf of both the FTA and the FHWA since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation. We initiated the preparation of materials to obtain a new three year approval from OMB in January 2000. The request for a new data collection approval will be filed with OMB before publication of this NPRM. The FHWA and the FTA are soliciting comments on this NPRM regarding the extent to which any additional burden, beyond that associated with the current collection requirement, will be incurred by States and MPOs.

The creation and submission of required reports and documents have been constrained to those specifically required by the TEA–21 or essential to the performance of our findings, certifications and/or approvals. The State plans are prepared on cycles individually determined by the States; the average is 10 such submissions per year. The State TIPs are prepared every two years. Approximately one third of all metropolitan areas prepare new plans every three years. The remaining metropolitan plans are updated every five years. We have assumed a distribution over several years for the plans. We have assumed that half of all TIPs are submitted annually. We assume an annual submission of unified planning work programs. By distributing the added burden for preparing these various submissions, the net result would be a minimal burden increase for each type of submission.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA and the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to the NPRM will be summarized and/or included in the request for OMB's clearance of this information collection.

National Environmental Policy Act

We have analyzed these proposed actions for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to meet the requirements for a Categorical Exclusion.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. (2 U.S.C. 1531 *et seq.*)

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements is predominantly covered by the funds they administer. However, as has been the case with previous regulatory issuances, we welcome comments from States, MPOs, transit agencies and other organizations regarding the extent to which the cost of compliance is covered by the funds provided.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of every year. The RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Parts 450 and 1410

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 613

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 621

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Federal Highway Administration

23 CFR Chapter I

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 134, 135, and 315, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

PART 450—[REMOVED]

1. Remove part 450.

23 CFR Chapter IV

2. For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to establish a new chapter IV in title 23, Code of Federal Regulations, consisting of part 1410 as set forth below:

CHAPTER IV—FEDERAL HIGHWAY ADMINISTRATION AND FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 1410—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Definitions

Sec.
1410.100 Purpose.
1410.102 Applicability.
1410.104 Definitions.

Subpart B—Statewide Transportation Planning and Programming

1410.200 Purpose.
1410.202 Applicability.
1410.204 Definitions.
1410.206 Statewide transportation planning process basic requirements.
1410.208 Consideration of statewide transportation planning factors.
1410.210 Coordination of planning process activities.
1410.212 Participation by interested parties.
1410.214 Content and development of statewide transportation plan.
1410.216 Content and development of statewide transportation improvement program.
1410.218 Relation of planning and project development processes.
1410.220 Funding of planning process.
1410.222 Approvals, self-certification and findings.
1410.224 Project selection.
1410.226 Applicability of NEPA to transportation planning and programming.

Subpart C—Metropolitan Transportation Planning and Programming

1410.300 Purpose of planning process.
1410.302 Organizations and processes affected by planning requirements.
1410.304 Definitions.
1410.306 What is a Metropolitan Planning Organization and how is it created?
1410.308 Establishing the geographic boundaries for metropolitan transportation planning areas.
1410.310 Agreements among organizations involved in the planning process.
1410.312 Planning process organizational relationships.
1410.314 Planning tasks and unified work program.
1410.316 Transportation planning process and plan development.
1410.318 Relation of planning and project development processes.
1410.320 Congestion management system and planning process.
1410.322 Transportation plan content.
1410.324 Transportation improvement program content.
1410.326 Transportation improvement program modification.
1410.328 Metropolitan transportation improvement program relationship to statewide TIP.
1410.330 Transportation improvement program action by FHWA/FTA.
1410.332 Selecting projects from a TIP.
1410.334 Federal certifications.

Authority: 23 U.S.C. 134, 135, 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5305; 49 CFR 1.48 and 1.51.

Subpart A Definitions

§ 1410.100 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) and 49 U.S.C. 5302.

§ 1410.102 Applicability.

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

§ 1410.104 Definitions.

Except as defined in this subpart, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

Conformity lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Conformity rule means the EPA Transportation Conformity Rule, as amended, 40 CFR parts 51 and 93.

Congestion management system means a systematic process for managing congestion that provides information on transportation system performance and on alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet State and local needs.

Consultation means that one party confers with another party, in accordance with an established process, about an anticipated action and then keeps that party informed about actions taken.

Cooperation means that the parties involved in carrying out the planning and/or project development 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 and adjustment of plans, programs and schedules to achieve general consistency.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial estimate means a projection of Federal and State resources that will serve as a basis for developing plans and /or TIPs.

Freight shipper means an entity that utilizes a freight carrier in the movement of its goods.

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

Illustrative project means a transportation improvement that would be included in a financially constrained transportation plan and program if reasonable additional financial resources were available to support it.

Indian Tribal Government means a duly formed governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Interim plan means a plan composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including adoption by the MPOs.

Interim transportation improvement program means a TIP composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including approval by the Governor.

ITS integration strategy means a systematic approach for coordinating and implementing intelligent transportation system investments funded with Federal highway trust funds to achieve an integrated regional system.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the Clean Air Act Amendments of 1990 (CAA) and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Management and operation means actions and strategies aimed at improving the person, vehicle and/or freight carrying capacity, safety, efficiency and effectiveness of the existing and future transportation system to enhance mobility and accessibility in the area served.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decision making for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

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, in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Non-metropolitan local official means elected or appointed officials of general purpose local government, outside metropolitan planning areas, with jurisdiction/responsibility for transportation or other community development actions that impact transportation and elected officials for special transportation and planning agencies, such as economic development districts and land use planning agencies.

Provider of freight transportation services means a shipper or carrier which transports or otherwise facilitates the movement of goods from one point to another.

Purpose and need means the intended outcome and sustaining rationale for a proposed transportation improvement, including, but not limited, to mobility deficiencies for identified populations and geographic areas.

Regionally significant project means a transportation project (other than an exempt project) 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 at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an 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:

(1) The implementation plan which contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy Clean Air Act (CAA) requirements for demonstrations of reasonable further progress and attainment (CAA secs. 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and secs.192(a) and 192(b), for nitrogen dioxide of the CAA); or

(2) The implementation plan under section 175A of the CAA as amended.

Statewide transportation improvement program (STIP) means a staged, multi-year, statewide, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan plans, TIPs and processes pursuant to 23 U.S.C. 135.

Statewide transportation improvement program (STIP) extension means the lengthening of the scheduled duration of an existing STIP, including the component metropolitan TIPs included in the STIP, beyond two years by joint administrative action of the FHWA and the FTA. STIP extensions are not allowed for metropolitan TIP portions of the STIP which are in nonattainment or maintenance areas as well as for those portions of the STIP containing projects in rural nonattainment or maintenance areas.

Statewide transportation plan means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process pursuant to 23 U.S.C. 135.

TIP update means the periodic re-examination and revision of TIP contents, including, but not limited to, non-exempt projects, on a scheduled basis, normally at least every two years. The addition or deletion of a non-exempt project or phase of a non-exempt project to a TIP shall be based on a comprehensive update of the TIP.

Transportation control measure means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a staged, multi-year, intermodal program of transportation projects in the metropolitan planning area 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).

Transportation plan update means the periodic review, revision or reaffirmation of plan content, normally every three years in nonattainment and maintenance areas and five years in attainment areas or the update period for State plans as determined by the State.

Twenty year planning horizon means a forecast period covering twenty years from the date of plan adoption, reaffirmation or modification in attainment areas and subsequent Federal conformity finding at the time of adoption in nonattainment and maintenance areas. The plan must reflect the most recent planning assumptions for current and future population, travel, land use, congestion, employment, economic activity and other related statistical measures for the metropolitan planning area.

Urbanized area (UZA) means a geographic area with a population of at least 50,000 as designated by the U.S. Department of Commerce, Bureau of the Census based on the latest decennial census or special census as appropriate.

User of public transit means any person or group representing such persons who use mass transportation open to the public other than taxis and other privately operated vehicles.

Subpart B—Statewide Transportation Planning and Programming

§ 1410.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a transportation planning process that shall be continuing, cooperative, and

comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed. The transportation planning process shall be intermodal and shall develop a statewide transportation plan and transportation improvement program for all areas of the State, including those areas subject to the requirements of 23 U.S.C. 134 and 49 U.S.C. 5303–5305. The plan and program shall facilitate the development and integrated management and operation of safe transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States. The intermodal transportation system shall provide for safe, efficient, economic movement of people and goods in all areas of the State and foster economic growth and development while minimizing transportation-related fuel consumption and air pollution.

§ 1410.202 Applicability.

The provisions of this subpart are applicable to States and any other agencies/organizations, such as MPOs, transit operators and air quality agencies, that are responsible for satisfying these requirements for transportation planning, programming and project development throughout the State pursuant to 23 U.S.C. 135.

§ 1410.204 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.

§ 1410.206 Statewide transportation planning process basic requirements.

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

(1) Data collection and analysis;

(2) Consideration of factors contained in § 1410.208;

(3) Coordination of activities as noted in § 1410.210;

(4) Development of a statewide transportation plan for all areas of the State that considers a range of transportation options designed to meet the transportation needs (*e.g.,* passenger, freight, safety, etc.) of the State including all modes and their connections;

(5) Development of a statewide transportation improvement program (STIP) for all areas of the State; and

(6) Various processes to accomplish data collection and analyses essential for an effective transportation planning process, including a process to assure that, no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the U.S. Department of Transportation. These assurances shall be demonstrated through the following:

(i) An assessment covering the State, including at a minimum the following:

(A) A geographic and demographic profile of the State that identifies the low-income and minority, and where appropriate, elderly and persons with disabilities, components of this profile;

(B) The transportation services available to or planned for these segments of the State population;

(C) Any disproportionately high and adverse environmental effects, including interrelated social and economic effects, consistent with the provisions of Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859) as implemented through US DOT Order 5610.2 and FHWA Order 6640.23; [1] and

(D) Any denial of or a reduction in benefits;

(ii) Consideration of comments received during public involvement efforts (consistent with the provisions of § 1410.212(b)) to ensure that expressed concerns of the elderly, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(iii) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(iv) The results of paragraphs (a)(5)(i), (ii) and (iii) of this section will be documented in a manner to permit public review during appropriate project development activities;

(v) The State may rely on information provided by a metropolitan planning organization for those segments of the population in metropolitan planning areas of the State; and

(vi) In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in paragraphs (a)(5)(i) through (vi) of this section are intended to nor shall they create any right to judicial review of any action taken by the agency, its officers or its recipients taken under this part to comply with such Orders.

(b) [Reserved].

[1] DOT order 5610.2 and FHWA order 6640.23 are available for inspection and copying from DOT headquarters and field offices as prescribed at 49 CFR part 7.

§ 1410.208 Consideration of statewide transportation planning factors.

(a) Each statewide transportation planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity and efficiency;

(2) Increase the safety and security of the transportation system for motorized and nonmotorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the preservation of the existing transportation system.

(b) In addition, in carrying out statewide transportation planning, the State shall consider, at a minimum, the following and other factors and issues that the planning process participants might identify which are important considerations within the statewide transportation planning process:

(1) With respect to nonmetropolitan areas, the concerns of local elected officials representing units of general purpose local government; and

(2) The concerns of Indian Tribal Governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State.

§ 1410.210 Coordination of planning process activities.

(a) The statewide transportation planning process shall be carried out in coordination with adjacent States, adjacent countries as appropriate at the international borders, and with the metropolitan planning process required by subpart C of this part.

(b) The statewide transportation planning process shall be coordinated with air quality planning and provide for appropriate conformity analyses to the extent required by the Clean Air Act (40 U.S.C. 175 and 176). The State shall carry out its responsibilities for the development of the transportation portion of the State Implementation Plan to the extent required by the Clean Air Act (42 U.S.C. 7504), as appropriate within the statewide transportation planning process.

(c) Development of transportation plans, programs and planning activities shall be coordinated with related planning activities being carried out outside of metropolitan planning areas.

(d) The statewide transportation planning process shall provide a forum for coordinating data collection and analyses to support, planning, programming and project development decisions.

(e) The degree of coordination shall be based on the scale and complexity of many issues including transportation problems, safety concerns, land use, employment, economic, environmental, and housing and community development objectives, and other circumstances statewide or in subareas within the State.

§ 1410.212 Participation by interested parties.

(a) Non-metropolitan local official participation.

(1) The State shall have a documented process for consultation with local officials in non-metropolitan areas within the continuing, cooperative and comprehensive planning process for development of the statewide transportation plan and the statewide transportation improvement program. The process shall be documented and cooperatively developed by both the State and nonmetropolitan local officials.

(2) The process for participation of nonmetropolitan local officials shall not be reviewed or approved by the FHWA and the FTA. However, local official participation will be among the issues considered by the FHWA and the FTA in making the transportation planning finding called for in § 1410.222(b).

(b) Public involvement.

(1) Public involvement processes shall be open and proactive by providing complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

(2) To satisfy these objectives public involvement processes shall provide for:

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

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

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

(iv) 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;

(v) A process for demonstrating explicit consideration and response to public input during the planning and program development process, including responses to input received from persons with disabilities and minority, elderly, and low-income populations;

(vi) A process for seeking out and considering the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income and minority populations which may face challenges accessing employment and other amenities;

(vii) 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, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low-income populations.

(3) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in § 1410.322(c) or § 1410.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(4) During initial development and major revisions of the statewide transportation plan required under § 1410.214, the State shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers providers of freight transportation services 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 § 1410.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(5) During development and major revision of the statewide transportation improvement program required under § 1410.216, the Governor shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers, providers of freight transportation services 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 § 1410.222(b)) 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.

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

(7) 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.

(c) Federal agency and other government participation. The transportation planning process shall allow for participation of other governments and agencies, particularly Indian Tribal Governments and Federal lands managing agencies. The process for consulting with Indian Tribal Governments and Federal lands managing agencies shall be cooperatively developed and documented by both the State and the Indian Tribal Government(s) or the respective Federal lands managing agency.

(d) State air quality agency and other state agency participation. The transportation planning process shall allow for participation of the State air quality agency and other state agencies as determined appropriate by the planning process participants.

(e) Participation and the planning finding. The processes for participation of interested parties will be considered by the FHWA and the FTA as they make the planning finding required in § 1410.222(b) to assure that full and

open access is provided to the decision making process.

§ 1410.214 Content and development of statewide transportation plan.

(a) The State shall develop a statewide transportation plan that shall:

(1) Cover all areas of the State;

(2) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between transit, non-motorized, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the safe and efficient movement of people and goods;

(3) Address the development of intelligent transportation systems (ITS) investment strategies, including an ITS Integration Strategy consistent with the provisions of § 1410.322(b)(11), to support the development of integrated technology based investments, including metropolitan and non-metropolitan investments. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the level of resources and staging of planned investments. ITS Integration Strategy shall be developed and documented no later than the first update of the transportation plan or STIP that occurs two years following the effective date of the final rule;

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

(5) Provide for development and integrated management and operation of bicycle and pedestrian transportation system and facilities which are appropriately interconnected with other modes;

(6) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134 and 49 U.S.C. 5303;

(7) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation needs 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;

(8) Reference, summarize or contain information on the availability of financial (including as appropriate an optional financial plan consistent with 23 CFR 1410.214(d)) and other resources needed to carry out the plan; and

(9) Contain strategies that ensure timely compliance with the applicable SIP.

(b) The following entities shall be involved in the development of the statewide transportation plan:

(1) MPOs shall be involved on a cooperation basis for the portions of the plan affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the plan affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting areas of the State under their jurisdiction;

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in nonmetropolitan areas of the State.

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

(1) Provide for participation by interested parties as required under § 1410.212;

(2) Provide for consideration and analysis as appropriate of specified factors as required under § 1410.208;

(3) Provide for coordination as required under § 1410.210; and

(4) Identify transportation strategies necessary to efficiently serve the mobility needs of people.

(d) The statewide transportation plan may include a financial plan that:

(1) Demonstrates how the adopted transportation plan can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary of Transportation on the STIP.

(e) The State shall provide and carry out a mechanism to adopt the plan as the official statewide transportation plan.

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

§ 1410.216 Content and development of 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 metropolitan TIP development the State, the MPO and the transit operator will cooperatively develop timely estimates of available Federal and State funds which are to be utilized 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 nonattainment 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 management 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 U.S.C. and 49 U.S.C. Chapter 53 fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for participation of interested parties in development of the STIP as required by § 1410.212.

(b) The following entities shall be involved in the development of the statewide transportation improvement program:

(1) MPOs shall be involved on a cooperation basis for the portions of the program affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the program affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting

areas of the State under their jurisdiction; and

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in nonmetropolitan areas of the State.

(c) The STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first three years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate 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 three years, but may at State discretion cover a longer period. If the STIP covers more than three 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 § 1410.214;

(4) In nonattainment and maintenance areas, contain only transportation projects that have been found to conform, or which come from programs that conform, in accordance with the requirements contained in the EPA conformity regulation 40 CFR parts 51 and 93;

(5) Contain a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. The STIP financial constraint will be demonstrated and maintained by year and the STIP shall 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, preferably in an optional financial plan consistent with § 1410.216(f);

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, safety, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under 49 U.S.C. Chapter 53 and/or title 23, U.S.C., excluding:

(i) Metropolitan planning projects funded under 23 U.S.C. 104(f) and 49 U.S.C. 5303;

(ii) State planning and research projects funded under 23 U.S.C. 307(c)(1) and 49 U.S.C. 5313(b)(except those funded with national highway system (NHS), surface transportation program (STP) and minimum guarantee funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(iii) 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 49 U.S.C. Chapter 53 funds, and/or selected funds administered by the Federal Railroad Administration, *e.g.,* addition of an interchange to the Interstate System with State, local and/or private funds, high priority or demonstration projects not funded under title 23, U.S.C., or 49 U.S.C. Chapter 53. (The STIP should 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) Identify ITS projects funded with highway trust fund monies, including as appropriate an integration strategy, consistent with the statewide plan. Where ITS projects are identified that fit the provisions of § 1410.322(b)(11), an agreement shall exist between participating agencies in the project area that will govern their implementation.

(9) Include for each project or phase the following:

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

(ii) Estimated total project cost, which may extend beyond the three years of the STIP;

(iii) The amount of funds proposed to be obligated during each program year for the project or phase;

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

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

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

(10) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the requirements in § 1410.224(c).

(d) 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 1420.311(c) and (d) and/or 40 CFR part 93. In addition, projects funded under chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line item, unless they are determined to be regionally significant.

(e) 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 requirements of § 1410.224.

(f) The statewide transportation improvement program may include a financial plan that:

(1) Demonstrates how the adopted transportation improvement program can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the program;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary on the STIP.

(g) The STIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 1410.212 (for interested party participation) and in § 1410.222 (for the FHWA and the FTA approval).

§ 1410.218 Relation of planning and project development processes.

(a) Depending upon its character and the level of detail desired as determined by the planning process participants, the statewide planning process products and analyses can be utilized as input to subsequent project development. The process described in § 1410.318 relating planning and project development may

be utilized at the discretion of the statewide transportation planning process participants in non-metropolitan areas. Analyses performed within the statewide planning process to support project development lead to a statement of purpose and need for regionally significant proposed transportation investments.

(b) The results of analyses conducted under paragraph (a) of this section, at the option of the planning participants, may:

(1) Be documented as part of the plan development record for consideration in subsequent project development actions;

(2) Serve as input to the NEPA process required under 23 CFR 1420;

(3) Provide a basis, in part, for project level decision making; and

(4) Be proposed for consideration as support for actions and decisions by federal agencies other than US DOT;

(c) To the extent feasible, Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan, shall be involved in planning analyses and studies as a means to reduce subsequent project development analyses and studies, support decisionmaking, and provide early identification of key concerns for later consideration and analysis as needed. Where the processes available under § 1410.318(f) are invoked, the FHWA and the FTA shall be consulted.

(d) Nothing in this section shall be interpreted as requiring formal NEPA review of or action on plans and TIPs.

(e) The FHWA and the FTA project level actions, including, but not limited to issuance of a categorical exclusion, finding of no significant impact or a final environmental impact statement under 23 CFR 1420, right of way acquisition (with the exception of hardship and protective buying actions), interstate interchange approvals, high occupancy vehicle (HOV) conversions, funding of ITS projects, project conformity analyses and approval of final design and construction and transit vehicle acquisition may not be completed unless the proposed project action is included in a STIP which meets the requirements of this subpart. None of these project level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the EPA's conformity rule (40 CFR parts 51 and 93).

§ 1410.220 Funding of planning process.

Funds provided under 49 U.S.C. 5303, 5307, 5309, 5311, and 5313(b) and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f), 105, and 505(a) may be used to accomplish activities in this subpart.

§ 1410.222 Approvals, self-certification and findings.

(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. 134 and 135, 49 U.S.C. 5303–5305 and 5323(k), and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230);

(3) Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324);

(4) The Older Americans Act of 1965, as amended (42 U.S.C. 6101); and

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35);

(6) Section 1101 of the Transportation Equity Act for the 21st Century (Public Law 105–178) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations ''Transportation for Individuals with Disabilities'' (49 CFR parts 27, 37, and 38);

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

(9) 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)); and

(10) all other applicable provisions of Federal law.

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal land managing agencies, will review the STIP or amendment and jointly make a finding (based on self-certifications made by the State and appropriate reviews established and conducted by FTA and FHWA) 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., 49 U.S.C. Chapter 53 and subparts A, B, and C of this part.

(1) If, upon review, the FHWA and the FTA Administrators jointly find that the planning process through which the STIP was developed meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will unconditionally approve the STIP.

(2) If the FHWA and the FTA administrators jointly find that the planning process through which the STIP was developed substantially meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will act on the STIP or amendment as follows:

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

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

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

(3) If, upon review, the FHWA and the FTA Administrators jointly find 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 or amendment.

(c) The joint approval period for a new STIP or amended STIP shall not exceed two years. Where the State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, the FHWA and the 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, not to exceed 180 days. Where the request involves projects in a metropolitan planning area(s), the affected 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, in writing, for the request. If nonattainment and/or maintenance areas are involved, a request for an extension cannot be granted.

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

(e) 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 funded under 49 U.S.C. 5307 and 5311 even though the projects or programs may not be included in an approved STIP.

§ 1410.224 Project selection.

(a) Except as provided in § § 1410.222(e) and 1410.216(c)(6), 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 23 U.S.C. or 49 U.S.C. Chapter 53 funds administered by the FHWA or the FTA shall be selected from the approved TIP/STIP 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 from the approved STIP by the State in consultation with the affected local officials. Federal lands highway projects shall be selected from the approved STIP in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected from the approved STIP by the State in cooperation with the affected local officials, and projects undertaken with 49 U.S.C. Chapter 53 funds shall be selected from the approved STIP 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 action under paragraphs (b) or (c) of this section 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, § 1410.332(c) provides for a revised list of ''agreed to'' projects to be developed upon the request of the State, the MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the procedures in paragraphs (b) and (c) of this section or as agreed to by the parties under paragraph (e) of this section must be used.

(e) Expedited 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 process.

§ 1410.226 Applicability of NEPA to transportation planning and programming.

Any decision by the Secretary concerning a transportation plan or transportation improvement program developed through the processes provided for in 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 through 5305, shall not be considered to be a Federal action subject to review under NEPA.

Subpart C—Metropolitan Transportation Planning and Programming

§ 1410.300 Purpose of planning process.

The purpose of this subpart is to implement 23 U.S.C. 134 and 49 U.S.C. 5303–5306 which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area (UZA) and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and support metropolitan community development and social goals. The transportation plan and program shall facilitate the development, management and operation of an integrated, intermodal transportation system that enables the safe, efficient, economic movement of people and goods.

§ 1410.302 Organizations and processes affected by planning requirements.

The provisions of this subpart are applicable to agencies responsible for satisfying the requirements of the transportation planning, programming, and project development processes in metropolitan planning areas pursuant to 23 U.S.C. 134.

§ 1410.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

§ 1410.306 What is a Metropolitan Planning Organization and how is it created?

(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. A single metropolitan planning organization, to the extent possible, shall be designated to serve a metropolitan planning area containing:

(1) A single UZA, or

(2) Multiple UZAs that are contiguous with each other or located within the same Metropolitan Statistical Area (MSA).

(b) The designation or redesignation shall clearly identify the policy body that is the forum for cooperative decision making 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) Nothing in this subpart shall be deemed to prohibit an MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(e) Existing MPO designations remain valid until a new MPO is redesignated. Redesignation is accomplished 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). If the Governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO designation remains in effect until a new MPO is formally designated.

(f) 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.

(g) Redesignation of an MPO covering more than one UZA requires the approval of the Governor(s) 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 be among those agreeing to the redesignation.

(h) The voting membership of an MPO policy body designated/redesignated 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 decision making 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.

(i) Where the metropolitan planning area boundary for a previously designated MPO needs 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.

(j) 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. This may 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 revoked in accordance with the procedures of this section.

§ 1410.308 Establishing the geographic boundaries for metropolitan transportation planning areas.

(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, at a minimum, the twenty year forecast period covered by the transportation plan described in § 1410.322.

(1) For existing MPOs, unless modified by agreement of the Governor and the MPO, the planning area boundaries shall be those in existence as of June 9, 1998. For MPOs designated after June 9, 1998, the boundaries shall be those agreed to by the Governor and local officials as indicated in § 1410.306(a).

(2) The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) For new MPOs, the planning area boundary shall reflect agreements between the MPO and the State DOT regarding the relationship of the metropolitan planning area boundary to any nonattainment and maintenance area within its designated limits or contiguous nonattainment or maintenance area excluded from the 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 and their operational integration, and promotes efficient overall transportation investment strategies in support of mobility and accessibility.

(d) Approval of metropolitan planning area boundaries by the FHWA and/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 and be made publicly available.

(e) 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.

§ 1410.310 Agreements among organizations involved in the planning process.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding among the State(s), operators of publicly owned mass transit, and the MPO.

(b) Where project development activities are conducted under the planning process, they shall be documented in an agreement between the MPO and the applicable project sponsor addressing, at a minimum, the provisions of § 1410.318.

(c) In nonattainment or maintenance areas, if the MPO is not designated as the agency responsible 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) 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.

(e) 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 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 parts 51 and 93). 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 boundary decision is made for the metropolitan planning area.

(f) Where more than one MPO has authority within a metropolitan planning area, a nonattainment or maintenance area, and/or in the case of adjoining metropolitan planning areas, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes and projects will be coordinated to assure the development of an overall transportation plan for the planning area(s). In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include State and local air quality agencies, and be consistent with the provisions of § 1410.312(c). 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.

(g) Where the planning process develops an ITS Integration Strategy

under the provisions of § 1410.322(b)(11), there shall be an agreement among the MPO, the State DOT, the transit operator and other agencies as described in the ITS Integration Strategy. This agreement shall address policy and operational issues that will affect the successful implementation of the ITS Integration Strategy, including at a minimum ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects identified in the ITS Integration Strategy;

(h) To the extent possible, a single cooperative agreement containing the understandings required by paragraphs (a) through (c) of this section among the State(s), the MPO, publicly owned operators of mass transportation services, and air quality agencies may be developed. Where the participating planning organizations desire, they may further consolidate agreements required by paragraphs (d) through (g) of this section with those addressed in paragraphs (a) through (c) of this section.

(i) For all requirements specified in paragraphs (a) through (h) of this section, existing agreements shall be reviewed by the MPO, the State DOT and the transit operator for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

§ 1410.312 Planning process organizational relationships.

(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. They shall cooperatively develop the unified planning work program, transportation plan, and transportation improvement program specified in §§ 1410.314 through 1410.332. 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, and where appropriate, planning agencies in Mexico and/or Canada.

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

(c) In nonattainment or maintenance areas:

(1) The transportation and air quality planning processes shall be coordinated;

(2) TCMs proposed for FHWA and FTA funding and/or approvals shall come from a plan and TIP that fully meet the requirements of this subpart (new TCMs authorized to proceed during a conformity lapse will meet the requirements of this subpart if they are included in an interim plan and program and approved into a SIP with emission reduction benefits); and

(3) MPOs shall participate in the development of motor vehicle emissions budgets, inventories and other transportation related air quality activities undertaken to develop SIPs to the extent required by the Clean Air Act (42 U.S.C. 7504).

(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 parts 51 and 93).

(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 (addressing the required 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 that plans and transportation improvement programs are coordinated for the entire metropolitan planning area, including, but not limited to, coordinated data collection, analysis and plan development. Alternatively, a single plan and/or TIP for the entire metropolitan area may be developed jointly by the MPOs in cooperation with their planning partners. Coordination efforts shall be documented in subsequent transmittals of the unified planning work program (UPWP) and various planning products (the plan, TIP, etc.) to the State(s), the FHWA, and the FTA.

(f) The FTA and the FHWA must designate as transportation management areas all UZAs over 200,000 population as determined by the most recent decennial census. The TMAs so designated and those designated subsequently by the FTA and the FHWA (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 planning 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) In TMAs, the congestion management system shall be developed as part of the metropolitan transportation planning process.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans and metropolitan plans shall be coordinated with the statewide transportation plan. 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 consulted in the development of transportation plans and programs.

(j) Discretionary grants awarded by the FHWA and the FTA under section 1221 of the TEA–21 (23 U.S.C. 101 note) (Transportation and Community and System Preservation Pilot Program), sections 1118 and 1119 of the TEA–21 (Borders and Corridors) and section 3037 (49 U.S.C. 5309 note) (Access to Jobs) shall be included in the appropriate metropolitan plan and program, except where these funds are utilized for planning and/or research activities. Applicants shall coordinate with the appropriate MPO to ensure that such projects are consistent with the provisions of this subpart. Where planning and research activities are funded under the Transportation and Community and System Preservation Pilot Program or the Borders and Corridors Program, they shall be identified in the Unified Planning Work Program as identified at § 1410.314.

§ 1410.314 Planning tasks and unified work program.

(a) 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

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; and

(2) Document planning activities to be performed with funds provided under title 23 and Chapter 53 of title 49 U.S.C.

(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) In areas not designated as TMAs and which are in attainment for air quality purposes, the MPO in cooperation with the State and transit operator(s), with the approval 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 (administered under title 23 U.S.C. and Chapter 53 of title 49 U.S.C. 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.

(d) MPOs, which include non-attainment or maintenance areas, should consult with the US EPA and state/local air agencies in the development of their UPWP regarding appropriate tasks to support attainment of air quality standards.

§ 1410.316 Transportation planning process and plan development.

(a) Each metropolitan planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the metropolitan planning area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety and security of the transportation system for motorized and non-motorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the efficient preservation of the existing transportation system.

(b) In addition, the metropolitan transportation planning process shall develop and adopt 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. To attain these objectives the process as developed shall meet the requirements and criteria as follows:

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

(2) Provide timely information about transportation issues and processes (including but not limited to initiation of plan and TIP updates, revisions and/or other modifications and the general structure of the planning process) to citizens, affected public agencies, representatives of transportation agency employees, users of public transit, freight shippers, 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);

(3) 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 highway and transit programs are being considered;

(4) 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));

(5) Demonstrate explicit consideration, recognition and feedback to public input received during the planning and program development processes, including responses to input received from minority, elderly, low-income, and persons with disabilities populations;

(6) Seek out and consider the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income, the elderly, persons with disabilities and minority populations;

(7) When 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 conformity regulations, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP;

(8) 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;

(9) 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, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low income populations;

(10) 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 decision making processes;

(11) Metropolitan public involvement processes shall be coordinated with statewide public involvement processes and with project development public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and reduce redundancies and costs.

(c) Transportation plan development and plans shall be consistent with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230); section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324); the Older Americans Act of 1965, as amended (42 U.S.C. 6101); the Americans With Disabilities Act of 1990 (Public Law 101–336, 104 Stat. 327, as amended) and implementing regulations (49 CFR parts 27, 37, and 38); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35), which ensure that no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the United States Department of Transportation. Consistency shall be demonstrated through:

(1) An assessment covering the entire metropolitan planning area, including at a minimum the following:

(i) A geographic and demographic profile of the metropolitan planning

area that identifies the low-income and minority, and where appropriate, the elderly and persons with disabilities components of this profile,

(ii) The transportation services available to and planned for these segments of the metropolitan planning area's population, and

(iii) Any disproportionately high and adverse environmental impacts, including interrelated social and economic impacts, affecting these populations, consistent with the provisions of Executive Order 12898 as implemented through U.S. DOT Order 5610.2 and FHWA Order 6640.23. Adverse effects can include a denial of or a reduction in benefits;

(2) Consideration of comments received during public involvement efforts (consistent with the provisions of paragraph (b) of this section to ensure that expressed concerns of the elderly, low-income individuals, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(3) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(4) The results of paragraphs (c)(1), (2), and (3) of this section will be documented in a manner to permit public review during appropriate project development activities. In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in this subpart is intended to nor shall create any right to judicial review of any action taken by the agencies, their officers or recipients under this subpart to comply with such orders.

(d) The transportation planning process shall identify actions necessary to comply with the Americans With Disabilities Act of 1990, U.S. DOT regulations ''Transportation for Individuals With Disabilities'' (49 CFR parts 27, 37, and 38) and section 504 of the Rehabilitation Act of 1973 and implementing regulations (49 CFR part 35).

(e) The transportation plan development process shall 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; freight shippers; transit users.

(f) The transportation planning process shall provide for the involvement of local, State, and Federal environmental resource and permit agencies as appropriate.

(g) The transportation planning process shall provide for the involvement of Indian Tribal Governments and the Secretary of Interior on a consultation basis for the portions of the plan affecting areas under the jurisdiction of an Indian Tribal Government.

(h) Simplified planning procedures may be proposed in non-TMAs which are in attainment for air quality purposes. The FHWA and the FTA shall review the proposed procedures for consistency with the requirements of this section.

(i) 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 paragraph (b) of this section.

(j) The metropolitan planning process should provide a forum to coordinate all federally funded non-emergency transportation services within the metropolitan planning area. Where coordination processes are developed within the transportation planning process, at a minimum they should address the planning and delivery of services supporting access to jobs and reverse commute options, relying where feasible on existing processes and procedures.

§ 1410.318 Relation of planning and project development processes.

(a) In order to coordinate and streamline the planning and NEPA processes, the planning process, through the cooperation of the MPO, the State DOT and the transit operator, shall provide the following to the NEPA process:

(1) An identification of an initial statement of purpose and need for transportation investments;

(2) Findings and conclusions regarding purpose and need, identification and evaluation of alternatives studied in planning activities (including but not limited to the relevant design concepts and scope of the proposed action), and identification of the alternative included in the plan;

(3) An identification of the planning documents that provide the basis for paragraphs (a)(1) and (a)(2) of this section; and

(4) Formal expressions of policy support or comment by the planning process participants on paragraphs (a)(1) and (a)(2) of this section.

(b) The following sources of information shall be utilized to satisfy paragraph (a) of this section at a level of detail agreed to by the MPO, the State DOT, and the transit operator:

(1) Inventories of social, economic and environmental resources and conditions;

(2) Analyses of economic, social and environmental consequences;

(3) Evaluation(s) of transportation benefits, other benefits, costs, and consequences, at a geographic scale agreed to by the planning participants, of alternatives, including but not limited to the relevant design concepts and scope of the proposed action;

(4) Data and supporting analyses to facilitate funding related decisions by Federal agencies where appropriate or required, including but not limited to 49 CFR part 611.

(c) The products resulting from paragraphs (a) and (b) of this section shall be reviewed early in the NEPA process in accordance with § 1420.201 to determine their appropriate use.

(d) In order to streamline subsequent project development analyses and studies, and promote better decision making, the FTA and the FHWA strongly encourage all Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan to do the following:

(1) Participate in planning analyses and studies to the extent possible;

(2) Provide early identification of key concerns for later consideration and analysis as needed; and

(3) Utilize the sources of information identified in paragraph (b) of this section.

(e) The analyses conducted under paragraph (b)(3) of this section may serve as the alternatives analysis required by 49 U.S.C. 5309(e) for new fixed guideway transit systems and extensions and the information required under 49 CFR part 611 shall be generated.

(f) Any decision by the Secretary concerning a transportation plan or transportation improvement program developed in accordance with this part shall not be considered to be a Federal action subject to review under NEPA (42 U.S.C. 4321 *et seq.*). At the discretion of the MPO, in cooperation with the State DOT and the transit operator, an environmental analysis may be conducted on a transportation plan.

(g) The FHWA and the FTA project level actions, including but not limited to issuance of a categorical exclusion, finding of no significant impact or final environmental impact statement under 23 CFR part 1420, approval of right of way acquisition, interstate interchange approvals, approvals of HOV

conversions, funding of ITS projects, final design and construction, and transit vehicle acquisition, may not be completed unless the proposed project is included in a plan and the phase of the project for which Federal action is sought is included in the metropolitan TIP. None of these project-level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the US EPA conformity regulation (40 CFR parts 51 and 93).

§ 1410.320 Congestion management system and planning process.

(a) 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 single occupant vehicle (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.

(b) 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.

(c) The effectiveness of the congestion management system 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.

§ 1410.322 Transportation plan content.

(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, including, but not limited to, operations and management activities, that lead to the systematic development of an integrated intermodal transportation system that facilitates the safe and efficient movement of people and goods in addressing current and future transportation demand. The transportation plan shall be reviewed and updated every five years in attainment areas and at least triennially in nonattainment and maintenance areas to confirm its validity and its consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period. The transportation plan must be approved by the MPO. Update processes shall include a mechanism for ensuring that the MPO, the State DOT and the transit operator agree that the data utilized in preparing other existing modal plans providing input to the transportation plan are valid and benchmarked in relation to each other and the transportation plan. In updating a plan, the MPO shall base the update on the latest estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. Reaffirmation or revisions of metropolitan plan contents and supporting analyses produced by an update review require approval by the MPO.

(b) In addition, the plan shall, consistent with the following:

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

(2) Identify adopted management and operations strategies (*e.g.,* traveler information, traffic surveillance and control, incident and emergency response, freight routing, reconstruction and work zones management, weather response, pricing, fare payment alternatives, public transportation management, demand management, alternative routing, telecommuting, parking management, and intermodal connectivity) that address the need for improved system performance and the delivery of transportation services to customers under varying conditions;

(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 congestion management system, 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 parts 51 and 93. 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;

(8) Reflect, to the extent that they exist, consideration of: Comprehensive long-range land use plan(s) and development objectives; State and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; linking low income households with employment opportunities as reflected in work force training and labor mobility plans and strategies; energy conservation goals; and the metropolitan area's overall social, economic, and environmental goals and objectives;

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

(10) Include a financial plan that demonstrates the consistency of proposed transportation investments (including illustrative projects where identified in the financial plan) 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. Financial estimates utilized in preparing transportation plans (and TIPs) shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). The estimated revenue by existing revenue source (local, State, 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, management, 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.

(11) Include an ITS integration strategy for the purposes of guiding and coordinating the management and funding of ITS investments supported with highway trust fund dollars to achieve an integrated regional system. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the resource commitments and staging of planned investments. Provision shall be made to include participation from the following agencies, at a minimum, in the development of the integration strategy: Highway and public safety agencies; appropriate Federal lands agencies; State motor carrier agencies as appropriate; and other operating agencies necessary to fully address regional ITS integration. In determining how ITS investments will meet metropolitan goals and objectives, the integration strategy shall clearly assess existing and future ITS systems, including their functions and electronic information sharing expectations. Unique regional ITS initiatives (a program of related projects) that are multi-jurisdictional and/or multi-modal, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability shall be identified. Documentation within the plan shall reflect the scale of investment and the needs and size of the metropolitan area.

(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 § 1410.316(b). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, freight shippers, representatives of users of public transit, providers of freight transportation services, 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 parts 51 and 93). If a conformity determination cannot be accomplished by either the MPO and or the FHWA and the FTA, the results will be communicated to the Governor or the Governor's designee and the public transit operator with an explanation of the potential consequences.

(e) The FHWA and the FTA do not approve transportation plans. However, Federal actions and approvals, including, but not limited to, conformity determinations, planning findings (pursuant to § 1410.322(b)), STIP approvals, completion of the NEPA process, grant agreements, and project authorizations, are based on a transportation plan with a horizon of at least twenty years on the effective date of the plan. Plans that remain substantially unchanged (i.e., regionally significant projects in attainment areas and non-exempt projects in nonattainment and maintenance areas have not been added) after adoption may serve as the basis for subsequent Federal actions until such time as the next update. In attainment areas the effective date of the plan shall be its date of adoption by the MPO. In nonattainment and maintenance areas, the effective date shall be the date of a conformity determination by the FHWA and the FTA.

(f) 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.

(g) During a conformity lapse metropolitan areas can prepare an interim plan as a basis for advancing projects that are eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

§ 1410.324 Transportation improvement program content.

(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 the FTA approval for the STIP lapses. In the case of extenuating circumstances, the FHWA and the 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 § 1410.222(c). TIP extensions shall not be granted in nonattainment or maintenance areas. Although metropolitan TIPs are not approved individually by the FHWA or the FTA, they are approved as part of the STIP approval action by the FTA and the FHWA. 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 new amended TIP consists entirely of exempt projects) in accordance with the Clean Air Act requirements and the EPA conformity regulations (40 CFR parts 51 and 93).

(c) There must be reasonable opportunity for public comment in accordance with the requirements of § 1410.316(b) 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 § 1410.322(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 three 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 advanced 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 one, year two, year three. 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 parts 51 and 93) 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. Financial estimates utilized in preparing TIPs shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). 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 (and illustrative projects) 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., 49 U.S.C. Chapter 53, 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, safety, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., and Federal Lands Highway projects. Title 49, U.S.C., Emergency relief projects (except those involving substantial functional, locational or capacity changes) and planning and research activities (except those funded with NHS, STP, and/or Minimum Guarantee funds) are exempt from this requirement. Planning and research activities funded with NHS, STP and/or Minimum Guarantee funds 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 FTA action is required whether or not the projects are to be funded with title 23, U.S.C., or title 49, U.S.C., funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, demonstration projects not funded under titles 23 and 49, U.S.C., etc.;

(4) Any FTA or FHWA funded or approved projects submitted to EPA for consideration as a SIP TCM;

(5) For air quality analysis in nonattainment and maintenance areas and informational purposes in other 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

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

(g) With respect to each project or project phase 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 project cost (which may extend beyond the three years of the TIP);

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase of the project;

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

(5) Identification of the recipient/subrecipient and State and local agencies responsible for carrying out the project or phase of the project;

(6) In nonattainment and maintenance areas, identification of those projects or phases of projects which are identified as TCMs in the applicable SIP or are new TCMs with emissions benefits being submitted for SIP approval during a conformity lapse; and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects or phases of 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 parts 51 and 93).

(i) Projects proposed for FHWA and/or FTA funding that are not considered by the State and the 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 1420.117 (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 parts 51 and 93). In addition, projects funded under Chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line unless they are determined to be regionally significant.

(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 49 U.S.C. 5307 may not exceed formula backed apportioned funding levels available to the area for the program year.

(l) Procedures or agreements that distribute suballocated Surface Transportation Program or urbanized area formula (49 U.S.C. 5307) 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 transit projects funded through Capital Investment Grants or Loans (49 U.S.C. 5309) 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, apportioned, appropriated (including carryover and unobligated balances 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. Projects shall be included in this list until construction has been fully authorized.

(5) Serve as a basis for an annual listing of projects for which Federal funds have been obligated, supplemented as appropriate to ensure annual public access to information on the obligation of funds.

(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.

(p) During a conformity lapses metropolitan areas may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

§ 1410.326 Transportation improvement program modification.

The TIP may be modified at any time under procedures agreed to by the cooperating parties 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 modified by adding or deleting non-exempt projects or is replaced with a new TIP, a new conformity determinations by the MPO and the FHWA and the FTA shall be made. Public involvement procedures consistent with § 1410.316(b) shall be utilized in modifying the TIP, except that these procedures are not required for TIP modifications that only involve projects of the type covered in § 1410.324(i).

§ 1410.328 Metropolitan transportation improvement program relationship in 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 § 1410.220, 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.

§ 1410.330 Transportation improvement program action by FHWA/FTA.

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing, comprehensive transportation process carried on cooperatively by the States, the MPOs and the transit operators in accordance with the provisions of 23 U.S.C. 134 and 49 U.S.C. 5307 and 5313(b). This finding shall be based on the self-certification statement submitted by the State and MPO under § 1410.334, a review of the metropolitan transportation plan 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 determine, in accordance with 40 CFR parts 51 and 93, that the metropolitan TIP conforms with the applicable SIP and that priority has been given to the timely implementation of transportation control measures contained in the applicable SIP. As part of their review in nonattainment and maintenance 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 § 1410.316(b). If the TIP is determined to be in nonconformance with the SIP, the FHWA and FTA shall return the TIP to the Governor and the MPO with an explanation of the joint determination and an explanation of potential consequences. If the TIP is found to conform with the SIP, the Governor and 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.

(c) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the fiscally constrained and conforming plan and TIP. The MPOs are not required to include illustrative projects in future TIPs.

§ 1410.332 Selecting projects from a TIP.

(a) Once a TIP that meets the requirements of § 1410.324 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, the State, and the transit operator if requested by the MPO, the 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 (b) and (c) of this section must be used unless the MPO, the State, and the transit operator jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(b) In areas not designated as TMAs and when § 1410.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or title 49 funds shall be selected by the State and/or the transit operator, 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) In areas designated as TMAs where § 1410.332(c) does not apply, all title 23 and title 49 funded projects, except projects on the NHS and projects funded under the bridge, 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 program 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.

(d) Projects not included in the federally approved STIP shall not be eligible for funding with title 23 or title 49, U.S.C., funds.

(e) In nonattainment and maintenance areas, priority shall 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 parts 51 and 93.

§ 1410.334 Federal certifications.

(a) The State and the MPO shall annually self-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) 23 U.S.C. 134 and 49 U.S.C. 5303–5306;

(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 (Public Law 102–240, 105 stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded planning projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(5) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations ''Transportation for Individuals with Disabilities'' (49 CFR parts 27, 37, and 38);

(6) Older Americans Act, as amended (42 U.S.C. 6101); and

(7) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities.

(8) All other applicable provisions of Federal law.

(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 in 40 CFR parts 51 and 93.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, the FHWA and the FTA shall take one of the following actions, as indicated:

(1) Where the process meets the requirements of this part, jointly certify the transportation planning process;

(2) Where the process substantially meets the requirements of this part, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(3) Where the process does not meet the requirements of this part, 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 or a shorter term is specified in the certification report.

(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:

(1) Withhold up to twenty percent of the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under 49 U.S.C. 5307–5309; or

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

(g) In conducting a certification review, the FHWA and the FTA shall make provision, relying on the local public involvement processes and supplemented with other involvement strategies as appropriate, to engage the public in the review process. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

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

Federal Transit Administration

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration proposes to amend Chapter VI of title 49, Code of Federal Regulations, as follows:

PART 613—[REMOVED]

3. Remove part 613.

4. Add part 621 to read as follows:

PART 621—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Planning

Sec.
621.100 Definitions.

Subpart B—Statewide Transportation Planning and programming

621.200 Statewide transportation planning and programming.

Subpart C—Metropolitan Transportation Planning and Programming

621.300 Metropolitan transportation planning and programming.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR .151.

Subpart A—Planning

§ 621.100 Definitions.

The regulations in 23 CFR 1410, subpart A, shall be followed in complying with the requirements of this subpart.

Subpart B—Statewide Transportation Planning and programming

§ 621.200 Statewide transportation planning and programming.

The regulations in 23 CFR 1410 subpart B, shall be followed in complying with the requirements of this subpart.

Subpart C—Metropolitan Transportation Planning and Programming

§ 621.300 Metropolitan transportation planning and programming

The regulations in 23 CFR part 1410, subpart C, shall be followed in complying with the requirements of this subpart.

Issued on: May 18, 2000.

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