Federal Register

Friday,
June 9, 2006

Part II

Department of Transportation

Federal Highway Administration
23 CFR Parts 450 and 500
Federal Transit Administration
49 CFR Part 613

Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 500

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2005–22986]

FHWA RIN 2125–AF09; FTA RIN 2132–AA82

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 the revision of regulations governing the development of metropolitan transportation plans and programs for urbanized areas, State transportation plans and programs and the regulations for Congestion Management Systems and invites public comment. This proposed revision results from the recent passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), which also incorporates changes initiated in its predecessor legislation, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998) and generally would make the regulations consistent with current statutory requirements. Interested parties are invited to send comments regarding all facets of this proposal.

DATES: Comments must be received on or before September 7, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, submit electronically at *http://dms.dot.gov* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 53, Number 70, Pages 19477–78) or may visit *http://dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Larry D. Anderson, Planning Oversight and Stewardship Team (HEPP–10), (202) 366–2374, Mr. Robert Ritter, Planning Capacity Building Team (HEPP–20), (202) 493–2139, or Ms. Diane Liff, Office of the Chief Counsel (HCC–10), (202) 366–6203. For the FTA: Mr. Charles Goodman, Office of Planning and Environment, (202) 366–1944, Ms. Carolyn Mulvihill, Office of Planning and Environment, (202) 366–2258, or Mr. Christopher VanWyk, Office of Chief Counsel, (202) 366–1733. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m for FHWA, and 9 a.m. to 5:30 p.m. for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Interested parties may submit or retrieve comments online through the Docket Management System (DMS) at *http://dms.dot.gov.* The DMS Web site is available 24 hours each day, 365 days each year. Follow the instructions online. Additional assistance is available at the help section of the Web site.

An electronic copy of this notice of proposed rulemaking may be downloaded using the Office of the Federal Register's Web page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/index.html.*

Background

Statement of the Problem

The joint FHWA/FTA rules governing statewide and metropolitan transportation planning have remained unchanged since the agencies originally promulgated these rules on October 28, 1993 (58 FR 58064) in response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991). Two statutory changes—the TEA–21 and the SAFETEA–LU—have occurred in the intervening years. The FHWA and the FTA, State Departments of Transportations (DOTs), Metropolitan Planning Organizations (MPOs), public transportation operators and the transportation community at large have evolved, and technology has improved. The proposed revisions would recognize the changes that have occurred in the last 12 years and bring the regulation up to date. We invite comments on all aspects of the proposed regulation, including the clarity of its requirements and any anticipated operational issues.

The existing rules have not been revised or amended since issuance in 1993, with two exceptions: The temporary waiver of certain metropolitan transportation planning and transportation conformity requirements for the New York City metropolitan area in response to the September 11, 2001, terrorist attacks (67 FR 62373, October 7, 2002), which has ended, and the requirement for States to establish, implement, and periodically review and revise a documented consultation process(es) with non-metropolitan local officials (68 FR 3181, January 23, 2003). The proposed regulations would not change the requirements related to State consultation with non-metropolitan local officials.

Section 1308 of the TEA–21 required the Secretary to eliminate the major investment study set forth in Section 450.318 of title 23, Code of Federal Regulations, as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the analyses required to be undertaken pursuant to the planning provisions of title 23, U.S.C. and title 49, U.S.C., Chapter 53 and the National Environmental Policy Act of 1969 (NEPA) for Federal-aid highway and transit projects. In addition, Section 3005 of SAFETEA–LU requires the Secretary to issue regulations setting standards for the Annual Listing of Projects required in 23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B) as amended by SAFETEA–LU. The proposed regulations are intended to satisfy these requirements.

History

SAFETEA–LU. Section 6001 of the SAFETEA–LU amended 23 U.S.C. 134 and 135, to require a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and States. Similar changes were made to 49 U.S.C. 5303–5306 by sections 3005, 3006 and 3007 of the SAFETEA–LU, which address the

metropolitan and statewide transportation planning processes in the context of the FTA's responsibilities. Section 1308 of TEA–21, which requires the Secretary of Transportation to eliminate the major investment study as a separate requirement and, as appropriate, integrate the requirement into the transportation planning and National Environmental Policy Act (NEPA) processes, was not changed by the SAFETEA–LU and remains in effect.

Prior Rulemaking. On May 25, 2000, the FHWA and the FTA jointly published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 33922) proposing amendments to the existing metropolitan and statewide transportation planning regulations 23 CFR part 450 and 49 CFR part 613. Concurrently, the FHWA and the FTA jointly proposed to redesignate and amend existing regulations to further emphasize using the NEPA process to facilitate effective and timely transportation planning decisionmaking (65 FR 33959, May 25, 2000). The metropolitan and statewide transportation planning and NEPA NPRMs were issued concurrently to further the goal of the FTA and the FHWA to better coordinate the planning processes with project development activities and decisions associated with the NEPA process. On July 7, 2000 (65 FR 41891), a supplemental notice was published to extend the comment period on both NPRMs until September 23, 2000.

More than 400 documents (representing slightly more than 300 discrete comments) were submitted to that docket, distributed relatively equally among three primary sources: State DOTs, MPOs, and various other transportation stakeholder groups.

During the comment period, the U.S. Senate Committee on Environment and Public Works and the U.S. House Committee on Transportation and Infrastructure held hearings regarding the NPRMs on September 12 and 13, 2000, respectively, focused on the intent of TEA–21 and possible burdens on State DOTs and MPOs that would not, it was asserted, result in increased efficiency and effectiveness of the planning or project development processes.

In response to the number, extent, and nature of the concerns, as well as in anticipation of further imminent statutory guidance (although, as it turned out, the SAFETEA–LU would not be enacted until 2005), the FHWA and FTA issued a notice in the September 20, 2002, **Federal Register** (67 FR 59219) withdrawing the NPRM.[1]

In the years since the May 2000 NPRM, transportation planning has continued to evolve. For example, the 2000 census identified increased urbanization, requiring the designation of additional metropolitan areas and establishment of additional MPOs and new Transportation Management Areas (TMAs). The TEA–21 provided increased funds for transportation planning. Improved technologies such as Geographic Information Systems (GIS), the proliferation of Internet use, and improved data collection and processing have allowed planners to analyze more data and provide new ways to share information. New partners, such as freight carriers and shippers, are engaged in the process. The nation increasingly competes in a global economy, with greater emphasis on the need to move freight efficiently, and a greater recognition for the need to maximize the use and efficiency of the existing transportation system. The planning regulations need to be updated to respond to these and other related changes, as well as to the new statutory mandates of the SAFETEA–LU.

Interim Guidance

After withdrawing the NPRM, the FHWA and the FTA developed and issued a number of guidance documents to provide direction to State DOTs, MPOs and public transportation operators in implementing the TEA–21 statutory provisions. These are summarized below:

On February 2, 2001, the FHWA and the FTA jointly issued ''Implementing TEA–21 Planning Provisions'',[2] which provided information on how to proceed with the TEA–21 statutory planning requirements, noting that ''Although new planning regulations have not been issued, the requirements in TEA–21 are in effect.'' Under this guidance, the FHWA and the FTA field offices were to work with MPOs, State DOTs, and transit operators ''to ensure a basic level of compliance with TEA–21 planning requirements, based on the statutory language.'' The guidance focused on the following new TEA–21 requirements: (a) Annual listing of projects; (b) revenue estimates for transportation plans and TIPs; (c) State consultation with local officials in non-metropolitan areas; (d) consultation with transit users and freight shippers and service providers; (e) MIS integration; (f) Federal planning finding for STIP approvals; (g) consolidation of planning factors; and (h) public involvement during certification reviews. These requirements continue, some enhanced, in SAFETEA–LU.

Subsequently, on February 22, 2005, the FHWA and the FTA issued joint ''Program Guidance on Linking the Transportation Planning and NEPA Processes.''[3] This guidance, developed for use by State DOTs, MPOs, and public transportation operators, summarized and further explained provisions in current law and regulation, and provided direction on how information, analysis, and products from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306) could be incorporated into and relied upon in the NEPA process under existing Federal statutes and regulations. This guidance is included in this proposal as Appendix A to part 450. A companion legal analysis outlining authority under current law was also issued on February 22, 2005.[4] Appendix A reiterates the statutory provision that transportation plans and programs are exempt from NEPA review. Development of Appendix A involved outreach to key national transportation planning stakeholder groups (American Association of State Highway and Transportation Officials (AASHTO), the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC), the American of Public Transportation Association (APTA), and the Surface Transportation Policy Project (STPP) as well as Federal environmental, regulatory, and resource agencies.

On March 10, 2005, the FHWA issued a memorandum on Wetland and Natural Habitat Mitigation that emphasized that wetland and natural habitat mitigation measures, such as wetland and habitat banks or statewide and regional

[1] The FHWA and the FTA proceeded with a separate rulemaking effort to address the issue of State consultation with non-metropolitan local officials. A final rule on that issue was published January 23, 2003 (68 FR 3181).

[2] This joint guidance is available via the Internet at the following URL:*http://www.fhwa.dot.gov/hep/tea21mem.htm.*

[3] This joint guidance is available via the Internet at the following URL: *http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/aa5aec9f63be385c852568cc0055ea16/9fd918150ac2449685256fb10050726c?OpenDocument.*

[4] This joint guidance is available via the Internet at the following URL: *http://nepa.fhwa.dot.gov/renepa/renepa.nsf/All+Documents/9FD918150AC2449685256FB10050726C/$FILE/Planning-NEPA%20guidance,%20legal,%20final,%202–22–05.doc or http://nepa.fhwa.dot.gov/renepa/renepa.nsf/All+Documents/9FD918150AC2449685256FB10050726C/$FILE/Planning-NEPA%20guidance,%20legal,%20final,%202–22–05.pdf.*

conservation measures, are eligible for Federal-aid participation when they are undertaken to create mitigation resources for future transportation projects. In its memorandum, the FHWA clarified that, to provide for wetland or other mitigation banks, the State DOT and the FHWA Division Office should identify potential future wetlands and habitat mitigation needs for a reasonable time frame and establish a need for the mitigation credits. The transportation planning process should guide the determination of future mitigation needs. (*See http://www.fhwa.dot.gov/environment/wetland/wethabmitmem.htm.*) The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) have also announced proposed revisions to regulations governing compensatory mitigation for authorized impacts to wetlands, streams, and other waters of the U.S. under Section 404 of the Clean Water Act. (*See* 71 FR 15520 (March 28, 2006).) These revisions are designed to improve the effectiveness of compensatory mitigation at replacing lost aquatic resource functions and area, expand public participation in compensatory mitigation decision-making, and increase the efficiency and predictability of the process of proposing compensatory mitigation and approving new mitigation banks.

On March 30, 2005, the FHWA and the FTA issued joint ''Guidance on Designation and Redesignation of MPOs.'' [5] This guidance, designed to address inconsistencies that existed between 23 U.S.C. 134, 49 U.S.C. 5303, and 23 CFR Part 450 regarding the designation and redesignation of MPOs, provided clarifying information and illustrative examples of scenarios that do and do not trigger MPO redesignations, based on several actual events that transpired since the enactment of TEA–21.

On April 12, 2005, the FHWA and the FTA jointly issued ''Planning Horizons for Metropolitan Long Range Transportation Plans.'' [6] This guidance provided updated and clarified information on the ''planning horizon'' requirement for metropolitan long-range transportation plans. The guidance required that metropolitan long-range transportation plans (*see* 23 CFR 450.322(a)) shall address ''at least a 20-year planning horizon.'' Furthermore, the guidance allowed the FHWA and the FTA to take actions on STIPs/TIPs and associated amendments or transportation conformity determinations with an MPO long-range transportation plan initially adopted with a minimum 20-year planning horizon. However, if the long-range transportation plan is amended to add, delete, or significantly change a regionally significant project (in any metropolitan area), the transportation plan's horizon should be at least 20 years at the time of the MPO action.

On June 30, 2005, the FHWA and the FTA jointly issued ''Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans.'' [7] This guidance summarized and described in detail the ISTEA and TEA–21 fiscal constraint requirements to ensure that transportation plans and programs reflect realistic assumptions on capital, operations, and maintenance costs associated with the surface transportation system. This guidance is included in this proposal as Appendix B to Part 450.

On September 2, 2005, the FHWA and the FTA jointly issued ''Interim Guidance for Implementing Key SAFETEA–LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities.'' [8] This guidance was issued after the enactment of the SAFETEA–LU to inform the FHWA and the FTA field offices on how to implement SAFETEA–LU provisions. related to transportation planning, air quality, and environment. This guidance established the following interim implementation schedule and requirements: (a) Statewide and metropolitan transportation plans and programs under development at the time of SAFETEA–LU enactment could be completed under TEA–21 requirements and schedules; (b) transportation plans and programs adopted after July 1, 2007, must comply with all the SAFETEA–LU planning provisions; (c) States or MPOs opting to implement the SAFETEA–LU requirements prior to July 1, 2007, must satisfy all the SAFETEA–LU provisions prior to adoption of transportation plans and programs; and (d) FHWA/FTA certifications of Transportation Management Areas (TMAs) would be extended to four years (except for any existing ''conditional'' certifications, which must be completed as previously scheduled).

Development of the Proposed Regulation

The proposed revised regulations reflect the requirements of the SAFETEA–LU, including requirements first mandated in the TEA–21. To implement these legislative mandates, we have adhered closely to the statutory language in drafting the regulation. Over time, and as necessary, the FHWA and FTA will continue to issue additional guidance and disseminate information on noteworthy practices.

Approach to Structure of Proposed Regulation

While the statutory changes resulting from the SAFETEA–LU form a large basis for the proposed regulation, several pre-existing regulatory provisions not specifically mentioned in the SAFETEA–LU remain relevant for carry over into the new rule. The statute alone does not fully present all the connections between various regulatory provisions nor define program stewardship and oversight mechanisms. Oversight mechanisms such as FHWA/FTA certification reviews of TMAs and the FHWA/FTA planning finding to support approval of the STIP have been effectively used to ensure compliance and to add value for promoting continuous improvement in the statewide and metropolitan transportation planning process.

Close adherence to the legislative mandate, described in ''Key Statutory Changes'' below, and further highlighted in the ''Section by Section Discussion,'' means that additional regulatory language was generally not included in the revised regulation if it expanded significantly on legislative language. In some cases, which will be noted below, other factors, such as court decisions or Presidential directives, required change and amplification. In these instances, however, we have tried to keep supplemental, non-statutory language to a minimum in the proposed regulations, except where clarification would assist compliance. In most cases, State DOTs, MPOs, transportation stakeholders, and the public are familiar and experienced in using existing practices.

We also propose to clarify and revise the regulation's section headings to use plainer language, as described below. The organization of each section and general structure reflects, mostly unchanged, the existing regulation, except as indicated in the ''Section by Section Discussion''.

The FHWA and FTA have conducted routine coordination/outreach activities with major transportation stakeholders,

[5] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/mpodes.htm.*

[6] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/planhorz.htm.*

[7] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

[8] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/hep/igslpja.htm.*

including regular participation in national and regional conferences and meetings on transportation planning issues, that provided important insight and perspective on the transportation planning process. In addition to these meetings, the FHWA and the FTA met with transportation stakeholder organizations as appropriate to understand the state-of-the-practice of transportation planning and recent or emerging policy concerns, identify noteworthy practices, and highlight outstanding transportation planning initiatives. Through programs such as the Transportation Planning Capacity Building Program,[9] the FHWA and the FTA have reached out to the transportation planning community to provide technical assistance and technology transfer and strengthen the transportation planning processes. Further, the FHWA and the FTA have worked with State DOTs, MPOs, and public transportation operators through their professional associations to discuss proposed guidance and statutory changes, and to implement improvements to the transportation planning process.

In developing the regulation, the knowledge we have gained regarding concerns and operations of our program stakeholders has assisted our understanding of the effect of both statute and regulations in a real world environment, enabled us to anticipate and address stakeholders' issues and concerns, and has made us attentive to the need to issue and administer regulations that are flexible to apply across the United States. For example, we propose retaining the existing rule language on separate and discrete State consultation processes with non-metropolitan local officials based on stakeholders' past concerns.

These proposed rules were developed by an interagency and multidisciplinary task force of transportation planners, engineers and environmental specialists of the FHWA and the FTA, with input from other Federal agencies and components of the Office of the Secretary of Transportation. The task force reviewed legislation and input received from partners and stakeholders. In addition, comments were solicited from the field staffs of the FHWA and the FTA.

Key Statutory Changes

Although substantial portions of the SAFETEA–LU sections 3005, 3006, and 6001 mirror previous law, there are several key statutory changes and new requirements, summarized below:

Metropolitan Planning

New Planning Factor: Security and safety of the transportation system are stand-alone planning factors, signaling an increase in importance from prior legislation, in which security and safety were coupled in the same planning factor. (23 U.S.C. 134(h)(1)(C) and 49 U.S.C. 5303(h)(1)(C).

Expanded Planning Factor: The TEA–21 planning factor related to environment was expanded to include ''promote consistency between transportation improvements and State and local planned growth and economic development patterns.'' (23 U.S.C. 134(h)(1)(E) and 49 U.S.C. 5303(h)(1)(E)).

Metropolitan Transportation Plans: The requirement for metropolitan transportation plans to cover a 20-year minimum plan horizon at the time of adoption is maintained. The SAFETEA–LU statutorily established time frames for updating metropolitan transportation plans. For air quality nonattainment and maintenance areas, transportation plans shall be updated at least every four years (compared to a three-year update cycle in the regulations implementing ISTEA). The requirement for attainment area MPOs to update transportation plans at least every five years remains unchanged from the regulations.

Environmental Mitigation Activities in Metropolitan Transportation Plans: Metropolitan transportation plans shall include a discussion of potential environmental mitigation activities, to be developed in consultation with Federal, State and Tribal wildlife, land management, and regulatory agencies. (23 U.S.C. 134(i)(2)(B) and 49 U.S.C. 5303(i)(2)(B)).

New Consultations: MPOs shall consult ''as appropriate'' with ''State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation'' in developing metropolitan transportation plans (23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4)).

Participation Plan: MPOs must develop and utilize a ''Participation Plan'' that provides reasonable opportunities for interested parties to comment on the content of the metropolitan transportation plan and metropolitan TIP. Further, this ''Participation Plan'' must be developed ''in consultation with all interested parties.'' (23 U.S.C. 134(i)(5)(B) and 49 U.S.C. 5303(i)(5)(B)).

Congestion Management Processes in Transportation Management Areas (TMAs): Within a metropolitan planning area serving a TMA, there must be ''a process that provides for effective management and operation'' to address congestion management (23 U.S.C. 134(k)(3)) and 49 U.S.C. 5303(k)(3)).

Operational and Management Strategies in Transportation Plans: Metropolitan transportation plans shall include operational and management strategies to improve the performance of the existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods (23 U.S.C. 134(i)(2)(D)) and 49 U.S.C. 5303(i)(2)(D)).

TIP Cycles and Scope: TIPs are to be updated at least every four years (compared to at least every two years in ISTEA and TEA–21). In addition, TIPs must include projects covering four years (compared to three years in ISTEA and TEA–21) (23 U.S.C. 134(j)(1)(D) and 134(j)(2)(A) and 49 U.S.C. 5303(j)(1)(D) and 5303(j)(2)(A)).

Visualization Techniques in Metropolitan Transportation Plan and TIP Development: As part of transportation plan and TIP development, MPOs shall employ visualization techniques to the maximum extent practicable (23 U.S.C. 134(i)(5)(C)(ii) and 49 U.S.C. 5303(i)(5)(C)(ii)).

Publication of the Metropolitan Transportation Plan and TIP: MPOs shall publish or otherwise make available for public review transportation plans and TIPs ''including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web'' (23 U.S.C. 134(i)(6) and 49 U.S.C. 5303(i)(6) on transportation plans and 23 U.S.C. 134(j)(7)(a) and 49 U.S.C. 5303(j)(7)(a) on TIPs).

Annual Listing of Obligated Projects: This TEA–21 requirement is retained, but the development of the annual listing ''shall be a cooperative effort of the State, transit operator, and MPO.'' For clarity, two new project types (investments in pedestrian walkways and bicycle transportation facilities) for which Federal funds have been obligated in the preceding year in the metropolitan planning area are emphasized (23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B)).

TMA Certification Cycle: FHWA/FTA must certify each TMA planning process

[9] The Transportation Planning Capacity Building (TPCB) Program is a collaborative effort of FHWA and the FTA with various public and private organizations. Broadly speaking, it exists to help State and local transportation staff meet their complex political, social, economic, and environmental demands. On a practical level, the TPCB Program provides information, training, and technical assistance to help transportation professionals create plans and programs that respond to the needs of the many users of their local transportation systems.

at least every four years (compared to every three years in ISTEA and TEA–21) (23 U.S.C. 134(k)(5)(A)(ii) and 49 U.S.C. 5303(k)(5)(A)(ii)).

Strategic Highway Safety Plan (SHSP): State must develop a strategic highway safety plan that identifies and analyzes safety problems and opportunities in order to use Highway Safety Improvement Program funds for new eligible activities under 23 U.S.C. 148.

Coordinated Public Transit-Human Services Transportation Plan: Sections 3012, 3018, and 3019 of the SAFETEA–LU require that proposed projects under three FTA formula funding programs (Special Needs of Elderly Individuals and Individuals with Disabilities (49 U.S.C. 5310(d)(2)(B)(i) and (ii)); Job Access and Reverse Commute (49 U.S.C. 5316(g)(3)(A) and (B)); and New Freedom (49 U.S.C. 5317(f)(3)(A) and (B)) must be derived from a locally developed public transit-human services transportation plan. This plan must be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers, as well as the public. And, an areawide solicitation for applications for grants under the latter two programs above shall be made in cooperation with the appropriate MPO.

Statewide Planning

New Planning Factor: Security and safety of the transportation system are stand-alone planning factors, signaling an increase in importance from prior legislation, in which security and safety were in the same planning factor (23 U.S.C. 135(d)(1)(C) and 49 U.S.C. 5304(d)(1)(C)).

Expanded Planning Factor: The TEA–21 planning factor related to environment was expanded to include ''promote consistency between transportation improvements and State and local planned growth and economic development patterns'' (23 U.S.C. 135(d)(1)(E) and 49 U.S.C. 5304(d)(1)(E)).

Environmental Mitigation Activities in Long-Range Statewide Transportation Plans: Long-range statewide transportation plans shall include a discussion of potential environmental mitigation activities, to be developed in consultation with Federal, State and Tribal wildlife, land management, and regulatory agencies (23 U.S.C. 135(f)(4) and 49 U.S.C. 5304(f)(4)).

New Consultations: States shall consult ''as appropriate'' with ''State, local, and Federally-recognized Tribal agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation'' in developing the long-range statewide transportation plan (23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D)).

STIP Cycles and Scope: STIPs are to be updated at least every four years (compared to at least every two years in ISTEA and TEA–21). In addition, STIPs must include projects covering four years (compared to three years in the ISTEA and the TEA–21) (23 U.S.C. 135(g)(1) and 49 U.S.C. 5304(g)(6)).

Visualization Techniques in Long-Range Statewide Transportation Plan Development: States shall employ visualization techniques in the development of the Long-Range Statewide Transportation Plan to the maximum extent practicable (23 U.S.C. 135(f)(3)(B)(ii) and 49 U.S.C. 5304(f)(3)(B)(ii)).

Publication of the Long-Range Statewide Transportation Plan: States shall publish or otherwise make available for public review the long-range statewide transportation plan ''including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web'' (23 U.S.C. 135(f)(8) and 49 U.S.C. 5304(f)(8)).

Strategic Highway Safety Plan (SHSP): State must develop a strategic highway safety plan that identifies and analyzes safety problems and opportunities in order to use Highway Safety Improvement Program funds for new eligible activities under 23 U.S.C. 148.

State Highway Safety Improvement Program Projects in the STIP: Projects or strategies contained in the State highway safety improvement program from the State strategic highway safety plan must be consistent with the requirements of the STIP (23 U.S.C. 148(a)(5)).

Indian Reservation Road Projects in the STIP: ''Funds available to Indian tribes for Indian reservation roads shall be expended on projects identified in a transportation improvement program approved by the Secretary'' (23 U.S.C. 202).

Section-by-Section Discussion

Subpart A—Transportation Planning and Programming Definitions

Section 450.100 Purpose

Existing § 450.100 would be largely retained.

Section 450.102 Applicability

Existing § 450.102 would be retained without change.

Section 450.104 Definitions

Existing § 450.104 would be retained, with terms and definitions, as follows.

We propose a definition for ''administrative modification'' to describe a type of revision to a long-range statewide or metropolitan transportation plan, TIP or STIP that is not significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). This term, along with ''amendment'' are the two types of ''revisions.''

''Alternatives analysis'' would be defined to reflect the FTA's Capital Investment Grant Program (49 U.S.C. 5309).

We propose a definition for ''amendment'' to describe a type of revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). This term, along with ''administrative modification'' are the two types of ''revisions.''

''Attainment area'' would be defined as reflected in the Transportation Conformity Reference Guide.[10]

We propose to include ''available funds'' and ''committed funds'' based on the FHWA/FTA Interim Guidance on Fiscal Constraint.[11]

''Conformity,'' and ''conformity lapse'' would be defined as reflected in the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

We propose a definition for ''congestion management process'' to reflect the SAFETEA–LU language.

We propose a definition for ''consideration'' to reflect a basic level of attention to other planning issues, as opposed to more substantial review under ''consultation'' and ''cooperation,'' in preparing transportation plans and programs.

''Consultation'' would remain largely unchanged, with minor revisions to reflect that consultation may occur between more than two parties.

''Cooperation'' would be slightly revised to reflect current legislation and practice.

''Coordinated public transit-human service transportation plan'' would be defined to reflect 49 U.S.C. 5316(g)(3).

''Coordination'' would be slightly revised to reflect current legislation and practice.

[10] The Transportation Conformity Reference Guide is available via the Internet at *http://www.fhwa.dot.gov/environment/conformity/ref_guid/coverpag.htm.*

[11] Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans (issued on June 30, 2005) available on the internet at *http://www.fhwa.dot.gov/planning/fcindex.htm.*

''Design concept'' and ''design scope'' would be defined as reflected in the EPA's transportation conformity rule at 40 CFR 93.101.

We propose to include definitions of: ''environmental mitigation activities,'' ''Federal land management agency,'' ''Federally funded non-emergency transportation services,'' ''financially constrained'' or ''fiscal constraint,'' ''financial plan,'' and ''freight shippers''.

The definition of ''Governor'' would be retained.

''Illustrative project'' would be added to reflect new legislative provisions from the TEA–21 and 23 U.S.C. 134(i)(2)(C) and 135(f)(5) and 49 U.S.C. 5303(i)(2)(C) and 5304(f)(5).

''Indian Tribal government'' would be added based on the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

''Intelligent transportation systems (ITS)'' would be added to reflect new legislative provisions from the TEA–21 and 23 U.S.C. 134(h)(1)(A) and 23 U.S.C. 135(d)(A) and 49 U.S.C. 5304(d)(A) and 49 U.S.C. 5309(e)(10)(B).

We propose to include definitions of: ''interim metropolitan transportation plan'' and ''interim transportation improvement program''.

''Long-range statewide transportation'' would be slightly revised and renamed from the former ''statewide transportation plan'' to reflect new statutory language from 23 U.S.C. 135(f) and 49 U.S.C. 5304(f).

''Maintenance area'' would be revised to reflect the EPA definition used in the conformity regulation at 40 CFR part 93.101.

''Major metropolitan transportation investment'' would be removed to reflect the legislative provision from Section 1308 of the TEA–21.

''Management system'' would be retained in consideration of their extensive use by States, although the requirement for maintaining them was eliminated by legislative changes in the National Highway System Designation Act of 1995 (Pub. L. 104–59; November 28, 1995).

''Metropolitan planning area'' (MPA) and ''metropolitan planning organization'' (MPO) would be revised to reflect legislative changes in 23 U.S.C. 134(b) and 49 U.S.C. 5303(b). Importantly, the term ''MPO'' refers to the policy board for the organization that is designated under 23 U.S.C. 134 and 49 U.S.C. 5303.

''Metropolitan transportation plan'' would remain unchanged, except for legislative references.

''National Ambient Air Quality Standards'' would be defined, using legislative language from the Clean Air Act (42 U.S.C. 7401 *et seq*).

''Nonattainment area'' would remain unchanged, except for legislative references.

''Non-metropolitan area'' and ''non-metropolitan local official'' would remain unchanged.

A definition is proposed for ''operational and management strategies'' to reflect the legislative policy directions from the SAFETEA–LU.

We propose to add definitions for the terms ''obligated projects,'' and ''project selection''.

''Provider of freight transportation services'' would be added as described for freight-related industries in the Transportation Warehousing Sector 48–49 of the North American Industrial Classification System.

We propose to add a definition for ''regional ITS architecture,'' as set forth in the National ITS Architecture Consistency Policy for Transit Projects (Number C–01–03) and FHWA regulations on ITS architecture and standards (23 CFR parts 655 and 940).

The definition of ''regionally significant project'' would be retained, with some clarifying revisions.

We propose a definition for ''Regional Transit Security Strategy'' that is aligned with the concept required by the Department of Homeland Security.

We propose a definition for ''revision'' that describes a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A revision may or may not be significant. A significant revision is defined as an ''amendment'' (see above), while a non-significant revision is defined as an ''administrative modification'' (see above).

''State'' would be unchanged.

The definition of ''State implementation plan'' would be retained, with some clarifying revisions.

''Statewide transportation improvement program'' would be unchanged.

''Strategic highway safety plan'' would be defined consistent with 23 U.S.C. 148(b)(6), as amended by the SAFETEA–LU.

''Transportation control measure'' would be defined, as reflected in U.S. EPA's transportation conformity rule at 40 CFR part 93.101.

''Transportation improvement program'' would be revised slightly.

''Transportation management area'' (TMA) would be slightly changed, particularly to change the provision in which the TMA designation formerly applied to the entire metropolitan planning area(s).

''Unified planning work program'' would be defined.

We propose a definition for ''update'' that applies to a complete change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs on a regular schedule as prescribed by Federal statute. Updates always require public review and comment, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (in nonattainment and maintenance areas).

''Urbanized area'' would be defined, consistent with recent statutory changes in 23 U.S.C. 134(b).

We propose to add definitions for the terms ''users of public transportation'' and ''visualization techniques.''

Subpart B—Statewide Transportation Planning and Programming

Section 450.200 Purpose

The statement of purpose in § 450.200 would be slightly revised to better reflect the policy statement contained in 23 U.S.C. 135 and 49 U.S.C. 5304. The proposed revision would support strengthened linkages between statewide and metropolitan transportation planning, and include a specific reference to ''accessible pedestrian walkways and bicycle facilities.''

Section 450.202 Applicability

Existing § 450.202 would be revised to specifically include MPOs and public transportation operators within the statewide transportation planning process and to add 23 U.S.C. 135 and 49 U.S.C. 5304 as a statutory citation.

Section 450.204 Definitions

Existing § 450.204 would remain the same, except for the addition of 49 U.S.C. 5302 as a statutory citation.

Section 450.206 Scope of the Statewide Transportation Planning Process

For purposes of simplification, a majority of the content of existing § 450.206 would be removed or relocated to other sections due to outdated or redundant information and the section would be re-titled. Proposed § 450.206(a) would revise the content in existing § 450.208(a) by replacing the ISTEA planning factors with the eight planning factors in 23 U.S.C. 135(d)(1) and 49 U.S.C. 5304(d)(1). See ''Key Statutory Changes'' above. The planning factors are based on the language in the statute, with the exception of minor amplification of the factor on ''security.''

In § 450.206(b) we propose to provide general information on the use of and application of the eight planning factors throughout the statewide transportation planning process.

In paragraph (c) what we propose is consistent with the language in 23 U.S.C. 135(d)(2) and 49 U.S.C. 5304(d)(2) that the failure to consider any of the factors shall not be reviewable by any court in any matter affecting a long-range statewide transportation plan, Statewide transportation improvement program (STIP), or FHWA/FTA planning process findings.

In paragraph (d) we propose to relocate and revise the information and statutory references in existing § 450.218 (Funding). In addition, this proposed paragraph would establish the statewide planning work program required by 23 CFR part 420 (for funds under 23 U.S.C. and 49 U.S.C.) as the primary tool to discuss the planning priorities of the State.

Section 450.208 Coordination of Planning Process Activities

Existing § 450.210 would be redesignated as § 450.208. Paragraph (a) would be revised to focus on required planning coordination efforts as defined in 23 U.S.C. 135(b)(1) and 135(e) and 49 U.S.C. 5304(b)(1) and 49 U.S.C. 5304(e) to reflect the simplification of language provided by the change in planning factors.

A new paragraph (b) is proposed to address the 23 U.S.C. 135(b)(2) and 49 U.S.C. 5304(b)(2) requirement for the statewide transportation planning process to be coordinated with air quality planning conducted by State air quality agencies in the development of the transportation portion of the State Implementation Plan (SIP).

A new paragraph (c) is proposed to reflect the 23 U.S.C. 135(c)(1) and 49 U.S.C. 5304(c)(1) provision allowing two or more States to enter into agreements or compacts for cooperative efforts and mutual assistance regarding multi-State transportation planning activities. This paragraph would note that the U.S. Congress reserves the right to alter, amend, or repeal interstate compacts entered into under this part.

Paragraph (d) would retain existing rule language providing States the option to use any one or more of the management systems (in whole or in part) under 23 CFR part 500 for purposes of carrying out the statewide transportation planning process.

Paragraph (e) is proposed to encourage States to apply asset management principles and techniques in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions to include transportation system safety, operations, preservation, and maintenance.

Paragraph (f) is proposed to ensure that statewide transportation planning processes are carried out in a manner consistent with regional Intelligent Transportation System (ITS) architectures in 23 CFR part 940 (based on the ITS consistency requirement in section 5206(e) of the TEA–21).

Paragraph (g) is proposed to address the need for transportation planning processes to be consistent with the development of Public Transit-Human Services Transportation Plans, as defined in 49 U.S.C. 5310, 5316, and 5317.

Paragraph (h) is proposed to promote consistency between the statewide transportation planning process and the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, as well as with the Regional Transit Security Strategy, as required by the Department of Homeland Security.

Section 450.210 Interested Parties, Public Involvement, and Consultation

Existing § 450.212 would be revised, re-titled, and redesignated as § 450.210. Overall, existing § 450.212 (Public Involvement) would be broadened to focus on all facets of participation and consultation in the statewide transportation planning process, including the involvement of ''interested parties'' (as defined by 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A)) and State consultation with non-metropolitan local officials, Indian Tribal governments, and the Secretary of the Interior. See ''Key Statutory Changes'' above.

Proposed paragraph (a) would continue the requirement for State public involvement processes that include the ''interested parties'' defined under 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A). Proposed paragraph (a)(1)(ix) provides for periodic State evaluation of its public involvement procedures. The FHWA and the FTA believe that the periodic assessment of such processes, including the voluntary development and use of public involvement process performance criteria, can help to determine that the effort is well spent and help adjust and respond to changes over time.

Proposed paragraph (a)(2) would require States to provide for public comment on existing and proposed procedures for public involvement in the development of the long-range statewide transportation plan and the STIP, allowing at least 45 days for public review and written comment before the procedures and any amendment to existing procedures are adopted.

Proposed paragraph (b) would retain the content in current § 450.212(h) regarding State development of a documented process(es) that is separate and discrete from the State's public involvement process for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials responsible for transportation. In addition, proposed paragraph (b)(1) would retain the content in existing § 450.212(i) on the periodic review (at least once every five years) of the effectiveness of the consultation process(es), including the solicitation of comments (for a period of at least 60 days) from non-metropolitan local officials and other interested parties, and the consideration of these comments by the State in modifying the process(es). Per the existing regulation, the five year review cycle begins February 24, 2006. The existing regulation allowed one year to implement the consultation process after the regulation was published (68 FR 3181, January 23, 2003), established an initial review after two years, and every five years thereafter.

Proposed paragraph (c) focuses on State consultation with Indian Tribal governments and the Secretary of Interior in the development of the long-range statewide transportation plan and the STIP, reflecting the language and intent articulated in 23 U.S.C. 135(f)(2)(C) and 135(g)(2)(C) and 49 U.S.C. 5304(f)(2)(C) and 5304(g)(2)(C). This proposed paragraph also encourages States, as appropriate, to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP. The FHWA and the FTA believe that a documented process(es) would provide for greater understanding between States and Indian Tribal governments and Federal land management agencies on how this consultation would occur. The FHWA and the FTA recognize an obligation and requirement for Federal government consultation with Indian Tribes, in addition to State consultation with Tribes.

Section 450.212 Transportation Planning Studies and Project Development

Section 1308 of the TEA–21 eliminated the major MIS as a separate requirement and called for the Secretary to integrate, as appropriate, the remaining aspects and features of the MIS (and associated corridor or subarea studies) into the transportation planning and the NEPA regulations.

Since 1998, the FHWA and the FTA (in cooperation with Federal, environmental, resource, and regulatory agencies) have undertaken several initiatives to promote strengthened linkages between the transportation planning and project development/NEPA processes under existing legislative, statutory, and regulatory authorities. In particular, on February 22, 2005, the FHWA and the FTA disseminated legal analysis and program guidance entitled ''Linking the Transportation Planning and NEPA Processes.'' [12] Although voluntary to States, MPOs, and public transportation operators, this program guidance was intended to articulate how information, analysis, and products from metropolitan and statewide transportation planning processes could be incorporated into and relied upon in the NEPA process under existing Federal statutes and regulations.

Proposed § 450.212 is structured around the guiding principles and legal opinion reflected in the program guidance.

Section 450.214 Development and Content of the Long-range Statewide Transportation Plan

Existing § 450.214 would be re-titled. Consistent with existing § 450.214, proposed § 450.214 would maintain the opportunity for the long-range statewide transportation plan to be comprised of policies and/or strategies, not necessarily specific projects, over the minimum 20-year forecast period. In addition, proposed paragraph (n) would retain State discretion to identify a periodic schedule for updating the long-range statewide transportation plan and to revise the plan as necessary. The FHWA and the FTA recognize that changes to transportation plans between formal update cycles may be necessary. We have proposed definitions for the terms ''administrative modification,'' ''amendment,'' and ''revision'' to clarify these actions.

Proposed § 450.214 also would be revised to reflect key provisions in 23 U.S.C. 135(d)(1)(G) and 135(d)(1)(H) and 49 U.S.C. 5304(d)(1)(G) and 5304(d)(1)(H). Proposed paragraph (b) calls for the long-range statewide transportation plan to include capital, operations, and management strategies, investments, procedures, and other measures to ensure the preservation of the existing transportation system.

The FHWA and the FTA believe improved planning for the operations and management of the Nation's transportation system is vitally important to continuing to deliver the safety, reliability, and mobility for people and freight in the 21st century that the nation expects. Operations and management (or management and operations) is a coordinated approach to optimizing the performance of existing infrastructure and building operational capacity into new projects through the implementation of multimodal, intermodal, and often cross-jurisdictional systems, services, and projects. To be effective, management and operations must be a collaborative effort between transportation planners and managers with responsibility for day-to-day transportation operations. Management and operations refers to a broad range of strategies, such as traffic detection and surveillance, work zone management, emergency management, and traveler information services. It also refers to strategies that address the economically critical area of goods movement, such as improving intermodal connections and designing and operating key elements of the transportation system to accommodate the patterns and dynamics of freight operations. Such strategies enhance reliability and goods movement efficiency; improve public safety and security; support homeland security and safeguard the personal security; reduce traveler delays associated with incidents and other events; and improve information for businesses and for the traveling public.

In order to draw a strong link between the Strategic Highway Safety Planning process described in 23 U.S.C. 148 and the statewide transportation planning process, proposed paragraph (d) states that the long-range statewide transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects contained in the Strategic Highway Safety Plan (SHSP). See ''Key Statutory Changes'' above, on the SHSP requirement.

Proposed paragraph (i) requires that the long-range statewide transportation plan be developed, as appropriate, with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation, including the comparison of transportation plans to State and Tribal inventories or plans/maps of natural and historic resources as mandated in 23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D).

While the title of 23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D) is ''Consultation, Comparison and Consideration,'' it is important to note that the consultation referenced in the statute is different from the definition of consultation in the existing or proposed regulation. The statute specifically defines ''consultation'' in this section as involving ''comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.''

Proposed paragraph (j) requires that the long-range statewide transportation plan contain a discussion of potential environmental mitigation activities (at the policy and/or strategic-levels, not project-specific). See ''Key Statutory Changes'' above. In developing this discussion in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies, this proposed paragraph allows States to establish reasonable timeframes for performing this consultation.

Proposed paragraph (k) identifies the ''interested parties'' defined in 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A) that must be provided a reasonable opportunity to comment on the proposed long-range statewide transportation plan.

Proposed paragraph (l) would implement a provision, added by TEA–21 and retained in 23 U.S.C. 135(f)(5) and 49 U.S.C. 5304(f)(5), for an optional financial plan to be developed to support the long-range statewide transportation plan. Another provision added by the TEA–21, retained by 23 U.S.C. 135(f)(5) and 49 U.S.C. 5304(f)(5), and reflected in proposed paragraphs (l) and (m) states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available.

Also reflecting language in 23 U.S.C. 135(f)(3)(B)(iii) and 49 U.S.C. 5304(f)(3)(B)(iii), proposed paragraph (n) would require the State to publish or otherwise make available the long-range statewide transportation plan in electronically accessible formats and means (such as the World Wide Web). See ''Key Statutory Changes'' above.

[12] This guidance document is available via the Internet at *http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/aa5aec9f63be385c852568cc0055ea16/9fd918150ac2449685256fb10050726c?OpenDocument* and is included as Appendix A.

Section 450.216 Development and Content of the Statewide Transportation Improvement Program (STIP)

Existing § 450.216 would be re-titled. Except for some restructuring and reorganization, much of the content of existing § 450.216 would remain intact.

Substantive changes reflected in proposed § 450.216 reflect key legislative and statutory changes resulting from the TEA–21 and the SAFETEA–LU. Proposed paragraph (a) requires that the STIP cover a period of at least four years and be updated at least every four years. Proposed paragraph (e) would require, pursuant to 23 U.S.C. 204(a) or (j), that Federal Lands Highway program TIPs be included without modification in the STIP (directly or by reference) once approved by the FHWA.

Proposed paragraph (l) would implement a provision, included in the TEA–21 and retained in 23 U.S.C. 135(g)(4)(F) and 49 U.S.C. 5304(g)(4)(F), that a financial plan may be developed to support the STIP. Proposed paragraph (l) would be consistent with the FHWA/FTA Interim Guidance on Fiscal Constraint that was issued on June 30, 2005,[13] and is included in Appendix B. Another provision in paragraph (l) that was prompted by TEA–21 and retained in 23 U.S.C. 135(g)(4)(F) and 49 U.S.C. 5304(g)(4)(F), states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available.

Proposed paragraph (m) also would retain the provision in existing § 450.216(a)(5) that projects included in the first two years of the STIP in nonattainment and maintenance areas shall be limited to those for which funds are available or committed. The FHWA and the FTA believe that retaining this provision is critical to realistic, meaningful planning and public involvement.

The FHWA and the FTA invite comments on whether the agencies should require States submitting STIP amendments to demonstrate that funds are ''available or committed'' for projects identified in the STIP in the year the STIP amendment is submitted and the following year.

Proposed paragraph (o) would allow projects in the first four of years of the STIP to be advanced in place of another project in the first four years of the STIP, subject to the project selection requirements of § 450.220. In addition, proposed paragraph (o) recognizes State discretion to revise the STIP under procedures agreed to by the State, the MPOs and the public transportation operators. The FHWA and the FTA recognize that changes to transportation programs between formal update cycles may be necessary. We have proposed definitions for the terms ''administrative modification,'' ''amendment,'' and ''revision'' to clarify these actions.

Section 450.218 Self-certification, Federal Findings, and Federal Approvals

Existing § 450.220 would be re-titled and redesignated as § 450.218. Proposed paragraph (a) would revise existing § 450.220(a) to reflect that the State must submit the entire STIP to the FHWA and the FTA for joint approval, at least once every four years, consistent with the extended cycle established in 23 U.S.C. 135(g)(1) and 49 U.S.C. 5304(g)(1). Furthermore, the State must submit any STIP amendments for joint approval. In addition, proposed paragraphs (a)(1) through (a)(8) would articulate the existing legislative and regulatory authorities to be included in the State self-certification, including three additional Federal requirements ((1) the Older Americans Act; (2) 23 U.S.C. 324 regarding the prohibition of discrimination based on gender; and (3) section 504 of the Rehabilitation Act of 1973 regarding discrimination against individuals with disabilities). These requirements previously existed and the regulations would be revised to include them.

We also are proposing to modify existing § 450.220(b) slightly in proposed paragraph (b) to indicate the relationship of the FHWA/FTA planning finding on the statewide transportation planning process to self-certifications by the State.

Existing § 450.220(d) would be revised and redesignated as a new proposed paragraph (c), indicating that STIP extensions (and by their inclusion, TIP extensions) would be limited to 180 days, with priority consideration to be given to projects and strategies involving the operation and management of the multimodal transportation system.

Section 450.220 Project Selection From the STIP

Existing § 450.222 would be re-titled and redesignated as § 450.220 and the references to funding categories updated. This section generally would remain unchanged, except for two key additions.

Proposed paragraph (d) reflects the requirement in 23 U.S.C. 204(a)(5) that Federal Lands Highway program projects be included in an approved STIP.

Proposed paragraph (e) would provide the option for expedited project selection procedures to be used, as agreed to by all parties involved in the project selection process.

The FHWA and the FTA invite comments on whether States should be required to prepare an ''agreed to'' list of projects at the beginning of each of the four years in the STIP, rather than only the first year. The FHWA and the FTA also invite comments on whether a STIP amendment should be required to move a project between years in the STIP, if an ''agreed to'' list is required for each year.

Section 450.222 Applicability of NEPA to Statewide Transportation Plans and Programs

This new proposed section re-states the provisions of the TEA–21 and 23 U.S.C. 135(j) and 49 U.S.C. 5304(j) that any decisions by the Secretary regarding the long-range statewide transportation plan and the STIP are not Federal actions subject to the provisions of the NEPA.

Section 450.224 Phase-In of New Requirements

Existing § 450.224 would be revised. This proposed section re-states the provisions in 23 U.S.C. 135(j)(B) and 49 U.S.C 5304(p)(B) that State transportation improvement programs adopted on or after July 1, 2007 shall reflect the provisions of 23 U.S.C. 134 and 135 and U.S.C. 5303 and 5304 as amended by the SAFETEA–LU. In addition, this proposed section clarifies that all State and FHWA/FTA actions on transportation plans and programs taken on or after July 1, 2007 (*i.e.*, updates and amendments) are subject to the provisions of 23 U.S.C. 134 and 135 and U.S.C. 5303 and 5304 as amended by SAFETEA–LU and these proposed rules. Provisions for early accommodation of SAFETEA–LU requirements, as well as its revised update cycles also are described in this section.

Subpart C—Metropolitan Transportation Planning and Programming

Section 450.300 Purpose

Existing § 450.300 would be retained. The statement of purpose would be slightly revised to include a specific reference to ''accessible pedestrian walkways and bicycle facilities,'' as specified in 23 U.S.C. 134(c)(2) and 49 U.S.C. 5303(c)(2).

[13] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

Section 450.302 Applicability

Existing § 450.302 would be retained with minor changes to reflect current statutory citations related to metropolitan transportation planning and programming.

Section 450.304 Definitions

This section would remain the same, except for the addition of 49 U.S.C. 5302 as a statutory citation.

Section 450.306 Scope of the Metropolitan Transportation Planning Process

For purposes of simplification, existing § 450.316(a) would be relocated to § 450.306(a), re-titled and revised by replacing the 16 planning factors from ISTEA with the eight planning factors in 23 U.S.C. 134(h)(1) and 49 U.S.C. 5303(h)(1). See ''Key Statutory Changes'' above. The planning factors are based on the language in the statute, with the exception of minor amplification of the factor on ''security.''

Proposed paragraph (b) provides general information on the use of and application of the eight planning factors throughout the metropolitan transportation planning process.

Proposed paragraph (c) is consistent with language in 23 U.S.C. 134(h)(2) and 49 U.S.C. 5303(h)(2) that the failure to consider any of the factors shall not be reviewable by any court in any matter affecting a metropolitan transportation plan, TIP, or the FHWA/FTA certification of a metropolitan transportation planning process.

Proposed paragraph (d) would require metropolitan transportation planning processes to be coordinated with the statewide transportation planning process as specified in 23 U.S.C. 135(b) and U.S.C. 5304(b).

Paragraph (e) is proposed to encourage MPOs to apply asset management principles and techniques in establishing planning goals, defining TIP priorities, and assessing transportation investment decisions to include system operations, preservation, and maintenance, as well as strategies and policies to support homeland security and to safeguard the personal security of all motorized and non-motorized users. Paragraph (f) is proposed to ensure that metropolitan transportation planning processes are carried out in a consistent manner with regional ITS architectures in 23 CFR part 940 (based on the ITS consistency requirement under section 5206(e) of the TEA–21).

Paragraph (g) is proposed to address the need for transportation planning processes to be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316, and 5317 as amended by the SAFETEA–LU.

Paragraph (h) is proposed to promote consistency with the metropolitan transportation planning process and the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and with the Regional Transit Security Strategy, as required by the Department of Homeland Security.

Paragraph (i) would re-locate and slightly revise the information contained in existing § 450.312(f) regarding the designation of urbanized areas over 200,000 population as transportation management areas (TMAs), as specified in 23 U.S.C. 134(k)(1) and 49 U.S.C. 5303(k)(1).

Paragraph (j) would re-locate and slightly revise the information contained in existing § 450.316(c) regarding the opportunity for MPOs serving non-TMAs in attainment of the NAAQS to propose (in cooperation with the State(s) and the public transportation operator(s)) a procedure for developing an abbreviated metropolitan transportation plan and TIP, for approval by the FHWA and the FTA.

Section 450.308 Funding for Transportation Planning and Unified Planning Work Programs

Existing § 450.314 would be slightly revised, re-titled, and redesignated as § 450.308. Proposed paragraph (a) discusses the categories of Federal funds that may be used for metropolitan transportation planning.

Proposed paragraph (b) would remove the reference to TMAs contained in existing § 450.314, with the intent of stressing that all MPOs have a responsibility to meet the requirements of this section. However, proposed paragraph (d) would continue the provision in 23 U.S.C. 134(l) and 49 U.S.C. 5303(l) that all MPOs serving non-TMAs may develop a simplified statement of work in lieu of a UPWP.

Section 450.310 Metropolitan Planning Organization Designation and Redesignation

Existing § 450.306 would be revised, re-titled, and redesignated as § 450.310. While much of the content of existing § 450.306 would not be significantly changed, a number of new paragraphs are proposed to address issues that have arisen since the enactment of the ISTEA in 1991, including the impacts of the 2000 decennial census.

Proposed paragraph (c) would provide that specific State legislation, State enabling legislation, or interstate compact should be utilized, to the extent possible, for designating MPOs.

Proposed paragraph (d) would mirror the language in 23 U.S.C. 134(d)(2) and 49 U.S.C. 5303(d)(2) outlining the composition of MPOs that serve TMAs.

Proposed paragraph (e) would provide clarifying information regarding multiple MPOs serving a single urbanized area, primarily based on language in 23 U.S.C. 134(d)(6) and 49 U.S.C. 5303(d)(6). Additional language is proposed regarding the development of written agreements between two or more MPOs serving the same urbanized area to clearly identify areas of coordination and the division of responsibilities among the MPOs.

Proposed paragraph (g) would retain existing § 450.306(e) regarding the opportunity for MPOs to utilize the staff of other agencies to carry out selected elements of the metropolitan transportation planning process.

New proposed paragraph (h) clarifies that a designated MPO remains in effect until it has been officially redesignated.

Proposed paragraph (k) would provide clarifying information on what constitutes ''units of general purpose local government.''

Proposed paragraphs (l) and (m) would provide clarifying information on situations that may or may not necessitate MPO redesignations. Since promulgation of the existing rule in 1993, the FHWA and the FTA have addressed a number of issues on this topic. On March 30, 2005, FHWA and FTA issued joint guidance entitled ''FHWA/FTA Guidance on Designation and Redesignation of MPOs'' [14] to address inconsistencies that existed between 23 U.S.C. 134, 49 U.S.C. 5303, and 23 CFR part 450 on the designation and redesignation of MPOs. This joint guidance also provided clarifying information and illustrative examples of scenarios that may or may not trigger MPO redesignations, based on several actual events that transpired since the enactment of the TEA–21. The proposed text is based on this previously-issued guidance.

Section 450.312 Metropolitan Planning Area Boundaries

Existing § 450.308 would be re-titled, redesignated as § 450.312 and revised to reflect the TEA–21 and the SAFETEA–LU changes to 23 U.S.C. 134 and 49 U.S.C. 5303.

Proposed paragraph (a) would retain the option in existing § 450.308(a) of

[14] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/mpodes.htm.*

extending the metropolitan planning area (MPA) boundary to the limits of the metropolitan statistical area or combined statistical area, as provided in 23 U.S.C. 134(e)(2)(B) and 49 U.S.C. 5303(e)(2)(B).

Proposed paragraph (b) would replace existing § 450.308(a) and includes the option to expand the MPA boundary to encompass the entire area designated as nonattainment for the ozone, carbon monoxide, or particulate matter NAAQS.

Proposed paragraph (c) allows a MPA boundary to encompass more than one urbanized area.

Proposed paragraph (d) states that a MPA boundary may be established to coincide with the geography of regional economic development and growth forecasting areas. This provision is intended to provide impetus for strengthening linkages between metropolitan transportation planning and economic development planning, as articulated in 23 U.S.C. 134(g)(3) and 49 U.S.C. 5303(g)(3).

Proposed paragraph (e) allows new census designated urbanized areas within an existing MPA without requiring redesignation of the existing MPO.

Proposed paragraph (f) addresses situations where the boundaries of an urbanized area or MPA extend across two or more States to encourage coordinated transportation planning in multistate areas.

Proposed paragraph (g) explicitly states that a MPA boundary shall not overlap with another MPA.

Proposed paragraph (h) establishes options for addressing situations in which part of an urbanized area extends into an adjacent MPA. The affected MPOs may either adjust their respective MPA boundaries so that the urbanized area lies only within one MPA or establish written agreements that clearly identify areas of coordination and division of transportation planning responsibilities between the MPOs.

Proposed paragraph (j) provides clarifying information to existing § 450.308(d) on the need for approved MPA boundaries to be provided to the FHWA and the FTA in sufficient detail to be accurately delineated on a map. The FHWA and the FTA would collect this data for informational purposes only to understand national policy issues such as the dynamics related to multiple planning geographies (e.g., MPA boundaries compared to air quality nonattainment and maintenance areas).

Section 450.314 Metropolitan Planning Agreements

Existing § 450.310 and § 450.312 would be combined, revised, re-titled, and redesignated as § 450.314.

The content of existing § 450.310(a), (b) and (d) would be combined and largely retained in proposed paragraph (a), except that the reference to ''corridor and subarea studies'' in existing § 450.310(a) would be removed. ''Corridor and subarea studies'' are proposed to be addressed in § 450.318.

Proposed paragraph (a) requires a written agreement(s) by the MPO, State(s), and public transportation operator(s) that clearly identifies their mutual responsibilities in carrying out the metropolitan transportation planning process.

Proposed paragraph (a)(1) would require such an agreement(s) to include specific provisions for the cooperative development and sharing of information related to the financial plans that support the metropolitan transportation plan, the TIP and the annual listing of obligated projects. This proposed paragraph is intended to articulate the cooperative relationships reflected in the TEA–21 and the SAFETEA–LU.

Proposed paragraph (a)(2) would encourage the written agreement(s) to include provisions for consulting with officials responsible for other types of planning affected by transportation (e.g., State and local planned growth, economic development, environmental protection, airport operations, freight movements, non-emergency transportation service providers funded by other sources than title 49, U.S.C., Chapter 53, and safety/security operations). This proposed paragraph is intended to articulate the extensive cooperative relationships reflected in the 23 U.S.C. 134 and 49 U.S.C. 5303.

Proposed paragraph (b) regarding interagency cooperation in MPAs that do not include the entire air quality nonattainment or maintenance areas would retain existing 450.310(f), except for minor wording changes for clarification.

Proposed paragraph (c) would retain existing § 450.310(c), except for minor wording changes for clarification.

Existing § 450.310(d) would be removed since more than one agreement may be necessary to cover the realm of the various cooperative working relationships necessary to undertake comprehensive metropolitan transportation planning.

Existing § 450.310(e) would be removed, since new proposed § 450.308 contains additional information on cooperative working relationships to be documented in the UPWP or simplified statement of work.

Proposed paragraph (d) combines several paragraphs from existing § 450.310 and § 450.312 regarding cooperative agreements among planning agencies when more than one MPO serves a single urbanized area. Proposed paragraph (d) requires coordination of metropolitan transportation plans and TIPs, and strongly encourages coordinated data collection, analysis, and planning assumptions across and between the MPOs, including coordination when transportation improvements extend across the boundaries of more than one MPA. This proposed paragraph also allows multiple MPOs to jointly develop a single, coordinated metropolitan transportation plan and TIP for the entire urbanized area.

Proposed paragraph (e) includes provisions in 23 U.S.C. 134(f) and 49 U.S.C. 5303(f) for situations in which the boundaries of the urbanized area or MPA extend across two or more States.

Proposed paragraph (f) would specifically allow for part of an urbanized area designated as a TMA to overlap into an adjacent MPA serving a non-TMA urbanized area without requiring the entire adjacent urbanized area also to be designated as a TMA. While MPA boundaries may not overlap, more than one MPO may serve a single MPA. Proposed paragraph (f) would require TMAs to establish formal agreements that clearly define specific MPO responsibilities within the urbanized area. This proposed change acknowledges the geographical boundary complexities that arose with the 2000 census.[15] If the affected MPOs choose to pursue this option, proposed paragraph (f) would require the development of a written agreement between the MPOs, the State(s), and the public transportation operator(s) describing how specific TMA requirements (*e.g.*, congestion management process, surface transportation program funds suballocated to the urbanized area over 200,000 population, and project selection) will be met for the overlapping part of the urbanized area.

Existing § 450.312(i) has been retained, expanded, and relocated to proposed § 450.316(c) discussed below.

[15] For the 2000 decennial Census, the Bureau of the Census used a new procedure for defining urbanized areas, based strictly on the population density of census blocks and block groups. This resulted in most urbanized areas having very irregular shaped boundaries, with a large number of these urbanized areas extending across traditional jurisdictional boundaries (*e.g.*, counties and townships), which are often used to define the metropolitan planning area boundaries.

Section 450.316 Interested Parties, Participation, and Consultation

Existing § 450.316(b) would be revised, expanded, re-titled, and redesignated as § 450.316. Since the enactment of the ISTEA in 1991, MPOs have been required to develop and utilize 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 metropolitan transportation plans and TIPs. Title 23 U.S.C. 134(i)(5) and 49 U.S.C. 5303(i)(5) as amended by the SAFETEA–LU expanded the public involvement provisions by requiring MPOs to develop and utilize ''participation plans'' that are developed in consultation with an expanded list of ''interested parties'' identified in 23 U.S.C. 134(i)(5)(A) and 49 U.S.C. 5303(i)(5)(A). See ''Key Statutory Changes'' above.

Proposed paragraph (a) would describe the requirement in 23 U.S.C. 134(i)(5)(B) and 49 U.S.C. 5303(i)(5)(B) as amended by the SAFETEA–LU for developing and using a documented Participation Plan and would retain much of the content from existing § 450.316(b), with additional language provided to directly address the requirement in 23 U.S.C. 134(i)(5)(A) and 49 U.S.C. 5303 for extensive stakeholder ''participation'' that is above and beyond ''public involvement.'' Specifically, proposed paragraph (a) would re-state the requirements in 23 U.S.C. 134(i)(5)(C) and 49 U.S.C. 5303(i)(5)(C) for the MPO to hold any public meetings at convenient and accessible locations and times, employ visualization techniques to describe metropolitan transportation plans and TIPs, and make public information available in electronically accessible format and means (such as the World Wide Web).

The FHWA and the FTA recognize that there are myriad ways to use visualization techniques to better convey plans and programs and there are wide variations among MPO capabilities and needs, especially between large, established MPOs and small, new MPOs. States and MPOs may use everything from static maps to interactive GIS systems, from artist renderings and physical models to photo manipulation to computer simulation. Visualization can be used to support plans, individual projects or Scenario Planning, where various future scenarios are depicted to allow stakeholders to develop a shared vision for the future by analyzing various forces (*e.g.*, health, transportation, economic, environment, land use, etc.) that affect growth.

While the FHWA and the FTA will encourage States and MPOs to identify and implement the most appropriate visualization technique for their particular circumstances, we do not propose to specify when specific techniques must be used. As technology continues to change and visualization techniques evolve, we anticipate that the techniques will be varied as they appropriately illustrate the project or plans they are trying to explain.

The FHWA and the FTA will provide technical assistance and information to States and MPOs on how to deploy different visualization techniques and will share noteworthy practices to highlight innovations that provide the public, elected and appointed officials and other stakeholders with better opportunities to understand the various options proposed for plans and programs. The FHWA and the FTA will share this information through the Transportation Planning Capacity Building Program, Web sites and publications.

Title 23 U.S.C. 134(i)(5)(B) and 49 U.S.C. 5303(i)(5)(B), as amended by SAFETEA–LU, require development of a participation plan. The FHWA and the FTA propose that the participation plan include elements of the public involvement process currently required of MPOs, as well as new requirements mandated by SAFETEA–LU. Proposed paragraph (a) identifies the interested parties to be included in the metropolitan transportation planning process, largely retains the language in existing § 450.316(b) regarding the public involvement process and builds on that process to describe the requirements of the new participation plan.

Proposed paragraph (a)(1)(vi) largely retains the language in existing § 450.316(b)(1)(v) that would require the participation plan to demonstrate explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP.

Proposed paragraph (a)(1)(vii) largely retains the language in existing § 450.316(b)(1)(vi) that would require the participation plan to seek out and consider the needs of those traditionally underserved by existing transportation systems, including low-income and minority households.

Proposed paragraph (a)(1)(viii) largely retains the language in existing § 405.316(b)(1)(viii) that would require the participation plan to provide an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was initially made available for public comment.

Proposed paragraph (a)(1)(ix) largely retains the language in existing § 450.316 (b)(1)(xi) that the participation plan be coordinated with the statewide transportation planning public involvement and consultation processes.

Proposed paragraph (a)(1)(x) largely retains the language in existing § 450.316(b)(1)(ix) requiring MPOs to periodically review the participation plan's effectiveness to ensure a full and open participation process.

Proposed paragraph (a)(2) largely retains the language in existing § 450.316(b)(1)(vii) regarding the MPO's disposition of comments received on the draft metropolitan transportation plan or TIP as part of the final metropolitan transportation plan or TIP.

Proposed paragraph (a)(3) would retain the language in existing § 450.316(b)(1)(i) requiring a minimum public comment period of 45 calendar days be provided before the initial or revised participation plan is adopted by the MPO.

Proposed paragraph (b) reiterates the language in 23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4) that requires MPOs to consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation in the development of metropolitan transportation plans and TIPs. See ''Key Statutory Changes'' above.

Proposed paragraphs (c) and (d) expand upon existing § 450.312(i) regarding MPO consultation with Indian Tribal governments or Federal land management agencies in the development of metropolitan plans and TIPs when the MPA includes Indian Tribal lands or Federal public lands. See ''Key Statutory Changes'' above.

Proposed paragraph (e) encourages MPOs to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in proposed paragraphs (b), (c) and (d). Such procedures may be included in the agreement(s) developed under proposed § 450.314. This proposed paragraph is intended to communicate the importance for MPOs to consult with a diverse array of State, local, and Indian Tribal governments and agencies in carrying out comprehensive metropolitan transportation planning.

Section 450.318 Transportation Planning Studies and Project Development

Existing § 450.318 would be revised and re-titled. Section 1308 of the TEA–21 eliminated the major investment study (MIS) as a separate requirement and required the Secretary to integrate, as appropriate, the remaining aspects and features of the MIS (and associated corridor or subarea studies) into the transportation planning and NEPA regulations (23 CFR part 771).

Since 1998, the FHWA and the FTA (in cooperation with Federal, environmental, resource, and regulatory agencies) have undertaken several initiatives to promote strengthened linkages between the transportation planning and project development/NEPA processes under existing legislative, statutory, and regulatory authorities. In particular, on February 22, 2005, the FHWA and the FTA disseminated legal analysis and program guidance entitled ''Linking the Transportation Planning and NEPA Processes''.[16] Although voluntary to States, MPOs, and public transportation operators, this program guidance was intended to articulate how information, analysis, and products from metropolitan and statewide transportation planning processes could be incorporated into and relied upon in the NEPA process under existing Federal statutes and regulations. Proposed § 450.318 is structured around the guiding principles and legal opinion reflected in that document.

Section 450.320 Congestion Management Process in Transportation Management Areas

Existing § 450.320 would be retained as § 450.320, and revised and re-titled to reflect the requirement in 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) that TMAs develop and use a congestion management process. See ''Key Statutory Changes'' above.

The SAFETEA–LU amended 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) to require that the planning process in a TMA include a congestion management ''process'' instead of a ''system''. This section is based on most of the information on ''congestion management systems'' contained in 23 CFR part 500. Therefore, this proposed rulemaking transfers the TMA congestion management ''system'' requirements in 23 CFR 500.109 to this subpart. The intent is to reiterate the importance of the congestion management process to TMA transportation planning and programming and consolidate this TMA requirement with the rest of the requirements for TMA planning processes.

In the past the CMS requirement, perhaps because it was a separate regulation, has often been carried out in a stove-piped manner, separate from the typical MPO planning process and separate from transportation system operational and management strategies. The proposed regulations reflect the goal that CMP be an integral part of developing a long range transportation plan and TIP for TMA MPOs. The proposed regulation also reflects the FHWA and the FTA goal to have a common set of performance measures and a common set of goals and objectives among the CMP, the long range transportation plan and the transportation systems operational and management strategies for a region. Items such as the regional ITS architecture and the selection process for projects to be included in the TIP should be consistent and seamless with the CMP. As part of developing the CMP, planners should be working in collaboration with others in the region, including public transportation operators and State and local operations staff.

Proposed paragraph (a) re-states the language in 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) requiring the development and implementation of a congestion management process in TMAs.

Proposed paragraph (b) largely retains the definition of a CMS contained in existing 23 CFR 500.109(a)

Proposed paragraphs (c)(1) through (c)(6) retain the specific TMA congestion management language from existing 23 CFR 500.109(b)(1) through (b)(6).

Proposed paragraph (d) reflects the language in 23 U.S.C. 134(m)(1) and 49 U.S.C. 5303(m)(1) regarding the use of the congestion management process in TMAs designated as nonattainment for ozone or carbon monoxide. Paragraph (d) would require that any project that would result in a significant increase in the carrying capacity for single occupant vehicles (SOVs) be addressed through a congestion management process.

Proposed paragraph (e) largely retains the language in the latter portion of 23 CFR 500.109(c) requiring analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that would result in a significant increase in SOV capacity is proposed in nonattainment and maintenance area TMAs.

Proposed paragraph (f) reflects the language in 23 U.S.C. 135(i) and 49 U.S.C. 5304(i) allowing State laws, rules, or regulations pertaining to congestion management systems or processes to constitute the congestion management process.

The phase-in period defined in 23 CFR 500.109(d)(2) would be removed from this proposed section since that date has passed.

Section 450.322 Development and Content of the Metropolitan Transportation Plan

Existing § 450.316 would be revised, re-titled, and redesignated as § 450.322, largely to reflect statutory requirements from the TEA–21 and the SAFETEA–LU.

Proposed paragraph (a) retains the language under existing § 450.316 that the metropolitan transportation plan must address at least a 20-year planning horizon. Additional clarifying information would specify that the minimum 20-year horizon applies at the time the metropolitan transportation plan is approved by the MPO. Proposed paragraph (a) would clarify that the effective date of the metropolitan transportation plan in nonattainment and maintenance areas is the date of a conformity determination issued by the FHWA and the FTA. This proposed change is intended to eliminate confusion over the validity of the metropolitan transportation plan in relation to the timing of the MPO and the FHWA/FTA conformity determinations, as well as provide a consistent temporal basis to track the new four-year update cycle established by the SAFETEA–LU.

Proposed paragraph (c) reflects the provision in 23 U.S.C. 134(i)(1) and 49 U.S.C. 5303(i)(1) that metropolitan transportation plans in air quality nonattainment and maintenance areas be updated at least every four years, instead of the former three-year update cycle. For attainment area MPOs, proposed paragraph (c) would maintain the previous 5-year update cycle. See ''Key Statutory Changes'' above. In addition, proposed paragraph (c) would provide MPO discretion to revise the plan as necessary. The FHWA and the FTA recognize that changes to transportation plans between formal update cycles may be necessary. We have proposed definitions for the terms ''administrative modification,''

[16] This guidance document is available via the Internet at the following URL: *http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/aa5aec9f63be385c852568cc0055ea16/9fd918150ac2449685256fb10050726c?OpenDocument.*

''amendment,'' and ''revision'' to clarify these actions.

Proposed paragraph (d) addresses the State air quality agency coordination of the development of the TCMs in a SIP. This proposed paragraph also discusses the ''TCM substitution'' provisions in Section 6011(d) of the SAFETEA–LU.

Proposed paragraph (f)(2) notes that the locally preferred alternative selected from a planning Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) need to be adopted by the MPO as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309.

As specified in 23 U.S.C. 134(i)(2)(D) and 49 U.S.C. 5303(i)(2)(D), proposed paragraph (f)(3) would require the metropolitan transportation plan include operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods. See ''Key Statutory Changes'' above.

The FHWA and the FTA believe improved planning for the operations and management of the Nation's transportation system is vitally important to achieving the high expectations for safety, reliability, and mobility for people and freight in the 21st century. Operations and management (or management and operations) is a coordinated approach to optimizing the performance of existing infrastructure through implementation of multimodal, intermodal, and often cross-jurisdictional systems, services, and projects. To be effective, management and operations must be viewed as a collaborative effort between transportation planners and managers with responsibility for day-to-day transportation operations. Management and operations refers to a broad range of strategies. Examples include traffic detection and surveillance, work zone management, emergency management, freight management systems, and traveler information services. Such strategies enhance reliability and service efficiency; improve public safety and security; reduce traveler delays associated with incidents and other events; and improve information for businesses and for the traveling public.

Proposed paragraph (f)(7) would require, consistent with 23 U.S.C. 134(i)(2)(B) and 49 U.S.C. 5303(i)(2)(B), that the metropolitan transportation plan contain a discussion of potential environmental mitigation activities (at the policy- and/or strategic-levels, not project-specific), developed in consultation with Federal, State, and Tribal regulatory agencies responsible for land management, wildlife, and other environmental issues. In addition, this proposed paragraph allows MPOs to establish reasonable timeframes for performing this consultation. See ''Key Statutory Changes'' above.

Proposed paragraph (f)(10) would implement the provision, in 23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C), for a financial plan to be developed to support the metropolitan transportation plan. In addition, proposed paragraph (f)(9), states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available as allowed by 23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C). Appendix B to this proposed rule contains a revised version of the FHWA/FTA Guidance on Fiscal Constraint of Transportation Plans and Programs, which is based on interim guidance issued by the FHWA and the FTA.[17]

Proposed paragraph (g) would require that the metropolitan transportation plan be developed, as appropriate, in consultation with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation, including the comparison of transportation plans to State and Indian Tribal inventories or plans/maps of natural and historic resources, as specified in 23 U.S.C. 134(i)(2)(B)(ii) and 49 U.S.C. 5303(i)(2)(B)(ii). See ''Key Statutory Changes'' above.

While the title of 23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4) is ''Consultation'', it is important to note that the consultation referenced in proposed paragraph (g) is different from the definition of consultation in the existing or proposed regulation. The statute specifically defines ''consultation'' in this section as involving, as appropriate, ''comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available.''

In order to draw a strong link between the Strategic Highway Safety Planning process described in 23 U.S.C. 148 and the metropolitan transportation planning process, proposed paragraph (h) states that the metropolitan transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects for the MPA contained in the Strategic Highway Safety Plan. This proposed paragraph also seeks to promote consistency between the development of metropolitan transportation plans and emergency relief/disaster preparedness plans, as well as strategies and policies that support homeland security and safeguard the personal security of all motorized and non-motorized users (as appropriate).

Proposed paragraph (i) would provide opportunities to comment for the ''interested parties'', specified in 23 U.S.C. 134(i)(5) and 49 U.S.C. 5303(i)(5) in the development of the metropolitan transportation plan, using the participation plan developed under proposed § 450.316.

Proposed paragraph (j) would require the MPO to publish or otherwise make available the metropolitan transportation plan in electronically accessible formats and means (such as the World Wide Web), to the maximum extent practicable as specified in 23 U.S.C. 134(i)(5)(C) and 49 U.S.C. 5303(i)(5)(C). See ''Key Statutory Changes'' above.

The FHWA and the FTA recognize that there are myriad ways to use visualization techniques to better convey plans and programs. States and MPOs may use everything from static maps to interactive GIS systems, from artist renderings and physical models to photo manipulation to computer simulation. Visualization can be used to support plans, individual projects or Scenario Planning, where various future scenarios are depicted to allow stakeholders to develop a shared vision for the future by analyzing various forces (*e.g.*, health, transportation, economic, environmental, land use, etc.) that affect growth. While the FHWA and the FTA will encourage States and MPOs to identify and implement the most appropriate visualization technique for their particular circumstances, we do not propose to specify when specific techniques must be used. There is too much variation among MPOs and their circumstances to mandate specific visualization techniques. As technology continues to change and visualization techniques evolve, we anticipate that the techniques will be varied as they appropriately illustrate the projects and plans MPOs are trying to explain.

The FHWA and the FTA will provide technical assistance and information to States and MPOs on how to deploy different visualization techniques and will share noteworthy practices to highlight innovations that provide the

[17] FHWA/FTA Guidance on Fiscal Constraint of Transportation Plans and Programs, June 30, 2005, available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

public, elected and appointed officials and other stakeholders with better opportunities to understand the various options proposed for plans and programs. This information will be shared through the Transportation Planning Capacity Building Program, our Web sites and publications.

Proposed paragraph (l) would be added to authorize utilization of an interim transportation plan during a conformity lapse, with the intent to continue funding of exempt projects, transportation control measures (TCMs) in an approved State Implementation Plan, and other projects that can advance under a conformity lapse in accordance with 40 CFR part 93. Under the provisions of § 176(c) of the Clean Air Act, as amended by the SAFETEA–LU, nonattainment and maintenance areas have 12 months from the time the area misses a deadline to determine conformity of their transportation plan or TIP before a conformity lapse occurs. During this conformity lapse grace period, all planning requirements in this subpart and subpart B must still be met.

Section 450.324 Development and Content of the Transportation Improvement Program (TIP)

Existing § 450.324 would be revised and retained as § 450.324. Except for some restructuring and reorganization, much of the content of existing § 450.324 would remain intact.

Substantive changes reflected in proposed § 450.324 are consistent with key legislative and statutory changes resulting from the TEA–21 and the SAFETEA–LU. Proposed paragraph (a) requires that the TIP cover a period of at least four years and be updated at least every four years. See ''Key Statutory Changes'' above.

Proposed paragraph (d) would modify existing § 450.324(f)(4) and (f)(5) to clarify that all regionally significant projects, whether federally funded or otherwise, would be included in the metropolitan TIP for purposes of transportation conformity, fiscal constraint, and public disclosure.

Proposed paragraph (h) would implement a provision, retained in 23 U.S.C. 134(j)(2)(B) and 49 U.S.C. 5303(j)(2)(B), requiring a financial plan to be developed to support the TIP. Another provision added by TEA–21, retained in 23 U.S.C. 134(j)(2)(B) and 49 U.S.C. 5303(j)(2)(B), and also reflected in proposed paragraph (h), states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available.

Proposed paragraph (i) would retain provisions in existing § 450.324(e) that explains the fiscal constraint standard for TIPs. The FHWA and the FTA believe that retaining these provisions are extremely important to meaningful planning and public involvement to ensure that TIPs are not merely ''wish lists.''

The FHWA and the FTA invite comments on whether the agencies should require MPOs submitting TIP amendments to demonstrate that funds are ''available or committed'' for projects identified in the TIP in the year the TIP amendment is submitted and the following year.

Proposed paragraph (k) would be added to authorize utilization of an interim TIP during a conformity lapse, with the intent to continue funding exempt projects, transportation control measures (TCMs) in an approved State Implementation Plan, and other projects that can advance under a conformity lapse in accordance with 40 CFR part 93. Under the provisions of § 176(c) of the Clean Air Act, as amended by the SAFETEA–LU, nonattainment and maintenance areas have 12 months from the time the area misses a deadline to determine conformity of their transportation plan or TIP before a conformity lapse occurs. During this conformity lapse grace period, all planning requirements in this subpart and subpart B must still be met.

Section 450.326 TIP Revisions and Relationship to the STIP

Existing § 450.326 and § 450.328 would be combined, re-titled, and redesignated as § 450.326. The existing regulatory text would remain largely unchanged. It allows for revision of TIPs through the addition or deletion of projects, subject to conditions that protect the principles of fiscal constraint and public involvement. The FHWA and the FTA recognize that changes to TIPs between formal update cycles may be necessary. This proposed section intends to clarify that in nonattainment and maintenance areas, a new conformity determination is necessary unless the changes to TIPs are administrative modifications (*i.e.*, addition or deletion of exempt projects). Consistent with this, proposed paragraph (a) would clarify that a new conformity determination is necessary when regionally significant non-exempt projects are added to or deleted from a TIP. Similarly, moving a project or a phase of a project from year five or later of a TIP to the first four years would constitute an amendment that would require a new conformity determination. And, in all areas, changes that affect fiscal constraint must take place by amendment of the TIP. We have proposed definitions for the terms ''administrative modification,'' ''amendment,'' and ''revision'' to clarify these actions.

Section 450.328 TIP Action by the FHWA and the FTA

Existing § 450.330 would be redesignated as § 450.328. The existing regulatory text would be changed slightly for clarification or technical corrections.

A new paragraph (c) would address situations in which a metropolitan transportation plan is not updated within the cycles required in the SAFETEA–LU, and proposes limitations on projects that could be advanced from an existing TIP. In nonattainment and maintenance areas, § 176(c) of the Clean Air Act, as amended by the SAFETEA–LU, provides a 12-month conformity lapse grace period from the time conformity expires on a plan or TIP before an area enters a conformity lapse. During the conformity lapse grace period, all planning requirements defined in 450.322 and 450.324 must still be met. As long as the TIP is still valid, projects can continue to be advanced, but amendments to the TIP would require a new conformity determination.

A new paragraph (e) would be added to address the addition of ''illustrative projects'' to TIPs. This proposed paragraph makes it clear that no Federal action may be taken on these projects until they become formally included in the TIP, as specified in statute.

Section 450.330 Project Selection From the TIP

Existing § 450.332 would be revised, re-titled, and redesignated as § 450.330. Existing § 450.332(a), (b), and (c) would be redesignated as § 450.330(b), (c) and (a), respectively, with largely citation corrections made to the text. In addition, proposed paragraph (a) has been revised to reflect the requirement in 23 U.S.C. 134(j)(2)(A) and 49 U.S.C. 5303(j)(2)(A) that the TIP include projects covering four years. See ''Key Statutory Changes'' above.

With minor citation changes, existing § 450.332(d) and (e) would be redesignated in proposed § 450.330 paragraphs (d) and (e), respectively.

The FHWA and the FTA invite comments on whether MPOs should be required to prepare an ''agreed to'' list of projects at the beginning of each of the four years in the TIP, rather than only the first year. The FHWA and the FTA also invite comments on whether a TIP amendment should be required to

move a project between years in the TIP, if an ''agreed to'' list is required for each year.

Section 450.332 Annual Listing of Obligated Projects

This new proposed section addresses the requirements of the TEA–21 and 23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B) for the development of an annual listing of projects (including investments in pedestrian walkways and bicycle facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year in MPAs.

Proposed paragraph (a) re-states the language in 23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B) that the annual listing shall be cooperatively developed by the State(s), public transportation operator(s), and the MPO, in accordance with § 450.314(a) and specifies the timetable for publication of the annual listing.

Proposed paragraph (b) specifies that the information contained in the annual listing of obligated projects be consistent with the information contained in the TIP and specifies the information to be included.

Proposed paragraph (c) states that the annual listing of obligated projects shall be published or otherwise made available by the MPO in accordance with the participation plan's criteria related to the TIP.

Section 450.334 Self-Certifications and Federal Certifications

Existing § 450.334 would be revised, re-titled, and retained as § 450.334. Proposed paragraph (a) would revise existing § 450.334(a) to align the transmittals of the State/MPO self-certifications and the TIP to the FHWA and the FTA, thereby reflecting the language in 23 U.S.C. 134(j)(1)(D) and 49 U.S.C. 5303(j)(1)(D) that requires TIPs to be updated at least once every four years. In addition, proposed paragraphs (a)(1) through (a)(8) would articulate the existing legislative and regulatory authorities to be included in the State/MPO self-certification, including three additional Federal requirements (1) the Older Americans Act, (2) 23 U.S.C. 324 regarding the prohibition of discrimination based on gender, and (3) section 504 of the Rehabilitation Act of 1973 regarding discrimination against individuals with disabilities). These requirements previously existed and the regulations would be revised to include them.

Proposed paragraph (b) would combine and revise the content of existing § 450.334(b) through (h), based largely on language in 23 U.S.C. 134(k)(5) and 49 U.S.C. 5303(k)(5) that describes TMA certification. In addition, proposed paragraphs (b)(1)(i) through (b)(1)(iii) describe specific FHWA/FTA options on TMA certification.

Section 450.336 Applicability of NEPA to Metropolitan Transportation Plans and Programs

This new proposed section includes the provisions of the TEA–21 and 23 U.S.C. 134(p) and 49 U.S.C. 5303(p) that any decisions by the FHWA and the FTA regarding the metropolitan transportation plan and the TIP are not Federal actions subject to the provisions of NEPA.

Section 450.338 Phase-in of New Requirements

Existing § 450.336 would be revised and redesignated as § 450.338. Proposed paragraphs (a), (b) and (c) include the requirements in Sections 3005(b) and 6001(b) of the SAFETEA–LU that State and MPO transportation plans and programs adopted on or after July 1, 2007, shall reflect the provisions in 23 U.S.C. 134 and 49 U.S.C. 5303 as amended by the SAFETEA–LU. In addition, this proposed section clarifies that all State, MPO, and FHWA/FTA actions on metropolitan transportation plans and programs taken on or after July 1, 2007 (*i.e.*, updates and amendments) are subject to the provisions in 23 U.S.C. 134 and 49 U.S.C. 5303 as amended by the SAFETEA–LU and these proposed rules. Provisions for early accommodation of SAFETEA–LU requirements, as well as its revised update cycles are described in this section.

Proposed paragraph (d) would establish that the congestion management process for newly designated TMAs shall be implemented within 18 months of the designation of the TMA. This requirement is consistent with previous joint guidance provided by the FHWA and the FTA entitled ''Frequently Asked Questions on Applying 2000 Census Data to Urbanized and Urban Areas''.[18]

Appendix A—Linking the Transportation Planning and NEPA Processes

The agencies propose to include an Appendix A in the regulations discussing the mandated linkage between transportation planning and project development to amplify requirements in 23 U.S.C. 134 and 135 and in 49 U.S.C. 5303 and 5304 regarding this linkage.

Despite the statutory emphasis over the last 40 years directing that Federally funded highway and transit projects flow from metropolitan and statewide transportation planning processes, the environmental analyses produced to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*) have often been disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), planning-level corridor/subarea/feasibility studies, or FTA's planning Alternatives Analyses. Congress established a strong transportation planning process for a reason, so that it would lay a foundation and help shape project decisions. This Appendix reinforces how planning analyses and decisions should be relied on during the NEPA process. The Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages. The Appendix includes a ''Questions and Answers'' section that addresses common issues regarding linking the transportation planning and NEPA/project development processes.

Appendix B—Fiscal Constraint of Transportation Plans and Programs

The agencies propose to include Appendix B on fiscal constraint to amplify requirements in 23 U.S.C. 134 and 135 and in 49 U.S.C 5303 and 5304 associated with fiscal constraint. Appendix B summarizes and describes in detail the ISTEA and TEA–21 fiscal constraint requirements to ensure that transportation plans and programs reflect realistic assumptions on capital, operations, and maintenance costs associated with the surface transportation system. Appendix B explains how to estimate ''reasonably available'' future revenues and what is considered ''Available or Committed'' funds. The Appendix also describes how to address changes in revenues or costs after the metropolitan transportation plan, TIP, or STIP are adopted and the FHWA/FTA position on how operations or maintenance are to be covered by fiscal constraint analyses. The Appendix includes a ''Questions and Answers'' section that addresses common uncertainties

[18] Guidance issued on March 31, 2003, available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/census/faqa2cdt.htm.*

regarding different fiscal constraint situations.

Section 500.109 Congestion Management Systems (CMS)

The SAFETEA–LU amended 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303 to require that the planning process in a TMA include a congestion management ''process'' instead of a ''system''. This proposed rulemaking transfers the TMA congestion management ''system'' requirements from this section to § 450.320. The intent of moving the requirements from this section to § 450.320 is to reiterate the importance of the congestion management process to TMA transportation planning and programming and consolidate the TMA congestion management process requirement with the rest of the requirements for TMA planning processes.

Proposed paragraph (a) largely retains the language contained in existing § 500.109(a). The remaining portions of existing § 500.109 that pertain to congestion management in TMAs are proposed to be moved to § 450.320.

The phase-in period defined in existing § 500.109(d)(2) would be removed because it is no longer necessary.

49 CFR Part 613

This section would be revised to refer to the proposed regulations in 23 CFR part 450. Because the FHWA and the FTA jointly administer the transportation planning and programming process, we propose to keep the regulations identical.

Distribution Tables

For ease of reference, two distribution tables are provided. The first indicates proposed changes in section numbering and titles. The second provides details within each section.

SECTION TITLE AND NUMBER

Old section	New section
Subpart A	*Subpart A*
450.100 Purpose	450.100 Purpose.
450.102 Applicability	450.102 Applicability.
450.104 Definitions	450.104 Definitions.
Subpart B	*Subpart B*
450.200 Purpose	450.200 Purpose.
450.202 Applicability	450.202 Applicability.
450.204 Definitions	450.204 Definitions.
450.206 Statewide transportation planning process: General requirements.	450.206 Scope of the statewide transportation planning process.
450.208 Statewide transportation planning process: Factors	450.208 Coordination of planning process activities.
450.210 Coordination	450.210 Interested parties, public involvement, and consultation.
	450.212 Transportation planning studies and project development.
450.212 Public involvement	450.214 Development and content of the long-range statewide transportation plan.
450.214 Statewide transportation plan	450.216 Development and content of the statewide transportation improvement program (STIP).
450.216 Statewide transportation improvement program (STIP)	450.218 Self-certifications, Federal findings, and Federal approvals.
450.218 Funding	450.220 Project selection from the STIP.
450.220 Approvals	450.222 Applicability of NEPA to statewide transportation plans and programs.
450.222 Project selection for implementation	450.224 Phase-in of new requirements.
Subpart C	*Subpart C*
450.300 Purpose	450.300 Purpose.
450.302 Applicability	450.302 Applicability.
450.304 Definitions	450.304 Definitions.
450.306 Metropolitan planning organizations: Designation and redesignation.	450.306 Scope of the metropolitan transportation planning process.
450.308 Metropolitan planning organization: Metropolitan planning boundary.	450.308 Funding for transportation planning and unified planning work programs.
450.310 Metropolitan planning organization: planning agreements	450.310 Metropolitan planning organization designation and redesignation.
450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.	450.312 Metropolitan planning area boundaries.
450.314 Metropolitan transportation planning process: Unified planning work programs.	450.314 Metropolitan planning agreements.
450.316 Metropolitan transportation planning process: Elements	450.316 Interested parties, participation and consultation.
450.318 Metropolitan transportation planning process: Major metropolitan transportation investments.	450.318 Transportation planning studies and project development.
450.320 Metropolitan transportation planning process: Relation to management systems.	450.320 Congestion management process in transportation management areas.
450.322 Metropolitan transportation planning process: Transportation plan.	450.322 Development and content of the metropolitan transportation plan.
450.324 Transportation improvement program: General	450.324 Development and content of the transportation improvement program (TIP).
450.326 Transportation improvement program: modification	450.326 TIP revisions and relationship to the STIP.
450.328 Transportation improvement program: Relationship to statewide TIP.	450.328 TIP action by the FHWA and the FTA.
450.330 Transportation improvement program: Action required by FHWA/FTA.	450.330 Project selection from the TIP.
450.332 Project selection for implementation	450.332 Annual listing of obligated projects.
450.334 Metropolitan transportation planning process: Certification	450.334 Self-certifications and Federal certifications.

SECTION TITLE AND NUMBER—Continued

Old section	New section
450.336 Phase-in of new requirements	450.336 Applicability of NEPA to metropolitan transportation plans and programs.
None	450.338 Phase-in of new requirements.
Section 500	
500.109 CMS	500.109 CMS.

The following distribution table identifies details for each existing section and proposed section:

Old section	New section
Subpart A	*Subpart A*
450.100	450.100. [Revised].
450.102	450.102.
450.104	450.104.
Definitions	Definitions.
None	Administrative modification. [New].
None	Alternatives analysis. [New].
None	Amendment. [New].
None	Attainment area. [New].
None	Available funds. [New].
None	Committed funds. [New].
None	Conformity. [New].
None	Conformity lapse. [New].
None	Congestion management process. [New].
None	Consideration. [New].
Consultation	Consultation. [Revised].
Cooperation	Cooperation. [Revised].
None	Coordinated public transit-human services transportation plan. [New].
Coordination	Coordination. [Revised].
None	Design concept. [New].
None	Design scope. [New].
None	Environmental mitigation activities. [New].
None	Federal land management agency. [New].
None	Federally funded non-emergency transportation services. [New].
None	Financially constrained or Fiscal constraint. [New].
None	Financial plan. [New].
None	Freight shippers. [New].
Governor	Governor.
None	Illustrative project. [New].
None	Indian Tribal government. [New].
None	Intelligent transportation system (ITS). [New].
None	Interim metropolitan transportation plan. [New].
None	Interim transportation improvement program (TIP). [New].
Maintenance area	Maintenance area. [Revised].
Major metropolitan transportation investment	Removed.
Management system	Management system. [Revised].
Metropolitan planning area	Metropolitan planning area. [Revised].
Metropolitan planning organization	Metropolitan planning organization.
(MPO)	(MPO). [Revised].
Metropolitan transportation plan	Metropolitan transportation plan.
None	National ambient air quality standards. [New].
Nonattainment area	Nonattainment area.
Non-metropolitan area	Non-metropolitan area.
Non-metropolitan local official	Non-metropolitan local official.
None	Obligated projects. [New].
None	Operational and management strategies. [New].
None	Project selection. [New].
None	Provider of freight transportation services. [New].
None	Regional ITS architecture. [New].
None	Regional transit security strategy.
Regionally significant project	Regionally significant project. [Revised].
None	Revision. [New].
State	State.
State implementation plan (SIP)	State implementation plan (SIP). [Revised].
Statewide transportation improvement Program (STIP)	Statewide transportation improvement program (STIP).
Statewide transportation plan	Long-range statewide transportation plan. [Revised].
None	Strategic Highway Safety Plan. [New].
None	Transportation control measures (TCMs). [New].

Old section	New section
Transportation improvement program (TIP)	Transportation improvement program (TIP). [Revised].
Transportation management area (TMA)	Transportation management area (TMA). [Revised].
None	Unified planning work program (UPWP). [New].
None	Update. [New].
None	Urbanized area. [New].
None	Users of public transportation. [New].
None	Visualization techniques. [New].
Subpart B	*Subpart B*
450.200	450.200. [Revised].
450.202	450.202. [Revised].
450.204	450.204. [Revised].
450.206(a)(1) through (a)(5)	Removed.
450.206(b)	450.208(a)(1). [Revised].
450.206(c)	450.208(a)(3).
450.208(a)(1)	450.208(d). [Revised].
450.208(a)(2) through (a)(23)	450.206(a)(1) through (a)(8). [Revised].
450.208(b)	450.206(b). [Revised].
None	450.206(c). [New].
450.210(a)(1) through (a)(13)	450.208(a)(1) through (a)(7). [Revised].
450.210(b)	Removed.
None	450.208(b). [New].
None	450.208(c). [New].
None	450.208(e). [New].
None	450.208(f). [New].
None	450.208(g). [New].
None	450.208(h). [New].
450.212(a) through (g)	450.210(a). [Revised].
450.212(h) through (i)	450.210(b)(1) through (b)(2). [Revised].
None	450.210(c). [New].
None	450.212. [New].
450.214(a) through (b)(3)	450.214(a). [Revised].
None	450.214(b). [New].
450.214(b)(4)	450.214(e). [Revised].
450.214(b)(5)	450.214(c). [Revised].
450.214(b)(6)	450.214(k). [Revised].
None	450.214(d). [Revised].
None	450.214(e). [New].
450.214(c)(1) through (c)(5)	450.214(g) and (h). [Revised].
450.214(d)	Removed.
None	450.214(i). [New].
None	450.214(j). [New].
None	450.214(m). [New].
None	450.214(n). [New].
450.214(e)	450.214(o).
None	450.214(p). [New].
450.214(f)	450.214(f). [Revised].
450.216(a) last sentence	450.216(g). [Revised].
450.216(a)(1) through (a)(2)	450.216(a) through (b). [Revised].
450.216(a)(3)	450.216(k).
None	450.216(l). [New].
450.216(a)(4)	450.216(b). [Revised].
None	450.216(d). [New].
None	450.216(e). [New].
450.216(a)(5)	450.216(m). [Revised].
450.216(a)(6)	450.216(g). [Revised].
450.216(a)(7)	450.216(h). [Revised].
450.216(a)(8)	450.216(i). [Revised].
450.216(a)(9)	Removed.
450.216(b)	450.216(j). [Revised].
None	450.216(f). [New].
None	450.216(n). [New].
None	450.216(m). [New].
450.216(c) through (d)	450.216(o).
450.216(e)	450.216(c). [Revised].
450.218	450.206(d). [Revised].
450.220(a) through (g)	450.218(a) through (d). [Revised].
450.222(a) through (d)	450.220(a) through (e). [Revised].
None	450.222. [New].
450.224(a) through (b)	450.224(a) through (c). [Revised].
Subpart C	*Subpart C*
450.300	450.300. [Revised].
450.302	450.302. [Revised].
450.304	450.304. [Revised].
450.306(a) through (d)	450.310(a) through (d). [Revised].

Old section	New section
None	450.310(f). [New].
450.306(e)	450.310(g).
None	450.310(h). [New].
450.306(f)	450.310(i). [Revised].
450.306(g)	450.310(j). [Revised].
450.306(h)	450.310(e). [Revised].
450.306(i) through (j)	Removed.
450.306(k)	450.310(l) through (m). [Revised].
None	450.310(k). [New].
450.308(a) through (c)	450.312(a), (b), and (i). [Revised].
None	450.312(c). [New].
None	450.312(d). [New].
None	450.312(e). [New].
None	450.312(f). [New].
None	450.312(g). [New].
None	450.312(h). [New].
450.308(d)	450.312(j). [Revised].
450.310(a), (b), and (d)	450.314(a). [Revised].
None	450.314(a)(1). [New].
None	450.314(a)(2). [New].
450.310(c)	450.314(c).
450.310(e)	Removed.
450.310(f)	450.314(b). [Revised].
450.310(g)	450.314(d). [Revised].
450.310(h)	Removed.
None	450.314(f). [New].
450.312(a)	Removed.
450.312(b)	Removed.
450.312(c)	450.322(d). [Revised].
450.312(d)	Removed.
450.312(e)	450.314(e).
450.312(f)	450.306(i).
450.312(g)	Removed.
450.312(h)	Removed.
450.312(i)	450.316(c) through (d). [Revised].
None	450.316(e). [New].
None	450.308(a). [New].
450.314(a) through (d)	450.308(b) through (e). [Revised].
None	450.308(f). [New].
450.316(a)(1) through (a)(16)	450.306(a)(1) through (a)(8). [Revised].
None	450.306(b). [New].
None	450.306(c). [New].
None	450.306(d). [New].
None	450.306(e). [New].
None	450.306(f). [New].
None	450.306(g). [New].
None	450.306(h). [New].
None	450.316(a). [New].
450.316(b)(1)(i)	450.316(a)(3). [Revised].
450.316(b)(1)(ii) through (b)(1)(vi)	450.316(a)(1)(i) through (a)(1)(vi). [Revised].
450.316(b)(1)(vii)	450.316(a)(2)(). [Revised].
450.316(b)(1)(viii) through (b)(1)(xi)	450.316(a)(1)(vii) through (a)(1)(x). [Revised].
450.316(b)(2)	Removed.
450.316(b)(3)	Removed.
450.316(b)(4)	Removed.
None	450.316(b). [New].
450.312(i)	450.316(c).
None	450.316(d). [New].
450.316(c)	450.306(j). [Revised].
450.316(d)	Removed.
450.318(a) through (f)	450.318(a) through (c). [Revised].
450.320(a) through (c)	450.320(a) through (f). [Revised].
450.322(a) and (e)	450.322(a) through (c). [Revised].
None	450.322(e). [New].
450.322(b)(1) through (b)(2)	450.322(f)(1) through (f)(2). [Revised].
450.322(b)(3)	450.322(f)(8). [Revised].
450.322(b)(4) through (b)(7)	450.322(f)(3) through (f)(6). [Revised].
450.322(b)(8)	Removed.
450.322(b)(9)	450.322(f)(7). [Revised].
450.322(b)(10)	Removed.
450.322(b)(11)	450.322(f)(8). [Revised].
None	450.322(g)(1) through (g)(2). [New].
None	450.322(h). [New].
450.322(c)	450.322(i). [Revised].

Old section	New section
None	450.322(j). [New].
None	450.322(k). [New].
450.322(d)	450.322(l). [Revised].
450.324(a) through (n)	450.324(a) through (j). [Revised].
None	450.324(k). [New].
None	450.324(l). [New].
450.326	450.326(a). [Revised].
450.328(a) through (b)	450.326(b) through (c). [Revised].
450.330(a) through (b)	450.328(a) through (b). [Revised].
None	450.328(c) through (e). [New].
450.324(o)	450.328(f). [Revised].
450.332(a) through (e)	450.330(a) through (e). [Revised].
None	450.332(a) through (c). [New].
450.334(a) through (h)	450.334(a) through (b). [Revised].
None	450.336. [New].
450.336	450.338(a) through (d). [Revised].
500.109 (a) through (c)	500.109(a) through (b). [Revised].

Rulemaking Analyses and Notices

All comments received on or 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. A final rule may be published at any time after close of the comment period.

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

The FHWA and FTA have determined preliminarily that this rulemaking would be a significant regulatory action within the meaning of Executive Order 12866, and is significant 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. The changes proposed herein would add new coordination and documentation requirements (*e.g.*, greater public outreach and consultation with State and local planning and resource agencies, annual listing of obligated projects, etc.), but would reduce the frequency of some existing regulatory reporting requirements (*e.g.*, metropolitan transportation plan, STIP/TIP, and certification reviews). In preparing this proposal, the FHWA and the FTA have sought to maintain existing flexibility of operation wherever possible for State DOTs, MPOs, and other affected organizations, and to utilize existing processes to accomplish any new tasks or activities.

The FHWA and the FTA have conducted a cost analysis identifying each of the proposed regulatory changes that would have a significant cost impact for MPOs or State DOTs, and have estimated those costs on an annual basis. This cost analysis is included as a separate document, entitled ''Regulatory Cost Analysis of Proposed Rulemaking,'' and is available for review in the docket. Based on the cost analysis, we estimate that the aggregate increase in costs over current expenditures attributable to this rulemaking for all 52 State DOTs and 384 MPOs would be approximately $19.8 million per year, or about $46,000 per agency, on average. Eighty (80) percent of these costs are directly reimbursable through Federal transportation funds allocated for metropolitan planning. [23 U.S.C. 104(f) and 49 U.S.C. 5303(h)] and for State planning and research [23 U.S.C. 505 and 49 U.S.C. 5313]. Furthermore, the SAFETEA–LU significantly increased the mandatory set-aside in Federal funds for metropolitan transportation planning, as well as Statewide Planning and Research funding. In addition, the State DOTs and MPOs have the flexibility to use most other Federal highway dollars for transportation planning if they so desire. Consequently, the increase in non-Federal cost burden attributable to this proposed rulemaking is estimated to be only $4 million per year in total, or about $9,100 per agency, on average. Therefore, we believe that the economic impact of this rulemaking would be minimal.

The FHWA and the FTA welcome comments on the economic impacts of these proposed regulations. Comments, including those from the State DOTs 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, burdens, and impacts.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), the FHWA and the FTA have determined that States and metropolitan planning organizations are not included in the definition of small entity set forth in 5 U.S.C. 601. Small governmental jurisdictions are limited to representations of populations of less than 50,000. Metropolitan planning organizations, by definition represent urbanized areas having a minimum population of 50,000. Therefore the Regulatory Flexibility Act does not apply.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure of non-Federal funds by State, local, and Tribal governments, in the aggregate, or by the private sector, of $120.7 million in any one year (2 U.S.C. 1532).

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes

made in the program by the Federal government. The Federal-aid highway program and Federal Transit Act permit this type of flexibility to the States.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA and the FTA have also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Comment is solicited specifically on the Federalism implications of this proposal.

By letter dated November 29, 2005, the FHWA and the FTA solicited comments from the National Governors' Association (NGA) as representatives for the elected State officials on the Federalism implications of this proposed rule.[19] An identical letter was sent on the same date to several other organizations representing elected officials and Indian Tribal governments. These organizations were: the National Conference of State Legislators (NCSL), the American Public Works Association (APWA), the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC), the National Association of Counties (NACO), the Conference of Mayors (COM), the National Association of City Transportation Officials (NACTO), and the National Congress of American Indians (NCAI).

In response to this letter, AMPO and NARC requested a meeting to discuss their Federalism concerns. On December 21, 2005, we met with representatives from AMPO and NARC. A summary of this meeting is available in the docket. Briefly, both AMPO and NARC expressed concern with the potential burdens that new requirements might have on MPOs, especially the smaller MPOs. In particular, AMPO and NARC were concerned with our implementation of the SAFETEA–LU provisions relating to public participation, congestion management process, and implementation of planning update cycles. During the meeting, the FHWA and the FTA indicated that we would consider the issues discussed at the meeting. In response to the concerns raised, we propose flexible public participation requirements in Section 450.316, recognizing the wide variations among MPO capabilities and needs. Regarding the implementation of planning update cycles, the FHWA and the FTA note that 23 U.S.C. 134(b) and 135(b) and 49 U.S.C. 5303(b) and 5304(b) state that ''beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.'' The FHWA and the FTA do not have the legal authority to allow flexibility with regard to this date.

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 and were carried out as part of the outreach on the Federalism implications of this rulemaking. The FHWA and the FTA solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), 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. The FHWA and the FTA have determined that this proposal contains collection of information requirements for the purposes of the Paperwork Reduction Act. However, the FHWA and the FTA believe that any increases in burden hours per submission are more than offset by decreases in the frequency of collection for these information requirements.

The reporting requirements for metropolitan planning unified planning work programs (UPWPs), transportation plans, and transportation improvement programs (TIPs) are currently approved under OMB control number 2132–0529 (expiration date: 06/30/2007). The information reporting requirements for State planning work programs have been approved by the OMB under control number 2125–0039. The FTA conducted the analysis supporting this approval 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 314,900 hours on the planning agencies that must comply with the requirements in the existing regulation. The FHWA and the FTA conducted an analysis of the change in burden hours attributed to the proposed rulemaking, based on estimates used in the submission for OMB approval. This analysis is included as a separate document entitled ''Estimated Change in Reporting Burden Hours Attributable to Proposed Rulemaking'', and is available for review in the docket. The analysis results are summarized below.

The creation and submission of required reports and documents have been limited to those specifically required by 23 U.S.C. 134 and 135 and in 49 U.S.C. 5303 and 5304 or essential to the performance of our findings, certifications and/or approvals. Under the proposed rulemaking, there would be no significant change in the submission requirements for UPWPs or State planning work programs; therefore there is no change in the annual reporting burden for this element. The proposed rulemaking would require that additional sections be added to the metropolitan and statewide transportation plans, which we estimate would increase the required level of effort by 20 percent over current plan development. However, the proposed rulemaking would also reduce the required frequency of plan submission from 3 to 4 years for MPOs located in nonattainment or maintenance areas. One half of all MPOs are located in nonattainment or maintenance areas and would realize a reduction in their annual reporting burden. Based on the burden hours used in the FTA analysis submitted for OMB approval, the decrease in burden hours for MPOs located in nonattainment and maintenance areas more than offsets the increase in burden hours associated with the new sections required in the plans.

The proposed rulemaking requires that State and metropolitan transportation improvement program (STIP and TIP) documents include 4 years of projects; an increase from 3 years of projects required under current regulations. We estimate that the inclusion of an additional year of projects would increase the reporting burden associated with TIP development by 10 percent over current levels. However, the proposed rulemaking would also reduce the

[19] A copy of this letter is included in the docket.

required frequency of TIP submission from 2 years to 4 years for all States and MPOs. Based on the burden hours used in the FTA analysis submitted for OMB approval, the decrease in burden hours associated with the reduced frequency of submission more than offsets the increase in burden hours associated with including an additional year of projects in the TIP.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the 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 collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA and the FTA have analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and have determined that this proposed action would not have any effect on the quality of the environment.

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 would 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.

Executive Order 13175 (Tribal Consultation)

The FHWA and the FTA have analyzed this action under Executive Order 13175, dated November 6, 2000, and believe that the proposed action would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal laws. The planning regulations contain requirements for States to consult with Indian Tribal governments in the planning process. Tribes are required under 25 CFR 170 to develop long range plans and develop an Indian Reservation Roads (IRR) TIP for programming IRR projects. However, the requirements in 25 CFR part 170 would not be changed by this rulemaking. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order because although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA and the FTA also believe that the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) apply to this proposed rule. The FHWA and the FTA have preliminarily determined that this proposed rule does not raise any environmental justice issues. The agencies request comment on this assessment.

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 each year. The RIN 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 500

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

49 CFR Part 613

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

In consideration of the foregoing, the FHWA and the FTA propose to revise title 23, Code of Federal Regulations, parts 450 and 500 and title 49, Code of Federal Regulations, part 613 as set forth below:

Title 23—Highways

1. Revise part 450 to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Transportation Planning and Programming Definitions

Sec.
450.100 Purpose.
450.102 Applicability.
450.104 Definitions.

Subpart B—Statewide Transportation Planning and Programming

450.200 Purpose.
450.202 Applicability.
450.204 Definitions.
450.206 Scope of the statewide transportation planning process.
450.208 Coordination of planning process activities.
450.210 Interested parties, public involvement, and consultation.
450.212 Transportation planning studies and project development.
450.214 Development and content of the long-range statewide transportation plan.
450.216 Development and content of the statewide transportation improvement program (STIP).
450.218 Self-certifications, Federal findings, and Federal approvals.
450.220 Project selection from the STIP.
450.222 Applicability of NEPA to statewide transportation plans and programs.
450.224 Phase-In of new requirements.

Subpart C—Metropolitan Transportation Planning and Programming

450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Scope of the metropolitan transportation planning process.
450.308 Funding for transportation planning and unified planning work programs.
450.310 Metropolitan planning organization designation and redesignation.
450.312 Metropolitan planning area boundaries.
450.314 Metropolitan planning agreements.
450.316 Interested parties, participation, and consultation.

450.318 Transportation planning studies and project development.
450.320 Congestion management process in transportation management areas.
450.322 Development and content of the metropolitan transportation plan.
450.324 Development and content of the transportation improvement program (TIP).
450.326 TIP revisions and relationship to the STIP.
450.328 TIP action by the FHWA and the FTA.
450.330 Project selection from the TIP.
450.332 Annual listing of obligated projects.
450.334 Self-certifications and Federal certifications.
450.336 Applicability of NEPA to metropolitan transportation plans and programs.
450.338 Phase-in of new requirements.
Appendix A to part 450—Linking the transportation planning and NEPA processes.
Appendix B to part 450—Fiscal constraint of transportation plans and programs.

Authority: 23 U.S.C. 134–135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5304; 49 CFR 1.48 and 1.51.

Subpart A—Transportation Planning and Programming Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 450.102 Applicability.

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

§ 450.104 Definitions.

Unless otherwise specified, the definitions in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are applicable to this part.

Administrative modification means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is not significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). Examples of administrative modifications include minor changes in the cost or initiation date of included projects.

Alternatives analysis (AA) means a study required for eligibility of funding under the Federal Transit Administration's (FTA's) Capital Investment Grant program (49 U.S.C. 5309), which includes an assessment of a range of alternatives designed to address a transportation problem in a corridor or subarea, resulting in sufficient information to support selection by State and local officials of a locally preferred alternative for adoption into a metropolitan transportation plan, and for the Secretary to make decisions to advance the locally preferred alternative through the project development process, as set forth in 49 CFR part 611 (Major Capital Investment Projects).

Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is significant enough to require public review and comment, redemonstration of fiscal constraint, and/or a conformity determination (in nonattainment and maintenance areas). Examples of amendments include the addition or deletion of a regionally significant project, or a substantial change in the cost, design concept, or design scope of an included project.

Attainment area means any geographic area considered to have air quality that meets or exceeds the U. S. Environmental Protection Agency's (EPA's) health standards in the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). An area may be an attainment area for one pollutant and a nonattainment area for others. A ''maintenance area'' (see definition below) is not considered an attainment area for transportation planning purposes.

Available funds means, for projects or project phases in the first two years of the metropolitan Transportation Improvement Program (TIP) and/or Statewide Transportation Improvement Program (STIP) in air quality nonattainment and maintenance areas, funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered ''available.'' A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.

Committed funds means, for projects or project phases in the first two years of a TIP and/or STIP in air quality nonattainment and maintenance areas, funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control may be considered ''committed.'' Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (*e.g.*, letter of intent) by the responsible official or body having control of the funds may be considered a commitment.

Conformity means the process to assess the compliance of a transportation plan, program, or project with the State Implementation Plan (SIP) for air quality. The conformity process is defined in the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and governed by the EPA under its transportation conformity rule (40 CFR part 93).

Conformity lapse means, pursuant to section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended, that the conformity determination for a metropolitan transportation plan or TIP has expired and thus there is no currently conforming metropolitan transportation plan or TIP.

Congestion management process means a systematic approach required in transportation management areas (TMAs) that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23, U.S.C., and title 49, U.S.C., through the use of operational management strategies.

Consideration means that one or more parties takes into account the opinions, action, and relevant information from other parties in making a decision or determining a course of action.

Consultation means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken.

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

Coordinated public transit-human services transportation plan means a unified, comprehensive strategy for transit service delivery developed by public, private, and non-profit providers of transportation and human services, with participation by the public, including people with disabilities, older adults, and individuals with lower incomes, in order to minimize duplication and maximize collective coverage. The plan is a requirement under the FTA formula programs for the Elderly and Persons with Disabilities (49 U.S.C. 5310), Job Access and Reverse Commute (49 U.S.C. 5316), and New Freedom (49 U.S.C. 5317), but may include other Federal, State, or local programs.

Coordination means the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.

Design concept means the type of facility identified for a transportation improvement project (*e.g.,* freeway, expressway, arterial highway, grade-separated highway, toll road, reserved right-of-way rail transit, mixed-traffic rail transit, or exclusive busway).

Design scope means the aspects that will affect the proposed facility's impact on the region, 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, safety features, access control including approximate number and location of interchanges, or preferential treatment for high-occupancy vehicles).

Environmental mitigation activities means strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, rectify, reduce, or compensate for (by replacing or providing substitute resources) the impacts to or disruption of elements of the human and natural environment associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan. The human and natural environment includes, for example, neighborhoods and communities, homes and businesses, cultural resources, parks and recreation areas, wetlands and water sources, forested and other natural areas, agricultural areas, endangered and threatened species, and the ambient air. The environmental mitigation strategies and activities are intended to be regional in scope, even though the mitigation may address potential project-level impacts. The environmental mitigation strategies and activities must be developed in consultation with Federal, State, and Tribal wildlife, land management, and regulatory agencies during the statewide and metropolitan transportation planning processes and be reflected in all adopted transportation plans.

Federal land management agency means units of Federal Government currently responsible for the administration of public lands (*e.g.,* U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the National Park Service).

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.

Financially constrained or Fiscal Constraint means that each program year in the TIP and the STIP includes sufficient financial information for demonstrating that projects can be implemented using current and/or reasonably available revenues, by source, while the entire transportation system is being adequately operated and maintained. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available or committed.''

Financial plans means documentation required to be included with metropolitan transportation plans, TIPs, and STIPs that demonstrates the consistency between reasonable available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements, as well as operating and maintaining the entire transportation system.

Freight shippers means any business that routinely transports its products from one location to another by providers of freight transportation services or by its own vehicle fleet.

Governor means the Governor of any of the 50 States or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia.

Illustrative project means a transportation project that would be included in a metropolitan transportation plan, TIP, or STIP for which financial constraint had been demonstrated if reasonable additional resources beyond those identified in the financial plan were available.

Indian Tribal government means a duly formed governing body for 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, Public Law 103–454.

Intelligent transportation system (ITS) means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

Interim metropolitan transportation plan means a transportation plan composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO.

Interim transportation improvement program (TIP) means a TIP composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO and the Governor.

Long-range statewide transportation plan means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

Maintenance area means any geographic region of the United States that the EPA previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under section 175(a) of the Clean Air Act, as amended.

Management system means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency and safety of, and protect the investment in the nation's infrastructure. A management system includes identification of performance measures; data collection and analysis; determination of needs; evaluation, and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area means the geographic area determined by agreement between the metropolitan planning organization (MPO) for the area and the Governor, in which the metropolitan transportation planning process is carried out.

Metropolitan planning organization (MPO) means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

Metropolitan transportation plan means the official multimodal transportation plan covering a period of no less than 20 years that is developed, adopted, and updated by the MPO through the metropolitan transportation planning process.

National ambient air quality standard (NAAQS) means those standards established pursuant to section 109 of the Clean Air Act.

Nonattainment area means any geographic region of the United States that has been designated by the EPA as a nonattainment area under section 107 of the Clean Air Act for any pollutants for which a NAAQS exists.

Non-metropolitan area means a geographic area outside designated metropolitan planning areas.

Non-metropolitan local officials means elected and appointed officials of general purpose local government in a non-metropolitan area with responsibility for transportation.

Obligated projects means strategies and projects funded under title 23, U.S.C., and title 49, U.S.C., Chapter 53 for which the supporting Federal funds were authorized and committed by the State or designated recipient in the preceding program year.

Operational and management strategies means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve vehicular congestion and maximizing the safety and mobility of people and goods.

Project selection means the procedures followed to advance projects from the first four years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.

Provider of freight transportation services means any business that transports or otherwise facilitates the movement of goods from one location to another for other businesses or for itself.

Regional ITS architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.

Regionally significant project means a transportation project (other than projects that may be grouped in the STIP or TIP pursuant to § 450.216 and § 450.324 or exempt projects as defined in EPA's transportation conformity regulation (40 CFR part 93) that is on a facility which serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region, major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network . At a minimum, this includes all capacity expanding projects on principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Regional transit security strategy means an overarching strategy for the region with mode-specific goals and objectives as they relate to prevention, detection, response, and recovery as a sustainable effort to protect regional transit systems' critical infrastructure from terrorism, with an emphasis on explosives and non-conventional threats that would cause major loss of life and severe disruption, as required by the Department of Homeland Security.

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A revision may or may not be significant. A significant revision is defined as an ''amendment,'' while a non-significant revision is defined as an ''administrative modification.''

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

State implementation plan (SIP) means an EPA—approved, State developed plan mandated by the Clean Air Act for air quality nonattainment areas that contains procedures to monitor, control, attain, maintain, and enforce compliance with the NAAQS.

Statewide transportation improvement program (STIP) means a statewide staged, at least four-year, multi-year program of transportation projects that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.

Strategic highway safety plan means a plan developed by the State DOT in accordance with the requirements of 23 U.S.C. 148(a)(6).

Transportation control measure (TCM) means any measure that is specifically identified and committed to in the applicable SIP that is either one of the types listed in section 108 of the Clean Air Act 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 that control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a staged, at least four-year, multi-year program of projects developed and formally adopted by an MPO as part of the metropolitan transportation planning process that is consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.

Transportation management area (TMA) means an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the MPO and designated by the Secretary of Transportation.

Unified planning work program (UPWP) means a statement of work identifying the planning priorities and activities to be carried out within a metropolitan planning area. At a minimum, a UPWP includes a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

Update means a complete change to a long-range statewide or metropolitan transportation plan, TIP, or STIP in order to meet the regular schedule as prescribed by Federal statute. Updates always require public review and comment, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (in nonattainment and maintenance areas).

Urbanized area means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

Users of public transportation means any person, or groups representing such persons, who use transportation open to the general public, other than taxis and other privately funded and operated vehicles.

Visualization techniques means methods employed by States and MPOs in the development of transportation plans and programs with the public, elected and appointed officials, and other stakeholders in a clear and easily accessible format such as maps, pictures, and/or displays, to promote improved understanding of existing or proposed transportation plans and programs.

Subpart B—Statewide Transportation Planning and Programming

§ 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135 and 49 U.S.C. 5304, as amended, which require each State to carry out a continuing, cooperative, and comprehensive statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and statewide transportation improvement program (STIP), that facilitates the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and that fosters economic growth and development within and between States and urbanized areas, while minimizing transportation-related

fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.202 Applicability.

The provisions of this subpart are applicable to States and any other organizations or entities (*e.g.,* metropolitan planning organizations (MPOs) and public transportation operators) that are responsible for satisfying the requirements for transportation plans and programs throughout the State pursuant to 23 U.S.C. 135 and 49 U.S.C. 5304.

§ 450.204 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 subpart as so defined.

§ 450.206 Scope of the statewide transportation planning process.

(a) Each State shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address the following factors:

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

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

(3) Increase the ability of the transportation system to support homeland security and to safeguard the personal security of all motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

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

(7) Promote efficient system management and operation; and

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

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in all aspects of the statewide transportation planning process, including activities such as the formulation of goals, objectives, performance measures, and evaluation criteria for use in developing the long-range statewide transportation plan; identification of prioritization criteria for projects and strategies reflected in the STIP; and development of short-range planning studies, strategic planning and/or policy studies, or transportation needs studies.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the FHWA/FTA planning process findings.

(d) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (3) and 105 and 49 U.S.C. 5307 may also be used. Statewide transportation planning activities performed with funds provided under title 23, U.S.C., and 49 U.S.C., Chapter 53 shall be documented in a statewide planning work program in accordance with the provisions of 23 CFR part 420. The work program should include a discussion of the transportation planning priorities facing the State.

§ 450.208 Coordination of planning process activities.

(a) In carrying out the statewide transportation planning process, each State shall:

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. The State is encouraged to rely on information, studies, or analyses provided by MPOs for portions of the transportation system located in metropolitan planning areas;

(2) Coordinate planning carried out under this subpart with statewide trade and economic development planning activities and related multistate planning efforts;

(3) Coordinate planning carried out under this subpart with planning by Federal land management agencies that have jurisdiction over land within the boundaries of the State;

(4) Consider the concerns of local elected and appointed officials with responsibilities for transportation in non-metropolitan areas;

(5) Consider the concerns of Indian Tribal governments that have jurisdiction over land within the boundaries of the State;

(6) Coordinate transportation plans, programs, and planning activities with related planning activities being conducted outside of metropolitan planning areas and between States; and

(7) Establish a forum for coordinating data collection and analyses to support statewide transportation planning and programming priorities and decisions.

(b) The State air quality agency shall coordinate with the State department of transportation (State DOT) to develop the transportation portion of the State Implementation Plan (SIP) consistent with the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(c) Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities under this subpart related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective. However, the U. S. Congress reserves the right to alter, amend, or repeal interstate compacts entered into under this part.

(d) States may use any one or more of the management systems (in whole or in part) described in 23 CFR part 500.

(e) States are encouraged to apply asset management principles and techniques in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) The statewide transportation planning process shall be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) The statewide transportation planning process should be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316, and 5317.

(h) The statewide transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and the Regional Transit Security Strategy as required by the Department of Homeland Security.

§ 450.210 Interested parties, public involvement, and consultation.

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement

process that provides opportunities for public review and comment at key decision points.

(1) The State's public involvement process at a minimum shall:

(i) Establish early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

(ii) Provide reasonable public access to technical and policy information used in the development of the long-range statewide transportation plan and the STIP;

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

(iv) To the maximum extent practicable, ensure that public meetings are held at convenient and accessible locations and times;

(v) To the maximum extent practicable, use visualization techniques to describe the proposed long-range statewide transportation plan and supporting studies;

(vi) To the maximum extent practicable, make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information;

(vii) Demonstrate explicit consideration and response to public input during the development of the long-range statewide transportation plan and STIP;

(viii) Include a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services; and

(ix) Provide for the periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all interested parties and revise the process, as appropriate.

(2) The State shall provide for public comment on existing and proposed processes for public involvement in the development of the long-range statewide transportation plan and the STIP. At a minimum, the State shall allow 45 calendar days for public review and written comment before the procedures and any major revisions to existing procedures are adopted. The State shall provide copies of the approved public involvement process document(s) to the FHWA and the FTA for informational purposes.

(b) The State shall provide for non-metropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this consultation process(es), copies of the process document(s) shall be provided to the FHWA and the FTA for informational purposes.

(1) At least once every five years (as of February 24, 2006), the State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the consultation process and any proposed revisions. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials.

(2) The State, at its discretion, shall be responsible for determining whether to adopt any proposed revisions. If a proposed revision is not adopted, the State shall make publicly available its reasons for not accepting the proposed revision, including notification to non-metropolitan local officials or their associations.

(c) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan and STIP in consultation with the Tribal government and the Secretary of Interior. States are encouraged to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP.

§ 450.212 Transportation planning studies and project development.

(a) An MPO(s), State(s), and/or public transportation operator(s) may undertake a corridor or subarea planning study as part of the statewide transportation planning process. The results of these transportation planning studies may be incorporated into the overall project development process to the extent that they meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies maybe used to produce any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (i.e., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Description of the affected environment; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents produced by, or in support of, the transportation planning process described in this subpart may be incorporated by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, to the extent that:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The corridor or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Continual opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment and other means of incorporation by reference that the NEPA lead agencies deem appropriate. Additional details on linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part.

§ 450.214 Development and content of the long-range statewide transportation plan.

(a) The State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period, that provides for the development and implementation of the multimodal transportation system for the State. The long-range statewide transportation plan shall consider and include, as applicable, elements and connections between public transportation, non-motorized modes, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel.

(b) The long-range statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(c) The long-range statewide transportation plan shall reference, summarize, or contain any applicable short-range planning studies; strategic planning and/or policy studies; transportation needs studies; management systems reports; emergency relief and disaster preparedness plans; and any statements of policies, goals, and objectives on issues (e.g., transportation, safety, economic development, social and environmental effects, or energy) that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects contained in the Strategic Highway Safety Plan required by 23 U.S.C. 148.

(e) The long-range statewide transportation plan should include a security element that incorporates or summarizes the priorities, goals, or projects set forth in the Regional Transit Security Strategy(ies), as required by the Department of Homeland Security.

(f) Within each metropolitan area of the State, the long-range statewide transportation plan shall be developed in cooperation with the affected MPOs.

(g) For non-metropolitan areas, the long-range statewide transportation plan shall be developed in consultation with affected non-metropolitan officials with responsibility for transportation using the State's consultation process(es) established under § 450.210(b).

(h) For each area of the State under the jurisdiction of an Indian Tribal government, the long-range statewide transportation plan shall be developed in consultation with the Tribal government and the Secretary of the Interior consistent with § 450.210(c).

(i) The long-range statewide transportation plan shall be developed, as appropriate, in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation shall involve comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(j) A long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by implementation of the plan. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation. Additional information on linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part.

(k) In developing and updating the long-range statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall, to the maximum extent practicable, utilize the public involvement process described under § 450.210(a).

(l) The long-range statewide transportation plan may include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were available.

(m) The State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (k) of this section.

(n) The long-range statewide transportation plan shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(o) The State shall continually evaluate, revise, and periodically update the long-range statewide transportation plan, as appropriate, using the procedures in this section for development and establishment of the long-range statewide transportation plan.

(p) Copies of any new or revised long-range statewide transportation plan documents shall be provided to the FHWA and the FTA for informational purposes.

§ 450.216 Development and content of the statewide transportation improvement program (STIP).

(a) The State shall develop a statewide transportation improvement program (STIP) for all areas of the State. The STIP shall cover a period of not less than four years and be updated at least every four years, or more frequently if the Governor elects a more frequent update cycle. If the STIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. In case of difficulties developing a portion of the STIP for a particular area (e.g., metropolitan planning area, nonattainment or maintenance area, or Indian Tribal lands), a partial STIP covering the rest of the State may be developed.

(b) For each metropolitan area in the State, the STIP shall be developed in cooperation with the MPO designated for the metropolitan area. Each metropolitan transportation improvement program (TIP) shall be included without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor. A metropolitan TIP in a nonattainment or maintenance area is subject to an FHWA/FTA conformity finding before inclusion in the STIP. In areas outside a metropolitan planning area but within an air quality nonattainment or maintenance area containing any part of a metropolitan area, projects must be consistent with the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP.

(c) For each non-metropolitan area in the State, the STIP shall be developed in consultation with affected non-metropolitan local officials with responsibility for transportation using the State's consultation process(es) established under § 450.210.

(d) For each area of the State under the jurisdiction of an Indian Tribal government, the STIP shall be developed in consultation with the Tribal government and the Secretary of the Interior.

(e) Federal Lands Highway program TIPs shall be included without change in the STIP, directly or by reference, once approved by the FHWA pursuant to 23 U.S.C. 204(a) or (j).

(f) The Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by § 450.210(a).

(g) The STIP shall include federally supported capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State proposed for funding under title 23, U.S.C., and title 49, U.S.C., Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), but excluding:

(1) Safety projects funded under 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the State's discretion, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

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

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(h) The STIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C., Chapters 1 and 2 or title 49, U.S.C., Chapter 53 funds (*e.g.*, addition of an interchange to the Interstate System with State, local, and/or private funds, and congressionally designated projects not funded under title 23, U.S.C., or title 49, U.S.C., Chapter 53). For informational purposes, the STIP should include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. In addition, the STIP should include, for informational purposes (if appropriate and included in any TIPs), all regionally significant projects to be funded with non-Federal funds.

(i) The STIP shall include for each project or phase (*e.g.*, preliminary engineering, environment/NEPA, right-of-way, design, or construction) the following:

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

(2) Estimated total project cost, or a project cost range, which may extend beyond the four years of the STIP;

(3) The amount of funds proposed to be obligated during each program year for the project or phase, by sources of Federal and non-Federal funds; and

(4) Identification of the agencies responsible for carrying out the project or phase.

(j) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, classifications must be consistent with the ''exempt project'' classifications contained in the EPA's transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23, U.S.C., Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the STIP.

(k) Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under § 450.214 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.322.

(l) The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the STIP, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted STIP 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 FHWA and the FTA on the STIP. Additional criteria for STIP financial constraint and financial plans that support the STIP are contained in Appendix B to this part.

(m) The STIP shall include 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. In nonattainment and maintenance areas, projects included in the first two years of the STIP shall be limited to those for which funds are available or committed. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, by source, and which projects are to be implemented using proposed revenue sources while the entire transportation system is being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified, preferably in the financial plan consistent with paragraph (l) of this section.

(n) In areas outside a metropolitan planning area but inside a nonattainment or maintenance area that contains any part of a metropolitan area, projects must be consistent with the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(o) Projects in any of the first four years of the STIP may be advanced in place of another project in the first four

years of the STIP, subject to the project selection requirements of § 450.220. In addition, the STIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the STIP development procedures established in this section, as well as the procedures for participation by interested parties (see § 450.210(a)), subject to FHWA/FTA approval (see § 450.218). All changes that affect fiscal constraint must take place by amendment of the STIP.

§ 450.218 Self-certifications, Federal findings, and Federal approvals.

(a) At least every four years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. STIP amendments shall also be submitted for joint approval. At the time the entire proposed STIP is submitted 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 and 5304, and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1), 49 CFR part 21, and 23 CFR parts 200 and 300;

(3) Section 1101(b) of the SAFETEA–LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(4) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(5) 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 40 CFR part 93;

(6) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(7) Section 324 of title 23, U.S.C., regarding the prohibition of discrimination based on gender; and

(8) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 35 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP at least every four years, or at the time the amended STIP is submitted, (based on self-certifications and appropriate reviews established and conducted by the FHWA and the FTA) and make a joint finding on the extent to which the projects in the STIP are based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and subparts A, B, and C of this part. Approval of the STIP by the FHWA and the FTA, in its entirety or in part, will be based upon the results of this joint finding.

(1) If the FHWA and the FTA determine that the STIP or amended STIP are based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part, the FHWA and the FTA may jointly:

(i) Approve the entire STIP;

(ii) Approve the STIP subject to certain corrective actions being taken; or

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

(2) If the FHWA and the FTA jointly determine and document in the planning finding that a submitted STIP or amended STIP does not substantially meet the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part for any identified categories of projects, the FHWA and the FTA will not approve the STIP.

(c) The approval period for a new or amended STIP shall not exceed four years. If a State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new or amended STIP, the FHWA and the FTA will consider and take appropriate action on a request to extend the approval beyond four years for all or part of the STIP for a period not to exceed 180 days. In these cases, priority consideration will be given to projects and strategies involving the operation and management of the multimodal transportation system. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request. If the delay was due to the development and approval of a metropolitan TIP(s), the affected MPO(s) must provide supporting information, in writing, for the request.

(d) Where necessary in order to maintain or establish transit operations, the FHWA and/or the FTA may approve operating assistance for specific projects or programs funded under 49 U.S.C. 5307, 5311, 5316, and 5317, even though the projects or programs may not be included in an approved STIP.

§ 450.220 Project selection from the STIP.

(a) Except as provided in § 450.216(g) and § 450.218(d), only projects in a FHWA/FTA approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects proposed for 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 subpart C of this part.

(c) In non-metropolitan areas, transportation projects undertaken on the National Highway System, under the Bridge and Interstate Maintenance programs in title 23, U.S.C., and under sections 5310, 5311, 5316, and 5317 of title 49, U.S.C., Chapter 53 shall be selected from the approved STIP by the State in consultation with the affected non-metropolitan local officials with responsibility for transportation.

(d) Federal Lands Highway program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 204.

(e) 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) through (d) of this section is required for the implementing agency to proceed with these projects. If Federal funds available are significantly less than the authorized amounts, or where there are significant shifting of projects between years, § 450.330(a) provides for a revised list of ''agreed to'' projects to be developed upon the request of the State, MPO, or public transportation operator(s). If an implementing agency wishes to proceed with a project in the second, third, or fourth year of the STIP, the procedures in paragraphs (b) through (d) of this section or expedited procedures that provide for the advancement of projects from the second, third, or fourth years of the STIP may be used, if agreed to by all parties involved in the selection process.

§ 450.222 Applicability of NEPA to statewide transportation plans and programs.

Any decision by the FHWA and the FTA concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135 and 49 U.S.C. 5304 shall not be considered to be a Federal action subject to review under NEPA.

§ 450.224 Phase-in of new requirements.

(a) Prior to July 1, 2007, long-range statewide transportation plans and STIPs under development since August 10, 2005, may be completed under

TEA–21 requirements. Long-range statewide transportation plans and STIPs may also reflect the provisions of this part prior to July 1, 2007, but cannot take advantage of the extended update cycles (*e.g.*, four years for STIPs) until all provisions and requirements of this part are reflected in the long-range statewide transportation plan and STIP.

(b) For STIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For long-range statewide transportation plans that are completed under TEA–21 requirements prior to July 1, 2007, the State adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the long-range statewide transportation plan or the STIP were developed.

(c) In addition, the applicable action (see paragraph (b) of this section) on any amendments or updates to STIPs or long-range statewide transportation plans on or after July 1, 2007, shall be based on the provisions and requirements of this part.

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134 and 49 U.S.C. 5303, as amended, which: (1) Sets forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process, including the development of a metropolitan transportation plan and a transportation improvement program (TIP), that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and (2) encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

§ 450.302 Applicability.

The provisions of this subpart are applicable to organizations and entities responsible for the transportation planning and programming processes in metropolitan planning areas.

§ 450.304 Definitions.

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

§ 450.306 Scope of the metropolitan transportation planning process.

(a) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and services that will address the following factors:

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

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

(3) Increase the ability of the transportation system to support homeland security and to safeguard the personal security of all motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

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

(7) Promote efficient system management and operation; and

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

(b) Consideration of the planning factors in paragraph (a) of this section should be reflected, as appropriate, in all aspects of the metropolitan transportation planning process, including activities such as the formulation of goals, objectives, performance measures, and evaluation criteria for use in developing the metropolitan transportation plan; identification of prioritization criteria for projects and strategies reflected in the TIP; and development of short-range planning studies, strategic planning and/or policy studies, or transportation needs studies.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(d) The metropolitan transportation planning process shall be carried out in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(e) In carrying out the metropolitan transportation planning process, MPOs, States, and public transportation operators are encouraged to apply asset management principles and techniques in establishing planning goals, defining TIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance, as well as strategies and policies to support homeland security and to safeguard the personal security of all motorized and non-motorized users.

(f) The metropolitan transportation planning process shall be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) The metropolitan transportation planning process should be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316, and 5317.

(h) The metropolitan transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and the Regional Transit Security Strategy, as required by the Department of Homeland Security.

(i) The FHWA and the FTA shall designate as a transportation management area (TMA) each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any additional urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(j) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and these regulations, taking into account

the complexity of the transportation problems in the area. The simplified procedures shall be developed by the MPO in cooperation with the State(s) and public transportation operator(s).

§ 450.308 Funding for transportation planning and unified planning work programs.

(a) Funds provided under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), 49 U.S.C. 5307, and 49 U.S.C. 5339 are available to MPOs to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (b)(3) and 23 U.S.C. 105 may also be provided to MPOs for metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(3)(E) for metropolitan transportation planning activities.

(b) Metropolitan transportation planning activities performed with funds provided under title 23, U.S.C. and title 49, U.S.C., Chapter 53 shall be documented in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next one or two-year period by major activity and task (including activities that address the planning factors in § 450.306(a)), in sufficient detail to indicate who (*e.g.*, MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation operator(s), in lieu of a UPWP. A simplified statement of work would include a description of the major activities to be performed during the next one- or two-year period, who (*e.g.*, State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100.1B (Program Guidance and Application Instructions for Metropolitan Planning Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, a metropolitan planning organization (MPO) shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) An MPO should be designated, to the extent possible, under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out transportation planning for the entire area that it serves.

(d) When an MPO that serves a TMA is designated or redesignated, the MPO shall include local elected officials, officials of agencies that administer or operate major modes of transportation, and appropriate State transportation officials.

(e) To the extent possible, only one MPO should be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area make designation of more than one MPO appropriate. In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.

(f) Nothing in this subpart shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to develop the metropolitan transportation plan and TIP for adoption by the MPO, or to develop long-range capital plans, coordinate transit services, and projects and carry out other activities pursuant to State law.

(g) 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 metropolitan transportation planning process.

(h) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(i) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(j) Redesignation of an MPO serving a multi-State metropolitan planning area requires agreement between the Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(k) For the purposes of redesignation, units of general purpose local government may be defined as either:

(1) The local elected officials currently serving on the MPO; or

(2) The elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(l) Redesignation of an MPO is required whenever the existing MPO determines that:

(1) There is a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) There is a substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(m) The following changes to an MPO do not require a redesignation:

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

§ 450.312 Metropolitan planning area boundaries.

(a) The boundaries of a metropolitan planning area (MPA) shall be determined by agreement between the MPO and the Governor. At a minimum, the MPA boundaries shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) If any of the urbanized area(s) served by the MPO lie within a nonattainment or maintenance area for ozone, carbon monoxide, or particulate matter as designated under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005, the MPA boundaries in existence at that time shall be retained. However, the MPA boundaries may be adjusted by agreement of the Governor and affected MPOs to encompass the entire nonattainment or maintenance area by agreement of the Governor.

(c) An MPA boundary may encompass more than one urbanized area.

(d) The MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate area.

(g) The MPA boundaries shall not overlap with each other.

(h) Where part of an urbanized area served by one MPO extends into an adjacent MPA, the MPOs shall, at a minimum, establish written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among and between the MPOs. Alternatively, the MPOs may adjust their existing boundaries so that the entire urbanized area lies within only one MPA. Boundary adjustments that significantly change the composition of the MPO may require redesignation of one or more such MPOs.

(i) The MPA boundaries shall be reviewed after each Census by the MPO (in cooperation with the State and public transportation operator(s)) to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall be adjusted as necessary. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(j) Following MPA boundary approval by the MPO and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

§ 450.314 Metropolitan planning agreements.

(a) The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in a written agreement among the MPO, the State(s), and the public transportation operator(s) serving the MPA.

(1) The written agreement shall include specific provisions for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan (*see* § 450.322) and the metropolitan TIP (*see* § 450.324) and development of the annual listing of obligated projects (*see* § 450.332).

(2) The written agreement should include provisions for consulting with officials responsible for other types of planning affected by transportation, including State and local planned growth, economic development, environmental protection, airport operations, freight movements, safety/security operations, and providers of non-emergency transportation services receiving financial assistance from a source other than title 49, U.S.C., Chapter 53 that may include (as appropriate) transportation planning products or milestones representing consultation opportunities and/or periodic review of the various consultation mechanisms.

(b) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written 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 MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity rule (40 CFR part 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

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

(d) If more than one MPO has been designated to serve an urbanized area, there shall be a written agreement between the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. The

metropolitan transportation planning processes for affected MPOs should, to the maximum extent possible, reflect coordinated data collection, analysis, and planning assumptions across the MPAs. Alternatively, a single metropolitan transportation plan and/or TIP for the entire urbanized area may be developed jointly by the MPOs in cooperation with their respective planning partners. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(e) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(f) If part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPA that does not primarily serve a TMA, the entire adjacent urbanized area is not necessarily considered a TMA. However, at a minimum, there shall be a written agreement between the State(s), the MPOs, and the public transportation operator(s) describing how specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection) will be met for the overlapping part of the urbanized area contained in the TMA.

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, agencies or entities responsible for safety/security operations, providers of non-emergency transportation services receiving financial assistance from a source other than title 49, U.S.C, Chapter 53, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The participation plan shall be developed by the MPO in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was initially made available for public comment;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO shall consult, as appropriate, with agencies and officials responsible for other planning activities within the MPA that are affected by transportation. To coordinate the planning functions to the maximum extent practicable, such consultation shall compare metropolitan transportation plans and TIPs, as they are developed, with the plans, maps, inventories, and planning documents developed by other agencies. This consultation shall include, as appropriate, contacts with State, local, Indian Tribal, and private agencies responsible for planned growth, economic development, environmental protection, airport operations, freight movements, land use management, natural resources, conservation, and historic preservation. In addition, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49, U.S.C., Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) The MPOs are encouraged to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under § 450.314.

§ 450.318 Transportation planning studies and project development.

(a) The MPO, State, and/or public transportation operator may undertake a corridor or subarea planning study as part of the metropolitan transportation planning process. The results of these transportation planning studies may be incorporated into the overall project development process to the extent that they meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may be used to produce any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (*i.e.*, highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Description of the affected environment; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents produced by, or in support of, the transportation planning process described in this subpart may be incorporated by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, to the extent that:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The corridor or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Continual opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment and other means of incorporation by reference that the NEPA lead agencies deem appropriate. Additional details on linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part.

§ 450.320 Congestion management process in transportation management areas.

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23, U.S.C., and title 49, U.S.C., Chapter 53 through the use of travel demand reduction and operational management strategies.

(b) The development of a congestion management process should result in multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP. The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(c) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management and congestion pricing;

(ii) Traffic operational improvements;

(iii) Public transportation improvements;

(iv) ITS technologies as related to the regional ITS architecture; and

(v) Where necessary, additional system capacity;

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decisionmakers and the public to provide guidance on selection of effective strategies for future implementation.

(d) In a TMA designated as nonattainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (i.e., 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 is addressed through a congestion management process meeting the requirements of this section.

(e) In nonattainment and maintenance area TMAs, the congestion management process shall provide an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(f) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.322 Development and content of the metropolitan transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a 20-year planning horizon as of the effective date. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO.

(b) The transportation plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) The MPO shall review and update the transportation plan at least every four years in air quality nonattainment and maintenance areas and at least every five years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The transportation plan (and any revisions) shall be approved by the MPO and submitted for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the State air quality agency shall coordinate the development of the transportation control measures (TCMs) in a State Implementation Plan (SIP) with the MPO. For TCM substitutions or additions made under section 176(c)(8) of the Clean Air Act (42 U.S.C. 7506(c)(8)), the MPO, State air quality agency, and the EPA must concur on the equivalency of any substitute TCMs and the addition of new TCMs to the SIP.

(e) The transportation plan update process shall include a mechanism for ensuring that the MPO, the State(s), and the public transportation operator(s) agree that the data utilized in preparing other existing modal plans providing input to the transportation plan are valid. In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.

(f) The metropolitan transportation plan shall, at a minimum, include:

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

(2) Existing and proposed transportation facilities (including major roadways, transit, multimodal and intermodal facilities, pedestrian walkways and bicycle facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan. In addition, the locally preferred alternative selected from an Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) needs to be adopted as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309;

(3) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

(4) Consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for carbon monoxide or ozone;

(5) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs;

(6) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance areas for conformity

determinations under the EPA's transportation conformity rule (40 CFR part 93). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) A discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(8) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(9) Transportation and transit enhancement activities, as appropriate; and

(10) A financial plan that demonstrates how the adopted transportation plan can be implemented, while operating and maintaining existing facilities and services. For the purpose of developing the transportation plan, the MPO, public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a)(1). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified. The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies proposed for funding under title 23, U.S.C., title 49, U.S.C., Chapter 53, or with other Federal funds; State assistance; local sources; and private participation. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP. In addition, the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were available. Additional criteria and information on financial plans that support metropolitan transportation plans are contained in Appendix B to this part.

(g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. The consultation shall involve, as appropriate:

(1) Comparison of transportation plans with State conservation plans or maps, if available; or

(2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(h) The metropolitan transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects for the MPA contained in the Strategic Highway Safety Plan required under 23 U.S.C. 148, as well as (as appropriate) emergency relief and disaster preparedness plans and strategies and policies that support homeland security and safeguard the personal security of all motorized and non-motorized users.

(i) The MPO shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(j) The metropolitan transportation plan shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(k) A State or MPO shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(9) of this section.

(l) In nonattainment and maintenance areas for transportation-related pollutants, the MPO, as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93). During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation. An interim metropolitan transportation plan containing eligible projects that are not from the most recent conforming transportation plan and TIP must meet all the requirements of this section.

§ 450.324 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall cover a period of not less than four years, be updated at least every four years, and be approved by the MPO and the Governor. If the TIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. The TIP may be updated more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or revised TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the TIP shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall include federally supported capital and non-capital surface transportation projects (or phases of projects) within the

boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49, U.S.C., Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), but excluding:

(1) Safety projects funded under 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the discretion of the State and MPO, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

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

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(d) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23, U.S.C., Chapters 1 and 2 or title 49, U.S.C., Chapter 53 (*e.g.*, addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally designated projects not funded under 23 U.S.C. or 49 U.S.C., Chapter 53). For public information and conformity purposes, the TIP should include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(e) The TIP shall include, for each project or phase (*e.g.*, preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

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

(2) Estimated total project cost, which may extend beyond the four years of the TIP;

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

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

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

(6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulation (40 CFR part 93); and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(f) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, classifications must be consistent with the ''exempt project'' classifications contained in the EPA transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23, U.S.C., Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(g) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(h) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO, State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation, in accordance with § 450.314(a)(1). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., title 49, U.S.C., Chapter 53, and other Federal funds; regionally significant projects that are not Federally funded; and operation and maintenance of the existing system. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan and TIP if reasonable additional resources beyond those identified in the financial plan were available. Additional criteria and information on financial plans that support the TIP are contained in Appendix B to this part.

(i) The TIP shall include a project, or a 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. In nonattainment and maintenance areas, projects included in the first two years of the TIP shall be limited to those for which funds are available or committed. The TIP financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, by source, and which projects are to be implemented using proposed revenue sources while the entire transportation system is being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. Additional information on TIP financial constraint and the financial plan that supports the TIP are contained in appendix B of this part. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulation (40 CFR part 93) and shall provide for their timely implementation.

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

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal 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; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(k) During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a lapse (as defined in 40 CFR part 93). An interim TIP consisting of eligible projects from the most recent conforming metropolitan transportation plan and TIP may

proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(l) Projects in any of the first four years of the TIP may be advanced in place of another project in the first four years of the TIP, subject to the project selection requirements of § 450.330. In addition, the TIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO participation plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.328).

§ 450.326 TIP revisions and relationship to the STIP.

(a) An MPO may revise the TIP 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 amended by adding or deleting non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. Public participation procedures consistent with § 450.316(b) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications that only involve projects of the type covered in § 450.324(f).

(b) After approval by the MPO and the Governor, the TIP shall be included without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, a conformity finding on the TIP must be made by the FHWA and the FTA before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO and Federal land management agencies when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 450.328 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP, including amendments thereto, is consistent with the metropolitan transportation plan produced by the continuing, comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.334, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP , in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If the metropolitan transportation plan has not been updated in accordance with the cycles defined in § 450.322(c), projects may only be advanced from a previously approved TIP in attainment areas or a previously conforming TIP in nonattainment and maintenance areas. Until the MPO approves (in attainment areas) or the FHWA/FTA issues a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the TIP may not be amended.

(d) 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 TIP in accordance with § 450.216(e).

(e) 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 financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and/or the FTA may approve transit operating assistance for specific projects or programs funded under 49 U.S.C. 5307, 5311, 5316, and 5317, even though the projects or programs may not be included in an approved TIP/STIP.

§ 450.330 Project selection from the TIP.

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C. 5303(j), and § 450.324 has been developed and approved, the first year of the TIP shall constitute an ''agreed to'' list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, a revised ''agreed to'' list of projects shall be jointly developed by the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s). If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth 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 public transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, projects to be implemented using title 23, U.S.C. funds (other than Federal Lands Highway program projects) or funds under title 49, U.S.C., Chapter 53, shall be selected by the State and/or the public transportation operator(s), in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(c) In areas designated as TMAs, all 23 U.S.C. and 49 U.S.C., Chapter 53 funded projects (excluding projects on the National Highway System (NHS) and projects funded under the Bridge, Interstate Maintenance, and Federal Lands Highway programs) shall be selected by the MPO in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. Projects on the NHS and projects funded under the Bridge and Interstate Maintenance programs shall be selected by the State in cooperation with the MPO, from the approved TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(d) Except as provided in § 450.324(c) and § 450.328(f), projects not included in the federally approved STIP shall not be eligible for funding with funds under title 23, U.S.C., or 49 U.S.C., Chapter 53.

(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 EPA transportation conformity regulations (40 CFR part 93).

§ 450.332 Annual listing of obligated projects.

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the State program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C., Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with § 450.314(a)(1) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under § 450.324(e)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO's public participation criteria for the TIP.

§ 450.334 Self-certifications and Federal certifications.

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every four years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

(1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

(2) In 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 40 CFR part 93;

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

(4) Section 1101(b) of the SAFETEA–LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(5) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(6) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(7) Section 324 of title 23, U.S.C., regarding the prohibition of discrimination based on gender; and

(8) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 35 regarding discrimination against individuals with disabilities.

(b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every four years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.

(1) After review and evaluation of the TMA planning process, the FHWA and FTA shall take one of the following actions:

(i) If the process meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(iii) If 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 FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.

(2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under title 23, U.S.C., and title 49, U.S.C., Chapter 53, in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for four years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The MPO(s), the State(s), and public transportation operator(s) shall be notified of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

§ 450.336 Applicability of NEPA to metropolitan transportation plans and programs.

Any decision by the FHWA and the FTA concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134 and 49 U.S.C. 5303 shall not be considered to be a Federal action subject to review under NEPA.

§ 450.338 Phase-in of new requirements.

(a) Prior to July 1, 2007, metropolitan transportation plans and TIPs under development since August 10, 2005, may be completed under TEA–21 requirements. Metropolitan transportation plans and TIPs may also reflect the provisions of this part prior to July 1, 2007, but cannot take advantage of the extended update cycles (*e.g.*, four years for TIPs and four years for metropolitan transportation plans in nonattainment and maintenance areas) until all provisions and requirements of this part are reflected in the metropolitan transportation plan and TIP.

(b) For metropolitan transportation plans and TIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For metropolitan transportation plans in attainment areas that are developed under TEA–21 requirements prior to July 1, 2007, the MPO adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the metropolitan transportation plan or TIP were developed.

(c) In addition, the applicable action (see paragraph (b) of this section) on any amendments or updates to metropolitan transportation plans and TIPs on or after July 1, 2007, shall address the provisions and requirements of this part.

(d) For new TMAs, the congestion management process described in § 450.320 shall be implemented within 18 months of the designation of a new TMA.

Appendix A to Part 450—Linking the Transportation Planning and NEPA Processes

Background and Overview

For 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environment and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo,* disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), planning-level corridor/subarea/feasibility studies, or FTA's planning Alternatives Analyses. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this Appendix is to change this culture, by supporting congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. This Appendix was crafted to recognize that transportation planning processes vary across the country. This document provides details on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws, regardless of when the Notice of Intent has been published. This Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages.

The information below is intended for use by State departments of transportation (State DOTs), metropolitan planning organizations (MPOs), and public transportation operators to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this Appendix in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.

This Appendix does not extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA–21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) specifically exempted transportation plans and programs from NEPA review. Therefore, initiating the NEPA process as part of, or concurrently with, a transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this Appendix by States, MPOs, and public transportation operators is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this Appendix document utilizes a ''Question and Answer'' format, organized into three primary categories (''Procedural,'' ''Substantive,'' and ''Administrative Issues'').

I. Procedural

1. In what format should the transportation planning information be included?

To be included in the NEPA process, work from the transportation planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be ''reasonably available for inspection by potentially interested persons within the time allowed for comment.'' Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information. To the extent possible, the documentation should be in a form such as official actions by the MPO and/or correspondence within and among the organizations involved in the transportation planning process.

2. What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support recommended improvements in the statewide or metropolitan long-range transportation plan. The SAFETEA–LU requires transportation planning processes to focus on setting a context and following acceptable procedures. For example, the SAFETEA–LU requires a ''discussion of the types of potential environmental mitigation activities'' and potential areas for their implementation, rather than details on specific strategies. The SAFETEA–LU also emphasizes consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. The intent is not to require NEPA studies in the transportation planning process. As an option, the NEPA analyses prepared for project development can be integrated with transportation planning studies (see the response to Question 9 for additional information).

3. What type and extent of involvement from Federal, Tribal, State, and local environmental, regulatory, and resource agencies is needed in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process?

Sections 3005, 3006, and 6001 of the SAFETEA–LU established formal consultation requirements for MPOs and State DOTs to employ with environmental, regulatory, and resource agencies in the development of long-range transportation plans. For example, metropolitan transportation plans now ''shall include a discussion of the types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the [transportation] plan,'' and that these planning-level discussions ''shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.'' In addition, MPOs ''shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan,'' and that this consultation ''shall involve, as appropriate, comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available.'' Similar SAFETEA–LU language addresses the development of the long-range statewide transportation plan, with the addition of Tribal conservation plans or maps to this planning-level ''comparison.''

In addition, section 6002 of the SAFETEA–LU established several mechanisms for increased efficiency in environmental reviews for project decision-making. For example, the term ''lead agency'' means the U. S. Department of Transportation and, if applicable, any State or local government entity serving as a joint lead agency for the

NEPA process. In addition, the lead agency is responsible for inviting and designating ''participating agencies'' (*i.e.,* other Federal or non-Federal agencies that may have an interest in the proposed project). Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency: (a) Has no jurisdiction or authority with respect to the project; (b) has no expertise or information relevant to the project; and (c) does not intend to submit comments on the project.

Past successful examples of using transportation planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Early participation in transportation planning provides environmental, regulatory, and resource agencies better insight into the needs and objectives of the locality. Additionally, early participation provides an important opportunity for environmental, regulatory, and resource agency concerns to be identified and addressed early in the process, such as those related to permit applications. Moreover, Federal, Tribal, and State, and local environmental, regulatory, and resource agencies are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

Transportation planning products can provide watershed and landscape-level approaches to mitigation that address indirect and cumulative impacts, which must be considered under NEPA. Such broad scale approaches focus on the natural resources within a particular ecosystem or watershed and look at the most critical or high quality resources, rather than focusing narrowly on mitigating at the direct location of impact. Techniques have been developed to better avoid, minimize, and mitigate these impacts, as well as the impacts of past infrastructure projects, on a project-specific basis. However, the avoidance, minimization, and mitigation efforts used may not always provide the greatest environmental benefit, or may do very little to promote ecosystem sustainability. To address concern, the FHWA and seven other Federal agencies produced *Eco-Logical: An Ecosystem Approach to Developing Infrastructure Projects.* (See *http://environment.fhwa.dot.gov/ecological/ecological.pdf.*) Eco-Logical encourages Federal, State, tribal and local partners involved in infrastructure planning, design, review, and construction to use flexibility in regulatory processes. Employing available planning resources such as each State's Comprehensive Wildlife Conservation Strategy, *Eco-Logical* puts forth the conceptual groundwork for integrating plans across agency boundaries, and endorses ecosystem-based mitigation—an innovative method of mitigating infrastructure impacts that cannot be avoided.

The FHWA has emphasized that wetland and natural habitat mitigation measures, such as wetland and habitat banks or statewide and regional conservation measures, are eligible for Federal-aid participation when they are undertaken to create mitigation resources for future transportation projects. In its March 10, 2005, memorandum on Wetland and Natural Habitat Mitigation, the FHWA clarified that, to provide for wetland or other mitigation banks, the State DOT and the FHWA Division Office should identify potential future wetlands and habitat mitigation needs for a reasonable time frame and establish a need for the mitigation credits. The transportation planning process should guide the determination of future mitigation needs.'' (*See http://www.fhwa.dot.gov/environment/wetland/wethabmitmem.htm.*)

4. What is the procedure for using decisions or analyses from the transportation planning process?

The FHWA and the FTA, as the lead Federal agencies, will have the final say on what processes and consultation techniques are used to determine the transportation planning products that will be incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed FHWA/FTA decisions on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, the FHWA and the FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

5. To what extent can the FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will allow planning-level decisions and analyses to be used in the NEPA process?

There are no guarantees. However, the potential is greatly improved for transportation planning processes that address the ''3–C'' planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects; involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

6. What considerations will the FHWA/FTA take into account in their review of transportation planning products for acceptance in project development/NEPA?

The FHWA and the FTA will give deference to decisions resulting from the transportation planning process if the FHWA and FTA determine that the planning process is consistent with the ''3–C'' planning principles and when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (*e.g.,* the Congestion Mitigation and Air Quality Improvement Program or the FTA's Capital Investment Grant program) also must be met.

The NEPA requires that the FHWA and the FTA be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, the FHWA and the FTA should not revisit whether these are the best objectives or choices among other options. Rather, the FHWA and the FTA review would include making sure that objectives or choices derived from the transportation plan were: Based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. The FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable, scientifically acceptable, and consistent with goals, objectives, and policies set forth in long-range transportation plans. This review would include determining whether: (a) Assumptions have a rational basis and are up-to-date and (b) data, analytical methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

II. Substantive

General Issues To Be Considered

7. What should be considered in order to rely upon transportation planning studies in NEPA?

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a ''checklist,'' these questions are intended to

guide the practitioner's analysis of the planning products:

- How much time has passed since the planning studies and corresponding decisions were made?
- Were the future year policy assumptions used in the NEPA study related to land use, economic development, transportation costs, and network expansion consistent with those developed and used in the transportation planning process?
- Is the information still relevant/valid?
- What changes have occurred in the area since the study was completed?
- Is the information in a format that can be appended to an environmental document or reformatted to do so?
- Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable, defensible, and consistent with that used in other regional transportation studies and project development activities?
- Were the FHWA and FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?
- Were the planning products available to other agencies at NEPA scoping?
- At NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?
- Are natural resource and land use plans being informed by transportation planning products, and vice versa?

Purpose and Need

8. How can transportation planning be used to shape a project's purpose and need in the NEPA process?

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region's future transportation system, define transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project's purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

Section 6002 of the SAFETEA–LU also provided additional focus regarding the definition of the purpose and need and objectives. For example, the lead agency, as early as practicable during the environmental review process, shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project. The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include: (a) Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan; (b) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or Tribal plans; and (c) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) Goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) A general travel corridor or general mode or modes (i.e., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) If the financial plan for a metropolitan transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) The results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

Short of a fully integrated transportation decisionmaking process, many State DOTs develop information for their purpose and need statements when implementing interagency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

9. Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the ''tiered EIS,'' in which general travel corridors, modes, and/or packages of projects are evaluated at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a subsequent project or series of projects. The tiered EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in these decisions, as well as to ensure the appropriate consideration of environmental factors in these planning-level decisions.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the formal NEPA process could be initiated through publication of a NOI in conjunction with a corridor or subarea study. Similarly, some public transportation operators developing major capital projects perform the planning Alternatives Analysis required for funding under FTA's Capital Investment Grant program found in 49 U.S.C. 5309(d) and (e) within the NEPA process and combine the planning Alternatives Analysis with the draft NEPA document.

Alternatives

10. In the context of this Appendix, what is the meaning of the term ''alternatives?''

This Appendix uses the term ''alternatives'' as specified in the NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This Appendix does not use the term as it is used in many other contexts (*e.g.*, ''prudent and feasible alternatives'' under Section 4(f) of the Department of Transportation Act, the ''Least Environmentally Damaging Practicable Alternative'' under the Clean Water Act, or the planning Alternatives Analysis in 49 U.S.C. 5309(d) and (e)).

However, as early as possible in the transportation planning stage of any project, a determination should be made as to whether the alternatives to be considered will need to be used to satisfy multiple statutory and regulatory requirements that will be addressed during the subsequent project development process as an integral part of the NEPA process. If so, during transportation planning, the alternatives chosen for consideration and the analysis of those alternatives should reflect the multiple objectives that must be addressed. For example, if a potential project would require a Section 404 permit, ideally there would be coordination with the U. S. Army Corps of Engineers (COE) and some level of agreement from the COE that the alternatives considered are broad enough to allow for the ultimate development of a Least Environmentally Damaging Practicable Alternative. In this case, screening of alternatives for the presence of important wetlands based on geographic information systems (GIS) or other planning-level data sources would be appropriate to support this early determination.

11. Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) Shaping the purpose and need for the project; or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to the start of the project-level NEPA process. Each approach requires careful attention, and is summarized below.

(a) *Shaping the Purpose and Need for the Project:* The transportation planning process

should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. See the response to Question 8 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

(1) The transportation planning process has selected a *general travel* corridor as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

(2) The transportation planning process has selected a *general mode* (*i.e.*, highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

(3) The transportation planning process determines that the project needs to be funded by *tolls or other non-traditional funding sources* in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

(b) *Evaluating and Eliminating Alternatives During the Transportation Planning Process:* The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the analysis of alternatives to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 4, 5, 6, and 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 12 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alternative(s) from detailed consideration in the NEPA process.

For instance, under FTA's Capital Investment Grant program, the alternatives considered in the NEPA process may be narrowed in those instances that the planning Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review. In fact, the FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the Locally Preferred Alternative. Alternatives must meet the following criteria if they are deemed sufficiently considered by a planning Alternatives Analysis under FTA's Capital Investment Grant program conducted prior to NEPA without a programmatic NEPA analysis and documentation:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts; capital and operating costs; social, economic, and environmental impacts; and technical considerations;
- There must be appropriate public involvement in the planning Alternatives Analysis;
- The appropriate Federal, State, and local environmental, regulatory, and resource agencies must be engaged in the planning Alternatives Analysis;
- The results of the planning Alternatives Analysis must be documented;
- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and
- The subsequent NEPA document must include the evaluation of alternatives from the planning Alternatives Analysis.

The above criteria apply specifically to FTA's Capital Investment Grant process. However, for other transportation projects, if the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

12. What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) Identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based on a corridor study, thereby eliminating all alternatives along other alignments);

(b) Briefly summarize the reasons for eliminating the alternative; and

(c) Include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and affected agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA ''purpose and need'' can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. Alternatives that remain ''reasonable'' after the planning-level analysis must be addressed in the EIS, even when they clearly are not the preferred alternative. When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

Affected Environment and Environmental Consequences

13. What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

- Regional development and growth analyses;
- Local land use, growth management, or development plans; and
- Population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

(a) GIS overlays showing the past, current, or predicted future conditions of the natural and built environments;

(b) Environmental scans that identify environmental resources and environmentally sensitive areas;

(c) Descriptions of airsheds and watersheds;

(d) Demographic trends and forecasts;

(e) Projections of future land use, natural resource conservation areas, and development; and

(f) The outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, and multiple species habitat conservation plans.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed enough to meet NEPA standards and, thus, the inventory and evaluation of affected resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

14. What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?

Because the nature of the transportation planning process is to look broadly at future

land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

(a) Be sufficiently detailed that differences in consequences of alternatives can be readily identified;

(b) Be based on current data (e.g., data from the most recent Census) or be updated by additional information;

(c) Be based on reasonable assumptions that are clearly stated; and/or

(d) Rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

Environmental Mitigation

15. How can planning-level efforts best support advanced mitigation, banking, and priorities for environmental mitigation investments?

A lesson learned from efforts to establish mitigation banks and advance mitigation agreements and alternative mitigation options is the importance of beginning interagency discussions during the transportation planning process. Development pressures, habitat alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for ''like'' value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

III. Administrative Issues

16. Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

- FHWA planning and research funds, as defined under 23 CFR part 420 (*e.g.*, Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP), and Equity Bonus); and
- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) Conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (*e.g.*, wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (*e.g.*, NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: Conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

The FHWA and the FTA encourage State DOTs, MPOs, and public transportation operators to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

17. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (*see http://www.gis.fhwa.dot.gov/* for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

18. How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of the TEA–21 spoke specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: *http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm*.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: Addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and

efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

19.What training opportunities are available to MPOs, State DOTs, public transportation operators and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U. S. Fish and Wildlife Service offers Green Infrastructure Workshops that are focused on integrating planning for natural resources (''green infrastructure'') with the development, economic, and other infrastructure needs of society (''gray infrastructure'').

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (*e.g.*, noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

Transportation planning and NEPA courses offered by various agencies and private sources have been compiled as part of the Executive Order 13274 (Environmental Stewardship and Transportation Infrastructure Project Reviews) workgroup efforts. This list is posted at *http://www.fhwa.dot.gov/stewardshipeo/index.htm*.

IV. Additional Information on This Topic

Valuable sources of information are FHWA's environmental streamlining Web site (*http://environment.fhwa.dot.gov/strmlng/index.htm*) and FTA's environmental streamlining Web site (*http://www.environment.fta.dot.gov*). Another source of information and case studies is NCHRP Report 8–38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at *http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8–38*. In addition, AASHTO's Center for Environmental Excellence Web site is continuously updated with news and links to information of interest to transportation and environmental professionals (*http://www.transportation.environment.org*).

Appendix B to Part 450—Fiscal Constraint of Transportation Plans and Programs [Revised]

Background

For over 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5304). The Congress further refined and strengthened the planning process as the foundation for project decisions when it first enacted fiscal constraint provisions for transportation plans and programs as part of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

Fiscal constraint requires that revenues (Federal, State, local, and private) in transportation planning and programming are identified and ''reasonably expected to be available'' to implement projects required to be included in the metropolitan transportation plan, metropolitan Transportation Improvement Program (TIP), and the Statewide Transportation Improvement Program (STIP), while providing for the operation and maintenance of the existing highway and transit systems. Fiscal constraint has remained a key component of transportation plan and program development with the enactment of the Transportation Equity Act for the 21st Century (TEA–21) in 1998 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) on August 10, 2005.

The fiscal constraint requirement is intended to ensure that metropolitan transportation plans, TIPs, and STIPs reflect realistic assumptions about future revenues, rather than extensive lists including more projects than could realistically be completed with available revenues. Importantly, for the purposes of developing the metropolitan transportation plan and TIP, the MPO, State DOT, and public transportation operator(s) must cooperatively develop estimates of funds that will be available to support plan and program implementation [23 U.S.C. 134 (i)(2)(C), 23 U.S.C. 134(j)(1)(C), 49 U.S.C. 5301(a)(1), 49 U.S.C. 5303(j)(2)(C), and 49 U.S.C. 5303(j)(2)(C)]. In addition, the Clean Air Act's transportation conformity regulations specify that a conformity determination can only be made on a fiscally constrained metropolitan transportation plan and TIP [40 CFR 93.108]. Given this intent, compliance with the fiscal constraint requirement entails an analysis of revenues and costs to address the following fundamental question:

''Will the revenues (Federal, State, local, and private) identified in the TIP, STIP, or metropolitan transportation plan cover the anticipated costs of the projects included in this TIP, STIP, or metropolitan transportation plan, along with operation and maintenance of the existing system?''

If the projected revenues are sufficient to cover the costs, and the estimates of both revenues and costs are reasonable, then the fiscal constraint requirement has been satisfied. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available or committed.''

The FHWA and the FTA also realize the challenges associated with forecasting project and program costs and revenues, particularly in the ''outer years'' of a metropolitan transportation plan. Therefore, the FHWA/FTA provide a great deal of flexibility in demonstrating fiscal constraint. For example, in years when a Federal transportation authorization bill is not yet enacted, State DOTs, MPOs, and public transportation operators may project and assume Federal revenues for the ''outer years'' based on a trend line projection. Additional information is provided in the following sections and the ''Questions and Answers.''

''Reasonably Available'' Future Revenues and ''Available or Committed'' Funds

Revenue forecasts to support projects required to be included in a metropolitan transportation plan, TIP, and STIP may take into account new funding sources that are ''reasonably expected to be available.'' New funding sources are revenues that do not currently exist or that may require additional steps before the State DOT, MPO, or public transportation operator can commit such funding to transportation projects. As first required in ISTEA, these planned new revenue sources must be clearly identified.

Future revenues may be projected based on historic trends, including consideration of past legislative or executive actions. The level of uncertainty in projections based on historical trends is generally greatest for revenues in the ''outer years'' of a metropolitan transportation plan (*i.e.*, those beyond the first 10 years of the metropolitan transportation plan). Additionally, for purposes of developing the financial plan to support the metropolitan transportation plan, the FHWA and the FTA encourage the use of aggregate ''cost ranges/cost bands'' to define costs in the outer years of the metropolitan transportation plan, with the caveat that the future funding sources must be ''reasonably available.''

To support air quality planning under the 1990 Clean Air Act Amendments, a special requirement has been placed on air quality nonattainment and maintenance areas, as designated by the U. S. Environmental Protection Agency (EPA). Specifically, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available or committed.'' Additionally, EPA's transportation conformity regulations specify that an air quality conformity determination can only be made on a fiscally constrained metropolitan transportation plan and TIP [40 CFR 93.108]. Therefore, nonattainment and maintenance areas may not rely upon proposed new taxes or other new revenue sources for the first two years of the TIP and STIP. Thus, new funding from a proposed gas tax increase, a proposed regional sales tax, or a major funding increase still under debate would not qualify as

''available or committed'' until it has been enacted by legislation or referendum.

Changes in Revenues or Costs After the Metropolitan Transportation Plan, TIP, or STIP are Adopted

In cases that the FHWA and the FTA find a metropolitan transportation plan or TIP/STIP to be fiscally constrained and a revenue source is subsequently removed (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. In such cases, the FHWA and the FTA will require the State DOT or MPO to identify alternative sources of revenue as soon as possible. Importantly, the FHWA and FTA will not act on new or amended metropolitan transportation plan, TIP, or STIP unless they reflect the changed revenue situation.

The same policy applies if project costs or operations/maintenance cost estimates change after a metropolitan transportation plan, TIP, or STIP are adopted. Such a change in cost estimates does not invalidate the adopted transportation plan or program. However, the revised costs must be provided in new or amended metropolitan transportation plan, TIP, or STIP. The FHWA and the FTA will not approve new or amended STIPs that are based on outdated or invalid cost estimates.

System Preservation, Operations, and Maintenance Costs

Since the enactment of ISTEA in 1991, fiscal constraint has encompassed operation and maintenance (O&M) of the system, as well as capital projects. On one hand, O&M activities typically do not involve Federal funds and are not listed individually in a metropolitan transportation plan, TIP, or STIP. However, the financial plans that support the metropolitan and statewide transportation planning processes must assess the adequacy of all sources of capital and O&M investment necessary to ensure the preservation of the existing transportation system, including provisions 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. To support this assessment, the FHWA and the FTA expect that the State DOT, MPO, and public transportation operator(s) will provide credible cost estimates.

However, the FHWA and FTA largely defer to State and local governments and public transportation operators to define the specific level of systems O&M that is appropriate, since the FHWA and the FTA do not mandate a particular, specific level of O&M. Instead, the Federal government accepts that State and local governments, MPOs, and public transportation operators will adjust their O&M from year-to-year and decade-to-decade, based on community desires and requirements established through an open transportation planning process.

Outside the transportation planning process, there also is a longstanding Federal requirement that States properly maintain, or cause to be maintained, any projects constructed under the Federal-aid Highway Program [23 U.S.C. 116]. However, beyond this basic requirement of proper maintenance, the FHWA and the FTA do not question State and local government, MPO, or public transportation operator decisions on specific uses of funding or question State and local priorities that balance the operation and maintenance of the existing transportation system with needs for transportation system expansion. Instead, the FHWA and the FTA ensure that the process used by the State DOT, MPO, and public transportation operator(s) to establish priorities is consistent with the transportation planning statute and regulations and that the funding sources identified to address these priorities are ''reasonably expected to be available.'' In addition, consistent with regulations implementing the Clean Air Act, the FHWA and the FTA will also continue to assure that priority is given to the timely implementation of transportation control measures in the air quality State Implementation Plan [40 CFR 93.103 and 40 CFR 93.116].

There is a subtle yet important distinction between projects or project phases listed in the TIP/STIP and the financial plan/financial information that supports the TIP/STIP. It is not required that all highway and transit O&M projects be included in the TIP/STIP, per se. However, these systems-level O&M costs and revenues must be reflected in the financial plan that accompanies and supports the TIP/STIP. Similarly, the O&M costs reflected in the financial plan for the first two years of the TIP/STIP in nonattainment and maintenance areas are not subject to the ''available or committed'' requirement. Rather, they must be ''reasonably expected to be available.''

Funding Gaps

Substantial investments have been made in highway and transit infrastructure. The short- and long-term needs for system preservation, operation, and maintenance can be enormous. Simply maintaining the existing system in a State or large metropolitan area can demand billions of dollars in investments, while system expansion demands investments of a similar scale. At times, the combination of these competing demands can cause temporary shortfalls in a State's or MPO's budget. To the extent there appear to be shortfalls, the MPO or State DOT must identify a strategy to address these funding gaps prior to the adoption of an updated metropolitan transportation plan, TIP, or STIP (or the amendment of an existing metropolitan transportation plan, TIP or STIP). The strategy should include a plan of action that describes the steps that will be taken to make funding available within the timeframe shown in the financial plan needed to implement the projects in the metropolitan transportation plan. The strategy may rely upon the past history of the State, MPO, or public transportation operator(s) to obtain funding. If the strategy relies on new funding sources, the MPO, State, public transportation operator(s) must demonstrate that these funds are ''reasonably expected to be available.''

Questions and Answers

Statewide and Metropolitan Transportation Improvement Program (STIP and TIP):

1. How should Federal and State funding be reflected in the TIP and STIP?

The Federal funding reflected in the TIP and STIP may be based on authorization levels for each year of the TIP and/or STIP, although obligation authority limitations could be utilized as a more conservative approach. In addition, for federally-funded projects, the TIP and/or STIP must identify the appropriate ''matched funds,'' by source. Importantly, because the State DOT will be involved in the development of all TIPs (as well as the STIP), the cumulative total of the State/Federal funds in the TIPs and STIP must not exceed, on an annual basis, the total State/Federal funds reasonably available to the State.

Financial forecasts (for revenues and costs) to develop TIPs and STIPs (as well as for metropolitan transportation plans) must utilize an inflation rate to reflect ''year of expenditure dollars'' to account for the time-based value of money. The inflation rate(s) should be based on sound, reasonable financial principles and information, developed cooperatively by the State DOT, MPOs, and public transportation operators. To ensure consistency, similar financial forecasting approaches should be utilized for all TIPs and STIPs in a given State. In addition, the financial forecast approaches, assumptions, and results should be clear and well-documented.

2. How should transit O&M activities and costs be treated in the TIP and STIP and their supporting financial plans?

With the exception of federally-supported transit operating costs in urbanized areas with populations less than 200,000, transit O&M activities are not required to be listed individually in the TIP, STIP, and metropolitan transportation plan. However, the supporting financial plans for the TIP, STIP, and metropolitan transportation plan must demonstrate the ability of operators to adequately operate and maintain their existing systems, as well as the new projects and strategies listed in the TIP, STIP, and metropolitan transportation plan. ''Adequate'' levels of transit service and associated O&M costs are determined by local officials, who may decide to defer maintenance and/or increase operating revenues as a means of balancing their budgets.

3. How exact should the funding estimates for O&M be for the financial plans/information that support the TIP and STIP?

Revenue and cost estimates for O&M will be more general than estimates for individual projects. For the financial plan that must accompany the TIP, the MPO may rely on the information contained in the financial plan that supports the metropolitan transportation plan to develop four-year ''snapshot'' estimates of O&M funding sources and costs. Similarly for the STIP, the State DOT may utilize other documents (*e.g.*, the long-range statewide transportation plan and/or State DOT budget information) to demonstrate sufficient resources for the operations and maintenance of the State surface

transportation system for at least the time period covered by the STIP. O&M involving local and/or State funds may be shown as a ''grouped line item'' in the financial plans for the TIP and STIP.

The FHWA and the FTA generally rely on the overall O&M information and analysis provided in support of the metropolitan and statewide transportation plans, including information on substantial changes to revenue streams for short-term (*i.e.*, programming-level) operations and maintenance expenditures. It is also reasonable to rely on supplemental State DOT information for non-metropolitan areas if similar information and/or analysis are not contained in a financial plan for the long-range statewide transportation plan or the TIP and STIP. Additionally, knowledge of local and/or State funding levels and previous year expenditures related to operations and maintenance compared to systems-level performance measures (*e.g.*, pavement and/or bridge conditions) can provide insightful information on the reasonableness of future local and/or State investments on highway and transit O&M.

Possible sources of data for O&M revenues and costs for States and MPOs to use in collecting this information for the State and local highway systems include the *Highway Statistics* [1] publication, capital improvement programs or budgets, and pavement management systems. For transit O&M costs, the best data sources likely are the public transportation operators and/or the units of government that are responsible for the public transit system(s), as well as the information contained in FTA's financial capacity reviews conducted for its Section 5307 (Urbanized Formula) and Section 5309 (New Starts, Bus, and Rail Modernization) programs.[2] The key is for State DOTs, MPOs, and public transportation operators (via the ''3–C'' planning process) to coordinate with the various local agencies to determine the best sources of these data.

As a condition for applying for grants under FTA's Section 5307 and Section 5309 programs, public transportation operators are required to self-certify their financial capacity to pay current costs from existing revenues and to meet expansion costs in addition to their existing operations from projected revenues. The FTA assesses the adequacy of financial capacity self-certifications at the TIP/STIP approval stage and for any capital grant approval (FTA's Capital Investment Grant program in 49 U.S.C. 5309 includes additional financial assessment requirements). Similar to the joint FHWA/FTA certification of the metropolitan panning processes in Transportation Management Areas, deficiencies are recorded for grantees that do not meet financial capacity requirements. The requirements, set forth in FTA Circular 7800.1A (Financial Capacity Policy),[3] call for public transportation operators to ''* * *maintain and operate current assets, and to operate and maintain the new assets on the same basis, providing at least the same level of service for at least one replacement cycle, or 20 years, as appropriate.'' Public transportation operators could attach their financial capacity self-certifications, with appropriate supporting information, to the financial plan supporting the TIP/STIP.

4. Must innovative finance mechanisms be reflected in the TIP/STIP? To what extent must Advance Construction (AC) be shown in the TIP/STIP?

Yes, innovative financing techniques (*e.g.*, tolls, Grant Anticipated Revenue Vehicles (GARVEE bonds), State Infrastructure Banks (SIBs), and Transportation Infrastructure Finance and Innovation Act (TIFIA)) must be reflected in the TIP and/or STIP. Additional information on innovative finance can be obtained via the Internet at the following FHWA and FTA Web sites:

- FHWA Innovative Finance Guidance *http://www.fhwa.dot.gov/innovativefinance/ifguidnc.htm*
- FTA Innovative Finance Guidance *http://www.fta.dot.gov/1263_ENG_HTML.htm*
- FTA Flexible Funds Guidance *http://www.fta.dot.gov/1254_ENG_HTML.htm*

Advance Construction (AC) and partial conversion of advanced construction (PCAC) are cash flow management tools that allow States to begin projects with their own funds and only later convert these projects to Federal assistance. AC allows a State to request and receive approval to construct Federal-aid projects in advance of the apportionment of authorized Federal-aid funds. Typically, States (at their discretion) ''convert'' AC projects to Federal-aid at any time sufficient Federal-aid funds and obligation authority are available at one time. Under PCAC, a State (at its discretion) partially ''converts'' AC projects to Federal-aid funds in stages.

Title 23, U.S.C., section 115(c) specifies that an AC project application may be approved ''* * * only if the project is included in the STIP.'' Because AC does not constitute a commitment of Federal funds to a project, the financial plan and/or funding information for the TIP and STIP, respectively, need to demonstrate sufficient non-Federal revenues to provide 100 percent funding for the projects listed as ''AC'' in the TIP and/or STIP. The total amount of allowable AC in the TIP and/or STIP is determined by: (a) The State's current unobligated balance of apportionments; and (b) the amount of Federal funds anticipated in the subsequent fiscal years of an approved STIP.

In practice, an AC project/project phase essentially is included in the TIP and/or STIP at two different points in time: (a) As State or local funds prior to the initial authorization of the AC project (including an assurance from the State that adequate State funds are available to ''front'' the cost of the project/project phase); and (b) prior to the authorization of the project/project phase to ''convert'' it from AC to a Federal-aid funding program (including a demonstration from the State that this ''conversion'' maintains fiscal constraint with other Federal-aid projects). Therefore, in the year of an AC project's ''conversion,'' the project is considered as both a State revenue source and a Federal-aid debit. Similarly, Federal funding utilized to make payments on debt instruments such as GARVEE bonds must be deducted from the amounts of Federal funds available for new federally-funded projects. In either case, the TIP and/or STIP should show the obligation of Federal-aid category funds and the resultant increase in available non-Federal funds.

5. To what extent can future Federal program funds be assumed for developing TIPs and STIPs, particularly beyond the current authorization or appropriations period?

When the TIP or STIP period extends beyond the current authorization period for Federal program funds, ''available'' funds may include an extrapolation based on historic authorizations of Federal funds that are distributed by formula. For Federal funds that are distributed on a discretionary basis (including FTA Section 5309, earmarks, and congressionally-designated funding), any funding beyond that currently authorized and targeted to the area may be considered as reasonably available, if past history supports such funding levels.

Therefore, when determining future year authorizations/apportionments, the growth rate as determined through the previous authorizations can be used to approximate the future annual growth rate of Federal authorizations. For example, since the TEA–21 was a six-year bill, the growth rate could be determined over the entire authorization period (fiscal year (FY) 1998–FY 2003), but excluding the Revenue Aligned Budget Authority from the calculations.

Upon the enactment of new authorizing legislation, State DOTs (in conjunction with MPOs and public transportation operators) must utilize the actual authorization levels and individual discretionary project funding amounts in the development of any updated TIP/STIP or amendment of an existing TIP/STIP.

Metropolitan Transportation Plan

6. How should revenues from ''public-private partnerships'' be treated?

''Public-private partnerships'' (PPP) are an emerging area related to transportation finance that refer to contractual agreements formed between a public agency and private sector entity that allow for greater private sector participation in the delivery of transportation projects. Traditionally, private sector participation has been limited to separate planning, design, or construction contracts as a fee-for-service arrangement, based on the public agency's specifications.

[1] The FHWA's Highway Statistics Series consists of annual reports containing analyzed statistical data on motor fuel; motor vehicles; driver licensing; highway-user taxation; State and local government highway finance; highway mileage, and Federal-aid for highways. These data are presented in tabular format as well as selected charts and have been published each year since 1945. The annual Highway Statistics reports are available from the FHWA's Office of Highway Policy Information at *http://www.fhwa.dot.gov/policy/ohpi/hss/index.htm.*

[2] Additional information on FTA's Section 5307 and Section 5309 programs is available from the FTA at *http://www.fta.dot.gov.*

[3] FTA Circular 7800.1A (Financial Capacity Policy) was last updated on January 30, 2002, and is available from the FTA at *http://www.fta.dot.gov/legal/guidance/circulars/7000/424_1081_ENG_HTML.htm.*

Expanding the private sector role allows the public agencies to tap private sector technical, management, and financial resources in new ways to achieve certain public agency objectives (*e.g.*, greater cost and schedule certainty, supplementing in-house staff, innovative technology applications, specialized expertise, or access to private capital). The private partner can expand its business opportunities in return for assuming these new or expanded responsibilities and risks. Additional information on new PPP approaches to project delivery can be obtained via the Internet at *http://www.fhwa.dot.gov/ppp/index.htm.*

The PPP projects often are undertaken to supplement conventional procurement practices by taking additional revenue sources and mixing a variety of funding sources, thereby reducing demands on constrained public budgets. Some of the revenue sources used to support PPPs include: (a) Shareholder equity; (b) grant anticipation bonds (GARVEEs and Grant Anticipation Notes); (c) general obligation bonds; (d) SIB loans; (e) direct user charges (tolls and transit fares) leveraged to obtain bonds; and (f) other public agency dedicated revenue streams made available to a private franchisee or concessionaire (*e.g.*, leases, direct user charges from other tolled facilities, and shadow tolls). Additional information on these financing approaches and tools is available online from the American Association of State and Transportation Officials at *http://www.InnovativeFinance.org.*

Within the financial plan that supports the metropolitan transportation plan, a prospective PPP should be addressed on a case-by-case basis, reflected as a source that is ''reasonably expected to be available.''

7. How should future costs be estimated and documented?

Financial forecasts (for revenues and costs) to support the metropolitan transportation plan (as well as the TIP and STIP) must utilize an inflation rate to reflect ''year of expenditure dollars'' to account for the time-based value of money. The inflation rate(s) should be based on sound, reasonable financial principles and information, developed cooperatively by the MPO, State DOT, and public transportation operator(s). To ensure consistency, similar financial forecasting approaches should be utilized for the metropolitan transportation plan and TIP in a given MPO.

Cost forecasts can be established in a number of ways. For example, O&M can be based on historic data applied on a per-lane mile and functional classification basis or an annual lump sum basis. Capital costs can be based on historic costs for: (a) An interchange; (b) new construction on new rights-of-way; (c) structure (number, type, and deck square footage (area) for various structure types); (d) transit vehicles for rolling stock procurement; or (e) widening and/or reconstruction, based on the extent of the project. In addition, capital cost estimates can be based on project-specific estimates contained in planning, environmental, or engineering studies, and updated as new information is prepared as part of project development.

Transit operating costs can be estimated by general mode type on a revenue-mile or passenger-mile basis, in accordance with the following principles: (a) Reflect historic operations; (b) anticipate future operations; (c) address all functional responsibilities of the transit property; (d) focus on major cost components; (e) apply consistent level of service data: (f) apply peer transit property experience; (g) apply readily available information; (h) provide fully-allocated costs for use in cost-effectiveness analysis; (i) structure for sensitivity analyses; and (j) document model theory and application [for additional information, see ''Chapter 2: Principles of Operating and Maintenance Cost Modeling'' in Estimation of Operating and Maintenance Costs for Transit Systems, available on the FTA Web site at *http://www.fta.dot.gov/transit_data_info/reports_publications/publications/finance/estimation_operating/1210_2455_ENG_HTML.htm*]. Transit system capital costs involve the estimation of capital costs for a broad variety of project components and the projection of future construction. Special consideration should be given to factors such as design changes, component upgrades, lengthened construction schedules, and the effects of general price inflation.

Revenues and related cost estimates for O&M should be based on a reasonable, documented process. Some accepted practices include:

- Trend analysis (a functional analysis based on expenditures over a given duration, in which costs or revenues are increased by inflation, as well as a growth percentage based on historic levels). This analysis could be linear or exponential. When using this approach, however, it is important to be aware of new facilities or improvements to existing facilities. Transit operations and maintenance costs will vary with the average age of the bus or rail car fleet.
- Cost per unit of service (*e.g.*, lane-mile costs, centerline mile costs, traffic signal cost, transit peak vehicles by vehicle type, revenue hours, and vehicle-miles by vehicle type).

Regardless of the methodology employed, the assumptions should be adequately documented by the State DOT, the MPO, and the public transportation operator, ideally reflected in the State DOT and the MPO self-certification statements on the statewide and metropolitan transportation planning processes.

The FHWA and the FTA recognize that estimating current and reasonably available new revenues and required operations and maintenance costs over a 20-year planning horizon is not an ''exact science.'' To provide discipline and rigor, public agencies should attempt to be as realistic as possible, as well as ensure that all costs assumptions are publicly documented.

8. Does the financial plan need to include O&M costs for the entire transportation system or simply the portion for which the State is responsible? How should operations and maintenance be reflected in the financial plan?

Titles 23, U.S.C., Section 134(i)(2)(D) and 49, U.S.C., Section 5303(i)(2)(D) require development of a metropolitan transportation plan that includes capital investment and other strategies to preserve the existing and projected future infrastructure needs. It also requires operational and management strategies [23 U.S.C. 134(i)(2)(E) and 49 U.S.C. 5303(i)(2)(E)] to improve the performance of existing transportation facilities. The metropolitan transportation plan also must contain a financial plan that demonstrates how the adopted transportation plan can be implemented, indicating resources from public and private sources that are reasonable expected to be made available to carry out the transportation plan [23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C)]. Therefore, the financial plan that supports the metropolitan transportation plan must reflect the estimated costs of constructing, operating, and maintaining the total (existing plus planned) transportation system, including portions of the system owned and operated by local governments.

Other Issues

9. What are some examples of ''reasonable'' and ''not reasonable'' revenue forecasting assumptions?

Whether or not a funding source is reasonable may require a judgment call. Illustrative (but not all-inclusive) examples of ''reasonable'' and ''not reasonable'' assumptions are highlighted in the following table. Please note, however, that those described as ''reasonable'' do not necessarily meet the special test of ''available or committed'' funds.

Reasonable	A new toll with funds to be dedicated to a particular project or program may be reasonable, if supported by the Governor and there are indications of other support needed to enact or institute the toll.
Reasonable	A new local gas or sales tax requiring State legislation is reasonable if there are indications of sufficient support to enact the new tax.
Not reasonable	Funds from an upcoming ballot initiative would not be reasonable if polls indicate strong likelihood of defeat or there is a history of repeated defeat of similar ballot initiatives in recent years.
Not reasonable	A 25 percent increase in gas tax revenues over five years is not reasonable if the increase in the previous five years was only 15 percent, unless there are special circumstances to justify and support a significantly higher increase than the historic rate.

Not reasonable	An assumption that the metropolitan area will receive 30 percent of a Federal discretionary program (*e.g.,* FTA New Starts) is not reasonable if the area has never received more than 10 percent in the past, unless there are special circumstances to justify and support such an assumption.

10. What is the connection (if any) between financial plans that support Statewide and metropolitan transportation plans and programs and financial/funding information for FHWA major projects and FTA Capital Investment Grant projects?

In general, the financial plans that support statewide and metropolitan transportation plans and programs do not need to contain the specific cash flow schedule information that typically is included for FHWA major projects (projects with an estimated total cost of $500 million or more, pursuant to Section 1904 of the SAFETEA–LU) or FTA Capital Investment Grant program projects. However, because a large-scale transportation project likely will have a substantial effect on a Statewide or metropolitan transportation plan and program, this project-specific cash flow schedule information can serve as a valuable resource on annual levels and sources of revenues for developing the financial plans that support Statewide and metropolitan transportation plans and programs.

Additional information on financial planning for FHWA major projects and FTA New Starts projects can be obtained via the Internet at:

- FHWA Financial Plan Guidance (May 23, 2000) *http://www.fhwa.dot.gov/programadmin/mega/fplans.htm#fpgmemo*
- FHWA Major Project Program Cost Estimating Guidance (June 4, 2004) *http://www.fhwa.dot.gov/programadmin/mega/cefinal.htm*
- Guidance for Transit Financial Plans (June 2000) *http://www.fta.dot.gov/documents/gftfp.pdf*
- ''Financial Planning for Transit'' in Procedures and Technical Methods for Transit Project Planning *http://www.fta.dot.gov/grant_programs/transportation_planning/major_investment/technical_guidance/16352_ENG_HTML.htm*
- Estimation of Operating and Maintenance Costs for Transit Systems (December 1992) *http://www.fta.dot.gov/transit_data_info/reports_publications/publications/finance/1210_ENG_HTML.htm*

PART 500—MANAGEMENT AND MONITORING SYSTEMS

2. Revise the authority citation for part 500 to read as follows:

Authority: 23 U.S.C. 134, 135, 303, and 315; 49 U.S.C. 5303–5305; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

3. Revise § 500.109 to read as follows:

§ 500.109 CMS.

(a) For purposes of this part, congestion means the level at which transportation system performance is unacceptable due to excessive travel times and delays. Congestion management means the application of strategies to improve system performance and reliability by reducing the adverse impacts of congestion on the movement of people and goods in a region. A congestion management system or process is a systematic and regionally accepted approach for managing congestion that provides accurate, up-to-date information on transportation system operations and performance and assesses alternative strategies for congestion management that meet State and local needs.

(b) The development of a congestion management system or process should result in performance measures and strategies that can be integrated into transportation plans and programs. The level of system performance deemed acceptable by State and local officials may vary by type of transportation facility, geographic location (metropolitan area or subarea and/or non-metropolitan area), and/or time of day. In both metropolitan and non-metropolitan areas, consideration needs to be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity of those lanes.

TITLE 49—TRANSPORTATION

4. Revise 49 CFR part 613 to read as follows:

PART 613—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Transportation Planning and Programming Definitions

Sec.
613.100 Definitions.

Subpart B—Statewide Transportation Planning and Programming

613.200 Statewide transportation planning and programming.

Subpart C—Metropolitan Transportation Planning and Programming

450.300 Metropolitan transportation planning and programming.

Subpart A—Transportation Planning and Programming Definitions

§ 613.100 Definitions.

The regulations in 23 CFR 450, subpart A, shall be followed in complying with the requirements of this subpart.

Subpart B—Statewide Transportation Planning and Programming

§ 613.200 Statewide transportation planning and programming.

The regulations in 23 CFR 450, subpart B, shall be followed in complying with the requirements of this subpart.

Subpart C—Metropolitan Transportation Planning and Programming

§ 613.300 Metropolitan transportation planning and programming.

The regulations in 23 CFR 450, subpart C, shall be followed in complying with the requirements of this subpart.

Issued on: June 1, 2006.

J. Richard Capka,

Administrator, Federal Highway Administration.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

[FR Doc. 06–5145 Filed 6–2–06; 10:22 am]

BILLING CODE 4910–22–P