DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 500

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2005–22986]

RIN 2125–AF09; FTA RIN 2132–AA82

Statewide Transportation Planning; Metropolitan Transportation Planning

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

ACTION: Final rule.

SUMMARY: This final rule revises the 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. The revision results from the 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 will make the regulations consistent with current statutory requirements.

EFFECTIVE DATE: March 16, 2007.

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SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Interested parties may access all comments on the NPRM received by the U.S. Department of Transportation (USDOT) 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 final rule 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

The regulations found at 23 CFR 450 and 500 and 49 CFR 613 outline the requirements for State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs) and public transportation operators to conduct a continuing, comprehensive and coordinated transportation planning and programming process in metropolitan areas and States. These regulations have not been comprehensively updated or revised since October 28, 1993. Since that time, Congress has enacted several laws that affect the requirements outlined in these regulations (e.g. such as the TEA–21 and the SAFETEA–LU). Therefore, the agencies needed to update these regulations to be consistent with current statutory requirements.

Notice of Proposed Rulemaking:

On June 9, 2006, the agencies published, in the **Federal Register**, a notice of proposed rulemaking (NPRM) proposing to revise the regulations governing the development of statewide and metropolitan transportation plans and programs and the regulations for Congestion Management Systems (71 FR 33510). The comment period remained open until September 7, 2006. During the comment period on the proposed rule, the FTA and the FHWA held six public outreach workshops and a national telecast, also available on the World Wide Web. Those meetings provided an opportunity for FTA and FHWA to provide an overview of the NPRM and offer clarification of selected provisions. Comments were not solicited at those meetings, and attendees were encouraged to submit all comments to the official docket. A summary of the issues raised at the meetings and the general response of the FTA and the FHWA presenters, along with copies of the materials presented at the meeting, is included in the docket (item Number 27).

In addition, the FHWA and the FTA responded to requests for presentations at several regularly scheduled meetings or conferences of national and regional professional, industry or advocacy organizations during the comment period of the NPRM.

Discussion of Comments

In response to the NPRM, we received over 150 documents (representing more than 1,600 comments) submitted to the docket as reflected in the summary below (and spreadsheet on file in the docket). The following discussion summarizes our response. We received diverse and even opposing comments. General comments concerning the rule are addressed initially, followed by specific responses to individual sections of the regulatory proposals.

We categorized the comments received by the type of organization that submitted the comments. The following categories are used throughout this discussion: State DOTs; MPOs, councils of government (COGs) and regional planning agencies; national and regional professional, industry or advocacy organization (which includes organizations representing State DOTs, MPOs, COGs or other agencies whose individual comments may be included in a different category), local/regional transit agency; general public; city/county (other sub-State government); State (other agency, Governor, Legislator); Federal agency and other.

State DOTs submitted almost one-quarter of the documents, which account for almost one-third of all comments. MPOs, COGs and regional planning agencies submitted slightly more than one-third of the documents, also accounting for approximately one-third of the comments. National and regional professional, industry or advocacy organizations submitted over one-quarter of the documents and approximately one-quarter of the comments. Local/regional transit agencies submitted approximately 5 percent of the documents. Other organizations or individuals submitted the remainder. Most State DOTs and some other commenters wrote in support of the comments submitted by the American Association of State Highway and Transportation Officials (AASHTO). Many MPOs and COGs and some other commenters wrote in support of the comments submitted by the Association of Metropolitan Planning Organizations (AMPO) and/or the National Association of Regional Councils (NARC). Several public transportation operators and others wrote in support of the comments submitted by the American Public Transportation Association (APTA).

The FHWA and the FTA received comments on almost all sections of the

rule. The largest number of individual comments we received were on fiscal constraint issues. Other sections with more than five percent of the overall comments included: § 450.104 (Definitions), § 450.216 (Development and content of the statewide transportation improvement program (STIP)), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program).

Several national and regional advocacy organizations, a few State DOTs and MPOs, some transit agencies and others suggested changes that go beyond what is required by statute. The FHWA and the FTA have adhered closely to the statutory language in drafting the regulation. Over time, and as necessary, the FHWA and the FTA will continue to issue additional guidance and disseminate information on noteworthy practices that may address these suggestions.

In response to several comments, specific regulatory reference to a Regional Transit Security Strategy (RTSS), including its definition, was removed due to the concern for possible disclosure of security-sensitive information in the planning process. Further, an RTSS is not required universally of all metropolitan areas and States. Regulatory language in both the metropolitan and statewide transportation planning sections was revised to make broad reference to the need for coordination with ''appropriate'' transit security-related plans, programs, and decision-making processes.

One national and regional professional, industry or advocacy organization suggested the incorporation of the Real Time System Management Information Program (required by § 1201 of the SAFETEA–LU) into the statewide transportation planning process. While the FHWA and the FTA agree that current, good quality data can improve effective transportation decisions and is key to effective operation and management strategies, we recognize each State's need to determine their appropriate statewide coordinated data collection program to support their individual planning process. We encourage the States to consider including real-time data, provided by the Real Time System Management Information Program, but have not included a requirement in this rule.

The FHWA and the FTA were asked to evaluate whether the leadership posts on MPO boards were acting in an impartial manner. A few organizations expressed concern that non-metropolitan or non-elected officials who serve as board chairs may have conflicts of interest that undermine local control of transportation funding. The FHWA and the FTA will consider conducting such a study as part of their discretionary research programs. Currently, we do not have enough information on this subject for incorporation into this rule.

Several documents providing research, data, and analysis on various issues related to transportation, planning and environment were submitted to the docket. The FHWA and the FTA have reviewed these documents and considered the information in developing this rule.

The FHWA and the FTA were asked to recognize regional planning organizations/regional transportation planning organizations (RPOs/RTPOs) throughout the rule as stakeholders and interested parties in the transportation planning process in States where they are established by law. Although the rule is silent on RPOs/RTPOs, § 450.208(a)(6) highlights that statewide transportation planning needs to coordinate with related planning activities being conducted outside of metropolitan planning areas. The FHWA and the FTA recognize that the RPO/RTPO planning process and activities should be input into the statewide transportation planning process. Further, many of the RPOs/RTPOs are recognized as forms of local government, and are addressed in § 420.210 (Interested parties, public involvement and consultation).

A few commenters observed that many small MPOs have very little funding from USDOT or non-USDOT sources, have very limited staffs, and limited consultant or technical support resources of their own. The FHWA and the FTA were urged to find ways to scale the regulatory requirements to fit the size and scope of smaller MPOs. We noted this comment and have tried to provide as much flexibility in the rule as practicable. We have provided some streamlined requirements for the non-transportation management area (TMA) MPOs, such as Simplified Statement of Work and grouping of projects within the transportation improvement program (TIP). The MPO is responsible for developing a planning process that is appropriate for its communities, given the resources and technical capability of the MPO.

Several State DOTs and a national and regional advocacy organization objected to including guidance documents with the regulations as Appendices A and B. These commenters noted that by including these documents with the regulation as appendices, the guidance documents would have the force and effect of law and, as a result, would ''open up FHWA and FTA (and thus the States and MPOs) to litigation challenges based on a selective reading of short passages in these lengthy documents.'' Therefore, these commenters requested removal of the appendices. Additionally, these commenters were concerned that including these guidance documents with the regulation would make it more difficult to change these documents in response to evolving practices, as any change would require a rulemaking action.

The Office of the Federal Register, pursuant to the Federal Register Act (44 U.S.C. Chapter 15) has established criteria for publishing material in the **Federal Register** and the Code of Federal Regulations. Under these criteria, agencies may use an appendix to improve upon the quality or use of a regulation, but not to impose requirements or restrictions. Additionally, agencies may not use an appendix as a substitute for regulatory text.[1] The information the FHWA and the FTA proposed to include in appendices A and B is intended to be non-binding guidance. Therefore, we believe that State DOTs and MPOs would not be subject to increased litigation based on inclusion of these appendices.

We believe that Appendix A, Linking the Transportation Planning and NEPA Processes, provides explanatory information that amplifies the rule and does not add any additional requirements and would not be subject to many changes. Therefore, we have decided to keep Appendix A, but are adding a disclaimer to this effect in the introduction of Appendix A highlighting its non-binding status. In addition, we have made some minor changes to the text of Appendix A to ensure that it is consistent with the environmental streamlining requirements of § 6002 of the SAFETEA–LU.

As for Appendix B, Fiscal Constraint of Transportation Plans and Programs, the FHWA and the FTA agree with these commenters that modifications to this document may be more frequently required to respond to evolving practices. Therefore, the FHWA and the FTA have decided to remove Appendix

[1] Federal Register Document Drafting Handbook, October 1998 Revision. National Archives and Records Administration, Office of the Federal Register. It is available at the following URL: *http://www.archives.gov/federal-register/write/handbook/ddh.pdf.*

B from the rule. However, there are three elements within that appendix that the agencies believe should be a part of the regulatory text for clarity and completeness. These elements are: (1) Treatment of highway and transit operations and maintenance costs and revenues; (2) use of ''year of expenditure dollars'' in developing cost and revenue estimates; and (3) use of ''cost ranges/cost bands'' in the outer years of the metropolitan transportation plan. Please see the responses to the comments on Appendix B for additional background information and explanation. Consequently, we have included language in § 450.216 (Development and content of the statewide transportation improvement program (STIP)), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program (TIP)) to address these issues within the regulation. The material contained in the proposed Appendix B will be made available as a guidance document on the agencies' Web sites.

Section-by-Section Discussion

The discussion in this section compares the NPRM with the final rule and discusses comments submitted on each section along with an explanation of any changes we made from the NPRM to the final rule. All references to revisions or changes are to changes in language that we originally proposed in the NPRM.

23 CFR Part 450

Subpart A—Transportation Planning and Programming Definitions

Section 450.100 Purpose

No comments were received on this section and no changes were made.

Section 450.102 Applicability

No comments were received on this section and no changes were made.

Section 450.104 Definitions

There were more than 45 documents with over 225 comments submitted on this section, with half of the documents coming from MPOs and almost one-fourth each from State DOTs and national and regional advocacy groups. Transit agencies, city/county agencies and the general public also commented on this section. Some of those that commented on this section recommended specific changes to examples or lists included in various definitions. It is important to note that the recommended lists in these definitions are intended to be advisory and not exhaustive; therefore, we did not make changes to the lists of examples.

Several definitions were revised based on comments received. These changes are described below.

Many State DOTs and MPOs as well as several national and regional advocacy organizations were concerned about the definitions of ''administrative modification'' and ''amendment.'' Commenters requested greater distinction between the two terms.

Several of those that commented on this section requested that the words ''minor revision'' be included in the definition of ''administrative modification.'' This change has been made. The examples in this definition have also been clarified, including ''minor changes to project/project phase initiation dates.'' It is important to note that while an ''administrative modification'' can change the initiation date, it cannot affect the completion date of the project as modeled in the regional emissions analysis in nonattainment or maintenance areas. A change in the project/project phase completion date in a nonattainment or maintenance area would be considered an ''amendment.'' Finally, based on comments, the term ''not significant'' was removed.

Commenters suggested that the term ''amendment'' include the words ''major change'' and use ''major'' in the examples. These changes have been made. State DOTs and MPOs should work with the FHWA and the FTA to identify thresholds for a ''major'' change in project cost. Examples of thresholds could include, but are not limited to, project cost increase that exceeds 20 percent of the total project cost; or project cost increase that exceeds a certain dollar amount, for example, the increase in costs exceeds the programmed amount by $50,000 or $100,000.

Further, some State DOTs and advocacy organizations wrote that changes in illustrative projects should not require an amendment. We agree. A sentence has been added to the definition of ''amendment'' to clarify this point. Also, most State DOTs that commented on this section noted that ''amendment'' should apply differently to long-range statewide transportation plans, since they are not subject to fiscal constraint. A sentence was added to the definition to clarify the long-range statewide transportation plan context.

After consultation with EPA, the definition of ''attainment area'' was revised to be consistent with the definition in the glossary of the Environmental Protection Agency's (EPA) Plain English Guide to the Clean Air Act.[2] We also included in this definition a clarification that a ''maintenance area'' is not considered an attainment area for transportation planning purposes.

A few commenters expressed confusion about the definitions of ''Available funds'' and ''Committed funds'' as they relate to air quality conformity. We have simplified these definitions to remove the phrase ''for projects or project phases in the first two years of a TIP and/or STIP in air quality nonattainment and maintenance areas.'' By deleting this phrase, however, we have not removed the requirement that projects in the first two years of a STIP and/or TIP in air quality nonattainment and maintenance areas be available or committed. This is still part of the definition under fiscal constraint. The requirement that these terms only apply to the first two years is already embedded in the regulation and does not need to be repeated in the definition of the terms ''Available'' and ''Committed.''

A national and regional advocacy organization and a few transit agencies suggested that ''Full funding grant agreement'' and ''Project construction grant agreement'' be added to the examples of ''Committed funds.'' This change has been made. We also received a comment that the requirement for private funds to be in writing as part of ''Committed funds'' would limit private participation in transportation projects. The FHWA and the FTA find that a written commitment is necessary to ensure that the private funds ultimately are provided and is integral to the concept of ''committed funds.'' This change was not made.

After consultation with the EPA, the definition of ''conformity'' was revised based on language from the EPA's conformity Web page[3] and in the EPA's conformity rule (40 CFR 93.100).[4]

Many MPOs wrote regarding the definition of ''congestion management process'' that the definition should reference Transportation System Management and Operations (TSMO), rather than ''management and operation'' to reinforce the principles of this emerging practice. The FHWA and the FTA do not believe this change would enhance the definition and note

[2] This document, ''Plain English Guide to the Clean Air Act'' is available via the Internet at the following URL: *http://www.epa.gov/air/oaqps/peg_caa/pegcaain.html.*

[3] EPA's conformity web page can be found at the following URL: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[4] This document is available via the Internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/rule.htm.*

that the term ''operations and management'' is taken directly from statute. No change was made.

Many national and regional advocacy organizations and MPOs and COGs that commented on this section were concerned about the different uses of the term ''consultation'' in the definitions section and in Sections 450.214 (Development and content of the long-range statewide transportation plan) and 450.322 (Development and content of the metropolitan transportation plan). The definition of consultation used in § 450.214 (Development and content of the long-range statewide transportation plan) and § 450.322 (Development and content of the metropolitan transportation plan) is consistent with the definition in the statute found at 23 U.S.C. 134(i)(4), 23 U.S.C. 135(f)(2), 49 U.S.C. 5303(i)(4), and 49 U.S.C. 5304(f)(2) and is applicable for those sections. This section presents a broad definition of ''consultation'' for use throughout the rest of the rule. We have added a note to the definition of ''consultation'' to recognize that this definition is not the one used in §§ 450.214 and 450.322.

Many national and regional advocacy organizations and several MPOs and COGs that commented on this section also asked that ''periodically'' be removed from the definition of ''consultation'' to better reflect that consideration of the other party's view and providing them with information should occur on a regular and ongoing basis, not a periodic basis. This definition is taken from the existing rule developed in an extensive rulemaking process in January 2003 on the non-metropolitan local official consultation process and agreed to by a number of stakeholders at that time (68 FR 7419). Further, the FHWA and the FTA consider ''periodically'' to mean frequently, on regular intervals. This change was not made.

Many transit agencies and State DOTs as well as several MPOs, COGs and others requested changes to the definition of ''coordinated public transit-human services transportation plan'' to reduce the degree of procedural detail. Accordingly, the definition was changed to be consistent with that used in the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs (New Freedom Program Guidance, The Job Access And Reverse Commute (JARC) Program, Elderly Individuals And Individuals With Disabilities Program) published in the September 2006.[5] In addition, commenters proposed the addition of guidelines for preparing the coordinated public transit-human services transportation plan, including geographic scope, approval authority, and determination of lead agency. To ensure maximum flexibility for localities to tailor the coordinated public transit-human services transportation plan preparation process to their areas, we will disseminate non-regulatory guidance on optional approaches and examples of effective practice, along with training and technical assistance.

Several MPOs and COGs expressed concern about the definition of ''coordination'' because there is no resolution mechanism if agencies cannot come to agreement. The FHWA and the FTA support the development of a dispute resolution process for ''coordination'' and ''consultation.'' However, such a process is not required by statute and is, therefore, not included in this rule. This does not preclude State DOTs and/or MPOs from developing their own dispute resolution processes as part of the transportation planning process.

After further review, the FHWA and the FTA have removed the term ''exclusive'' from the list of examples in the definition of ''design concept.'' We do not want to imply that only ''exclusive busways'' can be identified as a type of project.

A proposal was offered to define the term ''designated recipient'' to clarify this term in the rule. This definition has been added to this section

Many State DOTs and some national and regional advocacy organizations that commented on the definition of ''environmental mitigation activities'' suggested deleting ''rectify or reduce'' from the definition because these terms are redundant. The FHWA and the FTA believe that the terms ''rectify'' and ''reduce'' are related more to the discussion of specific projects, not the broad planning context. We agree with this comment and have deleted these words. In addition, MPOs and COGs and a few State DOTs and others suggested simplifying the definition by removing statements of regulatory action. We agree and have deleted the last sentence of the definition which reiterated requirements in the body of the rule. Finally, we have modified the definition to be clear that strategies may not necessarily address potential project-level impacts.

Several major concerns were expressed regarding the definition for ''Financially constrained or Fiscal constraint.'' Most commenters requested that three portions of the definition be deleted: (1) The phrase ''by source,'' (2) the phrase ''each program year,'' and (3) the phrase ''while the existing system is adequately maintained and operated.'' The requirement for demonstrating fiscal constraint by year and by source is consistent with, and carries forth language in, the planning rule adopted in October 1993 (58 FR 5804). The FHWA and the FTA consider demonstrating funding by year and by source necessary for decision-makers and the public to have confidence in the STIP and TIP as financially constrained. However, in response to concerns raised, we have changed the definition related to ''by source'' to be consistent with the October 1993 planning rule. This change clarifies that fiscal constraint documentation should include committed, available, or reasonably available revenue sources.

Additionally, as a result of the extensive comments provided on Appendix B (Fiscal constraint of transportation plans and programs) we have changed the phrase ''while the existing system is adequately maintained and operated'' to ''with reasonable assurance that the federally supported transportation system is being adequately operated and maintained.'' We believe this change provides flexibility and addresses the commenters' concerns that the FHWA and the FTA were overreaching beyond the Federally supported transportation system. Please see the responses to the comments on Appendix B for additional background information and explanation. Finally, we have also clarified the definition to explicitly refer to ''the metropolitan transportation plan, TIP and STIP.''

Many State DOTs, a few national and regional advocacy organizations, and some MPOs and COGs wrote that the definition of ''financial plans'' should be changed to note that financial plans are not required for STIPs and are not required for illustrative projects. The FHWA and the FTA agree with both comments. We have added a note to the definition that financial plans are not required for STIPs. We also agree that financial plans are not required for illustrative projects. § 450.216(m) states that ''The financial plan may include, for illustrative purposes, additional projects that would be included in the

[5] These documents, ''Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute,'' and ''New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars'' were published September 6, 2006, and are available via the internet at the following URLs: *http://www.fta.dot.gov/publications/publications_5607.html* or *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6–14733.pdf.*

adopted STIP if reasonable additional resources beyond those identified in the financial plan were available.'' We do not believe it is necessary to add a note to the definition regarding illustrative projects.

Several State DOTs also wrote requesting that the phrase ''as well as operating and maintaining the entire transportation system'' be removed from the definition of ''financial plans.'' This change has been made

Proposals were offered to define the terms ''full funding grant agreement'' to clarify this term in the rule. This definition has been added to this section.

In response to comments regarding financial plans and fiscal constraint requirements, we have modified the definition of ''illustrative project'' to clarify that ''illustrative projects'' refer to additional transportation projects that would be included in financially constrained transportation plans and programs if ''additional resources were to become available.'' This definition also notes that illustrative projects may (but are not required to) be included in the financial plan.

Representatives of a State DOT and a national and regional advocacy organization requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, we will rely upon non-regulatory guidance, training, and technical assistance for disseminating information on optional approaches to private sector participation.

The FHWA and the FTA noted that the proposed rule used an incorrect Clean Air Act reference in the definition of ''Maintenance area.'' This reference has been corrected.

After further review, the FHWA and the FTA have made slight changes to the definition of ''management systems'' to be more permissive. The phrase ''and safety'' was changed to ''or safety'' and ''includes'' was changed to ''can include.''

Some State DOTs and national and regional advocacy groups recommended removing the phrase ''in the preceding program year'' from the definition of ''obligated projects.'' The FHWA and the FTA find that the phrase ''in the preceding program year'' is important in the context of the annual listing of obligated projects (See § 450.332 (Annual listing of obligated projects)) to clarify what projects should be included in the list, since TIPs cover multiple years. Therefore, this change was not made. However, we did change the definition to emphasize that funds need to be ''authorized by the FHWA or awarded as a grant by the FTA.''

Several State DOTs, MPOs and COGs and some national and regional advocacy organizations and transit agencies expressed confusion over the terms ''management and operations'' and ''operations and management'' as related to the term they propose be included in the rule, ''Transportation System Management and Operations (TSMO).'' The SAFETEA–LU defined ''Operational and Management Strategies'' and its relationship to metropolitan long-range transportation plans. (*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 (23 U.S.C. 134(i)(2)(D) and 49 U.S.C. 5303(i)(2)(D)). This definition is included in the rule with one change. We have removed the modifier ''vehicular'' to emphasize that operational and management strategies should be considered for all modes. The FHWA and the FTA find this term, for practical purposes, to be the same as the term Transportation System Management and Operations currently commonly in use by agencies involved with transportation. We have chosen to continue using the term ''operational and management strategies'' as that is the term used in SAFETEA–LU.

Several State DOTs, MPOs and COGs and some national and regional advocacy organizations and transit agencies also asked for clarification of the term ''operations and maintenance.'' The terms ''operations'' and ''maintenance'' are used in these regulations as defined in 23 U.S.C. 101. Therefore, we have not repeated the definitions here.

A proposal was offered to define the term ''project construction grant agreement'' to clarify this term in the rule. This definition has been added to this section.

After further review, we have determined it is necessary to clarify the definition of ''project selection'' to emphasize these are procedures used by MPOs, States, and public transportation operators.

Based on comments, we have changed the term ''business'' in the definition of ''provider of freight transportation services'' to ''entity.'' Freight transportation providers may include other concerns besides businesses.

A proposal was offered to define the term ''public transportation operator'' to clarify this term in the rule. This definition has been added to this section.

Several State DOTs and MPOs and COGs as well as some transit agencies and national and regional advocacy organizations noted that the definition of ''regionally significant project'' should not include a reference to ''all capacity expanding projects.'' After consultation with the EPA, the FHWA and the FTA have changed this definition to be consistent with the EPA's transportation conformity rule (40 CFR 93.101).

Several of the State DOTs, many transit agencies, and a few of the national advocacy organizations and MPOs and COGs commented that the word ''overarching'' in the definition of ''Regional Transit Security Strategies'' was ambiguous. Other MPOs and COGs, transit agencies and national and regional advocacy organizations wrote that the definition was overly specific without defining who would be held responsible to develop the strategy and also expressed concern about possible disclosure of security-sensitive information in the planning process. Subsequent to publication of the NPRM, the FHWA and the FTA determined that the Department of Homeland Security does not require Regional Transit Security Strategies in all metropolitan areas, at all times. As a result, this term has been removed from this section and references to the term in § 450.208(h), § 450.214(e), and § 450.306(g) also have been removed from the rule. Alternatively, this language has been replaced, in these sections, with a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.''

The docket included several comments regarding the definitions for ''revision,'' ''amendment,'' ''administrative modification,'' and ''update.'' The definition of ''revision'' has been revised to use the terms ''major'' and ''minor'' rather than ''significant'' and ''non-significant,'' consistent with the comments received and changes to the related terms.

A State DOT commented on the definition of ''State implementation plan (SIP).'' After consultation with EPA, this definition was revised to cite applicable sections of the Clear Air Act and to be consistent with the definition in the Clean Air Act and EPA's conformity rule (40 CFR 93.101) for ''applicable implementation plan.''

The docket included a comment requesting clarification of the term ''staged'' in the definition for

''Statewide transportation improvement program (STIP).'' We have clarified this definition to describe the STIP as a ''prioritized listing/program'' and to reiterate that it must cover a period of four years. Similar changes were made to the definition of ''Transportation improvement program (TIP).''

Some State DOTs and a national and regional advocacy organization suggested that the reference to ''in order to meet the regular schedule as prescribed by Federal statute'' be removed from the definition of ''Update.'' A few MPOs and COGs questioned what would constitute an ''update'' and what was meant by ''complete change.'' We agree with these concerns, have removed these phrases and revised and simplified this definition to ''Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review.'' Based on comments, we note in this definition that an ''update'' requires a 20-year horizon year for metropolitan transportation plans and long-range statewide transportation plans and a four-year program period for TIPs and STIPs.

Several MPOs and other organizations asked for clarification of the term ''visualization.'' The FHWA and the FTA have changed ''employed'' to ''used'' in the ''Visualization techniques'' definition. Further, we agree that there is a need for more technical information on the use of visualization techniques and we intend to provide technical reports and guidance subsequent to the publication of this rule.

Proposals were offered to define the terms ''advanced construction,'' ''encouraged to,'' ''intercity bus,'' ''interested parties,'' ''MPO staff,'' ''public transportation provider,'' ''reasonable access,'' ''shall,'' and ''should.'' The FHWA and the FTA believe these terms are generally well understood and do not require additional detail.

Subpart B—Statewide Transportation Planning and Programming

Section 450.200 Purpose

No comments were received on this section and no changes were made.

Section 450.202 Applicability

No comments were received on this section and no changes were made.

Section 450.204 Definitions

No comments were received on this section and no changes were made.

Section 450.206 Scope of the Statewide Transportation Planning Process

There were more than 20 separate comments on this section with the most coming from State DOTs, followed by national and regional advocacy organizations. A small number of comments came from MPOs and COGs and providers of public transportation.

In comments on this section and § 450.306 (Scope of the metropolitan transportation planning process), many MPOs and COGs, some national and regional advocacy organizations and a few State DOTs noted that paragraph (a)(3) embellished the statutory language for the ''security'' planning factor. Organizations that commented on this issue were concerned that the expanded language would require State DOTs and MPOs to go far beyond their traditional responsibilities in planning and developing transportation projects, which was not intended by the SAFETEA-LU. The FHWA and the FTA agree and have revised the language in paragraph (a)(3) to match the language in statute.

Most of the State DOTs and several of the national and regional advocacy organizations that commented on this section said that the text in paragraph (b) should be revised similar to the text in the October 1993 planning rule acknowledging that the degree of consideration will reflect the scale and complexity of issues within the State. The FHWA and the FTA agree with these comments and have revised the rule accordingly. We have adopted the October 1993 planning rule language with one change. The phrase ''transportation problems'' was changed to ''transportation systems development.''

After further review, we have clarified paragraph (c) to be more specific and to mirror the language in 23 U.S.C. 135(d)(2) and 49 U.S.C. 5304(d)(2). The paragraph now specifically refers to ''any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7'' and to the ''statewide transportation'' planning process finding.

A small number of national and regional advocacy organizations and State DOTs that commented on this section said they would like the FHWA and the FTA to develop and/or encourage the use of performance measures when State DOTs consider the planning factors listed in this section. While the FHWA and the FTA encourage the use of performance measures, the flexibility afforded the State DOTs and MPOs in implementing the transportation planning process gives them wide latitude to develop a process that is appropriate for their jurisdiction. We believe this issue is best addressed in guidance and technical assistance.

Section 450.208 Coordination of Planning Process Activities

There were almost 100 separate comments on this section mostly from State DOTs, followed by national and regional advocacy organizations. A number of comments came from MPOs and COGs with a small number from public transportation providers or Federal agencies.

In some of the comments from national and regional advocacy organizations, MPOs and COGs, and others, the FHWA and the FTA were asked to expand the scope of the transportation planning process to include a variety of other issues and concerns. In response to these comments, we have added ''at a minimum'' to paragraph (a) to emphasize the flexibility for State DOTs to include more in their statewide transportation planning process than is listed in this section.

Several MPOs and COGs that had comments on this section suggested clarification of paragraph (a)(1) regarding the State's use of information and studies provided by MPOs. The text from this paragraph in part carries forward but simplifies text from 23 CFR 450.210 of the October 1993 planning rule. The FHWA and the FTA find that the language provides reasonable flexibility to respond to different circumstances while reinforcing the importance of information and technical studies as a foundation in transportation planning. No changes were made to this paragraph.

Many of the State DOTs that commented on this section indicated that coordination referenced in paragraph (a)(2) should not extend to private businesses. At the same time, many of the MPOs, COGs and national and regional advocacy organizations, as well as a public transportation provider that commented on this section wrote in support of the section and some requested that ''consult'' replace ''coordinate.''

The requirements in this paragraph come from the statutory language; therefore, no change was made. The FHWA and the FTA want to provide State DOTs flexibility to determine how to coordinate with statewide trade and economic planning activities and the level or coordination that needs to take place within the planning process. The

FHWA has made available information related to Public-Private Partnership opportunities, including analyses of contractual agreements formed between public agencies and private sector entities, on its Web site at: *http://www.fhwa.dot.gov/ppp/*. If necessary, we will provide guidance subsequent to the rule if more clarity is needed regarding this coordination.

Many of the State DOTs that commented on this section said that coordination in paragraph (a)(3) exceeds the requirement in the statute. At the same time, several of the national and regional advocacy organizations and a Federal agency commented in support of the language in the proposed rule. The FHWA and the FTA find that the proposed language does exceed the intent of the statute, and have revised the rule to more closely reflect the statutory language, by changing ''coordinate planning'' to ''consider the concerns of.''

Many of the State DOTs that commented on this section suggested placing the word ''affected'' before ''local elected officials'' in paragraph (a)(4). At the same time, some of the MPOs and COGs and national and regional advocacy organizations that provided comments on this section suggested changing ''consider'' to ''consult,'' which is used in § 450.210 (Interested parties, public involvement, and consultation). The text follows the statutory language. The FHWA and the FTA considered both groups of comments and determined that using the statutory language for this paragraph without amplification best meets the intent of the statute.

Many of the State DOTs that commented on this section said that the text in paragraph (a)(6) should follow the statutory language (23 U.S.C. 135(e)(1)(3) and 49 U.S.C. 5304(e)(1)(3)). The FHWA and the FTA agree and revised the rule accordingly.

Several of the State DOTs that commented on this section objected to the phrase ''establish a forum'' in paragraph (a)(7), while a smaller number supported the text. The FHWA and the FTA want to emphasize the importance of information and technical studies as a foundation in transportation planning. While there is no statutory basis to require ''establish[ing] a forum,'' this paragraph has been revised to more closely reflect the intent from § 450.210(a)(1) and (a)(3) of the October 1993 rule regarding coordination of data collection and analyses with MPOs and public transportation operators.

After further review, the FHWA and the FTA have modified the last sentence of paragraph (c) to be consistent with 23 U.S.C. 135(c)(2) and 49 U.S.C. 5304(c)(2) regarding multistate agreements and compacts.

Many of the State DOTs and a few of the national and regional advocacy organizations that provided comments on this section said the text in paragraphs (e) and (f) went beyond statutory requirements. The FHWA and the FTA agree with these comments and revised the rule accordingly by changing ''are encouraged to'' to ''may'' in paragraph (e) and adding ''to the maximum extent practicable'' to paragraph (f).

Most transit agencies, several State DOTs, MPOs, COGs, and others that commented on this section expressed concern or confusion about the requirement in paragraph (g) for the statewide transportation planning process to be consistent with the development of coordinated public transit-human services transportation plans. Several commenters requested the addition of procedural detail on the coordinated public transit-human services transportation plan, including geographic scope, approval authority, and determination of lead agency. Some commenters recommended removing the requirement entirely. We also received a comment questioning whether metropolitan and statewide transportation planning processes should be consistent with the coordinated public transit-human services transportation plan, or vice versa.

To ensure maximum flexibility for localities to undertake a coordinated planning process that may be uniquely tailored to their area, we have not included additional detailed requirements in the rule. The FHWA and the FTA will disseminate non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance, on the coordinated public transit-human services transportation plan. The definition of the coordinated public transit-human services transportation plan was changed to be consistent with that used in the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs (New Freedom Program Guidance And Application Instructions, The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions, Elderly Individuals And Individuals With Disabilities Program Guidance And Application Instructions) respectively, published on September 6, 2006.[6] Additionally, provisions for promoting consistency between the planning processes were revised to clarify that the coordinated public transit-human services transportation plan should be prepared in full coordination and be consistent with the metropolitan transportation planning process. The revisions also are intended to add flexibility in how the coordinated transportation plans would be prepared.

Many of the State DOTs, several transit agencies, and a few of the national and regional advocacy organizations that provided comments on this section, said the text in paragraph (h) went beyond statutory requirements. Several transit agencies and a few State DOTs and others suggested deleting paragraph (h) due to the confidential nature of Regional Transit Security Strategies (RTSS). An RTSS is not required of all metropolitan areas and States across the U.S. Reference to the RTSS was removed from paragraph (h). Instead, we have added a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.''

Section 450.210 Interested Parties, Public Involvement, and Consultation

The docket included 33 documents that contained about 60 comments on this section, with many from State DOTs, national and regional advocacy organizations and MPOs and COGs.

Many of the State DOTs and some of the national and regional advocacy organizations said that State DOTs should not be required to document the public involvement process. The FHWA and the FTA find that an essential element of an effective public involvement process is the opportunity for the public to understand when, how, and where public comment can occur. It is important to open, effective public involvement that the process be documented and available for public review. Therefore, we have retained the requirement for a documented public involvement process.

Some of the MPOs and some of the national and regional advocacy organizations said they would like to expand the list of interested parties in paragraph (a)(1)(i). Representatives of private bus operators requested specific mention in the regulation.

[6] These documents, ''Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute,'' and ''New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars'' were published September 6, 2006, and are available via the internet at the following URL: *http://www.fta.dot.gov/publications/publications_5607.html.*

The list of interested parties in the regulation is consistent with 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A), as amended by the SAFETEA-LU, and is sufficiently broad to encompass and have relevance to all of the suggested additional parties. The list illustrates groups that typically have an interest in statewide transportation planning, but does not preclude States from providing information about transportation planning to other types of individuals or organizations. The FHWA and the FTA note that 49 U.S.C. 5307(c) requires grant recipients to make available to the public information on the proposed program of projects and associated funding.

Specifically in regard to MPOs, States shall coordinate with MPOs under § 450.208 (Coordination of planning process activities). Therefore, a reference to MPOs here would be redundant and potentially confusing since this section does not require coordination with interested parties. No change was made to add MPOs to this paragraph.

Many of the State DOTs and some of the national and regional advocacy organizations also said that State DOTs should not be required to document the non-metropolitan local official consultation process. The rule does not change the regulations published in the **Federal Register** on January 23 (68 FR 3176) and February 14, 2003 (68 FR 7418) regarding consultation with non-metropolitan local officials. Those regulations were developed based on significant review and comment by State DOTs and non-metropolitan local officials and their representatives. At that time most State DOTs and national and regional advocacy organizations supported the regulations. Therefore, the only change we have made to paragraph (b) is to change ''revisions'' to ''changes,'' since ''revision'' is now specifically defined in the rule and, by that definition, is not an appropriate term for this paragraph.

Some of the State DOTs and some national and regional advocacy organizations said that the text encouraging State DOTs to document their process for consulting with Indian Tribal Governments should be eliminated. The commenters believe that documenting this consultation process goes beyond requirements in statute. We disagree. The FHWA and the FTA support efforts to consult with Indian Tribal governments and find that documentation of consultation processes are essential to a party's ability to understand when, how, and where the party can be involved. Upon further consideration, to strengthen the involvement of Indian Tribal governments in the statewide transportation planning process, we have changed paragraph (c) from ''States are encouraged to'' to ''States shall, to the extent practicable.''

Section 450.212 Transportation Planning Studies and Project Development

Section 1308 of the TEA–21 required the Secretary to eliminate the major investment study (MIS) set forth in § 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 analysis 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. The purpose of this section and § 450.318 (Transportation planning studies and project development) is to implement this requirement of Section 1308 of the TEA–21 and eliminate the MIS as a stand-alone requirement. A phrase has been added to paragraph (a) to clarify the purpose of this section.

The docket included more than 20 documents that contained more than 50 comments on this section with about two-thirds from State DOTs and the rest from MPOs or COGs, and national and regional advocacy organizations. The comments on this section were similar to, and often referenced, the comments on § 450.318 (Transportation planning studies and project development).

Most of the comments received supported the concept of linking planning and NEPA but opposed including Appendix A in the rule. The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. Appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. Because Appendix A provides amplifying information about how State DOTs, MPOs and public transportation operators can choose to conduct transportation planning-level choices and analyses so they may be adopted or incorporated into the process required by NEPA, but does not impose new requirements, the FHWA and the FTA find that Appendix A is useful information to be included in support of this and other sections of the rule. A phrase has been added to paragraph (c) to clarify this point. Additionally, we have added disclaimer language at the introduction of Appendix A.

The FHWA and the FTA recognize commenters' concerns about Appendix A, including the recommendation that this information be kept as guidance rather than be made a part of the rule. First, information in an Appendix to a regulation does not carry regulatory authority in itself, but rather serves as guidance to further explain the regulation. Secondly, as stated above, Section 1308 of TEA–21 required the Secretary to eliminate the MIS as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the transportation planning process. Appendix A fulfills that Congressional direction by providing explanatory information regarding how the MIS requirement can be integrated into the transportation planning process. Inclusion of this explanatory information as an Appendix to the regulation will make the information more readily available to users of the regulation, and will provide notice to all interested persons of the agencies' official guidance on MIS integration with the planning process. Attachment of Appendix A to this rule will provide convenient reference for State DOTs, MPOs and public transportation operator(s) who choose to incorporate planning results and decisions in the NEPA process. It will also make the information readily available to the public. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of Appendix A in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects. For the reasons stated above, after careful consideration of all comments, the FHWA and the FTA have decided to attach Appendix A to the final rule as proposed in the NPRM.

Most State DOTs and several MPOs and COGs, and national and regional advocacy organizations that commented on this section were concerned that the language in paragraph (a) is too restrictive. The FHWA and the FTA agree that planning studies need not ''meet the requirements of NEPA'' to be incorporated into NEPA documents. Instead, we have changed the language in paragraph (a) to ''consistent with'' NEPA. In addition, we have added the phrase ''multimodal, systems-level'' before ''corridor or subarea'' to emphasize the ''planning'' venue for environmental consideration.

Commenters on this section also requested that the rule clarify that the State DOT has the responsibility for conducting corridor or subarea studies in the statewide transportation planning

process. The FHWA and the FTA recognize that the State DOT is responsible for the statewide transportation planning process. However, we do not want to preclude MPOs or public transportation operators, in consultation or jointly with the State DOT, from conducting corridor or subarea studies. Therefore, we have changed paragraph (a) to add the sentence ''To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s).''

Some State DOTs suggested incorporating planning decisions rather than documents into the NEPA process. The FHWA and the FTA find that decisions made as part of the planning studies may be used as part of the overall project development process and have changed paragraph (a) to include the word ''decisions'' as well as ''results.'' It is important to note, however, that a decision made during the transportation planning process should be presented in a documented study or other source materials to be included in the project development process. Documented studies or other source materials may be incorporated directly or by reference into NEPA documents, as noted in § 450.212(b). We have added ''or other source material'' to paragraph (b) to recognize source materials other than planning studies may be used as part of the overall project development process.

It is important to note that this section does not require NEPA-level evaluation in the transportation planning process. Planning studies need to be of sufficient disclosure and embrace the principles of NEPA so as to provide a strong foundation for the inclusion of planning decisions in the NEPA process. The FHWA and the FTA also reiterate the voluntary nature of this section and the amplifying information in Appendix A. States, transit operators and/or MPOs may choose to undertake studies which may be used in the NEPA process, but are not required to do so.

Several State DOTs and national and regional advocacy organizations were concerned about the identification and discussion of environmental mitigation. They did not believe that detail on environmental mitigation activities was appropriate in the transportation planning process. The FHWA and the FTA agree. Paragraph (a)(5) calls for ''preliminary identification of environmental impacts and environmental mitigation.'' The FHWA and the FTA believe that the term ''preliminary'' adequately indicates that State DOTs are not expected to provide the same level of detail on impacts and mitigation as would be expected during the NEPA process.

Based on comments on Appendix A, we added the phrase ''directly or'' in paragraph (b), to indicate the use of publicly available planning documents for subsequent NEPA documents.

Also based on comments on Appendix A, we added the phrase ''systems-level'' in paragraph (b)(2), to emphasize that these corridor or subarea studies are conducted during the planning process at a broader scale than project specific studies under NEPA.

Several State DOTs and many others who submitted comments on this section noted that the word ''continual'' in paragraph (b)(2)(iii) provides the public with more opportunity to comment than is necessary. We agree and have replaced ''continual'' with ''reasonable'' in this paragraph, consistent with the terminology in § 450.316(a) (Interested parties, participation and consultation). Also in paragraph (b)(2)(iii) a number of commenters noted that the paragraph references the metropolitan transportation planning process when it should reference the statewide transportation planning process. This change has been made.

Several State DOTs and a national and regional advocacy organization suggested adding a ''savings clause'' in a new paragraph. A savings clause would lessen the likelihood that the new provisions regarding corridor or subarea studies would have unintended consequences. The specific elements requested to be included in the ''savings clause'' were statements that: (a) The corridor and subarea studies are voluntary; (b) corridor and subarea studies can be incorporated into the NEPA process even if they are not specifically mentioned in the long-range statewide transportation plan; (c) corridor and subarea studies are not the sole means for linking planning and NEPA; and (d) reiterate the statutory prohibition on applying NEPA requirements to the transportation planning process. The concepts recommended in the ''savings clause'' all reiterate provisions found elsewhere in the rule or statute. The FHWA and the FTA do not agree that it is necessary to repeat those provisions in this section.

The docket included a comment that corridor or subarea studies should be required, not voluntary, to be included in NEPA studies. Given the opposition to requiring NEPA-level analysis in the transportation planning process, the FHWA and the FTA find that the permissive nature of this section and Appendix A strikes the appropriate balance.

The docket also included a question asking what needs to be included in an agreement with the NEPA lead agencies to accomplish this integration. The FHWA and the FTA have determined that identification of what information appropriately belongs in the agreement should be disseminated as non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance. No change was made to the rule. We have not required that corridor or subarea studies be included or incorporated into NEPA studies.

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

The docket included approximately 50 documents that contained about 50 comments on this section with about one-third from State DOTs, one-half from national and regional advocacy organizations, and the rest from MPOs and COGs, city/county/State agencies, general public and transit agencies.

Many comments were received regarding the comparison of transportation plans with conservation plans. According to statute (23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D)), for long-range statewide transportation plans, comparison must be made to both conservation plans and inventories of natural/historic resources; whereas language relating to metropolitan transportation plans (23 U.S.C. 134(i)(4)(B) and 49 U.S.C. 5303(i)(4)(B)) requires comparison to State conservation plans/maps or comparison to inventories of natural or historic resources. The rule language is consistent with what is in statute. Therefore, no changes were made to the rule language.

A few comments were received pertaining to the lack of a required financial plan for the long-range statewide transportation plan. Most of the MPOs and COGs and several of the national and regional advocacy organizations were in favor of adding this requirement. One State DOT voiced opinion that this should remain an option, but not be mandated.

The FHWA and the FTA agree that the long-range statewide transportation plan may include a financial plan. This optional financial plan is different from the fiscal constraint requirement for the STIP. This financial plan is a broad look at the future revenue forecast and strategies needed to fund future projects over a 20-year horizon. However, the

SAFETEA-LU made it clear that the financial plan should not be required for a long-range statewide transportation plan. Therefore, no change was made to the rule.

A few comments were received stating that the 20-year horizon for the long-range statewide transportation plan should only be required as of the effective date of the plan adoption, which would be similar to language used for the effective date of the metropolitan transportation plan. The FWHA and the FTA agree with this comment and have added ''at the time of adoption'' to paragraph (a).

DOT Congestion Initiative: On May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation. The intent of the ''National Strategy to Reduce Congestion on America's Transportation Network'' [7] is to provide a blueprint for Federal, State and local officials to tackle congestion. The States and MPO(s) are encouraged to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages States to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie ups, designates new interstate ''corridors of the future,'' targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages the State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The U.S. DOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

To encourage States to address congestion in the long-range statewide transportation plan, the following sentence was added to paragraph (b): ''The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's transportation system.''

[7] This document, ''An Overview of the National Strategy to Reduce Congestion on America's Transportation Network'' dated May, 2006, is available via the internet at the following URL: *http://www.fightgridlocknow.gov.*

Several comments were received stating that the security requirements of paragraph (e) go beyond what was intended in the SAFETEA-LU. Based on these comments, the concern for possible disclosure of security-sensitive information in the planning process and the determination that a Regional Transit Security Study is not required universally of all metropolitan areas and States, this reference has been removed from the rule and instead we have added a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.'' Several commenters also were concerned about the distinction between ''homeland'' and ''personal'' security in the planning factors found at § 450.206 (Scope of the statewide transportation planning process). This distinction has been removed from § 450.206 (Scope of the statewide transportation planning process) and § 450.306 (Scope of the metropolitan transportation planning process).

Some State DOTs and a few advocacy organizations commented that ''types of'' should be added to the discussion of potential environmental mitigation activities requirement in paragraph (j) to emphasize the policy or strategic nature of these discussions. The rule language is consistent with statute (23 U.S.C. 135(f)(4) and 49 U.S.C. 5304(f)(4)), therefore this change was not made. However, we have added a sentence to this paragraph recognizing that long-range statewide transportation plans may focus on ''policies, programs, or strategies, rather than at the project level.'' The last sentence of this paragraph was also deleted because Appendix A does not provide additional information relevant to the subject of this paragraph.

In paragraph (l), in response to comments from State DOTs, national and regional advocacy organizations and several others, we have added the phrase ''but is not required to.'' The purpose of this addition is to reinforce that the financial plan is not required to include illustrative projects. We also corrected the language in the last sentence: ''were available'' was changed to ''were to become available.''

Several State DOTs and a few national and regional advocacy organizations requested in regard to paragraph (p) that long-range statewide transportation plans be provided to the FHWA and the FTA only when ''amended'' not ''revised.'' We agree and have made this change.

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

The FHWA and the FTA received over 100 separate comments on this section with the most from State DOTs followed by national and regional advocacy organizations. MPOs and COGs, local governments and public transportation providers also provided comments on this section.

Several State DOTs and national and regional advocacy organizations and a few MPOs and COGs said in regards to paragraph (a) that State DOTs should be allowed to have a statewide transportation improvement program (STIP) of more than four years where the additional year(s) are not illustrative.

The four-year scope is consistent with the time period required by the SAFETEA-LU. While State DOTs are not prohibited from developing STIPs covering a longer time period, in accordance with statute, the FHWA and the FTA can only recognize and take subsequent action on projects included in the first four years of the STIP. State DOTs may show projects as illustrative after the first four years, as well as in the long-range statewide transportation plan. Therefore, no change was made to this section of the rule.

After consultation with EPA and in response to comments from a few national and regional advocacy organizations, the language in paragraph (b) has been changed to clarify that projects in the ''donut areas'' of a nonattainment or maintenance area must be included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP. The transportation conformity rule (40 CFR part 93) covers the requirements for including projects in the ''donut area'' in the regional emissions analysis.

A public transportation provider said in regard to paragraph (g) that security projects should be added to the list of projects exempted from listing in the STIP. Because security projects are often funded with title 49 U.S.C. Chapter 53 or title 23 U.S.C. funds, they must be included in the STIP. No change was made to this paragraph.

However, after further review, the FHWA and the FTA have determined it is appropriate to remove the phrase ''federally supported'' from the beginning of paragraph (g) because it is redundant. The paragraph already requires projects to be included if they are funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53. We have also changed paragraph (g) to allow the

inclusion of the exempted projects, but do not require that they be included. Further, we have added ''Safety projects funded under 23 U.S.C. 402'' to paragraph (g)(1) to be consistent with the October 1993 planning rule.

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240), fiscal constraint has remained a prominent aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information and additional criteria. Given the level of controversy regarding Appendix B, it has been removed from the rule. Therefore, the sentence referencing Appendix B in paragraph (l) has been deleted.

Many State DOTs and several national and regional advocacy organizations commented in regard to paragraph (h), that they should not have to demonstrate financial constraint for projects included in the STIP funded with non-FHWA and non-FTA funds. However, this requirement is consistent with and carries forward the requirement that was implemented with the October 1993 planning rule. In addition, for informational purposes and air quality analysis in nonattainment and maintenance areas, regionally significant non-Federal projects shall be included in the STIP. Therefore, the FHWA and the FTA have retained this portion of paragraph (h). We have, however, simplified the paragraph slightly to combine the last two sentences.

Most State DOTs and national and regional advocacy organizations that commented on this section, recommended in regards to paragraph (i) that after the first year of the STIP, only the ''likely'' or ''possible'' (rather than ''proposed'') categories of funds should be identified by source and year. The FHWA and the FTA agree with this suggestion, with the exception of projects in nonattainment and maintenance areas for which funding in the first two years must be available or committed. Paragraph (i)(3) has been changed to specifically reference the amount of ''Federal funds'' proposed to be obligated and to identify separate standards for the first year and for the subsequent years of the STIP.

One of the features of Appendix B that the FHWA and the FTA find merits inclusion in the rule is ''year of expenditure dollars.'' The following has been added to paragraph (l): ''Revenue and cost estimates for the STIP must use an inflation rate(s) to reflect 'year of expenditure dollars,' based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.'' This language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars.'' We recognize that it might take some time for State DOTs and MPOs to convert their metropolitan transportation plans, STIPs and TIPs to reflect this requirement. Therefore, we will allow a grace period until December 11, 2007, during which time State DOTs and MPOs may reflect revenue and cost estimates in ''constant dollars.'' After December 11, 2007, revenues and cost estimates must use ''year of expenditure'' dollars. This requirement is consistent with the January 27, 2006, document ''Interim FHWA Major Project Guidance.''[8] Please see the responses to the comments on Appendix B to the NPRM for additional background information and explanation. In addition, to reinforce that the financial plan is not required to include illustrative projects, we have added the phrase ''but is not required to'' to this paragraph. Finally, we have deleted the reference to Appendix B in this paragraph because Appendix B is not included as part of this rule.

Regarding paragraph (m), many State DOTs, national and regional advocacy organizations and a few MPOs and COGs questioned having to demonstrate their ability to adequately operate and maintain the entire transportation system. The FHWA and the FTA have revised paragraph (m) to delete the phrase ''while the entire transportation system is being adequately operated and maintained.'' Instead, we have added ''while federally-supported facilities are being adequately operated and maintained.'' Further, as discussed in the response to the comments on Appendix B, we have added to this paragraph: ''For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).''

Many State DOTs and several national and regional advocacy organizations said regarding paragraph (m) that State DOTs should not have to demonstrate financial constraint in the STIP by year or by source of funding. Based on nearly 13 years of implementing this requirement, the FHWA and the FTA consider demonstrating funding by year necessary for decision-makers and the public to have confidence in the STIP as financially constrained. This change was not made. The specific reference to ''by source'' has been removed. However, the requirement for State DOTs to identify strategies for ensuring the availability of any proposed funding sources is retained. Please see the responses to the comments on Appendix B for additional background information and explanation as to why we have included this language in § 450.216.

After further review, the FHWA and the FTA determined that paragraph (n) is redundant. The same information is included in paragraph (b). Therefore, paragraph (n) was removed.

One State DOT and one local agency said that the regulation should include language emphasizing and expanding bicycle and pedestrian program guidance. The FHWA and the FTA find that the language in the guidance documents issued by the FHWA and the FTA on February 6, 2006,[9] is sufficient to address bicycle and pedestrian needs without being raised to the level of regulatory language.

Many State DOTs and national and regional advocacy organizations that provided comments on this section said in regards to paragraph (o) (now paragraph (n)), that all changes that affect fiscal constraint should not require an amendment. We have slightly modified the paragraph to remove ''all'' from the last sentence, but note that this change does not remove the requirement that any change that affects fiscal constraint requires an amendment. By definition, an amendment is ''a revision that requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for 'non-exempt' projects in nonattainment and maintenance areas). (See § 450.104 (Definitions)).

[8] This document, ''Interim FHWA Major Project Guidance,'' dated January 27, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/programadmin/mega/012706.cfm.*

[9] The guidance memo entitled ''Flexible Funding for Highway and Transit and Funding for Bicycle and Pedestrian Programs,'' dated February 6, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/hep/flexfund.htm.*

The FHWA and the FTA note that nearly all comments on § 450.324 (Development and content of the transportation improvement program (TIP)) regarding the question posed in the preamble of the NPRM ''whether the FHWA and the FTA 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'' opposed a change. Almost all commenters mentioned that such a change would require reviewing the financial assumptions for the entire program, thereby causing an undue burden. Commenters suggested showing financial constraint only for the incremental change. The same question was posed in this section of the NPRM. Although commenters did not respond to the question in comments on this section, based on the comments on § 450.324 no change was made to the rule. However, the FHWA and the FTA are concerned for the potential impact of individual amendments on the funding commitments and schedules for the other projects in the STIP. For this reason, the financial constraint determination occasioned by the STIP amendment will necessitate review of all projects and revenue sources in the STIP. The FHWA and the FTA will address any concerns on this issue through subsequent guidance.

Many State DOTs, MPOs and COGs as well as some national and regional advocacy organizations and a few public transportation providers and local government agencies asked for clarification on fiscal constraint if the financial situation in the State or metropolitan region changes. The FHWA and the FTA have added a new paragraph (o) to clarify that where a revenue source is removed or substantially reduced after the FHWA and the FTA find a STIP to be fiscally constrained, the FHWA and the FTA will not withdraw its determination of fiscal constraint but that the FHWA and the FTA will not act on an updated or amended STIP which does not reflect the changed revenue situation.

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

The docket included about 20 documents that contained approximately 30 comments on this section with about one-half from State DOTs, one-quarter from national and regional advocacy organizations, and the rest from MPOs and COGs, and city/county governments.

Several comments were made under this section that should have referenced 450.220(e) and the question posed in the preamble to the NPRM ''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 and whether a STIP amendment should be required to move projects between years in the STIP if an 'agreed to' list is required for each year.'' These comments have been reflected in the discussion of and final language for § 450.220(e).

Many commenters, including almost all State DOTs, in regards to paragraph (a), asserted their belief that the October 1993 planning rule requires joint FHWA and FTA approval of STIP amendments only ''as necessary'' so that, in most cases, either the FHWA or the FTA could approve the amendment. This is not the case. The October 1993 planning rule at 23 CFR 450.220(a) did require joint approval for all new STIPs and STIP amendments ''as necessary.'' The FHWA and the FTA have reviewed this requirement and determined that joint approval remains necessary. However, we note that through the internal Planning Collaboration Initiative, the FHWA and the FTA have developed a number of streamlined internal processes and agreements to expedite review and approval of STIP amendments. Based on these agreements and experience with the current regulation, we do not believe requiring joint approval will slow down the approval process or impose new workloads on the FHWA and the FTA. Joint approval of STIP amendments is necessary as part of our stewardship and oversight responsibility.

We have clarified paragraph (a) to specifically state that ''STIP amendments shall also be submitted to the FHWA and the FTA for joint approval'' and that ''at the time the entire STIP or STIP amendment is submitted,'' the State shall certify the planning process is being carried out in accordance with requirements.

After further review of this section, the FHWA and the FTA have updated the list of applicable requirements in paragraph (a). Reference to ''23 CFR parts 200 and 300 have been removed'' from paragraph (a)(2). Instead, a more specific reference to ''23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts'' was added as paragraph (a)(5). This is the specific portion of 23 CFR parts 200 and 300 that needs to be reviewed and is not related to Title VI of the Civil Rights Act of 1964 in paragraph (a)(2). In addition, we have added a new paragraph (a)(3) ''49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity.'' Upon further review of this section, the FHWA and the FTA determined that 49 U.S.C. 5332 should be included in this list of requirements.

Several comments to the docket expressed concern regarding the need for approval of the STIP when submitted to the FHWA and the FTA. While we still require joint approval, we have revised paragraph (b) to delete the proposed time frames of ''every four years'' or ''at the time the amended STIP is submitted.'' We will also make a joint finding on the ''STIP,'' rather than ''the projects in the STIP.''

Some commenters raised questions regarding the authority in paragraph (c) for the FHWA and the FTA approval of a STIP to continue for up to 180 days under extenuating circumstances even though a State has missed the deadline for its four-year update. Several comments suggested that the 180 calendar day limit for STIP extensions should be expanded and most supported not putting any time limit on the STIP extension period. At the same time, some national and regional advocacy organizations opposed allowing any STIP extensions. This provision has been in the planning regulations since the original rule relating to STIPs was adopted in October 1993, following the enactment of the ISTEA. Although the statute specifies that STIPs shall be updated every four years, Congress did not specify any consequences of missing this deadline by failing to complete the update within the specified period. Because Congress was silent on the consequences of the failure to update the STIP within the four-year period, the FHWA and the FTA have some latitude in interpreting Congress' intent. This discretion is further manifested in the statute by the fact that the FHWA and the FTA are given responsibility to approve the STIP (23 U.S.C. 135(g)(6) and 49 U.S.C. 5304(g)(6)). Since the October 1993 planning rule, the FHWA and the FTA have interpreted the update requirement strictly, believing that Congress intended the process to work on a regular cycle, and that regular updates were essential to the viability of the transportation planning process. Therefore, we have concluded that approval of the STIP should only continue past the update time period specified in statute when there are extenuating circumstances beyond the control of the State DOT that causes it to miss its update deadline.

Examples of extenuating circumstances include (but are not limited to): (a) late action by the Governor or State legislature on revenue that was reasonably expected to be available for transportation projects in the STIP, whereby instances have occurred when the STIP was nearing the completion of the update process (public review and comments had been received), but just before adoption the funding was severely restricted, thus a new update process (based on new fiscal constraint reality) needed to be commenced; or (b) disasters, both natural and man-made, have caused States to divert both funding and staff resources away from the STIP update process.

Further, the FHWA and the FTA believe that such an approval cannot extend indefinitely, but only be of limited duration (i.e., 180 calendar days). Therefore, we have retained the provision in paragraph (c) for an extension of the STIP update under extenuating circumstances. However, paragraph (c) has been slightly modified to clarify that, while the FHWA and the FTA approval may continue for a limited period of time based on extenuating circumstances, the statutory deadline for the update has not been changed. We have also clarified that the 180-day period refers to ''calendar days.''

Many comments were received questioning why the existing flexibility to maintain or establish operations for highway operating assistance was eliminated here and in § 450.328 (TIP actions by the FHWA and the FTA). This was an erroneous omission in the NPRM and the language has been restored to correct this error.

A small number of national and regional advocacy organizations expressed concern that the rule does not provide enough detail on the standards that the FHWA, the FTA and State DOTs should apply in making a statewide planning finding. We believe that the entire context of the rule and of the statute sufficiently identify the criteria to be used in making a finding that the transportation planning process meets or substantially meets these requirements. We do not believe additional detail is required in the rule. However, if necessary, the FHWA and the FTA will provide non-regulatory guidance, training and technical assistance.

Section 450.220 Project Selection From the STIP

The docket included 20 documents that contained about 20 comments on this section. The majority of the comments were from State DOTs. MPOs and COGs, as well as transit agencies, city/county governments, and national and regional advocacy groups, also provided comments.

All of the comments pertained to the two questions posed in the preamble to the NPRM: ''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'' and ''whether a STIP amendment should be required to move projects between years in the STIP, if an 'agreed to' list is required for each year.'' Predominantly, comments asserted that requiring a State DOT or MPO to submit an agreed-to list at the beginning of each of the four years of the TIP/STIP or requiring an amendment to move projects between years in the STIP unnecessarily limited flexibility and thus should not be a requirement. The FHWA and the FTA agree with the majority of the comments. Therefore, no change was made to the rule language.

We have clarified paragraph (b) to indicate that project selection shall be made according to procedures provided in § 450.330 (Project Selection From the TIP).

Section 450.222 Applicability of NEPA to Statewide Transportation Plans and Programs

The docket includes very few comments on this section. One concern expressed is that this section or Appendix A would make planning reviewable under NEPA. The purpose of this section, however, is to reiterate the statutory provisions that clearly say that the statewide transportation planning process decisions are not subject to review under NEPA. We have changed this section to mirror the language in 23 U.S.C. 135(j) and 49 U.S.C. 5304(j).

Section 450.224 Phase-In of New Requirements

The docket included 30 documents that contained almost 100 comments on this section with about half from State DOTs, one-fifth from national and regional advocacy organizations, one-fifth from MPOs and COGs, and the rest from city/county/State agencies.

All comments received indicated that it will be difficult to meet the SAFETEA–LU July 1, 2007, deadline. Subsequent to the preparation of the proposed rule, but prior to its publication, the FHWA and the FTA disseminated additional guidance regarding the phase-in requirements on May 2, 2006.[10] Many of the comments to the docket addressed issues that were clarified in our May 2, 2006, guidance. The provisions of the guidance have been incorporated into the regulation. Specifically, we have clarified that long-range statewide transportation plans and STIPs adopted and approved prior to July 1, 2007, may be developed using the TEA–21 requirements or the provisions and requirements of this part.

We have also clarified, in paragraph (a), what actions may be taken prior to July 1, 2007, on long-range statewide transportation plans and STIPs.

One MPO, half of the national and regional advocacy organizations and a quarter of the State DOTs commented that the regulations should clearly state that partial STIP approvals are allowable if one MPO or region is not SAFETEA–LU compliant. Because the regulation already allows for approval of partial STIPs (see § 450.218(b)(1)(iii)), no change was made to the regulation. Approval of partial STIPs is acceptable, primarily when difficulties are encountered in cooperatively developing the STIP portion for a particular metropolitan area or for a Federal Lands agency. If an MPO is able to produce a TIP that is SAFETEA–LU compliant, the Federal action would be to amend that TIP into the STIP, making the portion of the STIP that covers that region SAFETEA–LU compliant.

Most of the national and regional advocacy organizations and most of the State DOTs commented that the deadline for transportation plan, STIP and TIP action should apply to State/MPO approval action rather than the FHWA/FTA conformity finding. The FHWA and the FTA issued guidance on ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas'' on May 25, 2001.[11] Since the FHWA and the FTA do not determine conformity of STIPs, we are revising this section to eliminate conformity determinations. However, the rest of the rule language is consistent with current practice, and therefore, no other change was made.

Most of the commenters stated that 23 U.S.C. 135(b) requires only ''updates'' to reflect changes required by SAFETEA–LU after July 1, 2007, not ''amendments.'' The comments noted that requiring a STIP re-adoption for minor amendments would be a

[10] This guidance document, ''SAFETEA–LU Deadline for New Planning Requirements'', dated May 2, 2006, is available on the following URL: *http://www.fhwa.dot.gov/hep/plandeadline.htm.*

[11] This guidance document, ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas,'' dated May 25, 2001, can be found via the internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/planup_m.htm.*

substantial burden and is a stricter interpretation of the statute than Congress intended. Prior to the adoption of this rule, there has not been an accepted definition of or distinction between the terms ''update'' or ''amendment.'' As established in Section 450.104 (Definitions) of this rule, the FHWA and the FTA consider an amendment to the STIP to be a major change to the transportation plan or program. The FHWA and the FTA believe that any major change to the transportation plan or program, whether called an ''amendment'' or an ''update'' under this regulation, is considered for this purpose an ''update'' as referenced in 23 U.S.C. 135(b). However, an ''administrative modification'' would not be covered by this requirement. This rule clarifies the definition of these terms for the future.

One national and regional advocacy organization stated that Congress specified that the SAFETEA–LU phase-in period should begin on July 1, 2007, not be completed by that date. The FHWA and the FTA believe that this is an incorrect interpretation of the statute. The FHWA and the FTA agree that administrative modifications can be made to STIPs after July 1, 2007, but amendments or revisions that would add or delete a major new project to a TIP, STIP, or transportation plan would not be acceptable after July 1, 2007, in the absence of meeting the provisions and requirements of this part. This information has been included in paragraph (c).

Subpart C—Metropolitan Transportation Planning and Programming

Section 450.300 Purpose

No comments were received on this section and no changes were made.

Section 450.302 Applicability

No comments were received on this section and no changes were made.

Section 450.304 Definitions

No comments were received on this section and no changes were made.

Section 450.306 Scope of the Metropolitan Transportation Planning Process

The docket included about 80 separate comments on this section with almost half from MPOs and COGs. Several national and regional advocacy organizations also commented on this section. Most of the remaining comments came from State DOTs and transit agencies. City/county governments and others also commented on this section.

In comments on this section and § 450.206 (Scope of the statewide transportation planning process), many MPOs and COGs, some national and regional advocacy organizations and a few State DOTs noted that paragraph (a)(3) embellished the statutory language for the ''security'' planning factor. Organizations that commented on this issue were concerned that the expanded language would require State DOTs and MPOs to go far beyond their traditional responsibilities in planning and developing transportation projects, which was not intended by the SAFETEA–LU. The FHWA and the FTA agree and have revised the language in paragraph (a)(3) to match the language in the statute.

After further review, the FHWA and the FTA have changed the word ''should'' to ''shall'' in paragraph (b) to be consistent with statutory language in 23 U.S.C. 134(h)(1) and 49 U.S.C. 5303(h)(1).

Most of the State DOTs and several of the national and regional advocacy organizations that commented on similar text in § 450.206 (Scope of the statewide transportation planning process) said that the text in paragraph (b) of that section should be revised to be similar to the text in the October 1993 planning rule acknowledging that the degree of consideration will reflect the scales and complexity of issues within the State. The FHWA and the FTA agree with those comments and revised this section, as well, to be consistent. We have included the language from the October 1993 planning rule with one change. The phrase ''transportation problems'' was changed to ''transportation system development.''

After further review, we have clarified paragraph (c) to mirror the language in 23 U.S.C. 134(h)(2) and 49 U.S.C. 5303(h)(2). The paragraph now specifically refers to ''any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7.''

Some MPOs and COGs and a few national and regional advocacy organizations asked for clarification on the meaning of asset management principles and information on how to link them to performance measures. The FHWA and the FTA have changed ''are encouraged to'' to ''may'' in paragraph (e) to provide additional flexibility for MPOs, State DOTs, and public transportation operators to apply asset management principles appropriate to their individual context. If necessary, the FHWA and the FTA will provide additional non-regulatory guidance, training and technical assistance.

Many of the State DOTs and a few of the national and regional advocacy organizations that provided comments on this topic said the text in paragraph (f) went beyond statutory requirements. The FHWA and the FTA agree with these comments and revised the rule accordingly by adding ''to the maximum extent practicable'' in paragraph (f).

Most transit agencies, several State DOTs, MPOs and COGs, and others provided comments on the requirement in paragraph (g) for the metropolitan transportation planning process to be consistent with the development of coordinated public transit-human services transportation plans. In general, commenters requested additional information on the plans, who was responsible for developing the plans and how they were to be consistent. Some commenters recommended removing the requirement entirely.

Communities have broad flexibility in determining the roles and responsibilities in this area, including selecting the organization charged with developing the coordinated public transit-human services transportation plan. The FHWA and the FTA encourage review of the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs (New Freedom Program Guidance, The Job Access And Reverse Commute (JARC) Program, Elderly Individuals and Individuals With Disabilities Program), published on September 6, 2006.[12] Consistency between public transit-human services planning and the metropolitan transportation planning process is required. The provisions for promoting consistency between the planning processes were revised to clarify and add flexibility. In order to receive funding in title 49 U.S.C. Chapter 53, projects from the coordinated public transit-human services transportation plans must be incorporated into the metropolitan transportation plan, TIP and STIP. And, in areas with a population greater than 200,000, solicitation of projects for implementation from the public transit-human services transportation plan must be done in cooperation with the MPO.

Several transit agencies and a few State DOTs and others suggested deleting the portion of paragraph (h)

[12] These documents, ''Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, and New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars'' was published September 6, 2006, and are available via the internet at the following URLs: *http://www.fta.dot.gov/publications/publications_5607.html* or *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6–14733.pdf.*

related to Regional Transit Security Strategies (RTSS) due to the confidential nature of these plans. Reference to the RTSS was removed from paragraph (h). Instead, we have added a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.''

Section 450.308 Funding for Transportation Planning and Unified Planning Work Programs

There were a few comments on this section from MPOs and COGs. Those that commented on this section supported the flexibility provided in paragraph (d) and several requested clarification on issues such as the definition of ''MPO staff,'' and different processes expected of non-TMA and TMA MPOs. If necessary, the FHWA and the FTA will provide additional clarification through development of technical reports or guidance; however we did not make any changes to this section.

Section 450.310 Metropolitan Planning Organization Designation and Redesignation

The docket included about 30 separate comments on this section with the most coming from national and regional advocacy organizations. Most of the remaining comments came from State DOTs, MPOs and COGs. Local agencies also commented on this section.

Several of the MPOs and COGs and national and regional advocacy organizations that provided comments on this section worried that the Census' continuous sample American Community Survey (ACS) would change the official populations in urbanized areas more often than once a decade, and recommended that paragraph (a) should specifically state that urbanized area populations be based only on each decennial Census. The Census Bureau historically has identified and defined the boundaries and official population of urbanized areas only in conjunction with each decennial Census. This practice will not change as a result of the ACS. The ACS is collected in a nationwide sample of households, and does not constitute a full enumeration of the U. S. population. Consequently, it does not provide the necessary basis for adjusting the boundaries of an urbanized area or revising its total population. Moreover, changing this paragraph would preclude the option for a fast growing urban area to request (and pay for conducting) a special mid-decade Census for the purpose of determining whether its population increased beyond the threshold for designation as an MPO or TMA. While this has been done infrequently in the past, the FHWA and the FTA do not want to prohibit this option. Therefore, no change was made to this paragraph.

A few national and regional advocacy organizations and State DOTs had comments on paragraph (c), ranging from deleting language that they said went beyond statute to clarifying the phrase ''to the extent possible'' to including the public in designation. The language in this paragraph was carried forward from the October 1993 planning rule. However, the FHWA and the FTA agree that the implied regulatory standing was unclear. This paragraph has been changed to mirror the language in 23 U.S.C. 134(f)(2) and 49 U.S.C. 5303(f)(2). The intent of this paragraph is to encourage States to enact legislation that gives MPOs specific authority to carry out transportation planning for the entire metropolitan planning area they serve. Without such enabling legislation, MPOs may lack the necessary leverage to effectively coordinate transportation projects across local jurisdictions.

A national and regional advocacy organization suggested language be added to paragraph (d) to encourage broad representation, especially from public transportation operators, on MPO policy boards. The statute (23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B)) explicitly provides for public transportation agencies to be included on policy boards. To clarify this issue, paragraph (d) has been changed to better reflect the language in the statute. Further, we have added language to the rule to encourage MPOs to increase the representation of local elected officials and public transportation agencies on their policy boards, subject to the requirements of paragraph (k) of this section.

After further review, we have changed the language in paragraph (e) from ''should'' to ''shall'' to be consistent with statute (23 U.S.C. 134(d)(1) and 49 U.S.C. 5303(d)(1)).

A question was asked about the purpose of paragraph (f). This is not a new paragraph. In fact, it first appears in Federal statute (23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3)) as a means of ''grandfathering'' in those multimodal transportation agencies that were in existence at the time of enactment of ISTEA, which were serving many of the functions of an MPO. This paragraph continues to appear in the SAFETEA–LU (23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3), but was not explicitly included in past versions of the metropolitan transportation planning regulations. The FHWA and the FTA agree that it is no longer necessary and have removed it from the rule. Most agencies covered by the provisions of 23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3) have already been officially designated as an MPO, and this option still will have the force of law in the statute.

Some commenters suggested that paragraph (g) (now paragraph (f)) should allow MPOs to use non-profit organizations for staff work. This paragraph brings forward the language from the October 1993 planning rule. Nothing in this paragraph prohibits an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan planning process. However, to clarify this issue, we have added ''non-profit organizations, or contractors'' to this paragraph.

A few MPOs recommended deleting ''current MPO board members'' as one definition for units of general purpose local government from paragraph (k) (now paragraph (j)). The FHWA and the FTA agree that allowing the option of ''local elected officials currently serving on the MPO'' to represent all units of general purpose local government for the purposes of redesignation could result in unintended problems. The FHWA and the FTA have deleted ''local elected officials currently serving on the MPO'' from this paragraph and moved the remaining text into the body of paragraph (j).

Many of the State DOTs and a few of the national and regional advocacy organizations and MPOs and COGs that commented on this section had specific comments on paragraph (l) (now paragraph (k)) saying that the paragraph goes beyond statutory requirements and should be deleted and requesting clarification and minor word changes. The intent of this paragraph is that while an MPO may identify the need for redesignation, actual redesignation must be carried out in accordance with statutory redesignation procedures. The FHWA and the FTA have added language to this paragraph to clarify that redesignation is in accordance with the provisions of this section (§ 450.310). We have also modified paragraph (m) (now paragraph (l)) to reference the substantial change discussion in paragraph (k).

The docket contained a comment in regards to paragraph (l) (now paragraph (k)) that § 4404 of the SAFETEA–LU provides specific designation and redesignation authority for the States of Alaska and Hawaii. Because § 4404 of the SAFETEA–LU does not apply

universally to all MPOs, it is not included in the rule.

Section 450.312 Metropolitan Planning Area Boundaries

The docket included a few comments on this section with the most coming from MPOs and COGs and the remaining comments from State DOTs and national and regional advocacy organizations. Several of the comments provided general support for this section of the planning rule as written.

A few of the comments related to paragraph (b) and asked for minor text changes or clarification on how the section may limit flexibility. The FHWA and the FTA revised the paragraph to make it more consistent with statutory text and, thus, it should not limit flexibility beyond statutory requirements. We also added a reference to the requirements in § 450.310(b) to reiterate that the MPA boundary may be established to coincide only if there is agreement of the Governor and the affected MPO in the same manner as is required for designating an MPO in the first place.

One of the comments regarding paragraph (d) asked for clarification for requiring that the metropolitan planning area (MPA) boundary coincide with regional economic development or growth forecasting areas, in particular, for complex areas having multiple, non-coincident boundaries. This paragraph says that metropolitan planning boundaries ''may'' be established to coincide with regional economic and growth forecasting areas. This paragraph is permissive, not mandatory. Instead, this paragraph provides MPOs with the flexibility to allow their planning boundaries to coincide with other, established boundaries, but does not require them to do so. For clarification and simplicity, the word ''the'' was deleted from the beginning of this paragraph.

In response to comments on this section, we have also clarified paragraph (h) to indicate that all boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs, rather than only boundary changes that ''significantly'' change the composition of the MPO.

Section 450.314 Metropolitan Planning Agreements

The docket included more than 70 comments on this section, with the most coming from State DOTs, followed by MPOs and COGs. The remaining comments were from national and regional advocacy organizations, local agencies and public transportation providers.

Most of the State DOTs and MPOs, many of the national and regional advocacy organizations, and a few of the public transportation providers and local agencies that commented on paragraph (a) expressed concern about an unintended burden resulting from the requirements outlined in this paragraph and requested clarification. Some suggested text changes such as using the term ''memorandum of understanding'' in place of ''agreement.'' The MPO agreements are intended to document the cooperative arrangements among the various agency participants that participate in the metropolitan transportation planning process. The FHWA and the FTA encourage a single agreement. However, the rule language has been changed to reflect the option for multiple agreements. Removing the implied requirement for a single written agreement should allow many current planning agreements to satisfy the provisions of this paragraph provided they are written documents.

Many of the State DOTs that commented on this section said they find paragraph (a)(1) too prescriptive and redundant with requirements in other sections of the planning rule. On the other hand, several MPOs and COGs and national and regional advocacy organizations that provided comments on this section wrote to support the proposed rule language in this paragraph. The FHWA and the FTA believe the information in this paragraph is helpful to identify what shall be included in the written agreement(s). No change was made to this language, but it has been moved into the body of paragraph (a).

Many of the State DOTs that commented on this section said they found paragraph (a)(2) too prescriptive and redundant with requirements in other sections of the planning rule. Several MPOs and COGs and national and regional advocacy organizations said they would like clarification or minor text changes in this paragraph. A small number of MPOs and COGs and national and regional advocacy organizations that provided comments on this section wrote to support the proposed rule language in this paragraph. The FHWA and the FTA removed this paragraph from the final rule since the issues are adequately addressed in § 450.316 (Interested parties, participation, and consultation).

The docket includes a comment on this section objecting to the requirement in paragraph (f) that a planning agreement between two or more MPOs serving part of a TMA shall address specific TMA requirements, such as the suballocation of Surface Transportation Program (STP) funds. The FHWA and the FTA revised the final rule to clarify that the entire adjacent urbanized area does not need to be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g. congestion management process, STP funds suballocated to the urbanized area over 200,000 population, and project selection).

Representatives of State DOTs and private bus operators requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, the FHWA and the FTA will use non-regulatory guidance, training, and technical assistance, as necessary, for disseminating information on optional approaches to private sector participation.

Section 450.316 Interested Parties, Participation, and Consultation

The FHWA and the FTA received more than 80 comments on this section with the most coming from MPOs and COGs, followed by national and regional advocacy organizations. Public transportation providers, State DOTs and local agencies also provided comments on this section. In general, many of the MPOs and some of the others who provided comments on this section said that they supported the rule as written or with minor changes.

A few MPOs in regards to paragraph (a) asked about the difference between the participation plan identified in this rule and the public involvement plan under the prior two authorizations, the ISTEA and the TEA–21. The participation plan in this section has several elements not required of the public involvement plan: the participation plan shall be developed in consultation with all interested parties; and the participation plan shall include procedures for employing visualization techniques and making public information available in electronically accessible formats and means.

There were a variety of comments regarding the list of interested parties in paragraph (a) from several MPOs and COGs, national and regional advocacy

organizations and public transportation providers. The comments ranged from specifically including additional groups by reference to adding ''non-citizens'' or ''the public'' and ''limited English proficiency'' to adding definitions for the groups that are in the list to making the list optional. The FHWA and the FTA find that, with a general reference to ''other interested parties,'' MPOs have adequate flexibility to develop and implement a participation plan that provides an appropriate list of interested parties for their individual metropolitan area. MPOs are encouraged to broaden the list of interested parties beyond those listed in statute, as appropriate. The list in the rule has been modified to match the language in the statute (23 U.S.C. 134(i)(5) and 49 U.S.C. 5303(i)(5)). No additional groups were added. The FHWA and the FTA note that 49 U.S.C. 5307(c) requires grant recipients to make available to the public information on the proposed program of projects and associated funding.

Representatives of a State DOT and private bus operators requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. These commenters also requested that the private bus operators be specifically included in the list of interested parties. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, we will rely upon non-regulatory guidance, training, and technical assistance for disseminating information on optional approaches to private sector participation.

A Federal agency commented that the public or an agency should be able to identify itself to the MPO as an appropriate contact without having to be identified to participate by the MPO. The FHWA and the FTA agree. If an MPO is approached, the MPO should consider the request and determine whether the consultation is appropriate. We believe that this flexibility is allowed within the existing rule language. No change has been made to this section of the rule.

A few MPOs and COGs that commented on this section asked for a definition of ''reasonable access'' under paragraph (a)(1)(ii). This requirement carries forward what was in the October 1993 planning rule. The FHWA and the FTA find that MPOs have had adequate flexibility to define ''reasonable access'' when they developed and revised their public involvement plan and will continue to have that flexibility with the requirements for a participation plan. This definition was not added to the rule.

Many MPOs and COGs and some of the other organizations that commented on this section wrote to support the requirement for employing visualization in paragraph (a)(1)(iii). Several MPOs and COGs asked for clarification or subsequent guidance on effective and appropriate use of visualization techniques. The FHWA and the FTA agree that there is a need for more technical information on the use of visualization techniques and will provide technical reports and non-regulatory guidance, as necessary, subsequent to the publication of this rule.

A few MPOs and COGs said in reference to paragraph (a)(1)(iv) that making technical information available could be overly burdensome. This requirement conforms to the requirement in statute (23 U.S.C. 134 (i)(5) and 49 U.S.C. 5303(i)(5)). MPOs have flexibility to define specific techniques for making information available when they develop and revise their public participation plan.

Several MPOs and COGs and a public transportation provider wrote in reference to paragraph (a)(1)(vi) that the term ''explicit consideration'' could be burdensome and needs clarification. This language was similar to a requirement under the public involvement plan and based on that experience, the FHWA and the FTA believe that MPOs have adequate flexibility to define specific techniques when they develop and revise their public participation plan. If needed, the FHWA and the FTA will provide subsequent information on accepted practices in technical reports or guidance.

Several MPOs and COGs wrote in regards to paragraph (a)(1)(viii) that the section could result in unintended burdens on MPOs. In reviewing the statutory requirement (23 U.S.C. 134 (j)(4) and 49 U.S.C. 5303(j)(4)) and the October 1993 planning rules, the FHWA and the FTA agree that the current wording, which was intended to simplify requirements, could lead to unintended burdens. The language in this paragraph has been revised to follow more closely the language in the October 1993 planning rule and now reads: ''Providing an additional opportunity for public comment, if the final transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts.''

A few of the MPOs and COGs and a few of the national and regional advocacy organizations were concerned in paragraph (b) about their ability to consult with resource agencies. Upon further review of this paragraph, the FHWA and the FTA have revised paragraph (b). The originally proposed paragraph (b) ''mixed and matched'' consultation requirements from the SAFETEA–LU. We have removed the consultation discussion related to land management, resource, and environmental agencies from this paragraph. That information is included in § 450.322 (Development and content of the metropolitan transportation plan). The sentences that read ''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.'' were deleted. Instead, the phrase ''(including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities'' was added. This phrase is consistent with the requirements in the SAFETEA–LU that apply to consultation in metropolitan transportation plan and TIP coordination (23 U.S.C. 134(i)(4)(A) and 49 U.S.C. 5303(i)(4)(A)). Also to be consistent with statute, the term ''shall'' was changed to ''should.''

A few of the MPOs and COGs, a few of the national and regional advocacy organizations, a State DOT and a local agency that provided comments on this section said regarding paragraph (b), that natural resource agencies are not required to respond when consulted and that this places an unreasonable burden on MPOs. However, several MPOs wrote in support of this specific paragraph. The language regarding consultation has been modified to reflect the statutory requirement (23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4)). The FHWA and the FTA believe that clarification of what constitutes a reasonable attempt at consultation is better placed in guidance

and illustrations of practice where there is greater flexibility to address regional differences and the evolution of practice.

Also regarding paragraph (b), a local agency said that MPOs should not be required to consult with private agencies responsible for planned growth. The FHWA and the FTA believe there may be a need to consult with such organizations given the increase in public-private partnerships. However, the specific phrase ''private agencies responsible for growth'' is not in the statute or the October 1993 planning regulations and has the potential to cause confusion in the implementation of this rule. Accordingly, the FHWA and the FTA removed the phrase ''private agencies responsible for planned growth.''

A few MPOs and COGs that commented on this section said in regards to paragraph (b) that MPO requirements to consult should be limited to the metropolitan transportation plan, and not the TIP. No change was made to the rule because the requirement reflects language in the statute (23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4)).

A small number of national and regional advocacy organizations expressed concern that the rule does not explicitly require that all information used in making a conformity determination be made available for public comment. The transportation conformity rule (40 CFR 93.105(e)) requires that agencies establish a proactive public involvement process and that requirements of § 450.316(a) be followed and met before conformity may be determined. The FHWA and the FTA find that the public involvement requirements of this section and the conformity rule are sufficient to provide the public with appropriate access to the information developed during a conformity determination.

Representatives of a State DOT and private bus operators requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, we will rely upon non-regulatory guidance, training, and technical assistance for disseminating information on optional approaches to private sector participation.

Some MPOs and COGs and a few national and regional advocacy organizations wrote that the consultation process with other governments and agencies referenced in paragraph (e) does not need to be documented. The FHWA and the FTA find that documentation of consultation processes is essential to a party's ability to understand when, how, and where the party can be involved. This paragraph has been changed to require that MPOs, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies.

Section 450.318 Transportation Planning Studies and Project Development

Section 1308 of the TEA–21 required the Secretary to eliminate the MIS set forth in § 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 analysis 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. The purpose of this section is to implement this requirement of Section 1308 of the TEA–21 and eliminate the MIS requirement as a stand-alone requirement. A phrase has been added to paragraph (a) to clarify the intent of this section.

The docket included almost 20 documents that contained more than 50 comments on this section with about two-thirds from State DOTs and the rest from MPOs or COGs, as well as national and regional advocacy organizations. The comments on this section were similar to, and often referenced, the comments on § 450.212 (Transportation planning studies and project development).

Most of the comments received supported the concept of linking planning and NEPA but opposed including Appendix A in the rule. The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. Appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. Because Appendix A provides amplifying information about how State DOTs, MPOs and public transportation operators can choose to conduct transportation planning-level choices and analyses so they may be adopted or incorporated into the process required by NEPA, but does not impose new requirements, the FHWA and the FTA find that Appendix A is useful information to be included in support of this and other sections of the rule. A phrase has been added and this information has been included as paragraph (e). Additionally, we have added disclaimer language at the introduction of Appendix A.

The FHWA and the FTA recognize commenters' concerns about Appendix A, including the recommendation that this information be kept as guidance rather than be made a part of the rule. First, information in an Appendix to a regulation does not carry regulatory authority in itself, but rather serves as guidance to further explain the regulation. Secondly, as stated above, Section 1308 of TEA–21 required the Secretary to eliminate the MIS as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the transportation planning process. Appendix A fulfills that Congressional direction by providing explanatory information regarding how the MIS requirement can be integrated into the transportation planning process. Inclusion of this explanatory information as an Appendix to the regulation will make the information more readily available to users of the regulation, and will provide notice to all interested persons of the agencies' official guidance on MIS integration with the planning process. Attachment of Appendix A to this rule will provide convenient reference for State DOTs, MPOs and public transportation operator(s) who choose to incorporate planning results and decisions in the NEPA process. It will also make the information readily available to the public. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of Appendix A in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects. For the reasons stated above, after careful consideration of all comments, the FHWA and the FTA have decided to attach Appendix A to the final rule as proposed in the NPRM.

Most State DOTs and several MPOs and COGs, and national and regional advocacy organizations that commented on this section were concerned that the language in paragraph (a) is too restrictive. The FHWA and the FTA agree that planning studies need not ''meet the requirements of NEPA'' to be incorporated into NEPA documents. Instead, we have changed the language in paragraph (a) to ''consistent with'' NEPA. In addition, we have added the phrase ''multimodal, systems-level'' before ''corridor or subarea'' to

emphasize the ''planning'' venue for environmental consideration.

Commenters on this section also requested that the rule clarify that the MPO has the responsibility for conducting corridor or subarea studies in the metropolitan transportation planning process. The FHWA and the FTA recognize that the MPO is responsible for the metropolitan transportation planning process. However, we do not want to preclude State DOTs or public transportation operators, in consultation or jointly with the MPO, from conducting corridor or subarea studies. Therefore, we have changed paragraph (a) to add the sentence ''To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s).''

It is important to note that this section does not require NEPA-level evaluation in the transportation planning process. Planning studies need to be of sufficient disclosure and embrace the principles of NEPA so as to provide a strong foundation for the inclusion of planning decisions in the NEPA process. The FHWA and the FTA also reiterate the voluntary nature of this section and the amplifying information in Appendix A. States, public transportation operators and/or MPOs may choose to undertake studies which may be used in the NEPA process, but are not required to do so.

Several State DOTs and national and regional advocacy organizations were concerned about the identification and discussion of environmental mitigation. They did not believe that detail on environmental mitigation activities was appropriate in the transportation planning process. The FHWA and the FTA agree. Paragraph (a)(5) calls for ''preliminary identification of environmental impacts and environmental mitigation.'' The FHWA and the FTA believe that the term ''preliminary'' adequately indicates that State DOTs are not expected to provide the same level of detail on impacts and mitigation as would be expected during the NEPA process. Furthermore, SAFETEA–LU requires a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities. § 450.322 (Development and content of the metropolitan transportation plan) specifically provides that ''The discussion may focus on policies, programs, or strategies, rather than at the project level.''

Some State DOTs suggested incorporating planning decisions rather than documents into the NEPA process. The FHWA and the FTA find that decisions made as part of the planning studies may be used as part of the overall project development process and have changed paragraph (a) to include the word ''decisions'' as well as ''results.'' It is important to note, however, that a decision made during the transportation planning process should be presented in a documented study or other source materials to be included in the project development process. Documented studies or other source materials may be incorporated directly or by reference into NEPA documents, as noted in § 450.318(b). We have added ''or other source material'' to paragraph (b) to recognize source materials other than planning studies may be used as part of the overall project development process.

Based on comments on Appendix A, we added the phrase ''directly or'' in paragraph (b), to indicate the use of publicly available planning documents from subsequent NEPA documents.

Also based on comments on Appendix A, we added the phrase ''systems-level'' in paragraph (b)(2), to emphasize that these corridor or subarea studies are conducted during the planning process at a broader scale than project specific studies under NEPA.

Several State DOTs and many others who submitted comments on this section noted that the word ''continual'' in paragraph (b)(2)(iii) provides more opportunity to comment than is necessary. We agree and have replaced ''continual'' with ''reasonable'' in this paragraph.

Several State DOTs and a national and regional advocacy organization suggested adding a ''savings clause'' in a new paragraph. A savings clause would ensure that the new provisions regarding corridor or subarea studies do not have unintended consequences. The specific elements requested to be included in the ''savings clause'' were statements that: (a) The corridor and subarea studies are voluntary; (b) corridor and subarea studies can be incorporated into the NEPA process even if they are not specifically mentioned in the metropolitan transportation plan; (c) corridor and subarea studies are not the sole means for linking planning and NEPA; and (d) reiterate the statutory prohibition on applying NEPA requirements to the transportation planning process. The concepts recommended in the ''savings clause'' all reiterate provisions found elsewhere in the rule or statute. The FHWA and the FTA do not agree that it is necessary to repeat those provisions in this section.

The docket included a comment that corridor or subarea studies should be required, not voluntary, to be included in NEPA studies. Given the opposition to requiring NEPA-level analysis in the transportation planning process, the FHWA and the FTA find that the permissive nature of this section and the guidance provided in Appendix A strike the appropriate balance.

The docket also included a question asking what needs to be included in an agreement with the NEPA lead agencies to accomplish the integration of the planning and NEPA processes. The FHWA and the FTA have determined that identification of what information appropriately belongs in the agreement should be disseminated as non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance. Consequently, no change was made to the rule. We have not required that corridor or subarea studies be included or incorporated into NEPA studies.

A national and regional advocacy organization raised a number of issues and asked a number of questions regarding this section. Many of these concerns were also expressed by some transit agencies and a small number of MPOs and COGs. Most of these questions related to more detailed information on this section with regard to the Alternative Analysis requirements for major transit projects. The general concern related to the integration of the planning provisions in Sections 3005, 3006 and 6001 of the SAFETEA–LU and the environmental provisions in Section 6002 of the SAFETEA–LU, coupled with the historical Alternative Analysis process conducted as part of the eligibility requirements for transit proposals. These environment and planning provisions of the SAFETEA–LU are designed to add efficiencies to the project development process by facilitating a smooth transition from planning into the NEPA/project development process. To address these concerns and the specific questions related to the Alternatives Analysis process, the FHWA and the FTA have added paragraph (d) to the rule.

A specific concern was that this section eliminated the option of conducting a NEPA study as part of the Alternative Analysis/corridor study process. The FHWA and the FTA believe this is a misinterpretation of this section. We have been and continue to be staunch advocates of addressing NEPA issues and initiating the formal project level environmental analyses as early as practicable in the overall project development framework, including the

transportation planning process. This section continues to allow NEPA studies to be initiated, even during the Alternative Analysis/corridor study process.

Another concern was that this section permits the elimination of alternatives but does not provide for the selection of a preferred alternative. Additionally, a subsequent comment indicated that this section does not require the consideration of all reasonable alternatives. As is permitted by the Council on Environmental Quality's regulations, a project sponsor can select a preferred alternative at any time in the project development process but the overall environmental analysis cannot be slanted to support the preferred alternative nor does the identification of a preferred alternative eliminate the requirement to study all reasonable alternatives as part of the environmental analysis. The FHWA and the FTA believe that the rule allows for State DOTs, MPOs and public transportation operators who choose to use planning studies as part of the overall project development process to eliminate alternatives as well as select preferred alternatives, as appropriate. Therefore, no change was made to the rule.

These comments also pointed out that the FTA requires alternatives analysis for New Starts project, but no comparable requirement is specified for highway projects. Unlike FTA's formula funded programs, New Starts has a competition based eligibility requirement and, as such, the FTA requires a level of evaluation and analysis to screen the potential myriad requests they receive for limited funds. Traditionally, applicants select proposed highway projects as part of FHWA's formula funded programs. When Congress authorizes a competition-based highway program similar to New Starts, the FHWA has established criteria to evaluate and select projects that are eligible for those funds.

It was also noted that § 450.322 (Development and content of the metropolitan transportation plan) requires (in nonattainment and maintenance areas) design concept and scope be identified for projects. This comment raises several issues relative to actual application of the transportation planning process more than the regulation itself. For transportation demand modeling purposes and to meet the requirements of this part, the MPO and/or State DOT uses basic tools (e.g. engineering, capacity, past history, etc.) to identify the design concept and scope of a project, without conducting a formal corridor study. These early decisions are generally made on a broad corridor basis and will be refined as the project advances towards implementation. The commenter appears to favor this section of the rule being mandatory rather than permissive in an attempt to further the state of the practice of planning. Encouragement and incentives for good transportation planning were proffered by the commenter as tools to be used to increase the desirability of conducting corridor studies. The FHWA and the FTA believe Appendix A provides this encouragement and incentives for good transportation planning in identifying ways to utilize planning corridor studies and thereby reduce the amount of repetitive work in the NEPA process. We appreciate the support for the concepts in this section, but, based on all the comments received, find that it is most appropriate for this section to remain voluntary and permissive.

Section 450.320 Congestion Management Process in Transportation Management Areas

The docket included more than 25 documents that contained almost 30 comments on this section with about one-third from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from transit operators.

On May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation.[13] The intent of the ''National Strategy to Reduce Congestion on America's Transportation Network'' is to provide a blueprint for Federal, State and local officials to tackle congestion. USDOT encourages the States and MPO(s) to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages states to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie-ups, designates new interstate ''corridors of the future,'' targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, congestion pricing, electronic toll collection, quick crash removal, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The USDOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

A few commenters reiterated that the congestion management process (CMP) should result in multimodal system performance measures and strategies. The FHWA and the FTA note that existing language reflects the multimodal nature of the CMP. Existing language (§ 450.320(a)(2)) specifically allows for the appropriate performance measures for the CMP to be determined 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.

Most of the comments pointed out that the provisions of § 450.320(e) pertaining to projects that add significant new carrying capacity for Single Occupant Vehicles (SOVs) applies in ''Carbon Monoxide (CO) and Ozone Nonattainment TMAs,'' but does not apply to TMAs in air quality maintenance areas. The FHWA and the FTA agree and have clarified the language in paragraph (e). We also clarified that this provision applies to projects ''to be advanced with Federal funds.''

Several commenters asked for a clarification regarding what CMP requirements apply in air quality maintenance and attainment areas, as opposed to the requirements in air quality nonattainment areas. The CMP requirements for all TMA areas (attainment, maintenance and nonattainment) are identified in § 450.320(a), § 450.320(b), § 450.320(c), and § 450.320(f). Additional CMP requirements that apply only to non-attainment TMA areas (for ozone and carbon monoxide) are identified in § 450.320(d) and § 450.320(e).

Another commenter asked for clarification regarding the exact requirements for a CMP and how the CMP is integrated with the metropolitan transportation plan. As noted above, the specific CMP requirements for all TMAs, regardless of air quality status, are identified in this section. The CMP

[13] Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rails and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: *http://www.dot.gov/affairs/minetasp051606.htm.*

in this section is not described as, nor intended to be, a stand-alone process, but an integral element of the transportation planning process. To reinforce the integration of the CMP and the metropolitan transportation plan, § 450.322(f)(4) requires that the metropolitan transportation plan shall include ''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.''

One commenter asked for examples of the reasonable travel demand reduction and operational management strategies as required in § 450.320(e). Examples of such strategies include, but are not limited to: Transportation demand management measures such as car and vanpooling, flexible work hours compressed work weeks and telecommuting; Roadway system operational improvements, such as improved traffic signal coordination, pavement markings and intersection improvements, and incident management programs; Public transit system capital and operational improvements; Access management program; New or improved sidewalks and designated bicycle lanes; and Land use policies/regulations to encourage more efficient patterns of commercial or residential development in defined growth areas.

Section 450.322 Development and Content of the Metropolitan Transportation Plan

There were over 160 separate comments on this section, mostly from MPOs and COGs, followed by national and regional advocacy organizations and State DOTs. A number of comments also came from public transportation providers with the remainder coming from local government agencies, the general public or other sources.

Several MPOs and COGs and national and regional advocacy organizations that commented on this section asked for clarification regarding the 20-year planning horizon in paragraph (a). The FHWA and the FTA want to provide MPOs flexibility on how to treat the metropolitan transportation plan at the time of a revision. The actual effective date of a metropolitan transportation plan update may be dependent upon several factors, including the intent of the MPO, the magnitude of the metropolitan transportation plan revision and whether conformity needs to be determined. To specifically indicate in the final rule when a ''revision'' may be considered a full ''update'' could result in limiting flexibility. For more information on this topic, refer to the ''Definitions'' section of this rule.

A small number of MPOs and COGs and national and regional advocacy organizations that commented on this section asked for clarification in paragraph (b) between long-range and short-range strategies. The FHWA and the FTA carried forward the language regarding short and long-range strategies from the October 1993 planning rule. Generally, long-range are those strategies and actions expected to be implemented beyond 10 years.

A small number of national and regional advocacy organizations also commented that the transportation demand referenced in paragraph (b) should be balanced with the environment and other factors. The FHWA and the FTA find that the balance with environmental concerns is adequately raised in other parts of the rule both in this section and in § 450.306 (Scope of the metropolitan transportation planning process).

A small number of MPOs that commented on this section wrote in support of paragraph (c) relating to the cycles for reviews and updates. The FHWA and the FTA note that this paragraph revises and supercedes the April 12, 2005, guidance on ''Plan Horizons'' allowing MPOs to ''revise the metropolitan transportation plan at any time using the procedures in this section without a requirement to extend the horizon year.''

A small number of State DOTs and national and regional advocacy organizations that commented on this section said in regard to paragraph (d) that the proposed language limits consultation between State air quality agencies and MPOs in ozone and carbon monoxide (CO) nonattainment and maintenance areas. Transportation control measures (TCMs) can apply to all pollutants so this section should refer to all types of nonattainment and maintenance areas.

Paragraph (d) addresses the MPO's coordination in the development of the TCMs in a SIP in ozone and CO nonattainment areas, pursuant to 49 U.S.C 5303(i)(3). The FHWA and the FTA are clarifying in the final rule the role of the MPO in the development of SIP TCMs, to be more consistent with the statute. Similar coordination is encouraged in the development of SIP TCMs in ozone and CO maintenance areas, as well as particulate matter and nitrogen dioxide nonattainment and maintenance areas. The FHWA and the FTA had proposed additional language in paragraph (d) that specified that the MPO, State air quality agency and the EPA must concur on the equivalency of any substitute TCM before an existing SIP TCM is replaced under section 176(c)(8) of the Clean Air Act (42 U.S.C. 7506(c)(8)). After consultation with the EPA, this language was deemed unnecessary for the final planning regulations. The EPA has determined that revising the transportation conformity regulations is not necessary to implement the TCM substitution provision in Section 6011(d) of the SAFETEA–LU. The EPA believes that the new Clean Air Act provision contains sufficient detail to allow the provision to be implemented without further regulation. The EPA, the FHWA, and the FTA issued joint guidance on February 14, 2006, that describes how TCM substitutions can occur under the statute.[14]

A small number of State DOTs and a few MPOs and COGs that commented on this section said in regards to paragraph (e) that the requirement for ''agreement'' is too stringent. The FHWA and the FTA find that a ''cooperative'' planning process requires agreement among the major planning partners on what assumptions to adopt and what data and analyses to employ to forecast future travel demand. If a State or transit operator conducts a major planning study within the MPO planning boundaries, it is critical that the assumptions and data used in that planning study be considered valid by other planning partners and be consistent with data the MPO will employ to develop its travel models or otherwise develop growth projections in population, employment, land use, and other key factors that affect future travel demand. Both consultation and agreement on those assumptions/data are crucial to this process. However, the FHWA and the FTA also understand that the proposed text may be considered overly restrictive. We eliminated the phrase ''the transportation plan update process shall include a mechanism for ensuring that * * * agree * * *'' and replaced it with ''the MPO, the State(s), and the public transportation operator(s) shall validate * * *'' The FHWA and the FTA believe that the requirement ''validate data'' provides more flexibility than ''including a mechanism.''

[14] This joint guidance entitled, ''Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' dated February 14, 2006, is available via the Internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/sec6011guidmemo.htm.*

A number of MPOs and COGs that commented on this section asked for clarification in paragraph (f)(3) of the operational and management strategies. A small number of State DOTs support the proposed rule. Effective regional transportation systems management and operations requires deliberate and sustained collaboration and coordination between planners and managers of day-to-day operations across jurisdictions and between transportation and public safety agencies in order to improve the security, safety, and reliability of the transportation system. Coordination between transportation planning and operations helps ensure that regional transportation investment decisions reflect full consideration of all available strategies and approaches to meet regional transportation goals and objectives. Strengthening the coordination between these two processes and activities—planning and operations—can enhance both activities.

Because transportation systems management and operations is emerging as an important aspect of regional transportation planning, it is strongly encouraged that a set (or sets) of objectives be set forth in the metropolitan transportation plan for operational and management strategies that will lead to regional approaches, collaborative relationships, and funding arrangements for projects. Examples of operational and management strategies may include traffic signal coordination, traveler information services, traffic incident management, emergency response and homeland security, work zone management, freeway/arterial management, electronic payment services, road weather management, and congestion management. More specific examples on strategies related to congested locations can be found on the following Web site: *http://ops.fhwa.dot.gov/congestionmitigation/congestionmitigation.htm*, and additional information on freight bottlenecks is available at the following Web site: *http://www.fhwa.dot.gov/policy/otps/bottlenecks/index.htm*. The FHWA and the FTA intend to prepare guidance on operational and management strategies in the long-range statewide transportation plan and metropolitan transportation plan, including the development and use of objectives. The FHWA and the FTA have provided, and will continue to provide, technical information and guidance regarding operational and management strategies, if needed. However, we did not make any changes to this paragraph.

To encourage MPOs to address congestion in the metropolitan transportation plan, the following sentence was added to paragraph (f)(5): ''The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system.''

Some MPOs and COGs and a small number of State DOTs and the public that commented on this section had a variety of comments on paragraph (f)(6), ranging from requesting that it be eliminated to questioning the need for including existing facilities to the ability to provide sufficient detail to develop cost estimates in out years. This text is identical to the October 1993 planning rule. The FHWA and the FTA have found that providing the information required by this paragraph in the metropolitan transportation plan provides valuable information to system operators, decision-makers and the general public, while not causing undue burden on the MPOs.

There were a large number and variety of comments on paragraph (f)(7). Some MPOs and COGs questioned the value of this paragraph or the ability to implement this provision, while a small number of national and regional advocacy organizations wrote in support of the paragraph. Some MPOs and COGs, national and regional advocacy organizations, and State DOTs, as well as a small number of public comments had questions or asked for clarification. Some MPOs and COGs, along with some State DOTs, suggested a text change to clarify the intent of the paragraph. Finally, a small number of comments came from national and regional advocacy organizations and Federal agencies recommending including an evaluation mechanism.

The FHWA and the FTA concur with the recommendation to change the text, to more closely mirror the intent of the statute (23 U.S.C. 134(i)(2)(B) and 49 U.S.C. 5303(i)(2)(B)). We also concur that discussions of types of potential environment mitigation strategies need not be project specific, but should be at the policy or strategic level. We have made these changes to be consistent with the intent of the statute. A similar change has been made in § 450.214(j). The FHWA and the FTA have provided guidance, training, and technical assistance in this area and, if necessary, will provide additional efforts as needed so MPOs understand both how to address and the value of discussing types of potential mitigation activities as part of the metropolitan transportation plan. MPOs have the flexibility to develop and implement evaluation mechanisms that reflect the needs and complexity of the metropolitan area. While statute (23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3)) identifies evaluation in specific areas such as congestion, the FHWA and the FTA do not believe there is justification to develop a regulatory process that requires a systematic evaluation in other areas.

Also in regards to paragraph (f)(7), a Federal agency recommended requiring the consideration of avoidance measures to protect nationally significant resources. The FHWA and the FTA agree that consultation with appropriate Federal land and resource management agencies is essential during the development of metropolitan transportation plans to make the most efficient use of resources, since these agencies would need to be involved in the discussions of mitigation throughout the project development process. We believe that the regulatory language is sufficient to encourage such consultation and to foster discussions between the MPO and the Federal agencies to identify nationally significant resources and to consider actions and strategies to avoid and protect them. Therefore, no additional changes have been made to this paragraph.

There were a large number and variety of comments on paragraph (f)(10). Most of the State DOTs and many of the MPOs and COGs and national and regional advocacy organizations that commented on this section were against including operations and maintenance in the financial plan. Most of the State DOTs, many of the national and regional advocacy organizations, and some of the MPOs and COGs commented that the financial plan should not be extended to include ''the entire transportation system'' but should be limited to projects funded by the FHWA and the FTA. On the other hand, a small number of national and regional advocacy organizations supported requiring all projects be included. Finally, most of the State DOTs, MPOs and COGs, and many of the national and regional advocacy organizations suggested removing the reference to Appendix B.

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the ISTEA, fiscal constraint has remained a prominent

aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information and additional criteria. Given the level of controversy regarding Appendix B, it has been removed from the rule. Therefore, the sentence referencing Appendix B in paragraph (f)(10) has been deleted.

The FHWA and the FTA have divided paragraph (f)(10) into subparagraphs (i) through (viii) to make each provision easier to identify.

Many commenters questioned the requirement in new paragraph (f)(10)(i) that the financial plan must demonstrate the ability to adequately operate and maintain the entire transportation system. The FHWA and the FTA have revised § 450.322(f)(10) to delete the phrase ''while operating and maintaining existing facilities and services.'' Instead, a new sentence was added to paragraph (f)(10) (now paragraph (f)(10)(i)) that reads: ''For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).'' Please see the responses to the comments on Appendix B for additional background information and explanation.

A new paragraph (f)(10)(ii) discusses cooperative development of estimates of funds. No change was made to this discussion.

A new paragraph (f)(10)(iii) discusses additional financing strategies in the metropolitan transportation plan. No change was made to this discussion.

A new paragraph (f)(10)(iv) discusses the projects and strategies to be included in the financial plan. The FHWA and the FTA find that certain features of Appendix B merit inclusion in the rule. One of these features is the requirement for revenue and cost estimates to use an inflation rate(s) to reflect year of expenditure dollars (to the extent practicable). We have added a sentence to paragraph (f)(10)(iv) that reads: ''Starting December 11, 2007, revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).'' This language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars.'' We recognize that it might take some time for State DOTs and MPOs to convert their metropolitan transportation plans, STIPs and TIPs to reflect this requirement. Therefore, we will allow a grace period until December 11, 2007, during which time State DOTs and MPOs may reflect revenue and cost estimates in ''constant dollars.'' After December 11, 2007, revenues and cost estimates must use ''year of expenditure'' dollars. This requirement is consistent with the January 27, 2006, document ''Interim FHWA Major Project Guidance.'' [15] Please see the responses to the comments on Appendix B for additional background information and explanation.

A new paragraph (f)(10)(v) presents additional information from Appendix B. The FHWA and the FTA believe that this optional provision will give MPOs maximum flexibility to broadly define a large-scale transportation issue or problem to be addressed in the future that does not predispose a NEPA decision, while, at the same time, calling for the definition of a future funding source(s) that encompasses the planning-level ''cost range/cost band.'' Please see the responses to the comments on Appendix B for additional background information and explanation.

A new paragraph (f)(10)(vi) addresses nonattainment and maintenance areas.

A new paragraph (f)(10)(vii) reinforces that the financial plan is not required to include illustrative projects.

Many State DOTs, MPOs and COGs as well as some national and regional advocacy organizations and a few public transportation providers and local government agencies asked for clarification on fiscal constraint if the financial situation in the State or metropolitan region changes. The FHWA and the FTA have added paragraph (f)(10)(viii) to clarify situations where a revenue source is removed or substantially reduced after the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained.

All references to Appendix B have been removed from this section because Appendix B is not a part of this rule.

Some national and regional advocacy organizations and a small number of MPOs and COGs and Federal agencies provided comments on paragraph (g) regarding changing the ''or'' between paragraphs (g)(1) and (g)(2) to ''and''. A small number of the comments, including some by a Federal agency, also related to adding specific agencies or processes to the text. The FHWA and the FTA acknowledge that the text is different from similar text for statewide planning in § 450.214(i). However, both sections are consistent with statute. (See (23 U.S.C. 134(i)(4)(B) and 49 U.S.C. 5303(i)(4)(B)) and (23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D)). The FHWA and the FTA also note that there is flexibility in the rule language. The ''or'' does not prevent an MPO from carrying out (g)(1) and (g)(2). At the same time, the term ''as appropriate'' allows an MPO to carry out only (g)(1) or (g)(2) in certain circumstances. No changes were made to this paragraph to remain consistent with statutory language.

Most of the MPOs and COGs provided comments on paragraph (h) ranging from removing any reference to security to clarifying the MPO role in security to text changes. A few State DOTs and public transportation providers provided a range of comments as well. The FHWA and the FTA acknowledge the potential for concern and confusion in an emerging area such as transportation security. We have added the phrase ''(as appropriate)'' to this paragraph to provide additional flexibility in this emerging area and to respect the sensitive nature of homeland security issues. We also want to reiterate that placing the inclusion of policies that support homeland and personal security in the same sentence with safety should in no way detract from the recognition that safety and security are separate considerations in the planning process. If necessary, the FHWA and the FTA will provide subsequent guidance and technical resources on incorporating policies supporting homeland and personal security.

Several commenters noted that the reference in paragraph (k) was incorrect. This reference has been changed to accurately refer to paragraph (f)(10).

The FHWA and the FTA note, based on coordination with the EPA, that the interim metropolitan transportation plan and TIP referenced in paragraph (1) and in § 450.324(m) respectively allows the use of interim metropolitan transportation plans and TIPs during a conformity lapse so that exempt projects, transportation control measures in approved State implementation plans, and previously approved projects and/or project phases can be funded when a conformity determination lapses. In addition, we have clarified that the ''interagency

[15] This document, ''Interim FHWA Major Project Guidance,'' dated January 27, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/programadmin/mega/012706.cfm.*

consultation'' referenced in paragraph (1) is ''defined in 40 CFR part 93.''

After further review, the FHWA and the FTA have determined it is necessary to clarify paragraph (l) regarding eligible projects that may proceed without revisiting the requirements of this section. We have added ''or consistent with'' to this paragraph to clarify that eligible projects (e.g., exempt projects under 40 CFR 93.126) do not need to be explicitly listed in the conforming transportation plan and TIP to proceed.

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

The docket included more than 50 documents that contained more than 125 comments on this section with about one-quarter from State DOTs, one-quarter from national and regional advocacy organizations, one-half from MPOs and COGs, and the rest from city/county/State agencies and transit agencies. A few MPOs and COGs, many State DOTs and a few national and regional advocacy organizations said in regards to paragraph (a) that MPOs should be allowed to have a TIP of more than four years where the additional year(s) are not illustrative.

The four-year scope is consistent with the time period required by the SAFETEA–LU. MPOs may show projects as illustrative after the first four years as well as in the metropolitan transportation plan. While MPOs are not prohibited from developing TIPs covering a longer time period, the FHWA and the FTA can only recognize and take subsequent action on projects included in the first four years of the TIP. Therefore, no change was made to this paragraph of the rule in response to these comments. However, paragraph (a) was modified to be consistent with clarifications to the definitions of ''revision'' and ''amendment.''

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the ISTEA, fiscal constraint has remained a prominent aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information and additional criteria. Given the level of controversy regarding Appendix B, it has been removed from the rule. Therefore, the sentence referencing Appendix B in paragraph (i) has been deleted.

We have changed paragraph (c) to allow the inclusion of the exempted projects, but not requiring that they be included. We removed the phrase ''federally supported'' from the beginning of this paragraph because it is redundant. The paragraph already requires projects to be included if they are funded under title 23 U.S.C., and title 49 U.S.C. Chapter 53. Further, we have added ''Safety projects funded under 23 U.S.C. 402'' to paragraph (c)(1). This change is consistent with the October 1993 planning rule.

Many State DOTs and several national and regional advocacy organizations commented in regard to paragraph (d) (now paragraph (e)), that they should not have to demonstrate financial constraint for projects included in the TIP funded with non-FHWA and non-FTA funds. However, the proposed requirement is consistent with and carries forward the requirement that was implemented with the October 1993 planning rule. In addition, for informational purposes and air quality analysis in nonattainment and maintenance areas, regionally significant non-Federal projects shall be included in the TIP. Therefore, the FHWA and the FTA have retained this portion of paragraph (d). We have, however, simplified the paragraph slightly to combine the last two sentences.

A few comments were received from national and regional advocacy organizations and MPOs stating that paragraph (e)(1) would be enhanced by adding language that the information included in the TIP for each project needs to be understandable by the general public. This requirement remains unchanged from the October 1993 planning rule. Since that time, we have noted little public confusion over the information included in TIPs identifying projects or phases. We believe the MPO participation plan process offers opportunities for the public to clarify confusion in specific cases. No change was made to the rule.

Most State DOTs, MPOs and COGs and national and regional advocacy organizations that commented on this section, recommended in regards to paragraph (e), that after the first year of the TIP, only ''likely'' or ''possible'' (rather than ''proposed'') categories of funds should be identified by source and year. The FHWA and the FTA agree with this suggestion, with the exception of projects in nonattainment and maintenance areas for which funding in the first two years must be available or committed. Paragraph (e)(3) has been changed to specifically reference the amount of ''Federal funds'' proposed to be obligated and to identify separate standards for the first year and for the subsequent years of the TIP.

Most of the comments on paragraph (h) pertained to the question posed in the preamble of the NPRM regarding whether the FHWA and the FTA 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. Almost all opposed this suggestion believing that it would require reviewing the financial assumptions for the entire program, thereby causing an undue burden. Commenters suggested showing financial constraint only for the incremental change. The FHWA and the FTA are concerned for the potential impact of individual amendments on the funding commitments and schedules for the other projects in the TIP. For this reason, the financial constraint determination occasioned by the TIP amendment will necessitate review of all projects and revenue sources in the TIP. The FHWA and the FTA will address any concerns on this issue through subsequent guidance. Further, the FHWA and the FTA are concerned that amendments that do not include available and committed funds for the year of the amendment and the following year will reduce the credibility with decision-makers and the public that projects will be able to move forward in a timely manner. Given the comments on this issue, we have not made a change to the rule. The FHWA and the FTA will address any concerns on this issue through subsequent guidance.

As discussed in the response to the comments on Appendix B, we have added to paragraph (h), ''for purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).'' In addition, to reinforce that the financial plan is not required to include illustrative projects, we have added the phrase ''but is not required to'' to this discussion. We have added one additional feature from Appendix B: ''year of expenditure dollars.'' We have added the following sentence to paragraph (h): Starting December 11, 2007, revenue and cost estimates for the TIP must use an inflation rate(s) to

reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s). This language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars.'' We recognize that it might take some time for State DOTs and MPOs to convert their metropolitan transportation plans, STIPs and TIPs to reflect this requirement. Therefore, we will allow a grace period until December 11, 2007, during which time State DOTs and MPOs may reflect revenue and cost estimates in ''constant dollars.'' After December 11, 2007, revenues and cost estimates must use ''year of expenditure'' dollars. This requirement is consistent with the January 27, 2006, document ''Interim FHWA Major Project Guidance.''[16] The reference to Appendix B has been deleted since Appendix B is not included with this rule. Please see the responses to the comments on Appendix B for additional background information and explanation.

Many State DOTs, national and regional advocacy organizations and a few MPOs and COGs questioned having to demonstrate their ability to adequately operate and maintain the entire transportation system. They were concerned that State DOTs, MPOs, and public transportation operators should not be responsible for demonstrating available funds for projects outside of federally supported facilities. The FHWA and the FTA have revised paragraph (i) to change the phrase ''while the entire transportation system is being adequately operated and maintained'' to ''while federally supported facilities are being adequately operated and maintained.'' We have also removed the reference to ''by source'' and the reference to additional information in Appendix B, since Appendix B has been removed from this rule. Please see the responses to the comments on Appendix B to the NPRM for additional background information and explanation.

A few comments were received opposing the requirement in paragraph (j)(1) (now paragraph (l)(1)) for the TIP to identify the criteria and process for prioritizing implementation of transportation plan elements for inclusion in the TIP. The FHWA and the FTA find that if it is difficult for the MPO to identify or capture the criteria it used to select projects, it will be even more difficult for the general public to understand the rationale behind selecting one element from the transportation plan over another. Therefore, we retained the language in paragraph (l)(1). However, in reviewing this comment, we identified two paragraphs from the October 1993 planning rule (23 CFR 450.324(l) and (m)) that were not included in the NPRM, related to this issue. To clarify and emphasize that MPOs should identify criteria and a process for prioritizing transportation plan elements for inclusion in the TIP, we have added these two paragraphs to the rule as new paragraphs (j) and (k), respectively. These paragraphs identify the need for allocation of funds based on prioritization and explicitly prohibit suballocation based on pre-determined percentages of formulas.

The FHWA and the FTA note, based on coordination with the EPA, that the interim metropolitan transportation plan and TIP referenced in § 450.322(1) and in paragraph (k) (now paragraph (m)) of this section respectively allows the use of interim plans and TIPs during a conformity lapse so that exempt projects, transportation control measures in approved State implementation plans, and previously approved projects and/or project phases can be funded when a conformity determination lapses. We have added ''conformity'' to the first sentence to specify the ''lapse'' referenced and removed the phrase ''(as defined in 40 CFR part 93)'' because it is no longer necessary.

After further review, the FHWA and the FTA have determined it is necessary to clarify paragraph (k) (now paragraph (m)) regarding eligible projects that may proceed without revisiting the requirements of this section. We have added the phrase ''or consistent with'' to this paragraph to clarify that eligible projects (e.g., exempt projects under 40 CFR 93.126) do not need to be explicitly listed in the conforming transportation plan and TIP to proceed.

Many State DOTs, MPOs and COGs as well as some national and regional advocacy organizations and a few public transportation providers and local government agencies asked for clarification on fiscal constraint if the financial situation in the State or metropolitan region changes. The FHWA and the FTA have added a new paragraph (o) to clarify situations where a revenue source is removed or substantially reduced after the FHWA and the FTA find a STIP to be fiscally constrained.

Several comments asked for clarification between the phrases ''operation and maintenance'' and ''operation and management.'' See the discussion of § 450.104 (Definitions) for an explanation of these terms.

The FHWA and the FTA received a proposal identifying additional procedures for engaging private transportation operators in planning and program delivery. We recognize the importance of private operator participation and, if necessary, will provide technical assistance to MPOs to promote effective practice, but do not believe any changes to the rule are necessary.

Section 450.326 TIP Revisions and Relationship to the STIP

The docket included 21 documents that contained more than 25 comments on this section with about one-third from State DOTs, half from MPOs and COGs, and the rest from city/county/State agencies, as well as national and regional advocacy organizations.

One county, many of the MPOs and COGs and State DOTs, and most of the national and regional advocacy organizations submitted opposition to the statement in paragraph (a) that public participation procedures consistent with § 450.316(a) 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). Because the rule does not require an MPO to undertake any particular public involvement process for an administrative modification, an MPO may delineate its own public involvement process for administrative modifications within the public participation plan. In order to clarify these issues, the FHWA and the FTA have removed the phrase ''projects of the type covered in § 450.324(f)'' from paragraph (a).

Many of the MPOs and COGs and most of the State DOTs opposed the statement in paragraph (a) that ''in all areas, changes that affect fiscal constraint must take place by amendment of the TIP.'' The FHWA and the FTA realize that there are minor funding changes to projects that a region could determine would fall under the definition of ''administrative modifications,'' and these would not need to go through the full TIP amendment process. However, the FHWA and the FTA include this requirement because any change which requires an amendment has ripple effects throughout the program and thus should be subjected to the full disclosure of a TIP amendment.

[16] This document, ''Interim FHWA Major Project Guidance,'' date January 27, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/programadmin/mega/012706.cfm.*

Therefore, no change has been made to the paragraph in response to this comment.

Half of the MPOs and COGs and half of the national and regional advocacy organizations oppose the language in paragraph (a) that states: ''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.'' The sentence has been revised to clarify that the transportation conformity rule (40 CFR 93.104(c)(2)) requires a transportation conformity determination be made if a TIP amendment involves non-exempt projects. If a non-exempt project has already been incorporated into a regional emissions analysis and is merely moving from the currently conforming metropolitan transportation plan to the TIP (and is not crossing an analysis year) we agree that the conformity determination on the TIP can be based on a previous regional emissions analysis if the requirements of 40 CFR 93.122(g) are met. No additional changes were made to this paragraph.

Section 450.328 TIP Action by the FHWA and the FTA

The docket included approximately 20 documents that contained more than 20 comments on this section with about three-fifths from State DOTs, one-fourth from national and regional advocacy organizations, and the rest from city/county/State agencies and MPOs and COGs.

An MPO expressed concern that paragraph (a) was too vague and open-ended. In addition, several commenters expressed concern regarding the need for approval of the TIP when submitted to the FHWA and the FTA. The FHWA and the FTA do not approve the TIP. The language in this paragraph is consistent with the language in the October 1993 planning rule. Over nearly 13 years, we have not found significant confusion regarding this language. However, we did remove ''including amendments thereto'' from this paragraph since we the FHWA and the FTA do not make findings on amendments.

After consultation with the EPA, we have revised paragraph (c) to be consistent with Clean Air Act requirements and clarify that projects may only be advanced once the plan expires if the TIP was approved and found to conform prior to the expiration of the metropolitan transportation plan and if the TIP meets the TIP update requirements of § 450.324(a).

Many comments were received questioning why the existing flexibility to allow highway operating funds to be approved even if not in the TIP was eliminated from paragraph (f) and in § 450.218 (Self certification, Federal findings and Federal approvals). This was an erroneous omission in the NPRM and the language has been changed to correct this error.

Section 450.330 Project Selection From the TIP

The docket included 33 documents that contained more than 35 comments on this section with about one-third from State DOTs, one-eighth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from city/county/State agencies and transit operators.

Most of the comments pertained to the two questions posed in the preamble to the NPRM: (1) 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; and (2) 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. The predominant opinion was that requiring a State DOT or MPO to submit an agreed to list at the beginning of each of the four years of the TIP/STIP or requiring an amendment to move projects between years in the TIP/STIP unnecessarily limits flexibility, and thus should not be a requirement. The FHWA and the FTA agree with the majority of the comments. Therefore, no change was made to the rule language.

A few MPOs requested guidance on why a distinction is made between projects that are selected by the State in cooperation with the MPO and those that are selected by the MPO in consultation with the State and public transportation operators. This language is consistent with the October 1993 planning rule and is based on language in the statute (23 U.S.C. 135(b) and 49 U.S.C. 5304(b) and 23 U.S.C. 134(c) and 49 U.S.C. 5303(c), respectively). Therefore, no change was made to the rule language.

A few MPOs noted that paragraph (b) uses ''consultation'' to describe the MPO/TMA's action with the State and transit agency, whereas, ''cooperation'' is used to describe the State's action with the MPO. This language is consistent with the October 1993 planning rule and is based on language in the statute ((23 U.S.C. 135(b) and 49 U.S.C. 5304(b) and 23 U.S.C. 134(c) and 49 U.S.C. 5303(c), respectively). Therefore, no change was made to the rule language.

Section 450.332 Annual Listing of Obligated Projects

The docket included more than 20 documents that contained about 40 comments on this section with about one-eighth from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from city/county/State agencies and transit operators.

Half of the comments on this section pertained to the language that requires the annual listing needs to be published no later than 90 calendar days following the end of the State program year. All of the responses suggested that using the end of the Federal fiscal year would make more sense. The FHWA and the FTA appreciate the suggestion. We have changed the language to not specify ''State program year'' or ''Federal fiscal year.'' Instead, the MPO, State, public transportation operator(s) shall determine the ''program year.'' The annual listing of obligated projects shall be developed no later than 90 calendar days following the end of the program year.

Critical information needed for this report is available in FHWA's Fiscal Management Information System (FMIS) [17] and FTA's Transportation Electronic Award and Management (TEAM) [18] System databases. Many of the MPOs and many of the national and regional advocacy organizations requested that they be provided access to these databases, or provided timely reports of the data from the FHWA and the FTA. The FHWA and the FTA will work closely with the States, public transportation operators and the MPOs

[17] The FHWA administers a nationwide highway project reporting system, the Fiscal Management Information System (FMIS), that is used to provide oversight of over $30 billion in disbursements to States for Federal-aid highway projects. FMIS prescribes project reporting policy and procedures and maintains the official project obligation records and statistical data for the various highway programs, including the planning and administration of a nationwide highway project reporting system on the progressive stages of individual highway projects. The system provides information to the FHWA and U.S. DOT management, State transportation officials, other Federal agencies, and the Congress.

[18] In an effort to help manage funds that support some of the FTA collaborative activities, the FTA has developed the Transportation Electronic Award and Management (TEAM) system. TEAM is a system designed to manage and track the grant process. FTA staff use TEAM to assess grant availability, assess and approve projects, assign project numbers, allocate and approve funding, and view approved grantee projects and associate reports. FTA staff members also use TEAM to track the processes associated with these activities. In addition, grantees and potential grantees use TEAM to request grants and track grant progress.

to ensure all of the critical data is available to successfully meet this reporting requirement. However, the FHWA and the FTA do not believe that the rule needs to be changed to address this comment.

Some MPOs and several State DOTs expressed support for including bicycle and pedestrian projects in the annual listing. However, many commenters did not want to include a listing of all bicycle and pedestrian ''investments'' in the report because many bicycle and pedestrian investments are included within larger transit or highway projects. No changes were made to the rule because the language reflects what is included in the statute (23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B)) The FHWA and the FTA expect the projects included in the Annual Listing of Obligated Projects to be consistent with the projects that are listed in the TIP. It was suggested that the annual listing of obligated projects contain only fund obligations and not provide information duplicative of that published in the TIP. Because the annual listing of obligated projects is intended to improve the transparency of transportation spending decisions to the public, and because providing TIP information enhances the user-friendliness of the document, the FHWA and FTA have decided not to change the content requirements. On February 24, 2006, the FHWA and the FTA jointly issued preliminary guidance on the annual list of obligated projects.[19]

Section 450.334 Self-Certifications and Federal Certifications

The docket included about 10 documents that contained about 10 comments on this section with about one-half from national and regional advocacy organizations, one-half from MPOs and COGs, and the rest from city/county governments.

Several comments pertained to the four-year cycle for Federal certification reviews of TMAs compared to the annual self-certification required by all MPOs and State DOTs. There was some concern that the annual self-certifications should not be required if the FHWA and the FTA have just performed their Federal certification review. The regulations require the State and all MPOs to certify annually that they are carrying out the transportation planning process to ensure that the State and MPOs understand their transportation responsibilities and to ensure that their responsibilities are actually being met. This self-certification must affirm that the transportation planning process is conducted in accordance with all applicable requirements.

The MPO self-certifications and the FHWA/FTA Federal certification reviews of TMAs are related, yet distinct requirements. The Federal certification of TMAs is a statutory requirement, while MPO self-certifications are a regulatory requirement that apply to all MPOs and State DOTs. Both the FHWA/FTA (for the Federal certification) and the MPO (for the self-certification) must meet their individual requirements. While both may occur in the same year, the FHWA and the FTA note that some of the information pulled together by the MPO(s), State(s), and public transportation operator(s) in advance of the TMA certification review could be ''re-used'' in making the self-certification. Therefore, no change has been made to the rule.

One commenter requested that the FHWA and the FTA include a specific standard for compliance with private enterprise provisions, which now are excluded from consideration in TMA certification, and improve a private provider's ability to operate in metropolitan areas. Several commenters requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process.

To ensure maximum flexibility for localities to tailor private sector involvement procedures to the service providers and needs of their areas, we have determined that this information should be disseminated as non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance.

The FHWA and the FTA have updated the list of applicable requirements in paragraph (a). Reference to ''23 CFR parts 200 and 300'' has been removed from paragraph (a)(3). Instead, a more specific reference to ''23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts'' was added as paragraph (a)(6). This is the specific portion of 23 CFR parts 200 and 300 that needs to be reviewed and is not related to Title VI of the Civil Rights Act of 1964 in paragraph (a)(3). In addition, we have added a new paragraph (a)(4): ''49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity.'' Upon further review of this section, the FHWA and the FTA determined that 49 U.S.C. 5332 should be included in this list of requirements.

A small number of national and regional advocacy organizations expressed concern that the rule does not provide enough detail on the standards that the FHWA, the FTA, State DOTs and MPOs should apply in certification reviews. We believe that the entire context of the rule and of the statute sufficiently identify the criteria to be used in certifying that the transportation planning process meets or substantially meets these requirements. We do not believe additional detail is required in the rule. However, the FHWA and the FTA will provide non-regulatory guidance, training and technical assistance, if necessary.

Section 450.336 Applicability of NEPA to Metropolitan Transportation Plans and Programs

The docket included very few comments on this section. One concern expressed that this section or Appendix A would make planning reviewable under NEPA. The purpose of this section, however, is to reiterate the statutory authority that the metropolitan transportation planning process decisions are not subject to review under NEPA. We have changed this section to mirror the language in 23 U.S.C. 134(p) and 49 U.S.C. 5303(p).

Section 450.338 Phase-In of New Requirements

The docket included about 40 documents that contained about 110 comments on this section with about one-third from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from city/county/State agencies.

All comments received indicated that it will be difficult to meet the SAFETEA–LU July 1, 2007, deadline. Subsequent to the preparation of the proposed rule, but prior to its publication, the FHWA and the FTA disseminated additional guidance regarding the phase-in requirements on May 2, 2006.[20] Many of the comments to the docket addressed issues that were clarified in our May 2, 2006, guidance. The provisions of the guidance have been incorporated in the regulation. Specifically, we have clarified that

[19] This document, ''Preliminary SAFETEA–LU Guidance—Annual List of Obligated Projects, dated February 24, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/hep/annuallistemail.htm.*

[20] This guidance, ''SAFETEA–LU Deadline for New Planning Requirements (July 1, 2007),'' dated May 2, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/hep/plandeadline.htm.*

transportation plans and TIPs adopted and approved prior to July 1, 2007, may be developed under TEA–21 requirements of the provisions and requirements of this part.

We have also clarified, in paragraph (a), what actions may be taken prior to July 1, 2007, on long-range statewide transportation plans and STIPs.

One MPO, half of the national and regional advocacy organizations, and a quarter of the State DOTs commented that the regulations should clearly state that partial STIP approvals are allowable if one MPO or region is not SAFETEA–LU compliant, the other regions could produce a partial STIP that is compliant. Because the regulation allows for approval of partial STIPs (see § 450.218(b)(1)(iii)), no change was made to the regulation. Approval of partial STIPs are acceptable, primarily when difficulties are encountered in cooperatively developing the STIP portion for a particular metropolitan area or for a Federal Lands agency. If an MPO is able to produce a TIP that is SAFETEA–LU compliant, the Federal action would be to amend that TIP into the STIP, making the portion of the STIP that covers that region SAFETEA–LU compliant.

Most of the national and regional advocacy organizations and several State DOTs commented that the deadline for transportation plan, STIP and TIP action should apply to State/MPO approval action rather than the FHWA/FTA conformity finding. The FHWA and the FTA issued guidance ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas'' on this issue on May 25, 2001.[21] The language in the rule is consistent with the conformity rule and current practice. Therefore, no change was made.

Most of the commenters stated that 23 U.S.C. 135(b) requires only ''updates'' to reflect changes required by the SAFETEA–LU, not ''amendments.'' The comments noted that requiring a STIP re-adoption for minor amendments would be a substantial burden and is a stricter interpretation of the statute than Congress intended. Prior to the adoption of this rule, there has not been an accepted definition of or distinction between the terms ''update'' or ''amendment.'' As established in this rule, the FHWA and the FTA consider an amendment to the STIP to be a major change to the transportation plan or program. The FHWA and the FTA believe that any major change to the transportation plan or program, whether called an ''amendment'' or an ''update'' under this regulation, is considered for this purpose an ''update'' as referenced in 23 U.S.C. 135(b). However, an ''administrative modification'' would not be covered by this requirement. This rule will clarify the definition of these terms for the future.

One national and regional advocacy organization stated that Congress specified that the SAFETEA–LU phase-in period should begin on July 1, 2007, not be completed by that date. The FHWA and the FTA believe that this is an incorrect interpretation of the statute. The FHWA and the FTA agree that administrative modifications can be made to TIPs after July 1, 2007, but amendments or revisions that would add or delete a major new project to a TIP, STIP, or transportation plan would not be acceptable after July 1, 2007 in the absence of meeting the provisions and requirements of this part. This information has been included in paragraph (d). In addition, we have clarified in paragraph (d) that, on or after July 1, 2007, both amendments and updates must be based on the provisions and requirements of this part.

Appendix A—Linking the Transportation Planning and NEPA Processes

As mentioned, the FHWA and the FTA received more than 60 comments on this section with about one-third from MPOs and COGs and one-third from State DOTs. National and regional advocacy organizations, transit agencies and others provided the remaining third of the comments on this section. In general, most of the comments received supported the concept of linking planning and NEPA but opposed including Appendix A in the rule.

The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. Appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. Because Appendix A provides amplifying information about how State DOTs, MPOs, and public transportation operators can choose to conduct planning level choices and analyses so they may be adopted or incorporated into the process required by NEPA, but does not impose new requirements, the FHWA and the FTA find that Appendix A is useful information to be included in support of §§ 450.212 (Transportation planning studies and project development), 450.222 (Applicability of NEPA to statewide transportation plans and programs), 450.318 (Transportation planning studies and project development) and 450.336 (Applicability of NEPA to metropolitan transportation plans and programs).

The FHWA and the FTA recognize commenters' concerns about Appendix A, including the recommendation that this information be kept as guidance rather than be made a part of the rule. First, information in an Appendix to a regulation does not carry regulatory authority in itself, but rather serves as guidance to further explain the regulation. Secondly, as stated above, Section 1308 of TEA–21 required the Secretary to eliminate the MIS as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the transportation planning process. Appendix A fulfills that Congressional direction by providing explanatory information regarding how the MIS requirement can be integrated into the transportation planning process. Inclusion of this explanatory information as an Appendix to the regulation will make the information more readily available to users of the regulation, and will provide notice to all interested persons of the agencies' official guidance on MIS integration with the planning process. Attachment of Appendix A to this rule will provide convenient reference for State DOTs, MPOs and public transportation operator(s) who choose to incorporate planning results and decisions in the NEPA process. It will also make the information readily available to the public. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of Appendix A in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects. For the reasons stated above, after careful consideration of all comments, the FHWA and the FTA have decided to attach Appendix A to the final rule as proposed in the NPRM.

Based on the comments, the FHWA and the FTA thoroughly reviewed Appendix A and have made several changes discussed below.

A note was added to the beginning of the discussion to emphasize that the Appendix provides additional information, is non-binding and should not be construed as a rule of general applicability.

For clarification, we made small changes to some of the subheadings. Section I ''Procedural'' was changed to ''Procedural Issues'' and Section II

[21] This document, ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas,'' dated May 25, 2004, is available via the internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/planup_m.htm.*

''Substantive'' was changed to ''Substantive Issues.''

We expanded the agencies listed in the response to Question 1. The response now references ''MPO, State DOT, or public transportation operator.''

No changes were made to Question 2.

In the second paragraph of the response to Question 3, we clarified the term ''lead agency.'' The sentence now reads ''For example, the term 'lead agency' collectively means the U.S. Department of Transportation and a State or local governmental entity serving as a joint lead agency for the NEPA process.''

In the response to Question 4, we clarified that the lead agencies, rather than the FHWA and the FTA, are responsible for making decisions. Also, in the first sentence, we emphasize that the lead agencies ''jointly decide, and must agree * * *''

No changes were made to Question 5.

In the response to Question 6, a small change to add the phrase ''those of'' was made to the examples listed in the first paragraph.

We changed the order of the phrases in the second bullet of the response to Question 7 to emphasize that the transportation planning process (and the future policy year assumptions used) would occur before the NEPA process. We also added ''and the public'' to the eighth bullet. The public and other agencies should have access to the planning products during NEPA scoping.

In Question 8, we added ''during NEPA scoping and'' to the sentence ''The use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document'' to clarify that agencies must identify during the NEPA scoping process their intent to use planning-level decisions.

We clarified in Question 9 what happens during the first-tier EIS process. The second-tier NEPA review(s) would be performed in the usual way. We also added ''planning'' to ''subarea planning study'' to emphasize that information in this Appendix refers to planning level studies. Finally, we clarified that we are referencing the ''mandatory'' Alternatives Analysis process for transit projects.

We have deleted the second paragraph in the response to Question 10. This paragraph suggested even more detailed decisions could be developed and considered during the planning process. Based on the comments we received, we want the Appendix to focus on planning-level decisions.

In the response to Question 11, we simplified the language in the first paragraph.

In the response to Question 12, the reference to ''affected agencies'' was changed to ''participating agencies'' to be specific regarding which agencies should have access to the analyses or studies.

In the response to Question 13, ''special area management plans'' was added to paragraph (f). In addition, ''or current'' was added to the phrase ''the assessment of affected environment and environmental consequences conducted during the transportation planning process will not be detailed or current enough to meet NEPA standards'' to emphasize that these assessments may need to be revisited during NEPA if time has passed between the time when the planning study was completed and the NEPA study.

No change was made to Question 14.

In Question 15, we added ''mitigation'' before ''banking'' to be more specific.

No change was made to Question 16.

No change was made to Question 17.

In the response to Question 18, we added ''and its successor in SAFETEA-LU Section 6002'' to update the discussion in the first paragraph.

No change was made to Question 19.

We updated the Website addresses in the ''Additional Information on this Topic'' section.

A small number of national and regional advocacy organizations objected to Appendix A because it does not require consideration of mitigation to the level, extent and detail required for NEPA. This comment seems to reflect a misunderstanding of the intent of Appendix A. Although Appendix A is designed to provide clarifying information on how the transportation planning process could produce products that can be more readily used in the NEPA process, transportation planning process studies do not require the specificity or analysis required by NEPA. In all likelihood, the studies produced as part of the transportation planning process will only be foundational to subsequent NEPA studies and will need to be supplemented with additional analysis and detail before fully meeting the rigorous requirements of NEPA.

Appendix B—Fiscal Constraint of Transportation Plans and Programs

The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. As was stated, appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. The FHWA and the FTA received a significant number of comments on Appendix B. State DOTs, MPOs and COGs, national and regional advocacy organizations, transit agencies and others expressed concern about imposing new requirements in the Appendix.

The docket included about 80 documents that contained about 170 comments on Appendix B. Most of the comments came from State DOTs and from MPOs and COGs in about equal numbers. Many national and regional advocacy organizations also provided comments on this section. A few public transportation providers and local government agencies provided the remainder of the comments.

Many of the State DOTs, almost all of the MPOs and COGs, many of the national and regional advocacy organizations, and a few of the public transportation providers that commented on this section objected to the Appendix being included in regulation, were generally supportive of the guidance information but many had comments on individual elements of the text as described below. Many of the State DOTs and a few of the national and regional advocacy organizations objected strongly to the text on fiscal constraint being included in regulation or as guidance though some would accept guidance with significant revisions.

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the ISTEA, fiscal constraint has remained a prominent aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information, and additional criteria. Given the level of controversy regarding this Appendix, it has been removed from the rule.

Instead, the FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published.

The FHWA and the FTA find that three key features of Appendix B merit inclusion in the rule, as noted in the section-by-section discussions for § 450.216 (Development and content of the statewide transportation

improvement program (STIP), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program). These key features are: (1) Treatment of highway and transit operations and maintenance costs and revenues; (2) use of ''year of expenditure dollars'' in developing cost and revenue estimates; and (3) use of ''cost ranges/cost bands'' in the outer years of the metropolitan transportation plan.

Regarding the treatment of highway and transit operations and maintenance costs and revenues, the FHWA and the FTA realize that the 1993 planning rule and the NPRM interchangeably referred to the transportation system as either ''existing,'' ''total,'' or ''entire.''

Several State DOTs, MPOs and COGs, national and regional advocacy organizations, and others expressed concern and confusion over these terms. Many commenters called into question the statutory authority for the FHWA and the FTA to focus on State and local government investments to operate and maintain the ''system'' as part of fiscal constraint and financial plans supporting transportation plans and programs. However, the statute, as amended by the SAFETEA–LU (23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C)), requires that the financial element of a metropolitan transportation plan ''demonstrates how the adopted transportation plan can be implemented'' and ''indicates resources from public and private sources'' that can be ''reasonably anticipated to implement the plan.'' A metropolitan transportation plan, as it is developed, must include consideration and recognition of how all the pieces of the regional transportation system will integrate, function and operate, not just those facilities which are or could be funded with Federal resources. To focus solely on the Federally-funded portion of the transportation system could create greater demands on limited Federal resources or jeopardize the value of the Federal investments made within that metropolitan area. Furthermore, outside the transportation planning process, there 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).

Additionally, the FHWA and the FTA believe that the fundamental premise behind the wording in the October 28, 1993 planning rule regarding highway and transit operations and maintenance (58 FR 58040) remains sound.

However, for purposes of clarity and consistency, § 450.216(n), § 450.322(f)(10), and § 450.324(i) have been revised to better describe ''the system'' as Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53). As background, 23 U.S.C. 101(a)(5) defines ''Federal-aid highways'' as ''a highway eligible for assistance other than a highway classified as a local road or rural minor collector.'' Additionally, these sections clarify that the financial plans supporting the metropolitan transportation plan and TIP and the financial information supporting the STIP are to be based on systems-level estimates of costs and revenue sources reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

Regarding the use of ''year of expenditure dollars'' in developing cost and revenue estimates, the FHWA and the FTA jointly issued ''Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans'' on June 30, 2005.[22] This Interim Guidance indicated that financial forecasts (for costs and revenues) to support the metropolitan transportation plan, TIP, and STIP may: (a) Rely on a ''constant dollar'' base year or (b) utilize an inflation rate(s) to reflect ''year expenditure.'' The FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published. In Appendix B, the FHWA and the FTA proposed to exclusively require the use of ''year of expenditure dollars'' to better reflect the time-based value of money. This is particularly crucial for large-scale projects with construction/implementation dates stretching into the future. Because the transportation planning process serves as the beginning point of the larger ''project continuum'' (i.e., moving from concept through construction, and later operations and maintenance), the FHWA and the FTA strongly believe that early disclosure of revenue and cost estimates reflecting time and inflation provides a truer set of expectations and future ''reality'' to the public. However, most of the State DOTs, a few of the national and regional advocacy organizations and some MPOs and COGs, commented that they should not be required to use ''year of expenditure dollars.''

The FHWA and the FTA considered these comments and included in § 450.216(h), § 450.322(f)(10), and § 450.324(d) that ''year of expenditure dollars'' shall be used ''to the extent practicable.'' While this language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars,'' an opportunity to use ''constant dollars'' has been retained.

Regarding the use of ''cost ranges/cost bands'' in the outer years of the metropolitan transportation plan, the FHWA and the FTA jointly issued ''Interim Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans'' on June 30, 2005. The FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published. The Interim Guidance indicated that for the outer years of the metropolitan transportation plan (i.e., beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands. In the NPRM, the FHWA and the FTA proposed to provide this option to MPOs in developing fiscally-constrained metropolitan transportation plans. We have included this option in this rule because we believe it gives MPOs maximum flexibility to broadly define a large-scale transportation issue or problem to be addressed in the future that does not predispose a NEPA decision, while, at the same time, calling for the definition of a future funding source(s) that encompasses the planning-level ''cost range/cost band.''

23 CFR Part 500

Section 500.109 Congestion Management Systems

Few docket documents specifically referenced this section. However, the docket included more than 25 documents that contained almost 30 comments on § 450.320 (Congestion management process in transportation management areas) which is relevant to this section.

As was mentioned, on May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation. The intent of the ''National Strategy to Reduce Congestion on America's Transportation

[22] This joint guidance, ''Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs and Metropolitan Plans,'' dated June 27, 2005, is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

Network'' is to provide a blueprint for Federal, State and local officials to tackle congestion. The States and MPO(s) are encouraged to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages States to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie ups, designates new interstate ''corridors of the future,'' targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages the State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The U.S. DOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

A few comments were received reiterating that the CMP should result in multimodal system performance measures and strategies. The FHWA and the FTA note that existing language reflects the multimodal nature of the CMP. Specifically, § 450.320(a)(2) allows for the appropriate performance measures for the CMP to be determined 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.

Several commenters asked for a clarification with regards to what CMP requirements apply in air quality attainment areas, as opposed to the requirements in air quality nonattainment areas. The CMP requirements for all TMA areas (attainment and nonattainment) are identified in §§ 450.320(a), 450.320(b), 450.320(c), and 450.320(f). Additional CMP requirements that apply only to nonattainment TMA areas (for CO and ozone) are identified in § 450.320(d) and § 450.320(e).

49 CFR Part 613

The NPRM proposed to simplify FTA's cross-reference in 49 CFR Part 613 to 23 CFR Part 450. Because there may be references to the three subparts in 49 CFR Part 613 in various other regulatory and guidance documents, FTA has made technical changes to what was proposed in the NPRM to retain the names of the subparts in this part the same as they were prior to this rule. This will reduce confusion by keeping the names of the subparts the same, but still allowing for the cross-reference simplification and alignment of identical regulatory requirements that FTA had proposed.

Distribution Tables

The NPRM proposed to clarify and revise the regulation's section headings to use plainer language. These changes have been made. For ease of reference, two distribution tables are provided for the current sections and the proposed sections as follows. The first distribution table indicates 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	450.218 Self-certifications, Federal improvement program (STIP). 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.

SECTION TITLE AND NUMBER—Continued

Old section	New section
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.
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	Designated recipient [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].
None	Full funding grant agreement [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 (MPA) [Revised].
Metropolitan planning organization	Metropolitan planning organization.
(MPO)	(MPO) [Revised].
Metropolitan transportation plan	Metropolitan transportation plan.

Old section	New section
None	National ambient air quality standards (NAAQS) [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 construction grant agreement [New].
None	Project selection [New].
None	Provider of freight transportation services [New].
None	Public transportation operator [New].
None	Regional ITS architecture [New].
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) [Revised].
Statewide transportation plan	Long-range statewide transportation plan [Revised].
None	Strategic highway safety plan [New].
None	Transportation control measures (TCMs) [New].
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)(4).
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(a) through (c) [New].
450.214(a) through (b)(3)	450.214(a) [Revised].
None	450.214(b) [New].
450.214(b)(4)	450.214(f) [Revised].
450.214(b)(5)	450.214(c) [Revised].
450.214(b)(6)	450.214(l) [Revised].
None	450.214(d) [New].
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(g) [Revised].
450.216(a) last sentence	450.216(f) [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].

Old section	New section
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.]
450.216(b) last sentence	450.216(f).
450.216(c) through (d)	450.216(n) [Revised].
None	450.216(o) [New].
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 (h) [Revised].
450.306(e)	450.310(f) [Revised].
None	450.310(g) [New].
450.306(f)	Removed.
450.306(g)	450.310(i) [Revised].
450.306(h)	450.310(j) [Revised].
450.306(i) through (j)	Removed.
450.306(k)	450.310(k) through (l) [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].
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)	450.314(a) [Revised].
450.312(b)	450.322(c) [Revised].
450.312(c)	450.322(d) [Revised].
450.312(d)	Removed.
450.312(e)	450.314(b), (d), and (e) [Revised].
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].

Old section	New section
450.316(d)	Removed.
450.318(a) through (f)	450.318(a) through (e) [Revised].
450.320(a)	450.320(a) [Revised].
450.320(b)	450.320(d) and (e) [Revised].
450.320(c)	450.320(b) [Revised].
450.320(d)	450.320(b) [Revised].
500.109(a) second, fourth, and fifth sentences	450.320(b) [Revised].
500.109(b)	450.320(c) [Revised].
500.109(b)(1) through (b)(6)	450.320(c)(1) through (c)(6) [Revised].
None	450.320(f) [New].
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) and (g)(1) through (g)(2) [Revised].
450.322(b)(10)	450.324(f)(9) [Revised].
450.322(b)(11)	450.322(f)(10) [Revised].
None	450.322(h) [New].
450.322(c)	450.322(i) [Revised].
None	450.322(j) [New].
None	450.322(k) [New].
450.322(d)	450.322(l) [Revised].
450.324(a) through (i)	450.324(a) through (i) [Revised].
450.324(j) through (k)	Removed.
450.324(l) through (m)	450.324(j) through (k) [Revised].
450.324(n)	450.324(l).
None	450.324(m) [New].
None	450.324(n) [New].
None	450.324(o) [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 (e) [Revised].
500.109 first and third sentences	500.109(a) [Revised].
500.109(a) second, fourth, and fifth sentences	500.109(b) [Revised].

Rulemaking Analyses and Notices

The FHWA and the FTA received and considered more than 1,600 comments by the comment closing date of September 7, 2006. In addition, we considered all comments received after the closing date to the extent practicable.

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

The FHWA and the FTA have determined that this rulemaking is 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. This rule will 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 will reduce the frequency of some existing regulatory reporting requirements (e.g., metropolitan transportation plan, STIP/TIP, and certification reviews). The FHWA and the FTA have sought to maintain previous 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. We did not receive any comments on this analysis.

The FHWA and the FTA 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 was posted on the docket as a separate document, entitled ''Regulatory Cost Analysis of Proposed Rulemaking.'' We did not receive any comments on the cost analysis. We have not made changes that substantively affect the cost or benefits calculations used in the analysis. Therefore, no changes are made to the cost analysis and we believe that the economic impact of this rulemaking will be minimal.

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 MPOs 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. MPOs, by definition, represent urbanized areas having a minimum population of 50,000. Therefore the Regulatory Flexibility Act

does not apply. We did not receive any comments on the Regulatory Flexibility Act determination.

Unfunded Mandates Reform Act of 1995

This rule will 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 rule will not result in the expenditure of non-Federal funds by State, local, and Indian Tribal governments, in the aggregate, or by the private sector, of $128.1 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 Indian 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. We did not receive any comments on the Unfunded Mandates Reform Act.

Executive Order 13132 (Federalism)

This 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 action will not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA and the FTA have also determined that this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

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.[23] 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. We did consider these concerns when drafting the final rule. We did not receive additional comments on Federalism issues.

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. The FHWA and the FTA did not receive any comments on these programs.

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 regulation 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 approved under OMB control number 2132–0529. Under the previous planning regulations, the burden hours were estimated to be 314,900; however, due to the reduction in the frequency of collection, the burden hours for this final rule are estimated to be only 250,295 hours. That is a reduction of 64,605 burden hours. This collection has been approved by OMB with an expiration date of August 31, 2009. The information reporting requirements for State planning work programs were approved by the OMB under control number 2125–0039 (expiration date: November 30, 2007). However, we have combined these collections into one OMB control number (2132–0529). 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 250,295 hours on the planning agencies that must comply with the requirements in the new regulation. The FHWA and the FTA conducted an analysis of the change in burden hours attributed to the rulemaking, based on estimates used in the submission for OMB approval. This analysis is included on the docket as a separate document entitled ''Estimated Change in Reporting Burden Hours Attributable to the final rule.''

The docket contained a comment on the estimated change in reporting burden hours. The commenter stated that the analysis was unrealistically low because it failed to account for the costs of implementing the proposed fiscal constraint and STIP amendment provisions. The FHWA and the FTA disagree with this comment. The fiscal constraint requirements are not new with this rulemaking; they were introduced under the ISTEA, and subsequently reaffirmed under the SAFETEA–LU (23 U.S.C. 134 (i)(2)(C), 23 U.S.C. 134 (j)(1)(C), 49 U.S.C. 5301 (a)(1), and 49 U.S.C. 5303 (j)(2)(C)). Appendix B (Fiscal Constraint of Transportation Plans and Programs) has been removed from the rule, although three key features were included in appropriate sections. Please see the responses to the comments on Appendix B for additional background information and explanation.

Consequently, the FHWA and the FTA find that the fiscal constraint provision does not add new burden on State DOTs and MPOs, and therefore is not subject to a cost analysis. Furthermore the FHWA and the FTA believe that the changes in definitions regarding TIP/STIP amendments

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

actually reduce the administrative burden by introducing the concept of an ''administrative modification,'' which allows minor changes to be made without requiring public review and comment, redemonstration of fiscal constraint, or a conformity determination. Finally, the cost analysis does specifically recognize that some additional costs may be incurred to address new coordination provisions, and estimates an average cost increase for State DOTs of approximately $54,000 per year. Some States may incur higher costs, while others may incur lower costs. However, these additional costs for transportation plan development are partially offset by estimated cost savings due to other provisions (e.g., reduction in the required frequency of STIP updates). No substantial change was made to the ''Estimated Change in Reporting Burden Hours Attributable to the final rule'' as a result of these comments. Additionally, there has been no change since the approval of the most recent information collection request (ICR) and no change between the NPRM and final rule.

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. The final rule will have 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 final rule will 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 final rule also reduces 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 final rule 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 the previous regulations. The inclusion of an additional year of projects will increase the reporting burden associated with TIP development by 10 percent over current levels. However, the final rule also reduces the 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. The FHWA and the FTA have not made changes to the rule that would substantively affect this analysis. None of the changes made to the regulatory language between the NPRM and the final rule alter information collection requirements.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and have determined that this action would not have any effect on the quality of the environment. A small number of national and regional advocacy organizations wrote that this rulemaking process should be subject to NEPA because certain regulatory provisions (e.g., Appendix A (Linking the transportation planning and NEPA processes), § 450.212 (Transportation planning studies and project development), and § 450.318 (Transportation planning studies and project development)) will impact how environmental considerations are addressed by State DOTs and MPOs. The FHWA and the FTA disagree. The proposed rule defines a process for carrying out the transportation planning provisions as specified in the SAFETEA–LU. It does not rescind or alter any of the requirements specified under NEPA with respect to overall long range transportation planning or project evaluation. Individual plans and projects submitted by State DOTs and MPOs would continue to be subject to NEPA requirements.

Furthermore, the SAFETEA–LU clearly states in 23 U.S.C. 135(j) and 49 U.S.C. 5304(j) that ''any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program shall not be considered to be a Federal action subject to review under [NEPA].''

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. The FHWA and the FTA did not receive any comment on this determination.

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. The FHWA and the FTA did not receive any comment on this determination.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA and the FTA did not receive any comment on this determination.

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 action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian Tribal governments; and will 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 part 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 and would not be changed by this rulemaking. Therefore, a Tribal summary impact statement is not required. The FHWA and the FTA did not receive any comment on this analysis or determination.

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. The FHWA and the FTA did not receive any comment on this determination.

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 record keeping requirements.

49 CFR Part 613

Grant Programs—transportation, Highway and roads, Mass transportation, Reporting and record keeping requirements.

Issued on: January 29, 2007.

J. Richard Capka,

Federal Highway Administrator.

Issued on: January 31, 2007.

James S. Simpson,

Federal Transit Administrator.

■ For the reasons discussed in the preamble, the FHWA and the FTA amend title 23, parts 450 and 500, and title 49, part 613, Code of Federal Regulations as follows:

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

Sec.
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.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303 and 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 minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously-included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).

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 involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for metropolitan transportation plans and TIPs involving ''non-exempt'' projects in nonattainment and maintenance areas). In the context of a long-range statewide transportation plan, an amendment is a revision approved by the State in accordance with its public involvement process.

Attainment area means any geographic area in which levels of a

given criteria air pollutant (e.g., ozone, carbon monoxide, PM10, PM2.5, and nitrogen dioxide) meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant. 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 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 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. For projects involving 49 U.S.C. 5309 funding, execution of a Full Funding Grant Agreement (or equivalent) or a Project Construction Grant Agreement with the USDOT shall be considered a multi-year commitment of Federal funds.

Conformity means a Clean Air Act (42 U.S.C. 7506(c)) requirement that ensures that Federal funding and approval are given to transportation plans, programs and projects that are consistent with the air quality goals established by a State Implementation Plan (SIP). Conformity, to the purpose of the SIP, means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The transportation conformity rule (40 CFR part 93) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities.

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. This definition does not apply to the ''consultation'' performed by the States and the MPOs in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and Tribal conservation plans or maps or inventories of natural or historic resources (see § 450.214(i) and § 450.322(g)(1) and (g)(2)).

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 locally developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

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 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).

Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly-owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. 5336 that are attributable to transportation management areas (TMAs) identified under 49 U.S.C. 5303, or a State regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

Environmental mitigation activities means strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, 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, and may not necessarily address potential project-level impacts.

Federal land management agency means units of the 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.

Financial plan means documentation required to be included with a metropolitan transportation plan and TIP (and optional for the long-range statewide transportation plan and STIP) that demonstrates the consistency

between reasonably available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements.

Financially constrained or Fiscal constraint means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation plan, TIP, and STIP can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. 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.''

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.

Full funding grant agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(d)(1).

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 an additional transportation project that may (but is not required to) be included in a financial plan for a metropolitan transportation plan, TIP, or STIP if reasonable additional resources were to become 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 175A 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 or safety of, and protect the investment in the nation's infrastructure. A management system can include: 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 (MPA) 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 addressing no less than a 20-year planning horizon 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 an NAAQS exists.

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

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, and authorized by the FHWA or awarded as a grant by the FTA.

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

Project construction grant agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).

Project selection means the procedures followed by MPOs, States, and public transportation operators 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 entity that transports or otherwise facilitates the movement of goods from one location to another for others or for itself.

Public transportation operator means the public entity which participates in the continuing, cooperative, and comprehensive transportation planning process in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304, and is the designated recipient of Federal funds under title 49 U.S.C. Chapter 53 for transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by Amtrak.

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 TIP and/or STIP 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 principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A major revision is an ''amendment,'' while a minor revision is an ''administrative modification.''

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

State implementation plan (SIP) means, as defined in section 302(q) of the Clean Air Act (CAA), the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA.

Statewide transportation improvement program (STIP) means a statewide prioritized listing/program of transportation projects covering a period of four years 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 title 23 U.S.C. and title 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 prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 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 making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review. Updates require public review and comment, a 20-year horizon year for metropolitan transportation plans and long-range statewide transportation plans, a four-year program period for TIPs and STIPs, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (for metropolitan transportation plans and TIPs 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 used 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 motorized and non-motorized users;

(3) Increase the security of the transportation system for 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 the statewide transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation systems development, land use, employment, economic development, human and natural environment, and housing and community development.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C Chapter 7 in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the statewide transportation 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 title 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, at a minimum:

(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) Consider the concerns of 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) Consider related planning activities being conducted outside of metropolitan planning areas and between States; and

(7) Coordinate data collection and analyses with MPOs and public transportation operators 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. The right to alter, amend, or repeal interstate compacts entered into under this part is expressly reserved.

(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 may 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 (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the statewide transportation planning process.

(h) The statewide transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.

§ 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 changes. 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 changes. If a proposed change is not adopted, the State shall make publicly available its reasons for not accepting the proposed change, 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 shall, to the extent practicable, 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) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA–21 (Pub. L. 105–178), a State(s), MPO(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the statewide transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with 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 result in producing 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 (e.g., highway, transit, or a highway/transit combination);

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

(4) Basic description of the environmental setting; and/or

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

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

(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 systems-level, corridor, or subarea planning study is conducted with:

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

(ii) Public review;

(iii) Reasonable opportunity to comment during the statewide 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 tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate. Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that is non-binding guidance material.

§ 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 at the time of adoption, 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. The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's 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 other transit safety and security planning and review processes, plans, and programs, as appropriate.

(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 the long-range statewide transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. 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.

(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 (but is not required to) 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. In addition, for illustrative purposes, the financial plan may (but is not required to) include 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 to become 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 (l) 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 amended 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 no less than four years and be updated at least every four years, or more frequently if the Governor elects a more frequent update cycle. However, 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 a 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 included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(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 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), except the following that may (but are not required to) be included:

(1) Safety projects funded under 23 U.S.C. 402 and 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 and conformity purposes, the STIP shall include (if appropriate and included in any TIPs) 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.

(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 Federal funds proposed to be obligated during each program year (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of 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, project 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. In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become 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. Starting December 11, 2007, revenue and cost estimates for the STIP must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.

(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, while federally-supported facilities are 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 (l) of this section. For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(n) 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). Changes that affect fiscal constraint must take place by amendment of the STIP.

(o) In cases that the FHWA and the FTA find a STIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or

administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended STIP that does not reflect the changed revenue situation.

§ 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 to the FHWA and the FTA for joint approval. At the time the entire proposed STIP or STIP amendments are 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) and 49 CFR part 21;

(3) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(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) 23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(6) 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;

(7) 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;

(8) 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;

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

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP or the amended STIP, and make a joint finding on the extent to which the STIP is 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 is 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 past its update deadline, 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 calendar 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 highway and transit operations, the FHWA and the FTA may approve operating assistance for specific projects or programs, 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 STIP in accordance with project selection procedures provided in § 450.330.

(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 is significant shifting of projects among 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 Secretary concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135, 49 U.S.C. 5304, and this subpart shall not be considered to be a Federal action subject to review under NEPA.

§ 450.224 Phase-in of new requirements.

(a) Long-range statewide transportation plans and STIPs adopted or approved prior to July 1, 2007 may be developed using the TEA–21 requirements or the provisions and requirements of this part.

(b) For STIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, STIP approval) 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) 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. However, administrative modifications may be made to the STIP on or after July 1, 2007 in the absence of meeting 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:

(a) 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

(b) 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 motorized and non-motorized users;

(3) Increase the security of the transportation system for 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 shall be reflected, as appropriate, in the metropolitan transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation system development, land use, employment, economic development, human and natural environment, and housing and community development.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 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 may 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 (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the metropolitan transportation planning process.

(h) The metropolitan transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.

(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) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire MPA. The consent of Congress is granted to any two or more States to:

(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 23 U.S.C. 134 and 49 U.S.C. 5303 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.

(d) Each MPO that serves a TMA, when designated or redesignated under this section, shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan planning area, and appropriate State transportation officials. Where appropriate, MPOs may increase the representation of local elected officials, public transportation agencies, or appropriate State officials on their policy boards and other committees as a means for encouraging greater involvement in the metropolitan transportation planning process, subject to the requirements of paragraph (k) of this section.

(e) To the extent possible, only one MPO shall 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 deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.

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

(h) 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).

(i) Redesignation of an MPO serving a multistate 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).

(j) For the purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(k) Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:

(1) 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) A substantial change in the decisionmaking authority or

responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(l) The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (k) of the section):

(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) An MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005, shall retain the MPA boundary that existed on August 10, 2005. The MPA boundaries for such MPOs may only be adjusted by agreement of the Governor and the affected MPO in accordance with the redesignation procedures described in § 450.310(h). The MPA boundary for an MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) after August 10, 2005 may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

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

(d) 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 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 written agreements among the MPO, the State(s), and the public transportation operator(s) serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) 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).

(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 among 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 serving an urbanized area that is not designated as a TMA, the adjacent urbanized area shall not be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

§ 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, 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 made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts;

(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 should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, metropolitan 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) MPOs shall, to the extent practicable, 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) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA–21 (Pub. L. 105–178), an MPO(s), State(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with 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 result in producing 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 (e.g., highway, transit, or a highway/transit combination);

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

(4) Basic description of the environmental setting; and/or

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

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

(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 systems-level, corridor, or subarea planning study is conducted with:

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

(ii) Public review;

(iii) Reasonable 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 tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement (EIS) or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate.

(d) For transit fixed guideway projects requiring an Alternatives Analysis (49 U.S.C. 5309(d) and (e)), the Alternatives Analysis described in 49 CFR part 611 constitutes the planning required by section 1308 of the TEA–21. The Alternatives Analysis may or may not be combined with the preparation of a NEPA document (e.g., a draft EIS). When an Alternatives Analysis is separate from the preparation of a NEPA document, the results of the Alternatives Analysis may be used during a subsequent environmental review process as described in paragraph (a).

(e) Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that it is non-binding guidance material.

§ 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 TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of 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 to be advanced with Federal funds. 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 no less than 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 MPO shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).

(e) The MPO, the State(s), and the public transportation operator(s) shall validate data utilized in preparing other existing modal plans for providing input to the transportation plan. 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 ozone or carbon monoxide;

(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. The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system;

(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 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 metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. 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.

(i) For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(ii) For the purpose of developing the metropolitan 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). 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.

(iii) 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.

(iv) 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. Starting December 11, 2007, revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(v) For the outer years of the metropolitan transportation plan (i.e., beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands.

(vi) 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.

(vii) For illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.

(viii) In cases that the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint; however, in such cases, the FHWA and the FTA will not act on an updated or amended metropolitan transportation plan that does not reflect the changed revenue situation.

(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 (as appropriate) 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)(10) 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, or consistent with, the most recent conforming 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 metropolitan transportation

plan containing eligible projects that are not from, or consistent with, 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 no less than four years, be updated at least every four years, and be approved by the MPO and the Governor. However, 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 amended 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 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), except the following that may (but are not required to) be included:

(1) Safety projects funded under 23 U.S.C. 402 and 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 shall 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 Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);

(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, project 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). 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; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and

public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Starting [Insert date 270 days after effective date], revenue and cost estimates for the TIP must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(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. For 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, while federally supported facilities are 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. 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) Procedures or agreements that distribute suballocated Surface Transportation Program funds or funds under 49 U.S.C. 5307 to individual jurisdictions or modes within the MPA by pre-determined percentages or formulas are inconsistent with the legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the metropolitan transportation planning process.

(k) For the purpose of including projects funded under 49 U.S.C. 5309 in a TIP, the following approach shall be followed:

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

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

(l) 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.

(m) During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, 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, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(n) 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).

(o) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

§ 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 a TIP amendment involves 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(a) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications.

(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 is consistent with the metropolitan transportation plan produced by the continuing and 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 TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of § 450.324(a). 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 § 450.218(c).

(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 the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.

§ 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 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) 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) and 49 CFR part 21;

(4) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(5) 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;

(6) 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(7) 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;

(8) 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;

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

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 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 Secretary concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart shall not be considered to be a Federal action subject to review under NEPA.

§ 450.338 Phase-in of new requirements.

(a) Metropolitan transportation plans and TIPs adopted or approved prior to July 1, 2007 may be developed using the TEA–21 requirements or the provisions and requirements of this part.

(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) On and after July 1, 2007, the FHWA and the FTA will take action on a new TIP developed under the provisions of this part, even if the MPO has not yet adopted a new metropolitan transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the SAFETEA–LU.

(d) 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 be based on the provisions and requirements of this part. However, administrative modifications may be made to the metropolitan transportation plan or TIP on or after July 1, 2007 in the absence of meeting the provisions and requirements of this part.

(e) 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:

This Appendix provides additional information to explain the linkage between the transportation planning and project development/National Environmental Policy Act (NEPA) processes. It is intended to be non-binding and should not be construed as a rule of general applicability.

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 environmental 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 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), or planning-level corridor/subarea/feasibility studies. 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 Issues,'' ''Substantive Issues,'' and ''Administrative Issues'').

I. Procedural Issues:

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, State DOT, or public transportation operator 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'' collectively means the U. S. Department of Transportation and a State or local governmental 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, 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.

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

The lead agencies jointly decide, and must agree, 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 decisions by the lead agencies 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., those of 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 Issues

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 transportation planning process related to land use, economic development, transportation costs, and network expansion consistent with those to be used in the NEPA 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 those 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 and the public during NEPA scoping?
- During 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.

23 U.S.C. 139(f), as amended by the SAFETEA–LU Section 6002, provides 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 (e.g., 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 during NEPA scoping and 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 the first-tier EIS evaluates general travel corridors, modes, and/or packages of projects 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 project or series of projects. Subsequently, second-tier NEPA review(s) of the resulting

projects would be performed in the usual way. The first-tier EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in the planning decisions, as well as to ensure the appropriate consideration of environmental factors in these planning 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 planning study. Similarly, some public transportation operators developing major capital projects perform the mandatory planning Alternatives Analysis required for funding under FTA's Capital Investment Grant program [49 U.S.C. 5309(d) and (e)] within the NEPA process and combine the planning Alternatives Analysis with the draft EIS.

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)).

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 its start. 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* (e.g., 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 participating 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 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) Geographic information system (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, special area management 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 or current 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 advance mitigation, 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 and its successor in SAFETEA–LU section 6002 speak 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.

IV. Additional Information on this Topic

Valuable sources of information are FHWA's environment website (*http://www.fhwa.dot.gov/environment/index.htm*) and FTA's environmental streamlining website (*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 website is continuously updated with news and links to information of interest to transportation and environmental professionals (*www.transportation.environment.org*).

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. The authority citation for part 613 continues to read as follows:

Authority: 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 et seq; 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.48(b), 1.51(f) and 21.7(a).

■ 5. Revise Subpart A and Subpart B of 49 CFR part 613 to read as follows:

Part 613—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Metropolitan Transportation Planning and Programming

Sec.
613.100 Metropolitan transportation planning and programming.

Subpart B—Statewide Transportation Planning and Programming

Sec.
613.200 Statewide transportation planning and programming.

Subpart A—Metropolitan Transportation Planning and Programming

§ 613.100 Metropolitan transportation planning and programming.

The regulations in 23 CFR 450, subpart C, shall be followed in complying with the requirements of this subpart. The definitions in 23 CFR 450, subpart A, shall apply.

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. The definitions in 23 CFR 450, subpart A, shall apply.

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