

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,

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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 de-

veloped 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 ef-

forts 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

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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 oper-

ator(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

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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

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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

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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 non-attainment 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 plan-

ning 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 mainte-

nance 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 develop-

ment 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 ad-

ressed 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 region-

ally 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 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).

(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.

(1) 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

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FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

[72 FR 7261, Feb. 14, 2007; 72 FR 11089, Mar. 12, 2007]

§ 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 cer-

tain 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