DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 771

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2013–0037]

RIN 2125–AF52; 2132–AB10

Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA); U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA and FTA are jointly issuing this final rule to update the regulations governing the development of metropolitan transportation plans (MTP) and programs for urbanized areas, long-range statewide transportation plans and programs, and the congestion management process as well as revisions related to the use of and reliance on planning products developed during the planning process for project development and the environmental review process. The changes reflect the passage of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Fixing America's Surface Transportation (FAST) Act. The MAP–21 continues many provisions related to transportation planning from prior laws; however, it introduces transformational changes and adds some new provisions. The FAST Act makes minor edits to existing provisions. The changes make the regulations consistent with current statutory requirements and implement the following: A new mandate for State departments of transportation (hereafter referred to simply as ''States'') and metropolitan planning organizations (MPO) to take a performance-based approach to planning and programming; a new emphasis on the nonmetropolitan transportation planning process, by requiring States to have a higher level of involvement with nonmetropolitan local officials and providing a process for the creation of regional transportation planning organizations (RTPO); a structural change to the membership of the larger MPOs; a new framework for voluntary scenario planning; new authority for the integration of the planning and environmental review processes; and a process for programmatic mitigation plans.

DATES: Effective June 27, 2016.

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SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notices of proposed rulemakings (NPRM) published on June 2, 2014 (79 FR 31784), and September 10, 2014 (79 FR 53673), and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov*. The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov* and the Government Printing Office's Web site at: *http://www.gpo.gov*.

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I. Executive Summary

A. Purpose of the Regulatory Action

The MAP–21 transformed the Federal-aid highway program and the Federal transit program by requiring a transition to performance-driven, outcome-based approaches to key areas. With respect to planning, although MAP–21 leaves the basic framework of the planning process largely untouched, the statute introduced critical changes to the planning process by requiring States, MPOs, and operators of public transportation to link investment priorities to the achievement of performance targets that they would establish to address performance measures in key areas such as safety, infrastructure condition, congestion, system reliability, emissions, and freight movement. With respect to planning, the FAST Act left the provisions from MAP–21 intact and made minor revisions to existing provisions.

Accordingly, the final rule establishes that the statewide and metropolitan transportation planning processes must provide for the use of a performance-based approach to decisionmaking in support of the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. The final rule requires that States, MPOs, and operators of public transportation establish targets in key national performance areas to document expectations for future performance and that States, MPOs, and operators of public transportation must coordinate the targets that they set for key areas. It further establishes that MPOs must reflect those targets in the MTPs and that States must reflect those targets in their long-range statewide transportation plans. The final rule establishes that the States and MPOs must each describe the anticipated effect of their respective transportation improvement programs toward achieving their targets. As MAP–21 contained new performance-related provisions requiring States, MPOs, and operators of public transportation to develop other performance-based plans and processes, the final rule establishes that States and MPOs must integrate the goals, objectives, performance measures, and targets of those other performance-based plans and processes into their planning processes.

To support the effective implementation of a performance-based planning process, the final rule establishes that every MPO serving an area designated as a transportation management area (TMA) must include on its policy board an official (or officials) who is formally designated to

represent the collective interests of the operators of public transportation in the metropolitan planning area (MPA) and will have equal decisionmaking rights and authorities as other officials on its policy board. It also establishes the option for MPOs to use scenario planning during the development of their MTPs. Scenario planning is an analytical framework to inform decisionmakers about the implications of various investments and policies on transportation system condition and performance.

To continue implementation of the MAP–21 project delivery provisions concerning coordination between the transportation planning process and the environmental review process, the final rule amends the existing planning regulations to add a reference to a new statutory process for integrating planning and the environmental review activities, but preserves other authorities for integration. It also establishes an optional framework for the States and MPOs to develop programmatic mitigation plans as part of the statewide and the metropolitan transportation planning processes.

To support FAST's minor amendments to the planning process, this final rule amends the existing planning regulations to add new planning factors for States and MPOs to consider and implement as part of the planning process. It adds ''takes into consideration resiliency needs'' to the purposes of the statewide and nonmetropolitan and the metropolitan transportation planning processes. It adds new parties that States and MPOs shall provide early and continuous involvement opportunities to in the transportation planning process and that States and MPOs shall allow to comment on the long-range statewide transportation plan and the metropolitan transportation plans. It provides MPO's serving TMA's with an optional framework for developing a congestion management plan, and it adds consideration of the role intercity buses may play to the long-range statewide transportation plan and the metropolitan transportation plan. It also makes reducing the vulnerability of the existing transportation infrastructure to natural disasters a part of the metropolitan transportation plan. It provides structure for the transit representation on MPOs serving TMA areas. It also provides a revised new authority for the use of planning information in the environmental review process that States and MPOs may use. The final rule also contains FAST's requirement that long-range statewide transportation plans shall include a description of performance measures and targets and shall include a system performance report. Previously under MAP–21 this requirement was a ''should.'' These new or revised provisions from the FAST Act have been included in the final rule without changing the language used in the FAST Act.

B. Summary of Major Provisions and Key Changes From NPRM

The final rule retains the major provisions of the NPRM with some changes based on the review and analysis of comments received. In the final rule, FHWA and FTA make the statewide, metropolitan, and nonmetropolitan transportation planning regulations consistent with current statutory requirements. The final rule establishes the following: A new mandate for States and MPOs to take a performance-based approach to planning and programming; a new emphasis on the nonmetropolitan transportation planning process, by requiring States to have a higher level of involvement with nonmetropolitan local officials and providing a process for the creation of RTPOs; a structural change to the membership of the larger MPOs; a new framework for voluntary scenario planning; new authority for the integration of the planning and environmental review processes; and a process for programmatic mitigation plans. Section references below refer to the sections of the regulatory text for title 23 of the Code of Federal Regulations (CFR).

1. Performance-Based Planning and Programming

The MAP–21 transformed the Federal-aid highway program and the Federal transit program by requiring a transition to a performance-driven, outcome-based program that provides for a greater level of transparency and accountability, improved project decisionmaking, and more efficient investment of Federal transportation funds.[1] As part of this new performance-based approach, recipients of Federal-aid highway program funds and Federal transit funds are required to link the investment priorities contained in the Statewide Transportation Improvement Program (STIP) and Transportation Improvement Program (TIP) to achievement of performance targets. In a series of rulemakings, FHWA and FTA will establish national performance measures in key areas, including safety, infrastructure condition, congestion, system reliability, emissions, and freight movement.

Sections 450.206 and 450.306 were amended to establish the requirement that States, MPOs, and operators of public transportation use these measures to establish targets in the key national performance areas to document expectations for future performance.[2] The final rule further establishes that States and MPOs must coordinate their respective targets with each other to ensure consistency to the maximum extent practicable. Although proposed in the NPRM, the final rule does not require that States select and establish performance targets in coordination with Federal Lands Management agencies. The final rule requires that for transit-related targets, States and MPOs must coordinate their selection of targets relating to transit safety and transit state of good repair to the maximum extent practicable with operators of public transportation to ensure consistency with other performance-based provisions applicable to operators of public transportation.

The MAP–21 performance-related provisions also require States, MPOs, and operators of public transportation to develop other performance-based plans and processes or add new requirements on existing performance-based plans and processes. These performance-based plans and processes include the Congestion Mitigation and Air Quality Improvement (CMAQ) Program performance plan, the strategic highway safety plan, the public transportation agency safety plan, the highway and transit asset management plans, and the State freight plan. Sections 450.206 and 450.306 were further amended to establish that States and MPOs integrate the goals, objectives, performance measures, and targets of these other performance plans and processes into their planning process.[3] This integration would help ensure that key performance elements of these other performance plans are considered as part of the investment decisionmaking process. To provide States and MPOs with the needed flexibility to develop their approaches to integrating the performance-based plans into their planning processes as requested by multiple commenters, FHWA and FTA deleted proposed sections that would require the consideration of elements of these plans in the development of the

[1] See, *e.g.,* 23 U.S.C. 150(a).

[2] See 23 U.S.C. 134(h)(2), 23 U.S.C. 135(d)(2), 49 U.S.C. 5303(h)(2), and 49 U.S.C. 5304(d)(2).

[3] See 23 U.S.C. 134(h)(2)(D), 23 U.S.C. 135(d)(2)(C), 49 U.S.C. 5303(h)(2)(D), and 49 U.S.C. 5304(d)(2)(C).

long-range statewide transportation plans,[4] MTPs,[5] TIPs,[6] and STIPs.[7]

Section 450.208 in the NPRM and in the final rule discusses coordination of planning process activities. Section 450.208(e) of the NPRM proposed that, in carrying out the statewide transportation planning process, States shall apply asset management principles and techniques, consistent with the State Asset Management Plan for the National Highway System (NHS), the Transit Asset Management Plan, and the Public Transportation Safety Plan. Because this is not a statutory requirement and the statewide and nonmetropolitan transportation planning process is much broader than an asset management plan, FHWA and FTA changed ''shall'' to ''should'' in this provision. Section 450.208(g) in the NPRM would have required that a State integrate the goals, objectives, performance measures, and targets into the statewide transportation planning process, as appropriate from a specified list of performance-based plans—a requirement that was also listed in section 450.206(c). This requirement remains, however, the paragraph in section 450.208(g) was deleted from the final rule as it duplicates section 450.206(c)(4).

Section 450.210 requires that States shall provide opportunities for public review and comment at key decision points in the transportation planning process and for nonmetropolitan local official participation in the development of the long-range State plan and the STIP. Consistent with the requirement to engage the public in the transportation planning process, FHWA and FTA added section 450.210(a)(3) to the final rule, which states that: ''With respect to the setting of targets, nothing in this part precludes a State from considering comments made as part of the State's public involvement process.''

Section 450.314 was amended to require that MPOs identify how they will cooperatively implement these performance-based planning provisions with States and operators of public transportation. Rather than requiring a reopening of metropolitan planning agreements as proposed in the NPRM, the final rule provides the option documenting it either as part of the metropolitan planning agreements, or documenting it in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation. Whichever option is selected, section 450.314(h) establishes that the MPO(s), the State(s), and the providers of public transportation must jointly agree upon and document in writing the coordinated processes for the collection of performance data, the selection of performance targets for the metropolitan area, the reporting of metropolitan area targets, and the reporting of actual system performance related to those targets. The documentation must also describe the roles and responsibilities for the collection of data for the NHS. Including this description is critical because of the new requirements for a State asset management plan for the NHS and establishment of performance measures and targets.[8]

Sections 450.216 and 450.324 discuss the development of the long-range statewide transportation plan and the MTP. In the final rule, section 450.324 was amended to establish that, once performance targets are selected by MPOs, MPOs must reflect those targets in their MTPs. As a result of FAST, the amended section 450.216 requires States to do the same. Accordingly, amended section 450.324 establishes [9] that, in their transportation plans, MPOs would need to describe these performance targets, evaluate the condition and performance of the transportation system, and report on progress toward the achievement of their performance targets.[10] Amended section 450.216 requires States to include similar information in their transportation plans.[11] Sections 450.216(n) and 450.324(f)(7) of the NPRM proposed that the long-range statewide transportation plan and the MTP should be informed by the financial plan and the investment strategies from the State asset management plan for the NHS and by the public transit asset management plan(s). As the language is not statutory, and many commented that it could generate confusion and inconsistent enforcement, FHWA and FTA removed these subparagraphs from the final rule. However, FHWA and FTA note that the statute, section 450.206(c)(4), and section 450.306(d)(4) require that States and MPOs integrate the goals, objectives, performance measures, and targets described in other performance-based plans into their planning processes. The final rule will provide States and MPOs the flexibility to determine how to integrate the performance-based plans into their planning processes.

Sections 450.218 and 450.326 were amended to establish that, as part of the State and MPO programs of projects (the STIPs and TIPs, respectively), the States and MPOs must describe, to the maximum extent practicable, the anticipated effect of the investment priorities (or their program of transportation improvement projects) toward achieving the performance targets.[12] As the long-range plans, STIPs, and TIPs direct investment priorities, it is critical to ensure that performance targets are considered during the development of these documents. However, sections 450.218(r) and 450.328(d), which proposed that a STIP (and TIP) should be consistent with the strategies to achieve targets presented in other performance management plans such as the highway and transit asset management plans, the Strategic Highway Safety Plan, the public transportation agency safety plan, the CMAQ performance plan, and the State freight plan (if one exists), are not included in the final rule.

The FHWA and FTA removed this paragraph in the final rule, noting that the statute and sections 450.206(c)(4) and 450.306(d)(4) require that States and MPOs integrate the goals, objectives, performance measures, and targets described in other performance-based plans into their planning processes. The FHWA and FTA wish to provide States and MPOs the flexibility to determine how State asset management plans for the NHS and public transit asset management plans are considered when STIPs and TIPs are being developed.

Finally, proposed section 450.326(n) was changed to 450.326(m) in the final rule. The phrase ''or funds under 49 U.S.C. 5307'' was deleted from this paragraph as it is not consistent with FTA Circular C9030.1E, which permits section 5307 funds to be suballocated according to a formula.

2. New Emphasis on Nonmetropolitan Transportation Planning

This regulation also places a new emphasis on the importance of nonmetropolitan transportation planning. This new emphasis, as proposed in the NPRM, is retained in the final rule without change. The final rule retains sections 450.208–450.210

[4] Proposed section 450.216(n).

[5] Proposed section 450.324((f)(7).

[6] Proposed section 450.218(o) and proposed section 450.218(r).

[7] Proposed section 450.326(d) and proposed section 450.326(m).

[8] Federal-aid Highway Risk-Based Asset Management Plan Rule for the National Highway System (NHS) [RIN 2125–AF57].

[9] See proposed sections 450.216, 450.218, 450.324 and 450.326.

[10] See 23 U.S.C. 134(i)(2) and 49 U.S.C. 5303(i)(2).

[11] 23 U.S.C. 135(f)(7) and 49 U.S.C. 5304(f)(7).

[12] See 23 U.S.C. 134(j)(2)(D), 23 U.S.C. 135(g)(4), 49 U.S.C. 5303(j)(2)(D), and 49 U.S.C. 5304(g)(4).

and 450.216, without alteration from the NPRM, in which State ''consultation'' with local officials or RTPOs, if applicable, was changed to ''cooperation'' and States have the option to establish and designate RTPOs to conduct transportation planning in nonmetropolitan areas. Section 450.210(d)(1) provides the option that a State may establish an RTPO which shall be a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organizations and representatives of local transportation systems who volunteer for such organizations. The FHWA and FTA note that the establishment of an RTPO by a State is optional and that a State can choose to retain its existing rural planning organizations (RPO). However, the final rule affirms that in order to be treated as an RTPO under this regulation, any existing regional planning organization must be established and designated as an RTPO under the provisions of this section. The final rule describes its required structure and responsibilities.

Related to the new emphasis on nonmetropolitan transportation planning, FHWA and FTA did not include the proposed change to the definition of ''consideration'' in section 450.104. Multiple commenters noted that to require States and MPOs to take into account the consequences, in addition to the opinions, actions, and relevant information from other parties when making a decision or determining a course of action, would be extraordinarily burdensome and with limited benefit. The FHWA and FTA also corrected sections 450.216(h) and 450.218(c) to refer to the new requirements for a cooperative process in section 450.210.

3. Additions to the Metropolitan Planning Process

The MAP–21 made two changes specific to the metropolitan planning process to support the effective implementation of performance-based approach to planning and programming. The first change affects the policy board structure of large MPOs. For each MPO serving a TMA, the planning statutes and this final regulation identify a list of government or agency officials that must be on that policy board. The June 2, 2014, FHWA and FTA Guidance on Transit Representation on the TMA MPO [13] is superseded by revisions to section 450.310 in the final rule. Section 450.310(d)(3) in the NPRM became section 450.310(d)(4) in the final rule and is unchanged. The new section 450.310(d)(3) requires that representation by operators of public transportation be added to this list of officials. The final rule establishes that every MPO that serves an area designated as a TMA must include an official (or officials) who is formally designated to represent the collective interests of the operators of public transportation in the MPA and will have equal decisionmaking rights and authorities as other officials on its policy board. Related to this requirement, FHWA and FTA did not include the proposed definitions for ''local official'' and ''major modes of transportation'' in the final rule. As the NPRM already included a definition of ''nonmetropolitan local official,'' and section 450.310 identifies ''local elected official,'' FHWA and FTA deleted the definition of ''local official.'' With respect to ''major modes of transportation,'' FHWA and FTA concur with comments that the definition is overly broad and could be read to include all forms of transportation, including non-major modes, and that MPOs are in the best position to define what constitutes a major mode of transportation in their respective MPAs. The FHWA and FTA will continue to work with each MPO to determine what major modes exist in their MPA so that they are included appropriately in the MPO structure.

The second change in section 450.324 of the final rule provides that MPOs may use scenario planning during the development of their plans. Scenario planning is an analytical framework to inform decisionmakers about the implications of various investments and policies on transportation system condition and performance during the development of their plan.

4. Use of Planning Products in Project Development

In addition to changing the planning statutes, the MAP–21 and FAST made changes to project delivery provisions concerning coordination between the transportation planning process and the environmental review process. The FHWA and FTA have long supported the use of planning products and decisions during the environmental review process, an approach referred to as Planning and Environmental Linkages (PEL). Under PEL, Federal agencies use and rely on planning analyses, studies, decisions, or other information for the project development and environmental review of transportation projects. With PEL, FHWA and FTA may, for example: Establish a project's purpose and need by relying on the goal and objective developed during the planning process; eliminate the need to further consider alternatives deemed to be unreasonable by relying on analyses conducted to evaluate the alternatives during planning; rely on future land use plans as a source of information for the cumulative impacts analysis required under National Environmental Policy Act (NEPA); carry forward suitable mitigation measures and approaches identified through the planning process; or establish the modal choice selections for the consideration of reasonable alternatives to address the identified need, provided that such strategies are consistent with NEPA for the particular project. The final rule explicitly recognizes a variety of PEL methods that may be used to integrate planning with environmental reviews. The PEL provisions are in sections 450.212 and 450.318. Only sections 450.212(d) and 450.318(e) are new provisions, added as a result of the PEL authority created in the MAP–21 and substantially amended in FAST.

In the final rule, sections 450.212(a) and 450.318(a) describe the PEL approach developed by FHWA and FTA, based on NEPA regulations, guidance, and case law. Sections 450.212(b) and 450.318(b) retain the prior rule's provisions on using documents and other source materials through incorporation by reference pursuant to NEPA regulations at 40 CFR 1502.21. Sections 450.212(c), 450.318(c), and 450.318(d) keep language from the prior rule addressing integration by means of agreement of the NEPA lead agencies, including the use of tiering, incorporation of planning corridor or subarea studies into the NEPA document, and other means. Sections 450.212(c) and 450.318(d) retain the prior rule's description of the non-binding guidance in Appendix A to part 450, which discusses the integration of planning and environmental reviews. The FHWA and FTA made minor revisions to Appendix A in the final rule. These revisions include deleting the text in the response to question 16 that describes 49 U.S.C. 5313(b) funds as an eligible source of funds for conducting environmental studies and analyses within transportation planning. This change was made because 49 U.S.C. 5313(b) funds are not an eligible source of planning funds for conducting environmental studies and analyses within transportation planning. In another revision to Appendix A in the final rule, under the response to question 18, FHWA and FTA have

[13] 79 FR 31214.

updated the number of positions that were being funded with Federal and State funds to support focused and accelerated project review by a variety of local, State, and tribal agencies from 246 positions (as of 2003) to over 200 positions (as of 2015). This change was made to update the number of positions funded to accelerate project review at local, State, tribal, and Federal agencies to reflect more recent information. The FHWA and FTA have added language in 450.212(c) and 450.318(d) to clarify that Appendix A applies only to PEL authorities in sections 450.212(a)–(c) and 450.318(a)–(c).

Sections 450.212(d) and 450.318(e) add a reference to the statutory provision, 23 U.S.C. 168, added by MAP–21 and amended by FAST. The numbering for the new provisions is different in the final rule than in the NPRM. This is because sections 450.318(d) of the prior rule was deleted, as proposed in the planning NPRM. In addition, FHWA and FTA replaced the text from the PEL NPRM and in its place inserted references to the section 168 provisions.

5. Programmatic Mitigation

Sections 450.214 and 450.320 discuss an optional framework for developing programmatic mitigation plans as part of the statewide and the metropolitan transportation planning processes. The FHWA and FTA have largely retained the language in the NPRM for these sections, with the exception of a few changes. In sections 450.214 and 450.320, additional language has been added to make it clear that this provision for developing programmatic mitigation plans as part of the statewide or the metropolitan transportation planning process is optional. In sections 450.214(a)(2)(ii) and 450.320(a)(2)(ii), the final rule added archeological resources to the list of examples of resources in the NPRM that may be identified in a programmatic mitigation plan. In the same paragraph, the phrase ''threatened or endangered species critical habitat'' has been corrected from the NPRM to read ''threatened and endangered species and critical habitat'' in the final rule. In sections 450.214(a)(2)(iii) and 450.320(a)(2)(iii), the final rule added stormwater to the list of examples of resource categories described in the NPRM for existing or planned environmental resource banks that may be identified in a programmatic mitigation plan. New language has been added in sections 450.214(f) and 450.320(f) of this section to make it clear that a programmatic mitigation plan may be developed as part of, or separately from, the planning process and that a programmatic mitigation plan developed separately from the planning process under another authority may be adopted in the statewide or metropolitan planning process.

Section 1306 of FAST amends 23 U.S.C. 169(f) to change ''may use'' to ''shall give substantial weight to'' and changes ''any other environmental laws and regulations'' to ''other Federal environmental law'' such that a Federal agency responsible for environmental reviews ''shall give substantial weight to'' the recommendations in the programmatic mitigation plan when carrying out its responsibilities under NEPA or ''other Federal environmental law.'' Sections 450.214(d) and 450.320(d) of the final rule are amended to reflect these changes.

6. Other Changes

The definitions for ''conformity'' and ''consideration'' proposed in the NPRM were amended in the final rule.

7. Changes Resulting From the FAST Act

Sections 450.200 and 450.300 add intermodal facilities that support intercity transportation including intercity bus facilities and commuter van pool providers to the purposes of the statewide and metropolitan transportation planning processes. Sections 450.200 and 450.300 add a new requirement to take into consideration resiliency needs to the purposes of the statewide and nonmetropolitan and the metropolitan transportation planning processes. Sections 450.206(a)(9) and (10) and 450.306(b)(9) and (10) add two new planning factors to the scope of the statewide and nonmetropolitan and the metropolitan transportation planning processes that States and MPOs shall consider and implement: Improve resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and enhance travel and tourism.

Section 450.210(a)(1)(i) adds public ports and intercity bus operators to the list of entities that a State shall provide public involvement opportunities to as part of the statewide and nonmetropolitan transportation planning process. Section 450.216(b) adds that the long-range statewide transportation plan shall include consideration of the role of intercity buses may play in reducing congestion, pollution, and energy consumption. In section 450.216(l)(2), public ports has been added to the list of interested parties that a State shall provide a reasonable opportunity to comment on the proposed long-range statewide transportation plan exactly as described in FAST section 1201 (23 U.S.C. 135(f)(3)(A)(ii)). Also, in section 450.216(l)(2), examples of providers of private providers of public transportation have been added to the final rule exactly as described in FAST section 1202 (23 U.S.C. (f)(3)(A)(ii)) including intercity bus operators, employer based cash-out program, shuttle program, or telework program. Sections 450.216(f)(1) and (2) provide that States shall include a description of performance measures and targets and a system performance report in the long-range statewide transportation plan (previously under MAP–21 this was a ''should'').

Section 1306 of FAST amends 23 U.S.C. 169(f) to change ''may use'' to ''shall give substantial weight to'' and changes ''any other environmental laws and regulations'' to ''other Federal environmental law'' such that a Federal agency responsible for environmental reviews ''shall give substantial weight to'' the recommendations in the programmatic mitigation plan when carrying out its responsibilities under NEPA or ''other Federal environmental law.'' Sections 450.214(d) and 450.320(d) of the final rule are amended to reflect these changes exactly as discussed in section 1306 of FAST.

Sections 450.316(a) and (b) provide that MPOs must provide public ports with a reasonable opportunity to comment on the MTP. Section 450.316(b) provides that MPOs should consult with officials responsible for tourism and natural disaster risk reduction when developing MTPs and TIPs. Section 450.322 provides an optional framework for an MPO serving a TMA to develop a congestion management plan (the requirement for a congestion management process for MPOs serving a TMA has been retained). Section 450.324(f)(7) adds a new requirement to assess capital investment and other strategies that reduce the vulnerability of the existing transportation infrastructure to natural disasters to the MTP. Section 450.324(f)(8) adds consideration of the role intercity buses may play in reducing congestion, pollution, and energy consumption as part of the MTP. Section 450.324(j) adds public ports to the list of entities a MPO shall provide opportunity to comment on the MTP and also adds a list of examples of private providers of transportation.

In making the changes to the final rule based on the amendments to 23 U.S.C. 134 and 135 from FAST, FHWA and FTA have used the exact language in the regulations that was used in the Act,

and have included it in the final rule without alteration.

TABLE 1—SUMMARY OF KEY CHANGES FROM THE PLANNING NPRMS TO THE FINAL RULE

Topic	NPRM section(s)	Key changes from NPRMs to final rule
Performance-Based Planning and Programming.	450.206(c)	Coordination of the planning process—the requirement that the State should select and establish performance targets in coordination with Federal Lands Management agencies in section 450.206(c) was deleted.
	450.208(g)	Coordination of the planning process—In section 450.208(g), the requirement that the State shall integrate other performance-based plans into the statewide planning process was deleted as it is already covered in the scope of the planning process in section 450.206(c)(4).
	450.210(a)(3)	Interested parties—In section 450.210(a), additional language was added in section 450.210(a)(3): ''With respect to the setting of targets, nothing in in this part precludes a State from considering comments made as part of the State's public involvement process.''
	450.218(r), 450.328(d)	Development and content of the STIP and TIP—In sections 450.218(r) and 450.328(d), the requirement that the discussion in the STIP and TIP be consistent with the strategies to achieve targets presented in other performance management plans such as the highway and transit asset management plans, the Strategic Highway Safety Plan (SHSP), the public agency safety plan, the CMAQ performance plan, and the State freight plan (if one exists) was deleted.
	450.314(a), (e), and (g)	Metropolitan Planning Agreements —Proposed changes to sections 450.314(a), (e), and (g) were deleted and replaced by new section 450.314(h) which requires States, MPOs, and operators of public transportation to cooperatively develop and include specific provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance, and data collection for the State asset management system for the NHS as part of the metropolitan planning agreement or in some mutually agreed upon and documented means.
Additions to the Metropolitan Planning Process.	450.310 and June 2, 2014 FTA/FHWA Guidance on Transit Representation on a TMA MPO.	The June 2, 2014 FHWA/FTA Guidance on Transit Representation on a TMA MPO published with the NPRM is superseded by revisions to section 450.310 this final regulation.
New Authority for Using Planning Information in the Environmental Review Process.	450.212(d), 450.318(e)	Added a reference to the additional PEL authority in 23 U.S.C. 168.
Programmatic Mitigation Plans	450.214 and 450.320	Language was added to clarify that developing programmatic mitigation plans as part of the statewide or the metropolitan transportation planning process is optional.
	450.214(a)(2)(iii) and 450.320(a)(2)(iii).	Stormwater was added to the list of examples of environmental resource categories described in the NPRM that may be identified in a programmatic mitigation plan.
	450.214(b, d, and f) and 450.320(b, d, and f).	Changed to make it clear that a State or MPO may adopt a programmatic mitigation plan(s) that is developed outside of the planning process.
	450.214(a)(2)(ii and iii) and 450.320(a)(2)(ii and iii).	Archeological resources was added to the list of examples of resources that may be identified in a programmatic mitigation plan. The phrase ''endangered species critical habit'' was corrected to read ''endangered species, and critical habitat.''
Other Changes (Asset Management)	450.208(e)	Coordination of Planning Process Activities—''shall'' was changed to ''should'' (''In carrying out the statewide transportation planning process, States ''should'' apply asset management principles consistent with the NHS Asset Management Plan, the Transit Asset Management plan, and Public Transportation Agency Safety Plan . . .'').
	450.218(o), 450.326(m)	Development and content of the STIP (section 450.218(o)) and TIP (section 450.326(m))—The phrase ''The STIP and TIP should be informed by the financial plan and the investment strategies from the State asset management plan for the NHS and by the public transit asset management plan(s) . . .'' was deleted.
	450.216(n), 450.324(f)(7)	Development and content of the long-range statewide transportation plan (450.216(n)) and Development and content of the MTP (450.324(f)(7))—The phrase ''. . . long-range statewide transportation plans and metropolitan transportation plans should be informed by the financial plan and the investment strategies from the asset management plan for the NHS and investment priorities of the public transit asset management plans(s) . . .'' is deleted from the final rule.
Other Changes (misc.)	450.104	Definitions—The proposed definitions for *local official* and for *major modes of transportation* are deleted from the final rule.
		The proposed definitions for*, conformity,* and *consideration* are amended in the final rule.
	450.324(a)	The word ''minimum'' is added to the phrase a transportation plan addressing no less than a ''minimum'' 20-year planning horizon.
	450.326(n)	Sec. 450.326(n) becomes 450.326(m) in the final rule and the phrase ''or funds under 49 U.S.C. 5307'' is deleted.

TABLE 1—SUMMARY OF KEY CHANGES FROM THE PLANNING NPRMS TO THE FINAL RULE—Continued

Topic	NPRM section(s)	Key changes from NPRMs to final rule
Other Changes (from FAST)	450.200 and 450.300	Intermodal facilities that support intercity transportation, including intercity bus facilities and commuter van pool providers is added to the purpose of the statewide and metropolitan multimodal transportation planning processes.
	450.206(a)(9 and 10) and 450.306(b)(9 and 10).	Adds ''takes into consideration resiliency needs'' to the purpose of the statewide and nonmetropolitan and the metropolitan transportation planning processes.
	450.210(a)(1)(i)	Two new planning factors are added to the scope of the statewide and nonmetropolitan and the metropolitan transportation planning processes: (Improve resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and enhance travel and tourism).
	450.212(d) and 450.450.318(e).	Public ports and intercity bus operators are added to the list of entities that a State shall provide early and continuous public involvement opportunities as part of the statewide transportation planning process. New authority for using planning information in the environmental review process, sections 450.212(d) and 450.318(e) are added to reference FAST section 1305 (23 U.S.C. 168).
	450.214(d) and 450.320(d)	Programmatic mitigation plans—changes ''may use'' to ''shall give substantial weight to'' and changes ''any other environmental laws and regulations'' to ''other Federal environmental law''—A Federal agency responsible for environmental reviews ''shall give substantial weight to'' the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 or ''other Federal environmental law.''
	450.216 and 450.324	Development and content of the long-range statewide transportation plan and the metropolitan transportation plan. Section 450.216(b) adds requirement for consideration of the role of intercity buses in reducing congestion, pollution, and energy consumption as part of the long-range statewide transportation plan. Section 450.216(f)(1) and (2) ''should'' becomes ''shall''—The statewide transportation plan ''shall'' include a description of performance measures and targets and shall include a system performance report. Section 450.216(l)(2) adds public ports to the list of entities States shall provide a reasonable opportunity to comment on the plan and adds examples of private providers of transportation. Section 450.324(f)(2) adds public transportation facilities and intercity bus facilities to the list of existing and proposed transportation facilities to be included in the metropolitan transportation plan. Section 450.324(f)(7) adds ''reduce the vulnerability of the existing transportation infrastructure to natural disasters'' to the assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure in the metropolitan transportation plan. Section 450.324(f)(8) adds consideration of the role intercity buses may play in reducing congestion, pollution, and energy consumption as part of the metropolitan transportation plan. Section 450.324(j) adds public ports to the list of entities that an MPO shall provide a reasonable opportunity to comment on the metropolitan transportation plan. Section 450.324(j) adds a list of examples of private providers of transportation.
	450.310(d)	Describes TMA MPO structure.
	450.316	Interested parties, participation, and consultation. Section 450.316(a)—adds public ports to the list of entities that an MPO shall provide a reasonable opportunity to comment on the metropolitan transportation plan. Section 450.324(j) adds a list of examples of private providers of transportation. Section 450.316(b)—adds officials responsible for tourism and natural disaster risk reduction to the list of agencies and officials that an MPO should consult with in developing metropolitan transportation plans and TIPs.
	450.322	Congestion management process. Adds a list of examples in section 450.322(a) of travel demand reduction strategies. Adds job access projects as a congestion management strategy. Adds new section 450.322(h)—A MPO serving a TMA may develop a congestion management plan.

C. Costs and Benefits

The FHWA and FTA estimated the incremental costs associated with the new requirements in the final rule that represent a change to current planning practices for States, MPOs, and operators of public transportation. The FHWA and FTA derived the costs by assessing the expected increase in the level of effort and costs associated with carrying out several specific transportation planning functions, such as the development of metropolitan and statewide long-range transportation plans, TIPs, and STIPs. The changes in the final rule that are related to environmental reviews are optional and would not have a significant cost impact for States, MPOs, or operators of public transportation. It is anticipated that these optional environmental streamlining provisions could result in costs savings by minimizing the potential duplication of planning and environmental processes and by improved project delivery timeframes.

To estimate the incremental costs associated with the new requirements in the final rule that represent a change to current planning practices, FHWA and FTA assumed that implementing the performance-based planning provisions would increase the costs of preparing State and MPO long-range plans, TIPs, and STIPs by an average of 15 percent, based on an analysis of current costs and discussions with States and MPOs that have implemented a performance-based approach to transportation planning and programming. Following this approach, FHWA and FTA estimate the updated total cost for implementation of the changes to the planning process resulting from the final rule is $30.9 million annually (as compared to the estimate of $30.8 million in the NPRM). To implement the changes in support of a more efficient, performance-based planning process, FHWA and FTA estimate that the aggregate increase in costs attributable to the final rule for all 50 States, the District of Columbia, and Puerto Rico and 409 MPOs is approximately $28.4 million per year (as compared to the estimate of $28.3 million in the NPRM). These costs are primarily attributed to an increase in staff time needed to meet the new requirements. For the estimated 600 operators of public transportation that operate within MPAs, the total cost would be $2.5 million per year to coordinate with MPOs in their selection of performance targets for transit state of good repair and transit safety.

The FHWA and FTA updated the total cost estimate for the changes made from the NPRM to the final rule based on additional information on the number of MPOs that was not available at the time the NPRM was issued. The costs are revised for the final rule because FHWA and FTA assumed in the NPRM that there would be 420 MPOs (210 TMA MPOs and 210 non-TMA MPOs) after the 2010 census. This assumption was based on the fact that there were 384 existing MPOs at the time in addition to 36 new urbanized areas resulting from the 2010 census. The actual number of MPOs has turned out to be slightly lower (201 TMA MPOs and 208 non-TMA MPOs) because several of the new urbanized areas resulting from the 2010 census merged into existing MPOs instead of forming new MPOs. The costs were also adjusted for inflation from 2012 to 2014.

The FHWA and FTA expect that the final rule changes to the planning process will result in some significant benefits, including improved decisionmaking through increased transparency and accountability, and support of the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. The final rule would promote transparency by requiring the establishment of performance targets in key areas, such as safety, infrastructure condition, system reliability, emissions, and congestion and by expressly linking investment decisions to the achievement of such targets. This would be documented in plans or programs developed with public review.

The FHWA and FTA expect that the planning process would become more transparent as investments of Federal funds would be based on a decisionmaking process that is focused on transportation system performance, and the specific transportation system performance goals, measures, and targets that drive investment decisions would be known to the public, elected officials, and other interested parties. The proposal would establish accountability through mandating reports on progress toward meeting those targets. In addition, FHWA and FTA expect that these regulatory changes would make the planning process more accountable by having States, MPOs, and operators of public transportation identify desired transportation system performance outcomes related to the national performance areas and that investments made would be more focused on achieving these system performance outcomes. Other elements of the final rule would improve decisionmaking, such as including representation by operators of public transportation on each MPO that serves a TMA, establishing agreements in metropolitan areas identifying roles and responsibilities for performance-based planning, requiring States to have a higher level of involvement with nonmetropolitan local officials, and providing an optional process for the creation of RTPOs.

The FHWA and FTA have not been able to locate data or empirical studies to assist in monetizing or quantifying the benefits of the final rule. Estimates of the benefits of the final rule would be difficult to develop. Therefore, in order to evaluate benefits, FHWA and FTA used a break-even analysis as the primary approach to quantify benefits. The approach determines the point at which benefits from the final rule exceed the annual costs of compliance. The total annual MAP–21 funding programmed through this process in FY 2014 is $37.8 billion in FHWA funds and $10.7 billion in FTA funds. Under FAST, the total annual funding programmed through this process in FY 2016 is $39.7 billion in FHWA funds and $11.7 billion in FTA funds. The annual average cost for implementing this regulation is estimated to be $30.9 million per year. If return on investment increases by at least 0.064 percent of the combined FHWA and FTA annual funding programs, the benefits of the regulation exceed the costs. The total Federal, State, and local cost in FY 2014 of the planning program is $1,493,868,000. Generally, 80 percent of these eligible costs are directly reimbursable through Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(d) and 49 U.S.C. 5305(f)) and for State planning and research (23 U.S.C. 505 and 49 U.S.C. 5305(f)). States, MPOs, and operators of public transportation have the flexibility to use some FHWA Federal capital funds or some FTA formula program funds for transportation planning (23 U.S.C. 133(b)(1), 49 U.S.C. 5307(a)(1)(B), and 5311(B)(1)(A)). As the cost burden of the final rule is estimated to be 2.5 percent of the total planning program, FHWA and FTA believe the economic impact is minimal and the benefits of implementation outweigh the costs.

The table below is a summary of the costs and benefits calculated for the final rule.

TABLE 2—SUMMARY OF AVERAGE ANNUAL REGULATORY COSTS AND BURDEN HOURS OF EFFORT DUE TO THE CHANGES IN THE REGULATIONS RESULTING FROM MAP–21

[2014 dollars]

Entity	Total additional cost	Non-Federal share (20%)	Average additional person hours per agency
TMA MPOs (201)	$18,141,200	$3,628,200	1,800

TABLE 2—SUMMARY OF AVERAGE ANNUAL REGULATORY COSTS AND BURDEN HOURS OF EFFORT DUE TO THE CHANGES IN THE REGULATIONS RESULTING FROM MAP–21—Continued

[2014 dollars]

Entity	Total additional cost	Non-Federal share (20%)	Average additional person hours per agency
Non-TMA MPOs (208)	3,990,500	798,100	400
States (50), the District of Columbia, and Puerto Rico	6,257,800	1,251,600	2,400
Operators of Public Transportation (600)	2,510,000	502,000	100
Total	30,899,500	6,179,900	.....

II. Acronyms and Abbreviations

Acronym	Full name
3–C	Cooperative, Continuous, and Comprehensive.
AASHTO	American Association of State Highway and Transportation Officials.
AK DOT	Alaska Department of Transportation.
AMPO	Association of Metropolitan Planning Organizations.
AOG	Association of Governments.
APTA	American Public Transportation Association.
ARC	Atlanta Regional Commission.
ARTBA	American Road & Transportation Builders Association.
ASHTD	Arkansas State Highway and Transportation Department.
Assoc.	Association.
BART	Bay Area Rapid Transit.
CAA	Clean Air Act.
CALTRANS	California Department of Transportation.
CEDS	Comprehensive Economic Development Strategies.
CEQ	Council on Environmental Quality.
CFR	Code of Federal Regulations.
CMAQ	Congestion Mitigation and Air Quality Improvement Program.
CMP	Congestion Management Process.
CO DOT	Colorado Department of Transportation.
COG	Council of Governments.
CT DOT	Connecticut Department of Transportation.
DC DOT	District of Columbia Department of Transportation.
DOT	Department of Transportation.
DRCOG	Denver Regional Council of Governments.
DVRPC	Delaware Valley Regional Planning Commission.
EA	Environmental Assessment.
EDD	Economic Development District.
EGA	Expedited Grant Agreement.
EIS	Environmental Impact Statement.
EJ	Environmental Justice.
EO	Executive Order.
EPA	Environmental Protection Agency.
FAST Act	Fixing America's Surface Transportation Act.
FFGA	Full Funding Grant Agreement.
FHWA	Federal Highway Administration.
FL DOT	Florida Department of Transportation.
FMATS	Fairbanks Metropolitan Area Transportation System.
FONSI	Finding of No Significant Impact.
FRESC	Front Range Economic Strategy Center.
FTA	Federal Transit Administration.
FY	Fiscal Year.
GA DOT	Georgia Department of Transportation.
GIS	Geographic Information Systems.
H–GAC	Houston-Galveston Area Council.
HI DOT	Hawaii DOT.
HSIP	Highway Safety Improvement Program.
HUD	Housing and Urban Development.
IA DOT	Iowa Department of Transportation.
IAC	Interagency Consultation.
ID DOT	Idaho Department of Transportation.
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991.
ITS	Intelligent Transportation System.
KY TC	Kentucky Transportation Cabinet.
MAP–21	Moving Ahead for Progress in the 21st Century Act.
MARC	Mid-America Regional Council.

Acronym	Full name
MA DOT	Massachusetts Department of Transportation.
MAG	Maricopa Association of Governments.
MD DOT	Maryland Department of Transportation.
ME DOT	Maine Department of Transportation.
MT DOT	Montana Department of Transportation.
MI DOT	Michigan Department of Transportation.
MN DOT	Minnesota Department of Transportation.
MO DOT	Missouri Department of Transportation.
MPA	Metropolitan Planning Area.
MPO	Metropolitan Planning Organizations.
MTA	Metropolitan Transportation Authority.
MTC	Metropolitan Transportation Commission.
MTP	Metropolitan Transportation Plan.
NAAQS	National Ambient Air Quality Standards.
NACTO	National Association of City Transportation Officials.
NADO	National Association of Development Organizations.
NARC	National Association of Regional Councils.
NARP	National Association of Railroad Passengers.
NCCOG	North Carolina Councils of Governments.
NC DOT	North Carolina Department of Transportation.
NCHRP	National Cooperative Highway Research Program.
NCTCOG	North Central Texas Council of Governments.
NDDOT	North Dakota Department of Transportation.
NEPA	National Environmental Policy Act.
NHPP	National Highway Performance Program.
NHS	National Highway System.
NIRPC	Northwestern Indiana Regional Planning Commission.
NJ DOT	New Jersey Department of Transportation.
NJ Transit	New Jersey Transit.
NJTPA	North Jersey Transportation Planning Authority.
NPRM	Notice of Proposed Rulemakings.
NRDC	Natural Resources Defense Council.
NYMTA	New York Metropolitan Transportation Agency.
NYMTC	New York Metropolitan Transportation Council.
NYS DOT	New York State Department of Transportation.
OK DOT	Oklahoma Department of Transportation.
OMB	Office of Management and Budget.
OR DOT	Oregon Department of Transportation.
PA DOT	Pennsylvania Department of Transportation.
PEL	Planning and Environmental Linkages.
PL	Metropolitan Planning Funds.
PM 10	Particulate Matter up to 10 micrometers in size.
PM 2.5	Particulate Matter up to 2.5 micrometers in size.
PRA	Paperwork Reduction Act.
PSRC	Puget Sound Regional Council.
RDC	Regional Development Commission.
RDD	Regional Development District.
RI DOT	Rhode Island Department of Transportation.
RIA	Regulatory Impact Analysis.
RIN	Regulation Identification Number.
RMAP	Rockford Metropolitan Agency for Planning.
ROD	Record of Decision.
RPC	Regional Planning Commission.
RPDC	Regional Planning and Development Commission.
RPO	Rural Planning Organization.
RTC	Regional Transportation Council.
RTD	Regional Transportation District.
RTPO	Regional Transportation Planning Organization.
SACOG	Sacramento Area Council of Governments.
SAFETEA–LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.
SANDAG	San Diego Association of Governments.
SASHTO	Southeastern Association of State Highway and Transportation Officials.
SCAG	Southern California Association of Governments.
SCCRTC	Santa Cruz County Regional Transportation Commission.
SCVTA	Santa Clara Valley Transportation Authority.
SD DOT	South Dakota Department of Transportation.
SDAG	San Diego Association of Governments.
SE WI MPO	Southeastern Wisconsin Metropolitan Planning Organization.
Seattle DOT	Seattle Department of Transportation.
SELC	Southern Environmental Law Center.
SEMCOG	Southeast Michigan Council of Governments.
SFRTA	South Florida Regional Transportation Authority.
SHSP	Strategic Highway Safety Plan.
SIP	State Implementation Plan.

Acronym	Full name
SJCOG	San Joaquin Council of Governments.
SOV	Single Occupancy Vehicles.
SPR	State Planning and Research.
STIP	Statewide Transportation Improvement Program.
STP	Surface Transportation Program.
TCA	Transportation Corridor Agencies.
TCM	Transportation Control Measure.
TEA–21	Transportation Equity Act for the 21st Century.
TIP	Transportation Improvement Program.
TMA	Transportation Management Area.
TN DOT	Tennessee Department of Transportation.
TPO	Transportation Planning Organization.
TriMet	Tri-County Metropolitan Transportation District of Oregon.
TTP	Tribal Transportation Program.
TX DOT	Texas Department of Transportation.
UPWP	Unified Planning Work Program.
U.S.C.	United States Code.
USDOT	U.S. Department of Transportation.
UT DOT	Utah DOT.
UZA	Urbanized Area.
VA DOT	Virginia Department of Transportation.
VMT	Vehicle Miles Traveled.
VT DOT	Vermont Department of Transportation or Vermont Agency of Transportation.
WFRC	Wasatch Front Regional Council.
WI DOT	Wisconsin Department of Transportation.
WMATA	Washington Metropolitan Area Transit Authority.
WA State DOT	Washington State Department of Transportation.
WY DOT	Wyoming Department of Transportation.

III. Background

On June 2, 2014, FHWA and FTA published an NPRM at 79 FR 31784 proposing the following changes to 23 CFR part 450: That the statewide and metropolitan transportation planning processes provide for the use of a performance-based approach to decisionmaking; that each MPO that serves an area designated as a TMA include an official (or officials) who is formally designated to represent operators of public transportation in the MPA on its policy board; that MPOs be given the option to use scenario planning during the development of their MTP; that States work more closely with nonmetropolitan areas; and that States have the option of designating RTPOs to help address the planning needs of the State's nonmetropolitan areas. It also proposed revisions to the existing PEL provisions, and an optional framework for developing programmatic mitigation plans as part of the statewide and the metropolitan transportation planning processes for States and MPOs based on 23 U.S.C. 169 as established by section 1311 of MAP–21. The public comment period for the NPRM was scheduled to close on September 2, 2014. The FHWA and FTA extended the comment period 30 days to October 2, 2014, based on concerns expressed by the American Association of State Highway & Transportation Officials (AASHTO) that the closing date did not provide sufficient time to review and provide comprehensive comments (79 FR 51922).

In addition, on September 10, 2014, FHWA and FTA published a separate ''Section 168 NPRM'' at 79 FR 53673 proposing to add implementing regulations for 23 U.S.C. 168, ''integration of planning and environmental review,'' at 23 CFR 450.212(d)–(f) and 450.318(f)–(h). The regulations would create an additional process for integrating planning and the environmental review activities (planning and environmental linkages) based on 23 U.S.C. 168 as established by section 1310 of MAP–21. The comment period for the section 168 NPRM closed on November 10, 2014. The final rule combines the two rulemakings, covering changes proposed in the Planning NPRM and those proposed in the Section 168 NPRM. The final rule covers the statewide and metropolitan planning processes and includes the integration of planning and environmental review and programmatic mitigation plans as part of the statewide and the metropolitan transportation planning processes for States and MPOs.

A. Introduction to the Planning Process

The Statewide and Nonmetropolitan Transportation Planning program and the Metropolitan Transportation Planning program provide funding to support cooperative, continuous, and comprehensive (3–C) planning for making transportation investment decisions throughout each State, in metropolitan and nonmetropolitan areas. Since the Federal-Aid Highway Act of 1962, Federal authorizing legislation for the expenditure of surface transportation funds has required MTPs, long-range statewide transportation plans, and TIPs to be developed through a 3–C planning process. Over successive reauthorization cycles, including the passage of the MAP–21 in July 2012, Congress has revised and expanded the requirements for 3–C planning.

B. What do the MAP–21 and the FAST do?

While the MAP–21 left the basic framework of the planning process largely unchanged, it introduced transformational changes to increase transparency and accountability. Most significantly, States and MPOs must take a performance-based approach to planning and programming, linking investment decisionmaking to the achievement of performance targets. Along with its emphasis on performance-based planning and programming, MAP–21 emphasized the nonmetropolitan transportation planning process by requiring States to have a higher level of involvement with nonmetropolitan local officials and providing for the optional creation of RTPOs. The MAP–21 also made some structural changes to the membership of the MPOs that serve TMAs. Finally, MAP–21 included voluntary provisions

related to scenario planning, developing programmatic mitigation plans, and the use of planning products in the environmental review process. Many of these non-performance management changes codify existing best planning practices.

The FAST makes minor changes to existing planning provisions. It adds two new planning factors to be considered and implemented in the planning process, it adds new stakeholders to be included in the planning process, and it substantially amends the new authority provided by MAP–21 for using planning products in the environmental review process.

C. Stakeholder Engagement

After the publication of the NPRM on June 2, 2014, FHWA and FTA continued to engage stakeholders during the NPRM comment period. The FHWA and FTA hosted two national webinars with stakeholders on the content of the NPRM. The FHWA and FTA also responded to requests for presentations at regularly scheduled meetings or conferences of national and regional professional, industry, or advocacy organizations during the comment period of the NPRM. Those webinars and meetings provided an opportunity for FHWA and FTA to provide an overview of the NPRM and offer clarifications 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 those webinars and meetings is included in the docket.

IV. Summary of Comments

The FHWA and FTA received a total of 162 comment letters that were submitted to the docket. Fifty-one of these comment letters were received from MPOs, 36 from States, 27 from advocacy organizations, 18 from regional planning organizations, 16 from associations representing public transportation agencies, 9 from operators of public transportation, 2 from the public, 2 from local governments, and 1 from a Tribal government. Collectively, these comment letters contained a total of approximately 989 individual comments.

In addition, a total of 38 comment letters were submitted to the docket proposing to implement changes to planning and environmental linkages resulting from section 1310 of MAP–21. Fourteen of the comment letters were received from States, 9 from MPOs, 5 from advocacy groups, 4 from the public, 3 from associations representing public transportation agencies, 2 from operators of public transportation, 1 from a regional planning organization, and 1 from a State environmental resource agency. Cumulatively, these comment letters contained over 100 individual comments. After reviewing the comments received in response to the two NPRMs, FHWA and FTA decided to consolidate the Planning rule and the ''Additional Authorities or Planning and Environmental Linkages'' rule into a single final rule. The FHWA and FTA believe that a consolidated final rule will help stakeholders understand the range of options for integrating planning and environmental review, including the pre-existing regulations for integrating planning and environmental review in sections 450.212 and 450.318, and the new section 168 authorities adopted in the final rule.

The FHWA and FTA carefully considered the comments received from the stakeholders. The comments and summaries of analyses and determinations are discussed in the following sections.

A. Selected Topics for Which FHWA and FTA Requested Comments

Performance Target Setting

The FTA and FHWA requested public comment on the following questions relating to target setting: (1) What obstacles do States, MPOs, and operators of public transportation foresee to the coordination among them that is necessary in order to establish targets? (2) What mechanisms currently exist or could be created to facilitate coordination? (3) What role should FHWA and FTA play in assisting States, MPOs, and operators of public transportation in complying with these new target-setting requirements? (4) What mechanisms exist or could be created to share data effectively among States, MPOs, and operators of public transportation? For those States, MPOs, and operators of public transportation that already utilize some type of performance management framework, are there best practices that they can share? Comments were received from at least 25 separate entities on these questions including AASHTO, APTA, ARC, CO DOT, CT DOT, DRCOG, FL MPO Advisory Council, H–GAC, MD DOT, MTC, MI DOT, NACTO, NJ DOT, NYS DOT, NCTCOG/RTC, the Northeast Ohio Areawide Coordinating Agency, the River to Sea Transportation Planning Organization (TPO), SACOG, SANDAG, SCAG, SJCOG, TN DOT, WMATA, and WI DOT.

What obstacles do States, MPO, and operators of public transportation foresee to the coordination among them that is necessary in order to establish targets?

Several commenters noted that the establishment of performance targets will require unprecedented levels of coordination and cooperation between States, MPOs, and operators of public transportation (AMPO, H–GAC, and NCTCOG/RTC). See section IV(B) (Recurring comment themes) for detailed discussion and FHWA and FTA responses to coordination on target setting.

The AMPO and ARC stated that they would prefer a single effective date for all of the MAP–21 performance measures rules to minimize confusion during the implementation of the measures and in the reporting of results. The H–GAC commented that there is potential for confusion between the target setting provisions proposed under 23 CFR 490 and 23 CFR 450. The MI DOT, MTC, SACOG, SANDAG, SCAG, SJCOG, and VA DOT stated that it is difficult to comment on the merits of the performance-based planning framework as the majority of measures and target-setting methodologies have not yet been released. See section IV(B) (Recurring comment themes) for more discussion and responses to these comments.

The MD DOT, NJ DOT, and TN DOT commented that setting performance targets will be a significant challenge in interstate MPOs that have membership in multiple States, since each State differs with respect to legal framework, resource availability, policies, goals, and priorities. The MD DOT and TN DOT indicated that it is not clear who will have the ultimate authority in establishing targets when a State or MPO cannot come to agreement. See section IV(B) (Recurring comment themes) for more discussion of this issue and FHWA and FTA responses.

The MTC, SACOG, SANDAG, SCAG, and SJCOG were concerned that the future Federal performance regulations will overwhelm policymakers by diluting robust processes established on the State or regional level with the addition of more measures and targets. In response, FHWA and FTA believe that States and MPOs should utilize their existing processes to the maximum extent possible. Discussion on the specific measures and target setting under the Federal performance requirements is outside the scope of the final rule.

The AMPO and ARC stated that the transition to performance-based planning will be challenging, in part

because different organizations have different structures and priorities, and in part because of the financial burdens of data collection and analysis. The FHWA and FTA agree that the transition to performance-based planning will be challenging. However, as discussed in section IV(B) (Recurring comment themes), interagency coordination will be key to successful implementation. The financial burdens of data collection and analysis for target setting are outside the scope of the final rule.

Several commenters (ARC, NJ DOT, and TN DOT) stated that it is not uncommon for States, MPOs, and operators of public transportation to have different priorities that may conflict with each other, and that this may lead to conflicts when setting performance targets and trying to achieve them. Several MPOs commented that they have to balance multiple objectives when working with communities and that this may lead to conflicts with their State. Another commenter noted that data collection will be a major challenge that needs to be addressed by the MPOs with their local members, particularly as it relates to data needed on locally owned systems. A few commenters stated that they are concerned as to whether the analytical tools and framework will exist to allow States, MPOs, and operators of public transportation to identify realistic and attainable targets for each required measure. One operator of public transportation (WMATA) commented that there is not a uniform approach to performance management among operators of public transportation, either in setting targets or in tracking progress toward achievement of targets. In response to these comments, FHWA and FTA emphasize the importance of early and ongoing interagency coordination during performance-based planning and programming. The approach used by operators of public transportation for setting targets is outside the scope of this rule. See FHWA and FTA response below to the question on ''What role should FHWA and FTA play in assisting States, MPOs, and operators of public transportation in complying with these new target-setting requirements?'' regarding technical assistance FHWA and FTA plan to provide regarding approaches to tracking progress toward achievement of targets.

What mechanisms currently exist or could be created to facilitate coordination?

The ARC, CO DOT, CT DOT, Florida MPO Advisory Council, MI DOT, NYS DOT, River to Sea Transportation Planning Organization (TPO), and RMAP indicated that they have well-established, long-standing, formal forums or work groups for ongoing discussion and coordination of planning issues and topic areas among the States, MPOs, and operators of public transportation within a particular State, and that these forums typically meet on a regularly scheduled basis (*i.e.,* monthly or quarterly). These same commenters stated that through these forums, they have built relationships between the various planning organizations within their State for successful collaboration and cooperation. The commenters further stated that these established forums are ideal for coordinating the development and implementation of performance management as part of the planning process, including data collection and analysis, performance target setting, use of analytical tools, standards and consistency, and system performance reporting. Several of the commenters stated that they are already using these established forums within their respective States for coordinating planning issues to implement performance-based planning and programming among the States, MPOs, and operators of public transportation. The Florida MPO Advisory Council commented that it has formed alliances of MPOs to address transportation planning issues at a multi-MPO level.

The FHWA and FTA agree that these examples of practice provided by commenters on how to facilitate coordination are good practices and that the development and implementation of ongoing, multiagency, and multidisciplinary forums that meet on a regular basis is an ideal way to establish relationships among the States, and MPOs, and operators of public transportation within a State.

The ARC commented that it has examples of mechanisms to facilitate interagency coordination such as an interagency consultation concept used for air quality planning and MPO technical committees. The FMATS commented that they want the MPO to be required to participate in the development of HSIP projects and the State Asset Management Plan for the NHS. In response to this comment, FHWA and FTA agree that it would be desirable for States to include the MPOs in the development of the projects for the Highway Safety Improvement Program (HSIP) and in the development of the State Asset Management Plan for the NHS because those plans contribute to performance-based planning and programming. However, there are separate NPRMs and rules governing those documents and processes and they are outside the scope of the final rule.

The FMATS also commented that the first round of performance target setting should be a joint process and facilitated by FHWA and FTA. In response, FHWA and FTA note that the final rule requires that States and MPOs coordinate during the target setting process (sections 450.206 and 450.306). The final rule also requires MPOs and operators of public transportation to coordinate target setting on transit performance measures in the metropolitan areas (section 450.306) and States must coordinate with operators of public transportation for target setting on transit performance measures outside of the metropolitan areas (section 450.206).

What role should FHWA and FTA play in assisting States, MPOs, and operators of public transportation in complying with these new target-setting requirements?

The ARC and CO DOT commented that FHWA and FTA could provide technical assistance and best practices or peer review summaries on a regular basis to assist the States, MPOs, and operators of public transportation in complying with the new target setting requirements. The CT DOT suggested that FHWA and FTA could provide guidance to States, MPOs, and operators of public transportation to implement the new target setting requirements. At least one commenter stated that the ability to use Federal funds for the necessary data collection efforts to support performance management is important. The CO DOT, CT DOT, Florida MPO Advisory Council, MI DOT, and NJ DOT suggested that FHWA and FTA could conduct best practices research and share the results in regional and statewide forums and with individual MPOs during transportation planning certification reviews. The Florida MPO Advisory Council and MI DOT also suggested that FHWA and FTA actively participate in established processes to set and implement performance targets in the States.

Others stated that FHWA and FTA already participate in these processes in some States. The MI DOT suggested that FHWA and FTA develop training sessions to ensure that planning agencies are fully aware of all the new requirements and timelines associated with the rules. The WI DOT recommended that FHWA and FTA provide further guidance on best practices related to the coordination process among States, MPOs, and operators of public transportation. The WA State DOT suggested that FHWA

and FTA could provide further guidance and best practices for the coordination of data at a statewide level and that FHWA and FTA could mediate differences between States and MPOs during the target setting process by providing guidance as to the intent of the rules. The MD DOT commented that a consistent presence of FHWA and FTA in MPO meetings to help facilitate performance measures and targets discussions would be helpful. Several commenters suggested that there needs to be substantial collaborative effort by Federal and grantee stakeholders to develop common data collection and reporting processes. The MI DOT was concerned whether the analytical tools and framework exists to allow States, MPOs, and transit agencies to identify realistic and attainable targets for the national performance measures.

In response, FHWA and FTA plan to provide technical assistance to the States, MPOs, and operators of public transportation through a number of means, including the issuance of guidance, conducting peer reviews and workshops, sharing best practices, and conducting training on topics such as target setting, implementation of performance-based planning and programming, interagency coordination, data collection, and performance progress reporting. Performance-based planning and programming will also become a topic of discussion at future TMA planning certification reviews.

The APTA commented that FHWA and FTA should not allow these changes in the planning process to slow project development, and that these changes to the planning process should encourage accelerated project development through more consistent and complete information flow. The FHWA and FTA agree that these changes to the planning process should not slow project development and that, in fact, they may accelerate project development by providing more focus on national goal areas.

The MI DOT, MTC, SACOG, SANDAG, SCAG, and SJCOG suggested that FHWA and FTA should limit the numbers of required measures. The commenters stated that fewer measures are preferable to a large number of measures. The FHWA and FTA respond that the number of performance measures that will be established is outside the scope of the final rule.

What mechanisms exist or could be created to share data effectively amongst States, MPOs, and operators of public transportation?

The ARC, MI DOT, and NACTO suggested that FHWA and FTA could share data nationally as a mechanism to achieve consistency of effort across applications, and to reduce duplication of effort among States, MPOs, and operators of public transportation. A few commenters noted that FHWA and FTA could support the implementation of performance management by providing easy access to national data sources. The ARC commented that joint procurement and sharing of data with States and MPOs and the use of the national transit database could be methods for effectively sharing data among States, MPOs, and operators of public transportation.

See also comments provided under the previous question on ''What mechanisms currently exist or could be created to facilitate coordination?'' for additional examples of mechanisms for sharing data among States, MPOs, and operators of public transportation.

In response to this comment, FHWA and FTA note that sharing data nationally and providing easy access to national data sources to achieve consistency is outside the scope of this rule.

For those States, MPOs, and operators of public transportation that already utilize some type of performance management framework, are there best practices that they can share?

The ARC, DRCOG, MD DOT, MI DOT, MTC, SACOG, SANDAG, SCAG, and SJCOG commented that they have already implemented performance-based planning and programming and have long-standing, successful processes in place for establishing performance measures, performance targets, and reporting on progress toward achievement of performance targets.

The CT DOT stated that it anticipates taking a lead role in an open process working with the MPOs and operators of public transportation on target setting since the State owns an overwhelming majority of the transportation systems affected by the MAP–21 performance measures. The CT DOT stated that it also collects, stores, and analyzes most of the data associated with those systems. The MD DOT commented that the State should have the ultimate responsibility regarding target setting within the State.

The DRCOG commented that targets should be set to encourage continuous improvement rather than a concrete objective goal. The commenter further stated that establishing strict, inflexible targets encourages aiming low to achieve an arbitrary plateau not necessarily linked to quality. The DRCOG advised against project-by-project performance measures, and instead recommended that performance measures and targets should be applied at a system or programmatic level. At least one commenter stated that it will be important that funding is aligned with the performance targets in order to achieve them.

A few commenters said that they look to utilize current database information for tracking performance measures first before developing new systems for data collection. Commenters also suggested that the framework for target setting be flexible enough to allow for an adjustment in targets, strategies, and processes as agencies learn and acquire experience with performance management.

The AASHTO, AMPO, CT DOT, and H–GAC stated that there is a need for flexibility when establishing reasonable and appropriate performance targets. They further commented that it will take time to implement performance management and performance-based planning, and that there is potential for significant conflicts to arise during the development of targets.

The ARC was concerned that there might be misleading comparisons on how performance results might be portrayed and interpreted. Another commenter stated that, when relying on a limited number of high level performance metrics, it may not present a comprehensive picture of the effectiveness of a region's performance. The Florida MPO Advisory Council and MD DOT commented that MPOs should be allowed the flexibility to develop and set targets that suit the unique needs of their specific metropolitan area.

In response to these comments, FHWA and FTA agree that there is a need for flexibility in setting targets. There is flexibility in that States and MPOs are responsible for setting their respective targets for the national performance areas. When setting targets for FHWA performance measures, the final rule requires States and MPOs to coordinate with each other and set targets that are consistent to the maximum extent practical. Operators of public transportation and MPOs are required to coordinate to the maximum extent practicable when setting transit performance targets. As part of coordination when setting targets, States, MPOs, and operators of public transportation should seek to minimize conflicts. This requires close coordination between the States and MPOs in areas such as the collection and use of data, use of analytical tools, setting of targets, and the identification of strategies to achieve the targets. Operators of public transportation are responsible for setting performance

targets for the transit performance measures in metropolitan areas in coordination with the affected MPOs.

Although the final rule provides MPOs up to 180 days to set targets after their State sets performance targets, FHWA and FTA strongly encourage States and MPOs to set performance targets at the same time and in coordination with each other. Transportation planning must be cooperative because no single agency has responsibility for the entire transportation system. For example, some roads that are part of the Interstate System are subject to certain standards and are usually maintained by a State. Others are county arterials or city streets which are designed, operated, and maintained by counties or local municipalities. Transit systems are often built, operated, and maintained by a separate entity. See section IV.(B.) for more discussion on interagency coordination.

States and MPOs may have situations where they need to evaluate competing priorities as they make decisions about setting targets for the national performance areas. Scenario planning is one possible tool that States and MPOs can use to evaluate the effect of various scenarios on system performance in order to develop the metropolitan and statewide long-range transportation plans. The FHWA and FTA also agree with the comment that a limited number of high level performance metrics for the national performance areas may not present a comprehensive picture of the effectiveness of a region's performance. States and MPOs are encouraged, but not required, to develop and implement additional performance measures beyond the required national measures that they feel are appropriate to meet their system planning needs. In setting targets as part of their planning process, the States and MPOs are strongly encouraged to engage many of the same stakeholders that they normally engage as part of their planning process.

Regional Planning Coordination

In the NPRM, FHWA and FTA sought public comment on how regional planning coordination can be further improved in situations where multiple MPOs serve one or several adjacent urbanized areas. The FHWA and FTA also sought public comment on additional mechanisms that could be created to improve regional coordination in situations where there may be multiple MPOs serving a common urbanized area or adjacent urbanized areas.

Comments were submitted to the docket on these questions from nine entities, including AASHTO, ARC, CO DOT, CT DOT, MD DOT, NRDC, NJ DOT, RMAP, and WI DOT.

How can regional planning coordination be further improved in situations where multiple MPOs serve one or several adjacent urbanized areas?

The AASHTO, CT DOT, and MD DOT suggested that FHWA and FTA develop resource documents and best practice guides to support regional planning coordination as it relates to performance management implementation, and that these resources and best practices be made available at a centralized DOT online vehicle. The MD DOT suggested that FHWA, FTA, and the National Highway and Transit Institutes provide training classes on how States and MPOs can execute and implement these requirements. The MD DOT also suggested that FHWA and FTA could provide access to professional experts to address State and MPO staff questions.

The FHWA and FTA agree that training and technical support can improve the coordination of regional planning. As part of FHWA's Every Day Counts initiative, FHWA and FTA are supporting the Regional Models of Cooperation effort, which provides a framework and process for States and MPOs to develop multijurisdictional transportation plans and agreements to improve communication, collaboration, policy implementation, technology use, and performance management across agency boundaries. See *https://www.fhwa.dot.gov/everydaycounts/edc-3/regional.cfm*.

The FHWA and FTA are also in the process of developing a training course on performance-based planning and programming which will be available at the publication of the final rule. The FHWA Office of Transportation Performance Management (TPM) offers support and assistance to States, MPOs, and operators of public transportation implementing MAP–21 performance provisions. Examples of support include workshops on TPM, peer-to-peer exchanges and demonstration workshops, and ''Let's Talk Performance'' Webinars, which can be found at *http://www.fhwa.dot.gov/tpm/resources/presentations.cfm*.

The CT DOT proposed that States and MPOs coordinate the collection and analysis of data regarding travel patterns to, through, and among adjacent MPOs. Examples would include traffic counts, household surveys, big data purchases (*e.g.,* cell phone data) that would be beneficial to all decisionmakers. It further noted that it is coordinating efforts with local officials to reorganize the boundaries of MPOs so that they more closely resemble TMA boundaries and/or major transportation corridors that meet a minimum population threshold. It also supports efforts of MPOs to work on joint projects and studies with other MPOs that share urbanized areas and transportation corridors. The NJ DOT commented that an MPO historically has led numerous multistate coordination efforts and noted that States and MPOs are assessing whether that MPO should be the lead facilitator in coordinating target setting that best serves the needs of the entire metropolitan area.

What additional mechanisms could be created to improve regional coordination in situations where there may be multiple MPOs serving a common urbanized area or adjacent urbanized areas?

The FHWA and FTA received comments from ARC, Florida MPO Advisory Council, and NRDC. The ARC noted that, in complex regions that have multiple urbanized areas and/or MPOs, it will be critical for the Federal partners to build on the Interagency Consultation (IAC) concept used for air quality planning in nonattainment areas. While not suggesting that existing air quality IAC groups be reconstituted and their mission changed, a similar concept could be used to coordinate setting targets for the metropolitan area.

The ARC, which is located in a metropolitan statistical area with multiple urbanized areas, shared that it hosts and facilitates a number of standing technical committees, such as a Technical Coordinating Committee, comprised of staff from cities, counties, and State agencies, and a Transit Operators Subcommittee, which is composed of representatives of all operators of public transportation throughout the region. In addition, it regularly convenes working groups and task forces to meet for a specified period of time to focus on specific issues of a time sensitive nature. For example, it convened a Project Delivery Task Force to address systemic issues related to the implementation of transportation projects in its region. The ARC explained that the these task force meetings have been extremely well attended and have provided a structured and energetic forum for agencies at all levels to discuss challenges, provide constructive criticism, and offer solutions. Based on the success of this initiative, the ARC suggests that MPOs form task forces to discuss the implementation of a performance management approach to planning and programming in metropolitan areas. The NRDC encouraged that MPOs use the

existing consortium framework from the HUD Sustainable Communities Initiative planning process (supported by the Inter-Agency Partnership for Sustainable Communities at HUD, DOT, and EPA).

The FHWA and FTA applaud MPO efforts to coordinate their technical and decisionmaking processes and note that the final rule will provide States, MPOs and operators of public transportation with the flexibility to determine how best they can work together to implement a performance-based approach to planning and programming and the agility to adjust their roles and responsibilities as they implement their approaches. Under section 450.314 (Metropolitan Planning Agreements), MPOs will be required to identify, through either an updated metropolitan planning agreement, an MOU, or adopted operating procedures, the coordinated processes for the collection of performance data, the selection of performance targets for the metropolitan area, the reporting of metropolitan area targets, the reporting of actual system performance related to those targets, and the roles and responsibilities for the collection of data for the NHS. While beyond the scope of this rulemaking, NRDC endorsed the provisions under section 1202 of DOT's GROW AMERICA Act proposal which are intended to align MPO boundaries with metropolitan statistical areas. They noted that this would have multiple benefits in areas where a consolidated planning structure would continue the efficacy of the MPO as it would allow for more coordinated planning, optimize the use of scarce resources for planning, and allow for easier use of data sets due to a match between governance and statistical units of geography.

B. Recurring Comment Themes on Major Provisions of the Rule

This section contains a consolidated summary of comments and FHWA and FTA responses on major provisions of the rule. The key topic areas covered in this section include: State, MPO, and operator of public transportation coordination on performance-based planning and programming; traditionally underserved populations, environmental justice (EJ), Title VI of the Civil Rights Act of 1964 (as amended), equity, and the transportation planning process; asset management and the transportation planning process; common effective date and phase-in of new requirements; and other changes proposed by commenters. This section is written in narrative format with the exception of the discussion on traditionally underserved populations, EJ, Title VI of the Civil Rights Act of 1964 (as amended), equity, and the transportation planning process which, because of the level of detail, specificity, and uniqueness of the individual comments on the topic area, FHWA and FTA have organized in a comment and response format for ease of providing clarity in the responses.

- State, MPO, and Operator of Public Transportation Coordination on Performance-Based Planning and Programming

At least 48 commenters provided comments on the topic of coordination (Albany MPO, AASHTO, AMPO, APTA, ARC, Board of the French Broad River MPO, CALTRANS, Charlotte Regional TPO, CO DOT, CT DOT, DC DOT, DRCOG, DVRPC, FMATS, FL DOT, Florida MPO Advisory Council, HI DOT, H–GAC, IA DOT, MAG, MARC, Miami-Dade MPO, MT DOT, MTC, NACTO, NARC, NJTPA, North Florida TPO, NYMTC, (NYMTA), New York State Association of MPOs, NYS DOT, OR DOT, PA DOT, River to Sea TPO, SACOG, SANDAG, San Luis Obispo Council of Governments (COG), SCCRTC, SCAG, SJCOG, SEMCOG, Transportation for America, TX DOT, WA State DOT, and Wilmington MPO)) as it relates to coordination among States, MPOs, and operators of public transportation on the new requirements for performance-based planning and programming. Twenty-five of the commenters were from MPOs, 13 were from States, 8 were from associations, 1 was from an operator of public transportation, and 1 was from an advocacy organization. The comments were received on several sections in the NPRM, including sections 450.206, 450.208, 459.216, 450.218, 450.306, 450.314, 450.324, and 450.326. These sections include the scope of the statewide and metropolitan planning processes, coordination of the statewide transportation planning process, metropolitan planning agreements, development and content of the STIP and TIP, and development and content of the long-range statewide transportation plan and the MPO MTP.

The Federal-Aid Highway Act of 1962 set forward requirements for a 3–C transportation planning process in metropolitan areas. Subsequent acts required the designation of an MPO by the Governor and local officials in census designated urbanized areas. The 1993 planning regulations that resulted from the 1991 passage of ISTEA added provisions for cooperatively developed, written metropolitan planning agreements that outline the planning roles and responsibilities of the States, MPOs, and operators of public transportation in metropolitan areas. Section 450.306(a) continues the longstanding requirement that MPOs are required to conduct the metropolitan transportation planning process in the metropolitan area, including the development of an MTP and TIP, in cooperation with the State and operators of public transportation and expands the metropolitan planning process to make it performance-driven and outcome-based. States are required to cooperate with MPOs when conducting the statewide planning process, including during the development of the long-range statewide transportation plan and the STIP (sections 450.216(g), 450.218(b)). Cooperation means that the parties involved in carrying out the transportation planning and programming process work together to achieve a common goal or objective (section 450.104). 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 (section 450.104).

The final rule includes provisions for coordination on performance-based planning and programming among States, MPOs, and operators of public transportation in metropolitan areas. The new requirement for performance-based planning and programming expands the cooperation and coordination role among States and MPOs in the transportation planning process by requiring coordination on target setting for the FHWA required performance measures. Similarly, the role of operators of public transportation is also expanded as States and MPOs are required to coordinate with operators of public transportation on target setting for the FTA required performance measures. Several commenters emphasized the importance of coordination (H–GAC, MAG, MARC, and NCTCOG/RTC) among all metropolitan planning partners, including the States, MPOs, and operators of public transportation for successful implementation of the new requirements for performance management. The FHWA and FTA agree that coordination of performance management between the States, MPOs, and operators of public transportation is critical to successful implementation of performance management and achievement of targets. Coordination needs to include not only target setting, but also the data collection necessary to

support setting targets, identification of investments and strategies to achieve targets, and reporting of progress toward achieving targets.

The final rule includes the new requirement that the State coordinate with the relevant MPOs when setting FHWA performance targets (section 450.206(c)(2)), and, similarly, that MPOs coordinate with the relevant State (section 450.306(d)(2)(ii)) when the MPO is setting FHWA performance targets. States have up to 1 year from the effective date of each performance management final rule to set performance targets for that performance measure (section 450.206(c)(2)), and the MPOs have 180-days after the State or operator of public transportation sets performance targets to set its own targets (section 450(d)(3)). This final rule requires that, as part of the State and MPO coordination on FHWA target setting, the performance targets be consistent to the maximum extent practicable. Although the final rule allows the MPO up to 180 days to set performance targets after the State sets its targets, FHWA and FTA believe it is important that the State and MPO work together on FHWA target setting and, ideally, the State and MPO should be setting their targets at the same time in coordination with each other to ensure that they are consistent to the maximum extent practicable. The MPOs and operators of public transportation should coordinate to the maximum extent practicable in metropolitan areas on target selection for the public transportation performance targets. The MPOs have up to 180 days to set transit performance targets for the metropolitan area's transit performance measures after operators of public transportation set transit performance targets. State and MPO coordination on target setting will be crucial to successful implementation of performance management and the performance-based planning and programming process that supports performance management.

Although States, MPOs, and operators of public transportation are required to establish performance targets for the federally required performance measures based on the phase-in schedules and timeframes described in the final rule, FHWA and FTA think it is important to note that they coordinate on their target setting in advance of establishing those targets. As such, State, MPO, and operator of public transportation coordination on target setting will need to begin in advance of when the targets are required to be established.

Scope of the Metropolitan and Statewide Transportation Planning Processes (Sections 450.206 and 450.306)

Several comments received on section 450.306(d) emphasized the importance of coordination (H–GAC, MAG, MARC, and NCTCOG/RTC) among all metropolitan planning partners, including the States, MPOs, and operators of public transportation for successful implementation of performance management. The FHWA and FTA agree. Coordination of performance management among the States, MPOs, and operators of public transportation is critical to successful performance management and achievement of targets. Coordination needs to include not only target setting, but also the identification of investments and strategies to achieve those targets.

The WA State DOT commented that there is a need for more explicit explanations on the relationships and roles between the States and MPOs in section 450.306(d). The commenter further stated that it is unclear if MPOs are required to match the targets set by the State. The FHWA and FTA respond that States and MPOs are each required to set performance targets for the federally required performance measures. When setting performance targets for the federally required performance measures, MPOs are not required to match State targets; however, States and MPOs are required to coordinate to ensure consistency to the maximum extent practicable when setting the highway-related performance targets. Similarly, States (in areas not represented by an MPO) and MPOs (in MPAs) are to coordinate the selection of State and MPO transit-related performance targets to the maximum extent practicable with operators of public transportation to ensure consistency with the transit safety and state of good repair targets. No changes have been made to this section as a result of this comment.

The MTC, SACOG, SANDAG, SCAG, and SJCOG commented on the difficulty of coordination on target setting when there are a large number of agencies. The WA State DOT commented that there is a need for more explicit explanations on the relationships and roles between the States and MPOs. The MD DOT, NJ DOT, and TN DOT commented that setting of performance targets will be a significant challenge in interstate MPOs that have membership in multiple States, since each State differs with respect to legal framework, resource availability, policies, goals, and priorities. A few States (MD DOT and TN DOT) indicated that it is not clear who will have the ultimate authority in establishing targets when a State or MPO cannot agree.

The commenters further stated that funding constraints may make it difficult to move in the desired direction for many performance targets. They are also concerned about the implementation costs and resources required of smaller MPOs. The DC DOT and NJTPA commented on the new provisions for performance-based planning in section 450.306(d) because of the difficulty in coordinating target setting in situations where there may be multiple States, MPOs, and/or operators of public transportation involved, such as in bi-State or tri-State metropolitan regions.

In response to these comments, FHWA and FTA note that section 450.314(h) of the rule describes methods for States, MPOs, and operators of public transportation in metropolitan areas to mutually agree upon and document the roles and responsibilities for conducting performance-based planning and programming through the metropolitan planning agreement or by some other means. The FHWA and FTA also note the longstanding requirement in 23 U.S.C. 134(i)(2)(E)(iii) and 49 U.S.C. 5303(i)(2)(E)(iii) which provide that the State, MPO, and operator of public transportation shall cooperatively develop estimates of funds that will be available to support plan and TIP implementation. The availability of funding would certainly influence target setting, and the cooperative development of the funding estimates should help further encourage the States, MPOs, and operators of public transportation to work together. Comments on the costs of implementation and resources for MPOs to undertake these new requirements, including for smaller MPOs, are addressed separately in this document under the section addressing the regulatory impact analysis (RIA) for this rule.

The APTA commented that areas with multiple MPOs should be encouraged to coordinate across urbanized areas through informal means. The FHWA and FTA response to this comment is that the regulations at section 450.314(h) require that the State(s), MPO(s), and operator(s) of public transportation serving a single urbanized area mutually agree upon and document specific written provisions for interagency coordination on performance-based planning and programming, either as part of the metropolitan planning agreement, or by

some other means as mutually agreed upon by the MPO(s), State(s), and operator(s) of public transportation. It is up to the agencies to mutually decide how that coordination will take place.

Sections 450.206(c)(4) and 450.306(d)(4) of the final rule require that the State and the MPOs are required to integrate into the statewide and the metropolitan transportation planning processes, directly or by reference, the goals, objectives, performance, measures, and targets in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by operators of public transportation in areas not represented by an MPO required as part of a performance-based program. Examples of such plans and processes include the HSIP, SHSP, the State asset management plan for the NHS, the State Freight Plan, the Transit Asset Management Plan, and the Public Transportation Agency Safety Plan.

Several commenters (Albany MPO, AMPO, DVRPC, NARC, New York State Association of MPOs, NYMTC, PA DOT, and San Luis Obispo COG) remarked that this requirement appears to be in conflict with sections 450.306(d)(2)(i), (ii), and (iii), which state that each MPO shall establish performance targets, and the selection of targets shall be coordinated with the State and, to the maximum extent practicable, coordinated with operators of public transportation. The FHWA and FTA response to this comment is that these provisions do not conflict. They reflect the need for close coordination between States, MPOs, and operators of public transportation during the target setting process to ensure that the targets are coordinated and consistent to the maximum extent practicable. This would suggest that State, MPO, and operator of public transportation coordination during the development of other performance-based plans and processes (such as the State asset management plan for the NHS and transit asset management plans, safety plans, freight plans, and congestion plans) is desirable because these plans could affect the performance targets and the investments that support those targets. Early coordination on the development of these other performance-based plans and processes could ease their integration into the statewide and the metropolitan transportation planning processes.

The San Luis Obispo COG and SCCRTC commented on section 450.306, scope of the metropolitan planning process. They felt that decisionmaking for metropolitan projects often lies with the State, and as a result, the ability for an MPO to succeed at performance-based planning and at achieving performance targets is constrained. In response to this comment, FHWA and FTA reiterate the importance of early and ongoing State and MPO coordination on performance-based planning and programming, particularly with target setting and the identification of investments and strategies necessary to achieve targets. The FHWA and FTA note that it is an MPOs responsibility to develop the TIP (23 CFR 450.326), in cooperation with the State(s) and any affected public transportation operator(s), and to review and update the MTP (23 CFR 450.324(c)). The FHWA and FTA note that the State is required to develop the STIP in cooperation with the MPO designated for the metropolitan area (23 CFR 450.218(b)) and the State shall include each metropolitan TIP without changes in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor (23 CFR 450.218(b)).

Many commenters indicated that they disagreed with the requirement to amend the metropolitan planning agreement, stating that it is inflexible, that there would be a need to update the agreements frequently, and that updates take a long time. In reviewing these comments, FHWA and FTA decided to retain the requirement that there be mutually developed written documentation describing the interagency roles and responsibilities for performance-based planning in a metropolitan area. However, the final rule allows for flexibility, in that it may be documented as part of the metropolitan planning agreement, or in some other form mutually agreed upon by the States, MPOs, and operators of public transportation.

Coordination of Statewide Planning Process Activities (Section 450.208)

Regarding the coordination of planning process activities in section 450.208, NYS DOT commented that in multijurisdictional mega-regions, flexibility is needed to coordinate performance management requirements among States, MPOs, and interstate agencies or authorities. The commenter further stated that this flexibility is needed due to the complexity of transportation facilities and services that may straddle several MPO and State boundaries. The SEMCOG commented that there should be flexibility to allow MPOs to develop cooperative procedures for performance-based planning that are best for the local situation. The FHWA and FTA agree that States, MPOs, and interstate agencies and authorities need the flexibility to determine how best to coordinate their respective transportation planning activities and believe that the final rule provides for flexibility. Section 450.314(h) provides States, MPOs, and operators of public transportation options for mutually identifying the agency roles and responsibilities for performance-based planning and programming in metropolitan areas in writing, either through the metropolitan planning agreements or by some other mutually determined means.

Development and Content of Long-Range Statewide Transportation Plans, MTPs, STIPs, and TIPs (Sections 450.216, 450.218, 450.324, and 450.326)

The FMATS commented that it is essential for States to develop performance targets in full coordination with MPOs and the nonmetropolitan planning areas to ensure that performance targets are considered during the development of TIPs and STIPs, and that investment priorities are tied to targets. The FHWA and FTA agree that State and MPO coordination is a key part of target setting. It is also key that MPOs and operators of public transportation coordinate in metropolitan areas and that States coordinate with rural operators of public transportation as part of target setting for transit measures. The Miami-Dade MPO stated that it is important for States to coordinate the STIP with MPOs and that the STIP be consistent with the metropolitan plans, especially in TMAs. In response to this comment, FHWA and FTA reiterate that the STIP and the TIP must be consistent with the long-range statewide transportation plan (section 450.218(k)) and the MTP (section 450.326(i)), respectively, and that that the STIP must incorporate the TIP without alteration (section 450.218(b)).

Section 450.314 Metropolitan Planning Agreements

Section 450.314 discusses the requirement that States, MPOs, and operators of public transportation serving an MPA cooperatively establish a metropolitan planning agreement. These agreements determine the mutual responsibilities of the parties in carrying out the metropolitan transportation planning process. Forty-three commenters (Albany MPO, AASHTO, AMPO, APTA, ARC, Board of the French Broad River MPO, CALTRANS, Charlotte Regional TPO, CO DOT, CT DOT, DC DOT, DRCOG, DVRPC, FL DOT, Florida MPO Advisory Council,

FMATS, H–GAC, HI DOT, IA DOT, MAG, MARC, Metropolitan Transportation Council MPO, MT DOT, MTC, NACTO, NARC, New York State Association of MPOs, NJTPA, NC DOT, North Florida TPO, NYMTA, NYMTC, NYS DOT, OR DOT, PA DOT, River to Sea TPO, SACOG, SANDAG, SCAG, SJCOG, Transportation for America, TX DOT, and Wilmington MPO) provided comments on this section. Twenty-one of the commenters were from MPOs, 13 were from States, 7 were from transportation associations, 1 was from an operator of public transportation, and 1 was from an advocacy organization.

The requirement to have metropolitan planning agreements is long-standing, dating to the 1993 planning regulations that resulted from the passage of ISTEA in 1991. The metropolitan planning agreements serve as a basis for describing the interagency coordination that is part of the 3–C planning process. In the NPRM, FHWA and FTA proposed to add new provisions in this section to require that the States, MPOs, and operators of public transportation update the metropolitan planning agreements to include new interagency coordination provisions for State, MPO, and operator of public transportation on performance-based planning and programming and on the collection of data for the State asset management plan for the NHS. Specifically, sections 450.314(a), (e), and (g) in the NPRM would have required that the metropolitan planning agreements include specific provisions for cooperatively developing and sharing information related to transportation systems performance data, the selection of performance targets, the reporting of performance targets, the reporting of system performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (section 450.306(d)), and the collection of data for the State asset management plan for the NHS.

The NPRM proposed the addition of this new provision to the metropolitan planning agreements for two reasons: (1) To document the coordination necessary to successfully implement performance-based planning in metropolitan areas, and (2) to document coordination on the collection of data for the NHS for the State asset management plan (given that there are NHS highways in metropolitan areas and that some NHS roads are not on the State highway system but instead are under the ownership of local jurisdictions).

Nearly all of the comments on this section focused on the proposed requirements for including specific provisions in the metropolitan planning agreements for cooperatively developing and sharing information related to transportation systems performance data, the selection of performance targets, the reporting of performance targets, the reporting of system performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see section 450.306(d)), and the collection of data for the State asset management plan for the NHS. The commenters near universally stated that it would be difficult, time consuming, expensive, and require extensive review to carry this out and that these changes should not be included in the final rule. They further indicated that including the provision as part of the metropolitan planning agreement creates inflexibility because it would be difficult and time consuming to change the agreements as roles of the agencies might shift over time and the agreements might be subject to frequent change.

Nearly all of the commenters (AASHTO, Albany MPO, AMPO, ARC, Board of the French Broad River MPO, CALTRANS, Charlotte Regional TPO, CT DOT, DC DOT, DRCOG, DVRPC, FL DOT, Florida MPO Advisory Council, H–GAC, HI DOT, IA DOT, Metropolitan Council MPO, MTC, MT DOT, NACTO, NARC, NJTPA, North Florida TPO, NYMTA, NYMTC, OR DOT, PA DOT, River to Sea TPO, Transportation for America, and TX DOT) stated that they did not support these new requirements. These commenters suggested that they should not be included in the final rule, should be made optional, or should be done by more flexible means outside of the metropolitan planning agreement itself because of the difficulty in amending these agreements.

As part of their comments to the docket, many commenters provided examples of locally preferred, less formal methods of documentation for coordination (in place of using the metropolitan planning agreement). The alternative methods of documenting coordination suggested by the commenters include: MPO operating procedures (AASHTO, CT DOT, and TX DOT), Unified Planning Work Program (UPWP) (CT DOT), handshake agreements (ARC), resolution (Board of the French Broad River MPO, Charlotte Regional TPO, and Wilmington Urban Area MPO), and a secondary agreement separate from the metropolitan planning agreement (FMATS). The New York State Association of MPOs suggested documenting coordination methods through addendums or amendments to the existing metropolitan planning agreements without having to open existing agreements. The NYMTA commented that it prefers that the agency roles and responsibilities be identified outside the metropolitan planning agreement in a more informal manner. The CO DOT commented that the metropolitan planning agreement should be flexible, especially for the proposed new elements on performance-based planning. While many commenters (AASHTO, ARC, DVRPC, FMATS, MTC, New York State Association of MPOs, NYMTA, PA DOT, SANDAG, SCAG, SJCOOG, and Transportation for America) further stated that although they disagreed with the proposal requiring that the metropolitan planning agreements be modified, they recognized the importance of ensuring all planning agencies are coordinating and collaborating together on regional planning issues, including performance-based planning.

After reviewing these comments, FHWA and FTA have decided to modify the final rule to make it more flexible while still fulfilling a requirement to jointly agree upon and document mutual responsibilities for coordination in support of performance-based planning. In the final rule, FHWA and FTA have deleted the provisions for documenting the mutual responsibilities for interagency coordination on performance-based planning and for coordination on data collection on the NHS from sections 450.314(a), (e), and (g), and added new section 450.314(h).

The new section 450.314(h) requires that States, MPOs, and operators of public transportation jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see section 450.306(d)), and the collection of data for the State asset management plan for the NHS. The provision requiring documentation of mutual responsibilities for State, MPO, and operator of public transportation coordination in the final rule is more flexible than what was proposed in the NPRM in that these provisions for coordination shall be documented either: (1) As part of the metropolitan planning agreements required under sections 450.314(a), (e), and (g), or (2) in some other means outside of the metropolitan planning agreement as determined jointly by the States, MPOs, and operators of public transportation.

Similar to the NPRM, section 450.314(a), (e), and (g), and section 450.314(h) of the final rule requires documentation of responsibilities for coordination in each of the following circumstances: (1) When one MPO serves an urbanized area, (2) when more than one MPO serves an urbanized area, and (3) when an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA. As a result, the language for the metropolitan planning agreements, as it relates to performance-based planning and for the data collection for the NHS, is unchanged in the final rule with the exception that it has been made more flexible to provide States, MPOs, and operators of public transportation more options in how they establish written methods for coordination.

In the final rule, FHWA and FTA still require the States, MPOs, and operators of public transportation to mutually identify the roles and responsibilities of each agency for performance-based planning and for collection of data for the NHS in a documented manner. However, the option is provided to jointly agree upon and document the methods for coordination either through amending the existing metropolitan planning agreement or through another mechanism outside of the metropolitan planning agreement. This mechanism can be mutually agreed on by the States, MPOs, and operators of public transportation.

Four commenters (Albany MPO, DVRPC, New York State Association of MPOs, and NYMTC) were concerned that it will be difficult to establish agreements because some of the data and analytical tools necessary for performance-based planning might not yet be available and that several of the other NPRMs establishing performance measures for the performance-based programs have not yet been released. The FHWA and FTA response is that under section 450.340 of the final rule (phase-in of new requirements), MPOs have 2 years from the issuance of the other performance management final rules before they have to comply with the performance-based planning requirements of the final rule, including compliance with the requirement to document the interagency coordination on performance-based planning and data collection for the NHS as required in section 450.314. As a result, FHWA and FTA made no changes to the final rule based on this comment.

Transportation for America commented that it wants stronger local decisionmaking through improved State and MPO coordination regarding NHS within MPO boundaries, and that they would rather have coordination than cooperation. In response to this comment, FHWA and FTA note that section 450.314(h) requires States and MPOs to mutually determine and document the roles and responsibilities of each agency for the collection of data for the NHS in the MPA of the MPO in writing as part of the metropolitan planning agreement, or in some other mutually agreed to format. No changes are made to the final rule based on this comment.

Two commenters (FMATS and MARC) remarked that it is critical to describe and clarify the roles and responsibilities of parties responsible for the collection of data on the NHS because of the new requirements for a State asset management plan for the NHS and the establishment of performance measures and targets. The FMATS further stated that a conflict resolution process should be included as part of the agreement. The MARC commented that MAP–21 added many locally owned and operated principal arterial routes to the NHS and that States should have primary responsibility for data collection on the NHS with the option of providing funding to others to collect. The FHWA and FTA respond that the final rule does not establish who has primary responsibility for data collection for the NHS routes that are off the State system. However, that should be part of what is cooperatively described by the States, MPOs, and operators of public transportation in their documentation prepared to fulfill the requirements of section 450.314(h).

In regards to the FMATS comment about establishing a conflict resolution process, FHWA and FTA respond that States, MPOs, and operators of public transportation are not required to establish a conflict resolution process. However, they may choose to do so. The FHWA and FTA did not make any changes to the final rule as a result of these comments.

The CO DOT and NC DOT commented that FHWA and FTA should provide the States, MPOs, and operators of public transportation the flexibility to determine the specific elements that are appropriate for inclusion in the metropolitan planning agreement. In response to these comments, States, MPOs, and operators of public transportation are provided the flexibility to determine the specific elements that are appropriate for inclusion in the metropolitan planning agreement provided that, at a minimum, they include the requirement elements described in section 450.314. The NJ DOT stated that it already has in place various agreements with its transportation partners that were reached through a collaborative process, and it would rather use these or other less formal documents than the metropolitan planning agreement.

The FHWA and FTA response to this comment is that for the documentation on coordination for performance-based planning and for data collection for the NHS, States, MPOs, and operator of public transportation may collaboratively decide to document their methods for coordination outside of the metropolitan planning agreement as part of other less formal written agreements or through some other means.

The FMATS commented that that when a State updates it long-range statewide transportation plan or other performance-based plans, it is critical that it coordinate with MPOs because the State plans have impacts on the MPOs planning process. The FHWA and FTA response to this comment is that the metropolitan planning agreement, or another cooperatively developed agreement outside of the planning agreement could be a good place for describing this coordination.

The DVRPC stated that a single agreement might not be possible, for example in regions with multiple States. The FHWA and FTA response to this comment is that while a single agreement is preferred, it might not always be realistic, particularly in situations where there are multiple States involved and that, if necessary, there might be more than one agreement.

The NYMTA encouraged FHWA and FTA to provide examples of best practices on State, MPO, and operator of public transportation coordination that MPOs may implement. The APTA commented that FHWA and FTA could support coordination through guidance and technical assistance. The FHWA and FTA agree that sharing best practices on performance-based planning including sharing methods of coordination is useful and would benefit the state of the practice. The FHWA and FTA are already in the process of, and plan to continue developing guidance, workshops, peer exchanges, and other materials as appropriate to help disseminate best practices for performance-based planning and programming, including best practices on interagency coordination.

The MN DOT commented that it would like to see more clarification concerning bi-State MPOs in regards to coordination efforts for target setting in the final rule. The FHWA and FTA

reiterate that, similar to what was required in the NPRM under sections 450.314(a), (e), and (g), section 450.314(h) in the final rule requires documentation of responsibilities for coordination for each of the following circumstances: (1) When one MPO serves an urbanized area, (2) when more than one MPO serves an urbanized area, and (3) when an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA. A bi-State MPO could exist in any of these circumstances, because some urbanized areas cross State lines. Under these requirements, a bi-State MPO would have written agreements that include both States. The States, MPOs, and operators of public transportation would mutually identify and document their methods, roles, and responsibilities for coordination on performance-based planning and programming as part of the metropolitan planning agreement or by some other means.

Provisions for target setting for bi-State MPOs that are for specific performance measures are outside the context of the final rule. There are other rules on target setting for the specific federally required performance measures.

In the NPRM, sections 450.314(a), (e), and (g) used the words ''system'' and ''systems'' when referring to transportation systems performance data and when referring to the reporting of system performance. As described previously, FHWA and FTA added new section 450.314(h) instead of revising sections 450.314(a), (e), and (g). At least one commenter (MAG) asked for clarification on what the word ''system'' is referring to. The FHWA and FTA feel that the use of the words in this section is confusing, vague, undefined, and subject to misinterpretation and has removed them from section 450.314(h).

In summary, FHWA and FTA feel strongly that interagency coordination is an important part of successful implementation of the 3–C planning process, including the new requirements for performance-based planning. The requirement for cooperatively documenting the mutual responsibilities for carrying out the 3–C metropolitan transportation planning process has a long history dating back to the 1993 planning regulations. Performance-based planning is the newest addition to the 3–C planning process. Documenting the mutual responsibilities of the States, MPOs, and operators of public transportation in writing, either through the metropolitan planning agreement or through another means, is crucial to the successful implementation of the coordination that is necessary for the successful implementation of performance-based planning. For this reason, the final rule retains the requirement to document the methods for interagency coordination on performance-based planning and for data collection for the State asset management plan for the NHS. However, the final rule provides flexibility in how it may be documented.

The FHWA and FTA reiterate the importance of coordination to the effectiveness of performance-based planning and programming. Consequently, FHWA and FTA intend to initiate a rulemaking that will propose methods for improving MPO coordination in the transportation planning process, which recognizes the critical role that MPOs play in ensuring the economic well-being of a region and in identifying efficient improvements that serve its mobility needs. This targeted rulemaking will address the coordination challenges and inefficiencies that may result where there are multiple MPOs designated within a single urbanized area. The rulemaking may clarify the statutory requirement for the State and MPO to determine whether it is appropriate to designate multiple MPOs within a region, based on the size and complexity of the area. To further a 3–C transportation planning process, it may describe the coordination and collaboration requirements for MPOs already designated in regions with other MPOs. The changes under consideration are intended to enable MPOs to speak with a stronger, more unified voice, to increase efficiencies, to accelerate project delivery, and to improve the extent to which transportation investments reflect the needs and priorities of that region.

To date, FHWA and FTA have conducted numerous workshops, peer exchanges, and best practice studies to provide information and examples of performance-based planning and programming practices for use by the States, MPOs, and operators of public transportation, including information on interagency coordination. These resources are intended to aid the planning agencies in their transition to performance-based planning and programming. Many of these resources include elements of interagency coordination practices. This material is available at: *http://www.fhwa.dot.gov/planning/performance_based_planning/*. The FHWA and FTA plan to continue to develop and share additional resources on performance-based planning and programming in the future, including resources on interagency coordination.

- Traditionally Underserved Populations, Environmental Justice, Title VI of the Civil Rights Act of 1964 (as Amended), Equity, and the Transportation Planning Process

At least 12 commenters discussed the relationships between traditionally underserved populations and the transportation planning process (Community Labor United, Enterprise Community Partners, Front Range Economic Strategy Center, National Association of Social Workers, National Housing Conference, NRDC, Partnership for Active Transportation, Partnership for Working Families, Policy Link, Public Advocates, Sierra Club, and United Spinal Association). The comments focused on two elements: (1) Participation of traditionally underserved populations in the planning process itself, and (2) consideration of traditionally underserved populations in the planning process, including the development of key planning documents such as transportation plans and programs.

Related topic areas on which FHWA and FTA received comments included equity, EJ (Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994), and Title VI of the Civil Rights Act of 1964 (as amended, 42 U.S.C. 2000d–1). These comments were submitted on several sections of the planning regulations including scope of the statewide and nonmetropolitan and metropolitan planning processes (sections 450.206 and 450.306) and development and content of the long-range statewide transportation plan, MTP, STIP, and TIP (sections 450.216, 450.218, 450.325, and 450.326). Comments were also received on sections of the NPRM concerning Federal findings and approvals (section 450.220) and self-certifications and Federal certifications (section 450.336).

Given the level of detail, specificity, and uniqueness of the individual comments on this topic area, FHWA and FTA have organized this section in a comment and response format for ease of providing clarity in the responses.

Comment: The Nine to Five National Association of Working Women commented that an equitable transportation system is critical to creating thriving communities of opportunity. The commenter stated that where and how we decide to make transportation investments is critical to communities' access to economic

opportunity. The commenter further stated that low income and minority communities face tremendous barriers in access to transportation that can get them to critical places like school, work, child care, appointments, and grocery stores, and that reducing those barriers will require targeted investments.

Response: The FHWA and FTA agree that the transportation system plays a critical role in connecting Americans to opportunity by providing people with reliable and affordable connections to employment, education, services, other opportunities, creating career pathways into transportation jobs, and revitalizing neighborhoods and regions. The FHWA and FTA emphasize transportation system connectivity to create economic growth and spark community revitalization, particularly for disadvantaged groups like low-income, minority, older adults, or individuals with disabilities. The FHWA and FTA and the Office of the Secretary of Transportation are actively working with States, MPOs, operators of public transportation, and others on an initiative called Ladders of Opportunity. Ladders of Opportunity is an outreach effort that encourages MPOs, States, and operators of public transportation to consider connectivity and access for traditionally underserved populations to employment, health care, healthy food, and other essential services using Geographic Information Systems (GIS) based analysis tools and data. Ladders of Opportunity and connectivity have been part of the planning emphasis areas of the FHWA and FTA for Federal fiscal years 2015 and 2016.

The FHWA and FTA have developed several case study examples of analysis of connectivity and shared it with States and MPOs via Webinars and a workshop. Under the Ladders of Opportunity initiative, the MPOs are being encouraged to include funded work program activities to include an analysis of connectivity gaps with their MTP and TIP development. The FHWA and FTA will continue to conduct outreach and training on this topic and encourage MPOs to include a connectivity analysis as part of their planning process and plan and TIP development.

Comment: The Enterprise Community Partners, NRDC, and National Housing Conference, suggested that there be a requirement to include housing and community development representatives and consider those topics in the in the scope of the statewide and metropolitan planning processes (sections 450.206 and 450.306).

Response: The FHWA and FTA note that under sections 450.206 and 450.306 it is required that the statewide and metropolitan planning process promotes consistency between transportation improvements and State and local planned growth and economic development patterns. The FHWA and FTA also note that under sections 450.210(a) and 450.316(a), States and MPOs are required to provide individuals, affected public agencies, representatives of the disabled, and other interested parties an opportunity to be involved in the statewide and the metropolitan transportation planning processes. The FHWA and FTA believe that these affected public agencies and other interested parties should include housing and community development representatives.

Comment: Several commenters suggested that FHWA and FTA should consider that scenario planning in the development of the MTP be used by MPOs to analyze the impact of investments and policies on the transportation system, including prioritizing the needs of low-income populations, minorities, or people with disabilities.

On section 450.324(i), voluntary use of scenario planning in the development of the metropolitan transportation plan, at least seven advocacy groups (Community Labor United, Front Range Economic Center, National Association of Social Workers, Partnership for Working Families, PolicyLink, Public Advocates, United Spinal Association) suggested that scenario planning be used by MPOs to analyze the impact of investments and policies on the transportation system including prioritizing the needs of low-income populations, minorities, or people with disabilities. One advocacy group (National Housing Conference) suggested that MPOs should consider housing needs when conducting scenario planning.

Response: The FHWA and FTA agree with the commenters that scenario planning could help an MPO conduct an analysis of the impact of investments on low-income, minority, or disabled populations. However, FHWA and FTA reiterate that the use of scenario planning by the MPOs as part of developing the MTP is optional under the final rule (section 450.324(i)). The FHWA and FTA have a long-standing history of working with MPOs on the implementation of EJ into the planning process and Title VI. Similarly, MPOs could choose to evaluate housing needs as part of scenario planning, but are not required. That decision is left to the individual MPOs to decide. Based on these comments, no changes are made to the final rule.

The FHWA and FTA strongly support scenario planning as a best practice for developing the MTP. The NPRM and the final rule provide an optional framework for MPOs to use scenario planning in the development of their MTPs at section 450.324(i). The FHWA and FTA have developed considerable resources, examples of practice, and peer exchanges in support of promoting scenario planning. They are available at: *http://www.fhwa.dot.gov/planning/scenario_and_visualization/scenario_planning/*.

Comment: An EJ, equity, and Title VI analysis should be part of the scope of the statewide and metropolitan planning processes.

Nearly all of the commenters who provided comments on the relationships between traditionally underserved populations and the transportation planning process stated that States and MPOs should conduct an analysis of the impact of transportation plans, STIPs, and TIPs on EJ communities and Title VI in the interest of ensuring that investments are made in ways that help all communities prosper and achieve equitable investments. Several commenters recommended that performance measures be used to prioritize projects and expand equity and access to economic opportunity, public transit, access to jobs, affordable housing, pedestrian safety, and transportation costs for the benefit of traditionally underserved populations.

Others recommended that MTPs should be evaluated by their potential to connect the traditionally underserved to opportunities by providing them with reliable and affordable connections to employment, education, services, and other opportunities; creating career pathways into transportation jobs; and revitalizing neighborhoods and regions. Public Advocates suggested that MPOs should complete a comprehensive study of current conditions of disadvantaged communities as part of an equity analysis. They further stated that MPOs should routinely gather, analyze, and report relevant transit rider and demographic data and disaggregate by race and income. The Center for Social Inclusion stated that MPOs should conduct an equity analysis assessment of the TIP investments because they are short-term, in addition to an analysis of the MTP, which is longer term.

Response: The FHWA and FTA have been working actively with the States and MPOs to implement EJ principles into the statewide and metropolitan transportation planning and project development processes in accordance

with Executive Order 12898. The FHWA and FTA also require States and MPOs to comply with the requirements of Title VI and periodically review their compliance as part of TMA planning certification and through other Title VI reviews. The FHWA and FTA do not prescribe specifically how a State, MPO, or operator of public transportation conducts its analysis of EJ or Title VI. That is left to the specific agencies to decide based on their needs and situations. The FHWA and FTA provide examples of good practice and training that States, MPOs, and operators of public transportation can use to guide their practices.

Comment: The NRDC suggested that FHWA and FTA should establish a framework for MPOs to demonstrate to them and local communities how they are incorporating EO 12898 into their planning process.

Response: The FHWA and FTA typically discuss efforts at integrating EJ into the planning process and EO 12898 during certification reviews of TMAs.

Comment: The Nine to Five National Association of Working Women stated that developing State and metropolitan planning guidance that includes the voices of directly affected communities and prioritizes enhanced mobility and opportunity for the most vulnerable populations, transit investments can go a long way to supporting improved social and economic outcomes in these communities.

Response: The FHWA and FTA note that under section 450.210(a)(1)(vii), the final rule continues the long-standing requirement that States develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points in the statewide and nonmetropolitan transportation planning process. The State's public involvement process is required to include 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 (section 450.210(a)(1)(viii)).

The MPOs are required to develop a participation plan in consultation with all interested parties. Similar to the State's documented public involvement process, the MPO public participation plan is required to 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 (section 450.316(a)(1)(vii)).

Both the States and the MPOs are also required to provide adequate notice of public participation activities and a reasonable opportunity to comment on the long-range transportation plan, STIP, and TIP. The final rule also continues the long-standing requirement that both States and MPOs must hold any public meetings at convenient times and accessible locations, provide the public timely notice and reasonable access to information about transportation issues and process, and demonstrate explicit consideration and response to public input received on the long-range plan, STIP, and TIP (sections 450.210 and 450.316).

Comment: Nearly all of the advocacy groups commented that FHWA and FTA should provide guidance on EJ based on EO 12898. Several commenters suggested that best practices from academic research should be used in equity analysis design and be recommended by FHWA and FTA.

Response: The FHWA and FTA have a longstanding practice of undertaking research studies and identifying best practices and case studies in EJ, including equity analysis. This information is available at: *http://www.fhwa.dot.gov/environment/environmental_justice/*. This site is updated frequently with new resource material. The FHWA and FTA also offer training on EJ and Title VI on request.

Comment: Several advocacy groups (Community Labor United, Front Range Economic Strategy Center, National Association of Social Workers, Partnership for Working Families, PolicyLink, Public Advocaes, The Leadership Conference on Civil and Human Rights, and United Spinal Association) commented that EO 12898 and Title VI of the Civil Rights Act of 1964, as amended, should be part of the State and the MPO self-certification and topics of review in FHWA and FTA TMA transportation planning certification. They suggested that in sections 450.220 and 450.336 States and MPOs should be required to self-certify compliance with EO 12898 and Title VI and that FHWA and FTA should review compliance as part of the TMA transportation planning certification review.

Response: States and MPOs are required by the final rule to certify compliance with Title VI. The FHWA and FTA do not require States and MPOs to self-certify compliance to the EO because it is only intended to improve the internal management of the Executive Branch and is directed to Federal agencies.

Also, as stated in section 6–609 of the EO, it does not create substantive rights. Consistent with this approach, all of the requirements identified in sections 450.220 and 450.336 are based on law, not EOs. However, FHWA and FTA encourage States, MPOs, and operators of public transportation to incorporate EJ principles into the planning processes and documents. The FHWA and FTA consider EJ when making future funding or other approval decisions on a project basis, as required by EO 12898.

The FHWA and FTA further respond that EJ is typically discussed as part of TMA planning certification reviews. The FHWA and FTA have a long-standing history of working with States and MPOs to implement EJ as part of the transportation planning and project development processes. States and MPOs are required by the final rule to certify compliance with Title VI (sections 450.220 and 450.336). The FHWA and FTA typically discuss compliance with Title VI as part of TMA planning certification reviews.

The FHWA and FTA note that Title VI of the Civil Rights Act of 1964 is a Federal law that protects persons from discrimination based on race, color, or national origin in programs and activities that receive Federal financial assistance. These regulations require States to certify that the transportation planning process is being carried out in accordance with all applicable requirements of Title VI (42 U.S.C. 2000d-1) and 49 CFR part 21 at the time that the STIP or STIP amendments are submitted to FHWA and FTA for joint approval (section 450.220(a)(2)). The MPOs must make similar certification concurrent with the submittal of the TIP to FHWA and FTA as part of the STIP approval (section 450.336(a)(3)). The FHWA and FTA typically review compliance with Title VI as part of the planning certification review of TMAs, and also review Title VI complaints as part of other reviews that are outside the scope of the final rule.

Comment: The National Association of Social Workers, NRDC, Policy Link, Sierra Club, and United Spinal Association commented that MPOs should establish governing bodies that are inclusive of the communities they serve, and that the decisionmaking bodies should reflect the diversity of interests based on age, race, ethnicity, disability, and income.

Response: The FHWA and FTA note that the policy board for MPOs that serve TMAs are to be established in accordance with the requirements in the final rule at section 450.310, which is reflective of the law at 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). This section requires specific representation from

local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan area, representation by operators of public transportation, and appropriate State officials. The FHWA and FTA encourage MPOs to seek representation from minority communities as part of meeting the requirements of section 450.310. As discussed elsewhere in this summary, MPOs are required to self-certify compliance with Title VI and FHWA and FTA periodically review this self-certification.

Comment: The Center for Social Inclusion, Community Labor United, Front Range Economic Strategy Center, National Association of Social Workers, Policy Link, Public Advocates, and United Spinal Association commented that FHWA and FTA should collect and share data on travel behavior that is disaggregated by race and income. They also commented that FHWA and FTA should facilitate local and targeted hiring on transportation projects. One commenter suggested that FHWA and FTA should do a comprehensive study on the current condition of targeted communities.

Response: The FHWA and FTA response to these comments is that these requests are outside the scope of this rule.

Comment: Several commenters (United Spinal Association, Public Advocates, Policy Link, Community Labor United, Front Range Economic Strategy Center, National Association of Social Workers, Partnership for Working Families) encouraged FHWA and FTA to consider incentivizing implementation of equity-based performance measures in its Transportation Investment Generating Economic Recovery (TIGER) program. The Center for Social Inclusion suggested that a competitive grant program similar to TIGER should be established to incentivize States, MPOs, and operators of public transportation to coordinate and conduct project level equity analysis.

Response: The FHWA and FTA note that the TIGER grantees work with DOT modal administrations to choose between two and four project-level performance measures from a list of measures that directly relate to the five departmental strategic goals, which include the goal of fostering quality of life for all. This does not preclude any grantee from developing additional performance measures for internal analytic purposes, which could more directly reflect their community's strategic goals and priorities, such as equity-based performance measures. In response to other comments that suggested creating other grant programs similar to TIGER and include equity-based performance measures as part of those programs, FHWA and FTA note that the TIGER grant program is established under appropriations bills and that FHWA and FTA could not establish other grant programs similar to TIGER because it requires specific statutory authority to do so. The FHWA and FTA also note that the TIGER grant program and any other similar programs are outside the scope of the final rule.

Comment: The FHWA and FTA should prepare a quadrennial national report of non-discrimination that includes demographic data, inventory of complaints filed, compliance reviews conducted, an assessment of impediments to non-discrimination, and recommendations for compliance.

Some commenters (National Association of Social Workers, Policy Link, The Leadership Conference on Civil Rights, and United Spinal Association) suggested that FHWA and FTA prepare a quadrennial national report of non-discrimination that includes demographic data, an inventory of complaints filed, compliance reviews conducted, an assessment of impediments to non-discrimination, and recommendations for compliance. These same commenters argued that the information collected would aid FHWA and FTA in monitoring State and MPO progress in prioritizing investments that increase mobility and access to centers of employment.

Response: The FHWA and FTA respond that this comment is outside the scope of the final rule.

Comment: Several commenters suggested specific performance measures be incorporated into the planning process for the purposes of analyzing equity, EJ, and Title VI.

Community Labor United, the Front Range Economic Strategy Center, the National Association of Social Workers, NRDC, Partnership for Working Families, Policy Link, and United Spinal Association suggested that the DOT should incentivize States and MPOs to set performance measures and prioritize projects that expand economic opportunity for low-income and minority communities. Some suggested a number of specific performance measures be incorporated into the planning process such as housing and transportation costs, fatalities and injuries, security (distances police and fire professionals have to travel to the scene of accidents and crimes), system connectivity, energy conservation, system preservation, and person throughput. The Center for Social Inclusion stated that there should be a comprehensive equity performance measure.

Response: The FHWA and FTA note that the final rule does not establish specific performance measures and the discussion of specific performance measures is outside of its scope. There are other FHWA and FTA rulemakings in varying stages of development that will address performance measures. The FHWA notes that 23 U.S.C. 150 prescribes that FHWA and FHWA is expressly limited to establishing performance measures only for areas identified in that statute.

Comment: One commenter (NRDC) stated that FHWA and FTA should consider that the congestion reduction goal should be changed to congestion management to reflect the fact that congestion can sometimes be a symptom of a healthy economy.

Response: Congress specifically established Congestion Reduction as a national goal for the Federal-aid highway program as provided in 23 U.S.C. 150(b)(3). The FHWA and FTA note that these regulations do include a congestion management process requirement for TMAs in section 450.322 as required under 23 U.S.C. 134(k)(3). Based on these comments, FHWA and FTA are not making any changes to the regulations. The FHWA and FTA will continue to make resources, best practices, workshops, peer exchanges, and guidance available to the States, MPOs, and operators of public transportation on these topics (equity, EJ, Title VI, and scenario planning) and work to assist them with implementing these practices into their planning processes.

Comment: At least one commenter (9 to 5, National Association of Working Women), suggested that FHWA and FTA should consider collecting and disseminating best practices and should consider providing technical assistance and funding support for State and MPO public engagement efforts.

Response: The FHWA and FTA collect and disseminate best practices and provide technical support for State and MPO public engagement efforts. Under the Public Transportation Participation Pilot Program, created as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), FTA sponsored applied research to develop innovative approaches to improving public participation in the planning of public transportation. The research focused on improving data collection analysis and transportation access for all users of the public transportation

systems; supporting public participation through the project development phases; using innovative techniques to improve the coordination of transportation alternatives; enhancing the coordination of public transportation benefits and services; contracting with stakeholders to focus on the delivery of transportation plans and programs; and measuring and reporting on the annual performance of the transportation systems. The results of the research can be found at *http://www.fta.dot.gov/12347_5925.html*. Similarly, FHWA has developed material and resources on best practices for public participation that are available at: *http://www.fhwa.dot.gov/planning/public_involvement/*.

The FHWA and FTA note that section 450.308(a) describes funds that are available to MPOs to accomplish the activities described in 23 U.S.C. 134, metropolitan transportation planning, including public participation. Section 450.206(e) describes funds that are available to the States to accomplish the requirements of 23 U.S.C. 135, statewide and nonmetropolitan transportation planning, including public involvement.

The FHWA and FTA appreciate that many commenters shared many examples of best practices which are highlighted below:

- Massachusetts: Community Labor United's Public Transit-Public Good Coalition advocated for the inclusion of comprehensive service assessments in the State transportation funding bill (H3535).
- Washington: King County Metro Transit's Strategic Plan for Public Transportation provides annual goals and assessment of 46 indicators that prioritize social equity.
- California: California's Transportation Alternatives Program includes performance measures that prioritize mobility and safety for bicyclists and pedestrians, especially in disadvantaged communities.
- Georgia: The Atlanta Regional Commission developed Equitable Target Areas for greater outreach and planning attention. That process can be found here *http://www.atlantaregional.com/transportation/community-engagement/social-equity*).
- U.S. Government: HUD's Sustainable Communities Initiative to glean effective strategies for advancing inclusive governance and community engagement.
- Colorado: The Denver Regional Equity Atlas was developed by DRCOG and Mile High Connects. The atlas explores population and demographic characteristics across the region, including jobs, economic development opportunities, transportation mobility, and affordable and quality housing options.
- California: The San Francisco Bay Area undertook a scenario planning and vision process that would produce an integrated long-range transportation and land-use/housing plan for the San Francisco Bay Area. This process resulted in development of the Equity, Environment, and Jobs scenario.
- Louisiana: A survey of low-income riders conducted by the Regional Transit Authority (RTA) in New Orleans revealed that transit-dependent workers with early-morning or late-night shifts were unable to access public transportation to get between work and home.

• Asset Management and the Transportation Planning Process

In section 450.208(e) (coordination of planning process activities), AASHTO, CO DOT, ID DOT, MT DOT, ND DOT, OR DOT, SD DOT, TX DOT, and WY DOT expressed concerns with section 450.208(e) of the NPRM, which stated that, in carrying out the statewide transportation planning process, States shall apply asset management principles and techniques, consistent with the State NHS Asset Management Plan, the Transit Asset Management Plan, and the Public Transportation Safety Plan. The commenters stated that the statewide planning process is much broader than an asset management plan, and that as a requirement, it may have unintended consequences. The commenters suggested that it be deleted or modified. The WI DOT commented that it wants clarification on what section 450.208(e) means.

In response to these comments, FHWA and FTA retained this provision. However, ''shall'' is changed to ''should'' in the final rule. The FHWA and FTA believe that asset management principles and techniques, consistent with the State NHS Asset Management Plan and the Transit Asset Management Plan, and the Public Transportation Safety Plan, should contribute to defining STIP priorities and assessing transportation investment decisions. It is changed from shall to should in the final rule because, as noted in the comments received on the NPRM, it is not a statutory requirement. The FHWA and FTA feel that the use of the word ''shall'' might be implied to mean that strategies, projects, and financial plans resulting from the asset management plans would be required to be included directly in the STIP. The FHWA and FTA feel that by changing ''shall'' to ''should,'' it conveys the message that States should review the asset management plans when developing the STIP, but are not required to incorporate them into the STIP.

The FHWA and FTA retained the provision in section 450.208(f) that for non-NHS highways, States may apply principles and techniques consistent with other asset management plans to the transportation planning and programming process, as appropriate. No comments were received on this provision.

Sections 450.218 and 450.326 describe the development of the STIP and TIP. At sections 450.218(o) and 450.326(m) in the NPRM, FHWA and FTA included the requirement that the STIP and the TIPs should be informed by the financial plan and the investment strategies from the asset management plan for the NHS, and the investment priorities of the public transit asset management plans.

Similarly, in the NPRM at sections 450.216(n) and 450.324(f)(7), FHWA and FTA included the statement that the long-range statewide transportation plan and the MTPs should be informed by the financial plan and the investment strategies from the asset management plan for the NHS and the investment priorities of the public transit asset management plans. These provisions were proposed in the NPRM by FHWA and FTA to better link the State and MPO long-range plans and programs to the federally required State NHS asset management plan and the transit asset management plans.

Numerous comments (DVRPC, AASHTO, ASHTD, ID DOT, MI DOT, MT DOT, ND DOT, SD DOT, SEMCOG, and WY DOT) stated that this requirement was confusing; that it was unclear what FHWA and FTA's expectations were; that it was not based on statute; and that it should be deleted from the final rule. The States further commented that it infringes on their flexibility to determine the content of their long-range transportation plan, including whether to create a policy-or project-based plan. Most commenters stated that it could be interpreted and applied inconsistently.

After reviewing the comments, FHWA and FTA agree that this language is ambiguous regarding what the States and MPOs would be expected to do, and that it would be difficult to implement consistently across all the States and MPOs. The FHWA and FTA also note that, adding to the inconsistency, the financial plans for the MPO MTP, the TIP and the STIP are required to be fiscally constrained, while the financial plans for the asset management plans are not. States may, but are not required to develop a list of projects as part of the

State asset management plan for the NHS. Based on these comments and inconsistencies, FHWA and FTA removed this requirement from the final rule.

However, the final rule retains the language at sections 450.206(c)(4) and 450.306(d)(4) of the NPRM that requires the integration of elements of other State and transit performance-based plans and processes into the Statewide and metropolitan transportation planning processes. These other plans include the federally required State asset management plan for the NHS and the transit asset management plan. Integration of elements of other performance-based plans and processes means that elements of these other plans and processes should be considered by the State and MPOs as they develop the long-range statewide transportation plan, MTP, STIP, and TIP. The FHWA and FTA feel that this provision is sufficient to link the asset management plans into the statewide and metropolitan transportation planning processes, and is consistent with the statutory requirements at 23 U.S.C. 134(h)(2)(D) and 135(d)(2)(C), and 49 U.S.C. 5303(h)(2)(D) and 5304(d)(2)(C).

• Common Effective Date for Performance Related Rules and Phase-In of New Requirements

Common Effective Date

At least 26 commenters (AASHTO, AK DOT, Albany MPO, AMPO, ASHTD, CO DOT, CT DOT, FMATS, GA DOT, H–GAC, IA DOT, MD DOT, MI DOT, MN DOT, MO DOT, NARC, NC DOT, NJ DOT, North Florida TPO, NYS DOT, PSRC, RI DOT, San Luis Obispo COG, SEMCOG, TX DOT, and WA State DOT) commented that all of the new performance management requirements in the final rule should have a single effective date and that the planning requirements should be coordinated with the implementation of the other performance management requirements. They commented that this would ensure that States and MPOs are not establishing different targets for different time periods for different measures and incorporating targets for some measures into their planning processes, but not others.

The TX DOT further commented that having one effective date for all of the performance management rules would enable the States and MPOs to work together and ensure the necessary data and analysis techniques are available. The IA DOT commented that it is concerned that the comment period for the planning NPRM closed before all the other FHWA and FTA performance-related rules were published. The DRCOG and RTD expressed concern that because the other performance rules have not been published, it is not clear on how coordination of all the rules will work out, particularly the relationship of the measures and targets and the requirements of any plans that implement them. The RMAP is concerned with overlapping effective dates for the various performance related rules.

The FHWA and FTA response to this comment is that FHWA proposed in the prior performance management NPRMs to establish one common effective date for its three performance measure final rules. However, due to the length of the rulemaking process, FHWA is now proposing that each of three performance measures rules have individual effective dates. This would allow FHWA and the States to begin implementing some of the performance requirements much sooner than waiting for the rulemaking process to be complete for all the rules.

The first performance measures rule related to the HSIP has been finalized and could be implemented in its entirety before the other two rules. Earlier implementation of this rule is consistent with a DOT priority of improving the safety mission across the DOT.

The FHWA also believes that individual implementation dates will help States transition to performance-based planning. Based on the timing of each individual rulemaking, FHWA would provide additional guidance to stakeholders on how to best integrate the new requirements into their existing processes. Under this approach, FHWA expects that even though the implementation for each rule would occur as that rule was finalized, implementation for the second and the third performance measure final rules would ultimately be aligned through a common performance period. In the second performance management measure NPRM, FHWA proposed that the first 4-year performance period would start on January 1, 2016.

However, FHWA proposes in the third performance management NPRM that the first performance period would begin on January 1, 2018. This would align the performance periods and reporting requirements for the proposed measures in the second and third performance management measure NPRMs. The FHWA intends to place a timeline that illustrates how this transition could be implemented on the docket for the third performance management rule.

Phase-In of New Requirements

Concerning section 450.226 (phase-in of new requirements), IA DOT asked whether the 2-year compliance date also applies to amendments to long-range statewide transportation plans. The FHWA and FTA response to this comment is that it applies to both amendments and to updates to STIPs and to long-range statewide transportation plans. This is described in the regulatory text at 450.226 and is based on 23 U.S.C. 135(l).

For section 450.226, one commenter (DC DOT) suggested that FHWA and FTA consider changing the language in the final rule such that only STIP (and TIP) updates would be required to comply with the performance management requirements after the 2-year transition period instead of requiring compliance with STIP (and TIP) amendments and updates. The commenter stated that this would provide an additional 2 years of transition time during which amendments could be made to the STIPs and TIPs because they only have to be updated at least once every 4 years and that allowing amendments for an additional 2 years would reduce the possibility of delays in project implementation. The FHWA and FTA do not agree with this comment and believe that the 2-year transition provided for by MAP–21 and final rule is adequate.

The FHWA and FTA believe that 23 U.S.C. 135(l) provides for a 2-year transition after the publication of the final planning rule. Title 23 U.S.C. 135(l) provides that States shall reflect changes made to the long-range statewide transportation plan or STIP updates not later than 2 years after the date of issuance of guidance by the Secretary. The FHWA and FTA believe that the issuance of guidance as described in 23 U.S.C. 135(l) means issuance of the final rule by FHWA and FTA. The FHWA and FTA have interpreted this to mean that STIP updates and amendments would have to comply with the MAP–21 requirements, including the performance-based planning requirements of this rule, after the transition period.

The FHWA and FTA note that although States and MPOs have a 2-year transition period for reflecting the performance-based planning requirements in the underlying planning documents, they must set targets on the schedules discussed in sections 450.206(c)(2) and 450.306(d)(3) and below. Also, when setting targets, States and MPOs are required to coordinate as described in the final rule

in sections 450.206(c)(2) and 450.306(d)(3). No changes are made to the final rule based on these comments. The final rule includes similar transition requirements for the MPO MTP and TIP in section 430.340. See the NPRM section by section analysis for section 450.340 for more discussion on why the rule also applies the transition period to MPOs. No changes are made to the final rule based on these comments.

For sections 450.226 and 450.340, one commenter (DRCOG) stated that the phase-in schedule is unclear. The NPRM stated that States have 1 year to establish performance targets, and MPOs have 180-days to set targets after the States set targets (1.5 years total), but the NPRM also referenced a 2 year phase-in period to develop and coordinate targets.

In response to this comment, FHWA and FTA note that it is correct that States must establish targets within 1 year of the effective dates of the performance management rules and MPOs must establish targets within 180-days of when their respective States set targets. While these targets have to be set by the States and the MPOs on this timeframe, these targets and the other performance-based planning requirements of the final rule do not have to be reflected in the long-range statewide transportation plan, MTP, STIP, and TIP until 2 years after the effective dates of this final rule and the performance management rules establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329.

Also concerning section 450.340, two commenters (IA DOT, WFRC) commented that it is unclear if the 2-year compliance date also applies to amending long-range statewide transportation plans and MTPs, or if it applies only to updated plans. The FHWA and FTA response to this comment is that the 2-year compliance date applies to both amended and updated long-range statewide transportation plans and MTPs.

The New York State Association of MPOs and NYMTC commented that FHWA and FTA should not require MPOs to incorporate performance-based planning provisions into their MTPs or TIPs until 2 years after the last final rule related to performance-based planning is published in the **Federal Register**.

The FHWA and FTA response to this comment is that, as described in sections 450.226 and 450.340, the phase-in of the performance-based planning requirements are triggered by the effective date of this final rule and the effective dates for the individual final rules for the other performance management rules. The FHWA and FTA believe that this will not be too burdensome given that this regulation provides a 2-year transition period rule after the effective dates of this rule and the performance management rules for the planning process and the planning documents to reflect the performance-based requirements in this rule. Updates or amendments to the long-range statewide transportation plan and the MTP(s) and the STIP and TIPs that occur on or after the date that is 2 years after the effective date of the performance management rule(s) must be developed according to the performance-based provisions and requirements of this regulation and in such rule(s).

The WA State DOT commented that FHWA and FTA should consider delaying the implementation of the performance management requirements of the final rule from 2 years after the publication date to 2 years after the publication date of the final rule and the issuance of guidance. In response to this comment, FHWA and FTA believe that the final rule and the other performance management final rules are the guidance referred in 23 U.S.C. 135(l). No changes are being made to the final rule as a result of this comment.

The NJ DOT and NARC stated that FHWA and FTA should consider additional flexibility for States, MPOs, and operators of public transportation in complying with the 2-year phase–in requirements for developing and updating their planning documents to the new planning regulations. The commenter is concerned with having as many as five different compliance dates which the commenter felt could cause confusion and make it difficult to coordinate. In response, see the FHWA and FTA responses to comments on one common effective date elsewhere in this section.

The DRCOG and RTD want FHWA and FTA to recognize and reconcile the timing and durations of the long-range statewide transportation plan, the MPO MTP, and the other performance-based plans and processes, such as the federally required transit asset management plans and the State asset management plan for the NHS.

In response to this comment, FHWA and FTA note that Congress established that FHWA and FTA shall not require States to deviate from their established planning update cycle to implement the changes in the final rule (23 U.S.C. 135(l)). The FHWA and FTA extended this same flexibility to the MPOs. The FHWA and FTA reflected this requirement in the phase-in of new requirements under sections 450.226 and 450.340. The FHWA and FTA hope that, after the phase in of these requirements, the States, MPOs, and operators of public transportation within each State will work together to align their processes and procedures, to the extent they deem practicable, for purposes of coordinating performance-based planning and programming and the associated documents such as the various performance related plans, programs, and processes.

Returning to section 450.226, DRCOG and RTD commented that the phase-in schedule is unclear and that it would like for MPOs to have 2 years to set targets after States. The FHWA and FTA believe that Congress established in 23 U.S.C. 134(h)(2)(C) to provide up to 180 days for MPOs to set performance targets after their respective State sets targets. Section 450.306(d)(3) in the final rule reflects that intent.

The IA DOT requested clarification on sections 450.226 and 450.340 as to which final effective date (this rule or the performance measures rules) is being required when discussing the 2-year compliance date for the phase-in period of performance-based planning requirements in the final rule. In response to this comment, FHWA and FTA note that under sections 450.226 and 450.340, States and MPOs have 2 years from the effective date of each performance measures rule, and 2 years from the effective date of this final rule, whichever is later, to meet the performance-based planning and programming requirements.

The MN DOT commented that the effective date should be far enough in the future to provide time for the long-range statewide transportation plan and STIP development to go through appropriate public review. In response to this comment, FHWA and FTA believe that the 2-year phase-in period provided in section 450.226 after the effective date of the final rule is sufficient time for States to undertake appropriate public review as part of updating the long-range statewide transportation plan and STIP.

- Other Changes Proposed by Commenters

Performance Measures

Concerning section 450.206 (scope of the statewide and nonmetropolitan transportation planning process), SFRTA suggested that the final rule should emphasize the development of standardized environmental performance measures into the statewide, metropolitan, and nonmetropolitan transportation

planning processes. The FHWA and FTA response to this comment is that environmental performance measures are not included in the list of performance measures that MAP–21 requires FHWA and FTA to establish. Title 23 U.S.C. 150(c)(2)(C) precludes FHWA from establishing any national performance measures outside those areas identified in 23 U.S.C. 150. The FHWA and FTA also note that the establishment of specific performance measures is outside the scope of the final rule.

The ARTBA provided comments on specific examples of suggested performance measures for consideration by FHWA and FTA, such as freight, safety, and the economic costs of congestion. The FMATS, NRDC, Partnership for Active Transportation, and SFRTA commented on specific performance measures that they felt should be considered by FHWA and FTA in the new performance-based planning and target setting requirements described in subsection 450.306(d).

Concerning sections 450.324 and 450.326 (development and content of the MTP and TIP), the National Housing Conference and the Center for Social Inclusion commented that spending decisions should be linked to performance measures and ensure that those measures promote sustainable development and a more holistic view of how transportation investments can serve the broader community. They also commented that an equity analysis, which includes performance measures specific to equity, should be done on the MTP and the TIP. The FHWA and FTA response to these comments is that recommendations for specific performance measures are outside the scope of the final rule. The federally required performance measures are being established through other FHWA and FTA rulemakings.

Returning to section 450.206, APTA commented that FHWA and FTA should not impose project-by-project performance measures or require project-by-project reporting on performance. On section 450.218(r) of the NPRM (development and content of the STIP), AASHTO, CT DOT, FL DOT, GA DOT, ID DOT, MT DOT, NC DOT, ND DOT, NYS DOT, SD DOT, TriMet, WI DOT, and WY DOT commented that States should not be required to include information on individual projects and should not be required to link individual projects with specific performance measures as part of the discussion on the anticipated effect of the STIP toward achieving the performance targets in the long-range statewide transportation plan (note section 450.218(r) in the NPRM is section 450.218(q) in the final rule).

On section 450.324(f)(4) (development and content of the MTP), several commenters (ARC, DVRPC, NYMTA, NYMTC, and PA DOT) commented that the required system performance report in the MTP should only consider conditions and trends at the system level, and should not be required to conduct a project specific analysis.

On section 450.326(d) (development and content of the TIP), AASHTO, Albany MPO, DVRPC, Florida MPO Advisory Council, H–GAC, IA DOT, MAG, MARC, NARC, North Florida TPO, NYMTA, Orange County Transportation Authority, PA DOT, San Luis Obispo COG, Santa Cruz County RTC, and TriMet commented that the required discussion on the anticipated effect of the TIP toward achieving the performance targets should not be on a project basis. They suggested that it should instead be on the basis of the entire program in the TIP. Transportation for America commented that it wanted a clear statement in the final rule requiring States and MPOs to evaluate projects according to the federally required performance measures.

The FHWA and FTA response to these comments is that that the final rule does not require project-by-project performance measures or reporting of performance at the individual project level. Reporting in the TIP will be on the performance of the program in the TIP. The FHWA and FTA believe that this is clear and that no changes to the final rule are necessary. With regards to any specific requirements for target setting or reporting in other rules or guidance, that is outside the scope of the final rule. The specific performance measures will be established under other FHWA and FTA performance rules or guidance. Based on these comments, no changes have been made to the final rule.

The ARC, MARC, DRCOG, and RTD requested flexibility in reporting and documenting targets for performance measures and progress reporting on meeting targets as required under sections 450.306, 450.324, and 450.326 as part of the MTP and the TIP. The DRCOG and RTD also expressed concern about setting transit targets and want flexibility in how they do it. The NYMTA commented on section 450.306 that there should be flexibility in setting targets. The NYMTA commented that they should be able to set their own targets, and the targets should not be required to be realistic or ''hard.'' The MARC also asked for clarification as to whether the documentation for the system performance plan required in section 450.324(f)(4) for the MTP could be in a separate document and referenced in the plan. The ARC asked if the description of how the TIP helps achieve the performance measures in the MTP (section 450.326(d)) could be documented through a separate document and not directly in the TIP. The GA DOT commented that reporting should be done in a nonburdensome manner. The WI DOT commented on section 450.206(c) that States should have flexibility in setting targets.

The FHWA and FTA response to these comments is that under the final rule, MPOs and operators of public transportation are required to coordinate to the maximum extent practicable when setting transit performance targets. The MPOs must include transit targets as part of the MTP and describe progress toward achieving those targets with each update of the plan. In the TIP and STIP, States and MPOs must describe how those plans make progress toward achievement of targets. The requirements for setting specific, federally required targets for MPOs and operators of public transportation are outside the scope of the final rule.

The FHWA and FTA note that there other rules specific to transit and highway performance targets. The FHWA and FTA plan to issue guidance on the performance-based planning reporting requirements for updates to the STIPs, TIPs, and the long-range statewide transportation plan, and the metropolitan transportation plan after the issuance of the final rule. With regards to the comment requesting clarification as to whether the documentation for the system performance plan required in section 450.324(f)(4) for the MTP could be in a separate document and referenced in the plan, FHWA and FTA respond that it should be included as part of the MTP. Similarly, the documentation for the requirements of section 450.326(d) on the anticipated effect of the TIP toward achieving the performance targets in the MTP should be included directly in the TIP.

The FMATS commented that it wants FHWA and FTA to be flexible in evaluating MPO system performance reports because, for NHS projects, there may be different priorities at the MPO level than at the State level for the NHS. In response, FHWA and FTA note that the final rule requires States and MPOs to coordinate when setting performance targets for the metropolitan area, including those targets that may be associated with the NHS. When reviewing the metropolitan transportation planning process, FHWA

and FTA will be reviewing the State and MPO coordination on target setting in addition to the reporting requirements for the MTP and TIP. The FHWA and FTA reiterate that the final rule requires that the State and MPO performance targets for the metropolitan area should be coordinated and consistent to the maximum extent practicable (sections 450.206 and 450.306).

The ARC commented that it is unlikely that the 4-year TIP will result in meeting targets. In response, FHWA and FTA note that, as described in section 450.326(c), the TIP shall be designed by the MPO such that once implemented, it makes progress toward achieving the performance targets in the MTP. The FHWA and FTA further note that as an MPO sets targets under section 450.306(d)(2), it should select targets that are realistic given available funding.

The MN DOT commented that the rules should explicitly identify who has ultimate authority for establishing the targets in case of conflict. The MT DOT commented that States must retain authority in target setting. In response to these comments, FHWA and FTA note that States are responsible and have authority for establishing State targets as described in section 450.206. The MPOs are responsible for setting MPO targets in metropolitan areas as described in section 450.306. Operators of public transportation are responsible for setting transit targets in metropolitan areas as described in section 450.306. The FHWA and FTA reiterate that, as described in sections 450.206 and 450.306, States and MPOs are required to coordinate when establishing targets to ensure consistency of their targets to the maximum extent practicable. The MPOs and operators of public transportation are to coordinate to the maximum extent practicable when setting targets for a metropolitan area. No one agency has ultimate authority for establishing targets. No changes are made to the final rule as a result of this comment.

The SCVTA commented that both the final rule and the preamble should be clear that operators of public transportation should cooperate with States and MPOs to assist them in their target setting, but States and MPOs have no required role in target setting being done by operators of public transportation. The commenter further noted that proposed sections 450.206 and 450.306 of the NPRM appear to reflect this concept. However, the preamble to the NPRM could cause some to interpret these sections differently.

In response to these comments, FHWA and FTA reiterate that the NPRM and the final rule require States and MPOs to coordinate to ensure consistency to the maximum extent practicable when setting targets for the performance areas described in 23 U.S.C. 150(c) and the measures established under 23 CFR part 490 (sections 450.206(c)(2) and 450.306(d)(2)(ii)). The final rule requires MPOs to coordinate to the maximum extent practicable with operators of public transportation when selecting performance targets that address performance measures described in 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d) (section 450.306(d)(2)(iii)). The final rule also requires that States coordinate to the maximum extent practicable with operators of public transportation in areas not represented by an MPO, when selecting targets for public transportation performance measures, to ensure consistency with the performance targets that operators of public transportation establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d) (section 450.206(c)(3)).

The FL DOT commented that performance measures should not be used for apportioning funds among States. Similarly, the NYMTA commented that there should not be a link between targets and funding. The FHWA and FTA respond that this comment is outside the scope of the final rule. There are other FHWA and FTA rules on the specific performance measures, target setting for those measures, and any consequences for not achieving targets. The FL DOT commented that the requirement for performance reporting of the federally required performance measures as part of the long-range statewide transportation plan and STIP does not extend to other locally determined performance measures outside of the federally required measures. The FHWA and FTA agree with this comment. No changes are made to the final rule as a result of these comments.

The DRCOG and RTD commented that the final rule does not identify the consequences for not making significant progress on meeting performance targets. The FHWA and FTA response to this comment is that it is outside the scope of this final rule. However, FHWA and FTA note that such consequences would be identified in the corresponding MAP–21 rulemakings related to performance management, which will include opportunities for comment.

The ARC commented that they do not want the imposition of overly rigid targets. The FHWA and FTA response to this comment is that under section 450.306(d)(2) of the final rule, each MPO sets its own targets in coordination with the State and operators of public transportation. Other FHWA and FTA performance rules may have more criteria for setting performance targets. However, that is outside the scope of the final rule.

The MARC commented that FHWA and FTA should support target setting through technical assistance. In response to this comment, FHWA and FTA note that this is outside the scope of the final rule and is more appropriate for the other FHWA and FTA performance measures rules that establish the specific performance measures.

The FMATS expressed concern about the timing for target setting, particularly a 1-year target period, and would like targets set based on the MTP schedule and the long-range statewide plan schedule. In response to this comment, FHWA and FTA note that the target update process is in the other performance measures rules and is outside the scope of the final rule. The final rule requires States to initially set targets for the measures identified in 23 U.S.C. 150(c) within 1 year of the effective date for the other DOT final rules on performance measures (section 450.206(c)(2)) (23 U.S.C. 135(d)(2)(B)) in accordance with the appropriate target setting framework established at 23 CFR part 490. The final rule requires MPOs to set targets that address performance measures described in 23 U.S.C. 150(c) and 49 U.S.C. 5326(c)–(d) within 180 days after the completion of same by the State or operator of public transportation (section 450.306(d)(3) (23 U.S.C. 134(h)(2)(C)). The FHWA and FTA believe such a deadline reflects congressional intent in the MAP–21.

The ARTBA commented that it wanted to be clear that the focus of NHPP funds is highway and bridge projects. The ARTBA also commented that, in light of section 1503(c) of the MAP–21 (project approval and oversight), the more information the public has, the more transparent and accountable the process will be. Section 1503(c) of the MAP–21 requires that DOT annually compile and submit a report containing a summary of annual expenditure data for funds made available under title 23 U.S.C. and chapter 53 of title 49 U.S.C. to Congress, and make the report publicly available on the DOT's public Web site. The FHWA and FTA response to these comments is that they are outside the scope of the final rule.

Integration of Other State Performance-Based Plans and Programs Into the Planning Process

Section 450.208 describes coordination of planning process activities. Section 450.206 describes the scope of the statewide and nonmetropolitan transportation planning process. In the NPRM at section 450.208(g), FHWA and FTA included language on the integration of elements of other State performance-based plans and processes into the statewide transportation planning process and listed examples of these other plans and processes.

Concerning section 450.208(g), AASHTO, CT DOT, NJ DOT, and NC DOT requested that FHWA and FTA eliminate redundant references to the integration of goals and objectives into the statewide planning process, as proposed in the NPRM. The commenters stated that this provision in section 450.208(g) is unnecessary because it is duplicative of the requirement in section 450.206(c)(4).

After reviewing the comments, FHWA and FTA agree that section 450.208(g) has the same meaning, essentially repeats section 450.206(c)(4), and is therefore unnecessary. The FHWA and FTA have removed section 450.208(g) from the final rule while retaining section 450.206(c)(4).

The ID DOT, MT DOT, ND DOT, SD DOT, and WY DOT also commented on section 450.308(g). They suggested that FHWA and FTA should remove the list of examples of State performance-based plans and processes listed in this section because it should be left up to the State to decide which plans and processes to integrate into the planning process. The IA DOT expressed concern with section 450.208(g) integrating a large number of plans into its planning process.

In response to these comments, as noted above, FHWA and FTA have eliminated section 450.208(g) because it repeats the requirements of section 450.206(c)(4). Section 450.206(c)(4) retains the requirement to integrate elements from other federally required performance-based plans and processes into the statewide transportation planning process. Section 450.306(d)(4) maintains similar requirements for metropolitan areas. The FHWA and FTA believe that in 23 U.S.C. 134(h)(2)(D) and 135(d)(2)(C), Congress intended for elements of other performance-based plans and processes to be integrated into the statewide and metropolitan transportation planning processes. The FHWA and FTA believe that such intent is reflected in the final rule (sections 450.206(c)(4) and 450.306(d)(4)). The FHWA and FTA also provided specific examples of federally required performance-based plans and processes to provide more clarity in these sections of the rule and reflect Congress's intent. Therefore, no changes are made to the final rule as a result of this comment.

Differences Between State and MPO Requirements in the Final Rule

Concerning section 450.216 (development and content of the long-range statewide transportation plan), FMATS, NARC, NRDC, San Luis Obispo COG, and Transportation for America commented that differences between the State and metropolitan planning sections of the final rule should be reconsidered. Namely that for the regulations governing the long-range statewide transportation plan, the word ''should'' is sometimes used, whereas for the MTP in section 450.324, the word ''shall'' is sometimes used (*e.g.,* with fiscal constraint and the accompanying financial plan). The commenters made a similar comment regarding the inclusion of performance targets in the long-range statewide transportation plans, that States are held to a lower standard (''should'') in the long-range statewide transportation plan, than the MPOs (''shall'') in the MTPs.

On section 450.218 (development and content of the STIP), the NRDC commented that they disapprove of the differences between the sections of the final rule covering STIPs and the sections covering TIPs, particularly the use of the words ''may'' and ''shall,'' and that the provisions in the regulations for the State STIP should mirror those for the MPO TIP. For example, in paragraph (l), the STIP may include a financial plan, whereas in section 450.324(f)(11), the TIP shall include a financial plan. The FHWA and FTA acknowledge that the statewide long-range transportation plan and MTP provisions and the STIP and TIP provisions do not mirror each other with regard to the use of the words ''may,'' ''should,'' and ''shall.''

The FHWA and FTA disagree that the differences between the statewide and metropolitan sections should be reconciled in regards to the usage of those words. The FHWA and FTA note that Congress specifically draws this distinction between the statewide and the MTPs in the statute and the final rule reflects that requirement. The final rule is also historically consistent with how the statute has distinguished between States and MPOs. The FHWA and FTA note that the use of the words ''should'' and ''shall'' in the final rule is consistent with statutory language. The FHWA and FTA note that, in one instance, the FAST Act amended 23 U.S.C. 135(f)(7) and changed the State requirement from ''should'' to ''shall,'' specifically, when requiring a State to include a description of the performance measures and targets and a systems performance report in the long-range statewide transportation plan. This change is made in the final rule in sections 450.216(f)(1) and (2). No other changes are made to the final rule based on these comments.

Integration of Health Into the Transportation Planning Process

The Partnership for Active Transportation and the Sierra Club commented on sections 450.206 and 450.306. They commented that health should be integrated into the planning process and that FHWA and FTA also include performance measures relating to how transportation infrastructure promotes healthy living. The commenters further stated that the final rule does not address safety issues of active transportation users. However, they appreciate that the final rule does contain explicit language on non-motorized transportation facilities, including pedestrian walkways and bicycle facilities. The Sierra Club further commented that the performance metrics that identify the impacts of investments on individual and community health should be more reliably identified on a disaggregated basis in travel modeling.

The FHWA and FTA response to these comments is that FHWA and FTA are actively working with transportation planning stakeholders and undertaking research to identify ways that health can be integrated into the transportation planning process. This research is focused on better consideration of health outcomes in transportation by promoting safety; improving air quality; protecting the natural environment; improving social equity by improving access to jobs, healthcare, and community services; and on opportunities for the positive effects of walking, biking, public transportation, and ride sharing. The results of this research are available online at: *http://www.fhwa.dot.gov/planning/health_in_transportation/*. The FHWA and FTA continue to update this Web site with new material.

The FHWA and FTA do not feel that it is appropriate at this time to include public health within the scope of the final rule, and that it is left up to the States and MPOs to decide whether or not they want to include health considerations in their transportation

planning processes. The FHWA and FTA provide research and examples of best practices to the States and MPOs on this topic area, which can be used in their planning processes and integrated to the degree they feel is appropriate. The discussion of specific performance measures, including measures for health considerations in transportation, is outside the scope of the final rule because this rule does not establish specific performance measures. Based on this comment, the FHWA and FTA made no changes to the final rule.

Integration of Climate Change Into the Transportation Planning Process and Reducing Carbon Dioxide Emissions

The VT DOT recommended incorporating climate resilience as one of the components of the statewide transportation planning process. The FHWA and FTA believe that including climate resilience as a component of the statewide and the metropolitan transportation planning process is a good practice, and have developed resource materials in the form of peer exchanges, workshops, guidebooks, and other references for States, MPOs, and operators of public transportation on this topic that are available on FHWA's climate change Web site at: *http://www.fhwa.dot.gov/environment/climate_change/*. The FHWA and FTA will continue to update this Web site with new material.

It is clear that reducing CO_2 emissions is critical and timely. On-road sources account for over 80 percent of U.S. transportation sector greenhouse gasses (GHG). In an historic accord in Paris, the U.S. and over 190 other countries agreed to reduce GHG emissions, with the goal of limiting global temperature rise to less than 2° C above pre-industrial levels by 2050.

According to the Intergovernmental Panel on Climate Change (IPCC), human activity is changing the earth's climate by causing the buildup of heat-trapping GHG emissions through the burning of fossil fuels and other human processes.[14] Transportation sources globally have been a rapidly increasing source of GHGs. Since 1970, GHGs produced by the transportation sector have more than doubled, increasing at a faster rate than any other end-use sector. The GHGs from total global on-road sources have more than tripled, accounting for more than 80 percent of the increase in total global transportation GHG emissions.[15] In the U.S., GHG emissions from on-road sources represent approximately 23 percent of economy-wide GHGs, but have accounted for more than two-thirds of the net increase in total U.S. GHGs since 1990,[16] during which time vehicle miles traveled (VMT) also increased by more than 30 percent.[17]

A well-established scientific record has linked increasing GHG concentrations with a range of climatic effects, including increased global temperatures that have the potential to result in dangerous and potentially irreversible changes in climate and weather. In December 2015, the Conference of Parties nations recognized the need for deep reductions in global emissions to hold the increase in global average temperature to well below 2 °C above pre-industrial levels, and are pursuing efforts to limit temperature increases to 1.5 °C. To that end, the accord calls on developed countries to take a leadership role in identifying economy-wide absolute emissions reduction targets and implementing mitigation programs. Also, as part of a 2014 bilateral agreement with China, the U.S. pledged to reduce GHG emissions to 26–28 percent below 2005 levels by 2025, with this emissions reduction pathway intended to support economy-wide reductions of 80 percent or more by 2050.

The FHWA recognizes that achieving U.S. climate goals will likely require significant GHG reductions from on-road transportation sources. To support the consideration of GHG emissions in transportation planning and decisionmaking, FHWA has developed a variety of resources to quantify on-road GHG emissions, evaluate GHG reduction strategies, and integrate climate analysis into the transportation planning process. The FHWA already encourages transportation agencies to consider GHG emissions as part of their performance-based decisionmaking, and has developed a handbook to assist State DOTs and MPOs interested in addressing GHG emissions through performance-based planning and programming.[18] The FHWA has developed tools to help State and local transportation agencies address GHG emissions associated with their systems. These include the Energy and Emissions Reduction Policy Analysis Tool (EERPAT),[19] a model that evaluates the impacts of CO_2 reduction policies for surface transportation, and the Infrastructure Carbon Estimator (ICE),[20] a tool that specifically evaluates CO_2 associated with the construction and maintenance of transportation infrastructure. The FHWA is also currently conducting a number of pilots to analyze the potential GHG emission reductions associated with various transportation-related mitigation strategies.[21] Even with these efforts, FHWA recognizes that more will be needed to meet the U.S. climate goals.

The FHWA is considering how GHG emissions could be estimated and used to inform planning and programming decisions to reduce long term emissions. As part of the rulemaking process for the National Performance Measures for Assessing System Performance, CMAQ Congestion, CMAQ On-Road Mobile Source Emissions, and Freight Movement, FHWA is seeking comment on the potential establishment and effectiveness of a measure as a planning, programming, and reporting tool.

The FHWA and FTA note that, in response to amendments to 23 U.S.C. 134 and 135 resulting from the FAST Act, this final rule includes a new planning factor that States and MPOs should consider and implement on improving resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation as part of the statewide and metropolitan planning process (sections 450.206(a)(9) and (10) and sections 450.306(b)(9) and (10)). This final rule in section 450.316(b) adds a new requirement for MPOs to coordinate with officials responsible for natural disaster risk reduction when developing a MTP and TIP. In sections 450.200 and 450.300(a), States and

[14] The IPCC Document: IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

[15] Sims, et al. 2014: Transport: In Climate Change 2014, Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. p. 605.

[16] This is the first year of official U.S. data.

[17] U.S. Environmental Protection Agency, 2015. Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2015. Washington, DC. Tables 2–1 and 2–13. Federal Highway Administration, 2013 Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance. Washington, DC. Exhibit 1–3.

[18] A Performance-Based Approach to Addressing Greenhouse Gas Emissions through Transportation Planning, available at *http://www.fhwa.dot.gov/environment/climate_change/mitigation/publications_and_tools/ghg_planning/ghg_planning.pdf*.

[19] The Energy and Emissions Reduction Policy Analysis Tool (EERPAT), available at *https://www.planning.dot.gov/FHWA_tool/*.

[20] The Infrastructure Carbon Estimator (ICE), available at *http://www.fhwa.dot.gov/environment/climate_change/mitigation/publications_and_tools/carbon_estimator/*.

[21] FHWA's Greenhouse Gas/Energy Analysis Demonstration projects are described at *http://www.fhwa.dot.gov/environment/climate_change/mitigation/ongoing_and_current_research/summary/index.cfm*.

MPOs are required to take into consideration resiliency needs as part of the metropolitan transportation planning process. Section 450.324(f)(7) adds a requirement to reduce the vulnerability of the existing transportation infrastructure to natural disasters to the assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure in the metropolitan transportation plan.

The FHWA and FTA will continue to develop and share best practices, research, workshops, and peer exchanges on this topic for use by States and MPOs to aid with the implementation of their planning processes.

Other Topics

The North Central Pennsylvania Regional Planning and Development Commission (RPDC) requested that there be a review of NHS and principle arterials and functional classification systems. The FHWA and FTA response to this comment is that it is outside the scope of the final rule. The North Central Pennsylvania RPDC commented that regional Unified Planning Work Programs (UPWP) are an eligible means to structure planning activities.

The FHWA and FTA response to this comment is that section 450.308 describes the requirements for an MPO UPWP. The UPWP documents metropolitan transportation planning activities performed with funds provided under 23 U.S.C. and 49 U.S.C. chapter 53, in accordance with this section and 23 CFR part 420, and contains a discussion of the planning priorities for the MPA.

The DRCOG and RTD commented that they wanted the final rule to be clearer on how funding will be made available and how funding will be distributed among entities. The FHWA and FTA respond that this comment is outside the scope of the final rule.

The Partnership for Active Transportation stated that planners should be required to collect and aggregate data relating to active transportation infrastructure and its use. The FHWA and FTA response to this comment is that section 450.216(a) requires the State to develop a long-range statewide transportation plan that provides for the development and implementation of a multimodal transportation system for the State, including non-motorized modes. In meeting this requirement, the long-range statewide transportation plan may be a policy plan, so it is up to the individual States to determine the degree to which they collect and aggregate data relating to active transportation infrastructure and use.

In section 450.324(b), MPOs are required to include strategies and actions in their MTPs that provide for the development of an integrated multimodal transportation system, including accessible pedestrian walkways and bicycle transportation facilities. Section 450.324(f)(2) requires that MPOs include existing and planned facilities in the MTP, including nonmotorized transportation facilities. Section 450.324(f)(1) requires that the MTP include the current and projected demand of persons and goods in the MPA over the period of the MTP.

With regards to collecting data on the usage of active transportation, it is up to the individual MPOs to decide what and how much data they need to collect on active transportation usage to meet the MTP requirements in sections 450.324(b), (f)(1), and (f)(2).

The County of Maui, HI commented that it is concerned about a one-size-fits-all final rule, particularly in relation to the smaller MPOs, and that it wants significant reductions to the final rule for small communities that have recently emerged from a rural status. In response to this comment, FHWA and FTA note that section 450.308(d) of the rule provides that an MPO in an urbanized area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State and the operators of public transportation, in lieu of a UPWP.

The FHWA and FTA also note that under section 450.306(i), an MPO in an urbanized area not designated as a TMA but in an air quality attainment area may, taking into account the complexity of the transportation problems in the area, propose and submit for approval to FHWA and FTA a procedure for developing an abbreviated MTP and TIP. The MPO shall develop the simplified procedures in cooperation with the State and the operators of public transportation. The FHWA and FTA believe these provisions provide significant flexibility for MPOs serving non-TMA urbanized areas that are in air quality attainment areas. No changes are made to the final rule based on this comment.

V. Section-by-Section Discussion

The section-by-section discussion of statewide and nonmetropolitan planning and metropolitan planning summarizes the public comments received and the FHWA and FTA responses. It also serves as a summary of any changes to the regulatory text in the NPRMs that are made in the final rule as a result of the comments. For topics on which there are recurring comments in multiple sections, FHWA and FTA have consolidated the comments and responses in section IV(B), leaving references to the comment in this section so the reader can return to review them.

The FHWA and FTA have changed the term ''decisionmaking'' to read ''decision-making'' in the final rule.

In response to a comment from the WI DOT, FHWA and FTA also changed the final rule to refer to the ''long-range statewide transportation plan'' consistently throughout.

The Memphis Urban Area MPO submitted several comments on the NEPA process. The FHWA and FTA note that the NEPA process is outside the scope of the final rule.

The MD DOT made a general comment that FHWA and FTA should limit the rulemaking to what is required by statute. The FHWA and FTA response to this comment is that, when drafting the final rule, FHWA and FTA had an overarching goal of staying as close to the statutory requirements as possible.

The AASHTO commented that it wanted consistent usage, or definitional distinctions, of similar terms such as ''transit operator'' and ''transit provider'' in the final rule. The FHWA and FTA response to this comment is that those terms are meant to mean the same thing. In order to be consistent, FHWA and FTA used the term ''operator of public transportation'' throughout the document.

The AASHTO and the WA State DOT commented that they wanted consistent use of terms for the asset management plan for the NHS. The FHWA and FTA response to this comment is that FHWA and FTA have tried to use the term State asset management plan for the NHS consistently throughout this document.

Subpart A—Transportation Planning and Programming Definitions

Section 450.100 Purpose

No comments were received on this section. The FHWA and FTA did not make any changes in the final rule to the language proposed in the NPRM for this section.

Section 450.102 Applicability

No comments were received on this section. The FHWA and FTA did not make any changes in the final rule to the language proposed in the NPRM for this section.

Section 450.104 Definitions

The FHWA and FTA received 33 comments on proposed changes to terms

and definitions in section 450.104. Commenters included Albany MPO, AASHTO, AMPO, Capital Area MPO, CT DOT, ID DOT, MT DOT, ND DOT, SD DOT, WY DOT, Florida MPO Advisory Council, Houston MPO, IA DOT, ME DOT, MN DOT, MT DOT, NARC, the National Housing Conference, the National Trust for Historic Preservation, NCTCOG/RTC, ND DOT, NRDC, NJ DOT, NYMTA, OK DOT, Portland Metro (a transit operator), Richmond MPO, SCCRTC, TN DOT, TX DOT, WFRC, WA State DOT, Westchester County Department of Public Works and Transportation, and WY DOT. Fifteen of the comments were from States, eight were from MPOs, five were from associations representing public transportation agencies, three were from advocacy groups, one was from a regional planning agency, and one was from a local government. The OK DOT requested that FHWA and FTA ensure that the proposed definitions retain the verbiage in 23 U.S.C. 134 and 23 U.S.C. 135 and that they are clear and serve the intent of the law. The FHWA and FTA concur with this comment and strive to ensure that all definitions proposed are clear and consistent with 23 U.S.C.134 and 135 and 49 U.S.C. 5303 and 5304.

Amendment—Five comments (NARC, NYMTA, SCCRTC, TN DOT, and WFRC) sought clarity with respect to the proposed changes to the definition of the term ''amendment.'' In the NPRM, FHWA and FTA proposed to change the definition of amendment to clarify that a conformity determination is not a criterion for determining the need for an amendment in nonattainment and maintenance areas, and also proposed to add a transit example of a change in design concept or scope to the definition of amendment. The TN DOT stated that the proposed revision to more accurately reflect the relationship of the Clean Air Act's transportation conformity requirements to the planning process was confusing, noting that TIP amendments usually trigger a conformity determination not vice versa.

The FHWA and FTA response to this comment is that, as described in the NPRM's section-by-section analysis, the proposed definition clarifies that a conformity determination is not a criterion for determining the need for an amendment in nonattainment and maintenance areas.

Three commenters (NARC, SCCRTC, and WFRC) requested that FHWA and FTA not include the proposed phrase ''changing the number of stations in the case of fixed guideway transit projects'' to the list of examples of major changes in design concept or design scope as they feel requiring amendments for every time the number of stations changes is too burdensome.

In response to this comment, FHWA and FTA included the phrase ''changing the number of stations in the case of fixed guideway transit projects'' in the final rule, as proposed in the NPRM in order to add a transit example of a change in design concept or design scope to the definition.

The NYMTA commented that the definition of amendment should be revised to note that an amendment to a TIP does not trigger a reassessment of the TIP's impact on achieving performance targets. The FHWA and FTA respond that the commenter is correct, amendments to a TIP do not trigger the requirement in section 450.326(d) to include a description of the anticipated effect of the TIP toward achieving the performance targets. Only an update to the TIP triggers the requirements in section 450.326(d). The FHWA and FTA do not believe it is necessary or desirable to include this as part of the definition of amendment in section 450.104 as it would make the definition lengthy and overly complicated. In response to these comments, FHWA and FTA did not change the definition of amendment in the final rule.

Asset Management—The TX DOT requested that the new definition of the term ''asset management'' references the NHS since 23 U.S.C. 119(e) specifies a risk-based asset management plan for the NHS only. The FHWA and FTA retained the definition as proposed because it is identical to the definition in section 1103 of the MAP–21 (23 U.S.C. 101(a)(2)) and refers to the asset management plan requirements for both the NHS and public transportation agencies. The FHWA and FTA also note that the asset management plan for the NHS may also include non-NHS assets. The IA DOT noted that the lack of definitions for performance measures, performances targets, transit asset management plan, and transit asset management system makes it difficult to interpret the regulations related to these items. In response, FHWA and FTA note that the definitions for performance measures, performance targets, transit asset management plan, and transit asset management system will be provided in the rulemakings on those topics.

Attainment Area—The FHWA and FTA did not propose changing the definition of attainment area in the NPRM or in the final rule. However, FHWA and FTA clarify that a maintenance area that has satisfied the maintenance planning period requirements as stated in section 175A of the Clean Air Act is considered an attainment area for transportation planning purposes. In general, the maintenance planning period extends 20 years from the effective date of the Environmental Protection Agency's (EPA) approval of the 10-year maintenance plan and redesignation of the area to attainment for the NAAQS. For example, a carbon monoxide (CO) area was redesignated as an attainment area and the EPA approved its first 10-year maintenance plan for CO effective April 30, 1993; and the area has a second maintenance plan, effective April 30, 2003. In this example, the CO area would be considered an attainment area for transportation planning purposes after April 30, 2013, if the area is attainment for all other transportation related pollutants.

Conformity—The AASHTO requested that FHWA and FTA edit the proposed definition of conformity by replacing the phrase ''in any area'' with ''in a nonattainment or maintenance area,'' as SIPs also apply to attainment areas, whereas conformity does not. The AMPO commented that it wanted to change ''in any area'' to ''in an adequate or approved SIP in a nonattainment or maintenance area.''

In response to these comments, the definition has been changed to replace ''in any area'' with ''in a nonattainment or maintenance area,'' as suggested by AASHTO and AMPO. The FHWA and FTA do not believe that the additional text suggested by AMPO ''in an adequate or approved SIP'' provides additional clarity. The FHWA and FTA made no changes based on this additional comment. In the final rule, the term 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 SSIP. 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, any required interim emission reductions, or other milestones in a non-attainment or maintenance area. The transportation conformity regulations (40 CFR part 93, subpart A) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities.

Consideration—The AASHTO, six States (ID DOT, MT DOT, ND DOT, SD DOT, TX DOT, and WY DOT) and one MPO (H–GAC) requested that FHWA and FTA not include the word

''consequences'' in the proposed definition of ''consideration'' as an item to take into account in the consideration process. They expressed concern that including consequences would complicate the planning process, especially given the considerable workload needed to be done by States and MPOs as they move toward a performance-based planning and programming process. They note that the current definition has been in place for an extended period and that it is fair to believe that the Congress did not contemplate that DOT would be revisiting it at the same time that it works to implement the new provisions in the MAP–21.

The FHWA and FTA agree that to take into account the consequences of a course of action is a vague expectation that could be difficult to define. Consequently, the final rule does not include the term ''consequences'' in the definition of ''consideration.'' In the final rule, consideration means that one or more parties take into account the opinions, action, and relevant information from other parties in making a decision or determining a course of action.

Local Official—Three commenters (Florida MPO Advisory Council, RTC/NCTCOG, and NYMTA) sought additional clarity with respect to the proposed definition of ''local official.'' The FHWA and FTA proposed to add a definition because of the new emphasis under the MAP–21 on nonmetropolitan transportation planning. The FHWA and FTA proposed that ''local official'' would be defined as an elected or appointed official of general purpose local government with responsibility for transportation. In general, the commenters sought clarity on how the definition of local official related to the term ''local elected official'' used in section 450.310(d)(i) as one of the categories of individuals who may serve on an MPO in a designated TMA. As the rule already includes a definition of ''nonmetropolitan local official,'' FHWA and FTA deleted the definition of ''local official.''

Long-range statewide transportation plan—The AASHTO and NJ DOT requested that FHWA and FTA use the term ''long-range statewide transportation plan'' consistently throughout the rule to ensure consistency and clarity. They noted that there are many references in subpart B (450.206(c)(5) and 450.216(f)) that refer to the ''statewide transportation plan'' where those references are intended to refer to the ''long-range statewide transportation plan.'' The FHWA and FTA concur with these comments and will ensure that the term long-range statewide transportation plan is used consistently throughout the final rule.

Major Mode of Transportation—The Albany MPO, AMPO, and NARC requested that FHWA and FTA delete the definition of major modes of transportation because, as proposed, the definition is overly broad and could be interpreted to include all forms of transportation, including non-major modes. They note that MPOs are in the best position to define what constitutes a major mode of transportation in their respective MPAs. The FHWA and FTA agree that the major modes could vary among MPOs and that they are in the best position to decide which are the major modes of transportation that operate in their metropolitan area. The FHWA and FTA deleted the definition in the final rule. The FHWA and FTA will continue to work with each MPO to determine what major modes exist in their region.

Metropolitan Planning Agreement—The MN DOT noted that FHWA and FTA should not use the acronym ''MPA'' when referencing the metropolitan planning agreement as it could also stand for ''metropolitan planning area.'' As these are distinctly different, FHWA and FTA will apply the acronym ''MPA'' to only reference ''metropolitan planning area'' throughout this rule to avoid confusion. Two advocacy organizations (National Trust for Historic Preservation and NRDC) expressed support for the definition since it explicitly requires more structured coordination between public transportation agencies and MPOs.

Scenario planning—Three States (CT DOT, ME DOT, and WA State DOT) and one MPO (Capital Area MPO) submitted comments on the definition of ''scenario planning.'' While two States (ME DOT and WA State DOT) endorsed the definition, another (CT DOT) expressed concern that the proposed definition is not sufficiently descriptive and would be subject to a variety of interpretations. The CT DOT noted that, as written, the definition provides little guidance for making the final decision between the analyzed scenarios, and recommended a more complete definition by including language about choosing the most practical or likely scenario.

In response to this comment, FHWA and FTA note that the definition is intended to be broad and that a more fulsome discussion of ''scenario planning'' is included in section 450.324(i) (Development and content of the metropolitan transportation plan). In addition, the Capital Area MPO requested that the scenario planning definition be revised to mean: ''A planning process that evaluates the effects of alternative policies, plans, and/or programs on the future of a community or region. This activity can provide additional information to decisionmakers as they develop the transportation plan and other programs and policies.'' The FHWA and FTA believe the broad definition of scenario planning, as proposed in the NPRM, reflects the intent of Congress in 23 U.S.C. 134(i)(4)(A) and will retain the definition in the final rule.

Visualization Techniques—The National Trust for Historic Preservation and NJ DOT noted that the proposed definition of visualization techniques is too narrow and requested that the definition include that visualization techniques be searchable and interactive. The FHWA and FTA appreciate that the technology of visualization is rapidly progressing but are sensitive to the fact that not all MPOs have the technical capacity or resources to support higher levels of sophistication. The FHWA and FTA retained the definition of visualization techniques as proposed in the NPRM and will work to increase the technical capacity of MPOs to develop searchable and interactive inventories of transportation facilities and resources.

In addition to comments on the definitions proposed in section 450.104, a number of commenters requested additional definitions. The AASHTO requested that FHWA and FTA provide a discussion on the difference between the definitions of terms such as ''shall'' and ''should.'' In response, FHWA and FTA have stated that ''shall'' denotes a requirement whereas ''should'' is optional.

Subpart B—Statewide and Nonmetropolitan Transportation Planning and Programming

The NPRM proposed a change to the title of subpart B from ''Statewide Transportation Planning and Programming'' to ''Statewide and Nonmetropolitan Transportation Planning'' to reflect statutory changes. The addition of ''Nonmetropolitan'' to the title epitomized the MAP–21's new emphasis on the importance of nonmetropolitan transportation planning. No comments were submitted to the docket on this proposed change. The final rule retains those changes.

Section 450.200 Purpose

Section 450.200 describes the purpose of subpart B (statewide and nonmetropolitan transportation planning and programming). No comments were received on this section.

The FHWA and FTA made no changes to this section based on comments received on the NPRM.

Sections 1202 and 1201 of the FAST Act, codified at 23 U.S.C. 135(a)(2) and 23 U.S.C. 134(a)(1) respectively, added intermodal facilities that support intercity transportation, including intercity bus facilities and commuter van pool providers to the purpose of the statewide and metropolitan multimodal transportation planning processes. The final rule at sections 450.200 and 450.300 is amended to reflect this change.

Section 1201 and 1202 of the FAST Act amends 23 U.S.C. 134(a)(1) and adds ''takes into consideration resiliency needs'' to the purpose of the of the metropolitan transportation planning process and the statewide and nonmetropolitan transportation planning process (23 U.S.C. 135(a)(2)). The final rule at sections 450.300(a) and 450.200 are amended to add this change.

Section 450.202 Applicability

Section 450.202 describes the applicability (to States, MPOs, RTPOs, and operators of public transportation) of subpart B on statewide and nonmetropolitan transportation planning and programming. No comments were received on this section. The FHWA and FTA made no changes to the final rule.

Section 450.204 Definitions

No comments were received on this section. The FHWA and FTA made no changes to the final rule.

Section 450.206 Scope of the Statewide Transportation and Nonmetropolitan Planning Process

Section 450.206 describes the scope of the statewide transportation and nonmetropolitan planning process. Fifty-three commenters (AASHTO, AK DOT, APTA, ARC, ARTBA, California Association for Coordinated Transportation, CALTRANS, CO DOT, Community Labor United, CT DOT, Danville MPO, DC DOT, Enterprise Community Partners, FL DOT, FMATS, Front Range Economic Strategy Center, MARC, MD DOT, ME DOT, MI DOT, Miami-Dade MPO, MN DOT, MO DOT, MTC, NARC, National Association of Social Workers, National Housing Conference, National Trust for Historic Preservation, NC DOT, ND DOT, NJ DOT, North Central Pennsylvania RPDC, NRDC, NYMTC, NYS DOT, OK DOT, Orange County Transportation Authority, PA DOT, Partnership for Active Transportation, Partnership for Working Families, Policy Link, Public Advocates, SACOG, San Luis Obispo MPO, SANDAG,, Santa Cruz MPO, SCAG, SCVTA, SEMCOG, SFRTA, SJCOG, Southeast Alabama RPO, TX DOT, United Spinal Association, VA DOT, VT DOT, WA State DOT, West Piedmont Planning District, WI DO, and WY DOT) submitted comments to the docket on this section. Twenty-four comments were received from State, 12 from advocacy organizations, 10 from MPOs, 5 from operators of public transportation, and 2 from regional planning organizations.

The NYS DOT stated that it is generally supportive of the performance-based approach to the transportation planning process. They further stated that they also agree and support the requirement in the final rule that each State, and the MPOs within the State, must establish performance targets in coordination with each other to ensure consistency to the maximum extent practicable.

The San Luis Obispo COG expressed its concern that the NPRM imposes different requirements on States and MPOs. Namely, that MPOs are required to include performance targets and a system performance report in their MTP. While States may, but are not required to, include these same elements in the long-range statewide transportation plan. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The SFRTA suggested that the final rule should emphasize the development of standardized environmental performance measures into the statewide, metropolitan and nonmetropolitan transportation planning processes. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The APTA commented that FHWA and FTA should not impose project-by-project performance measures or require project-by-project reporting on performance. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The NRDC commented on specific performance measures that FHWA and FTA should consider. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.206(a)

Several advocacy groups (Front Range Economic Strategy Center, Partnership for Working Families, PolicyLink, Public Advocates, and United Spinal Association) commented that the planning process, the use of performance measures, and prioritization of projects by States and MPOs should encourage the States and MPOs to consider expansion of economic opportunity for low-income communities and minority communities through improved transportation. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Sections 1202 and 1201 of the FAST Act amended 23 U.S.C. 134(h)(1) and 23 U.S.C. 135(d)(1) respectively to add two new planning factors to the scope of the statewide and nonmetropolitan and the metropolitan transportation planning processes: improve resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and enhance travel and tourism. The final rule at sections 450.206(a)(9) and (10) and 450.306(b)(9) and (10) are amended to reflect these new planning factors.

Section 450.206(b)

The National Trust for Historic Preservation commented that section 450.206(b) should also make reference to historic resources as part of the planning factors to show that historic preservation may be related to the transportation planning process. The FHWA and FTA received a similar comment from the National Trust for Historic Preservation during the development of the NPRM and added language under paragraph (b) in this section that includes section 4(f) properties as defined in 23 CFR 774.17 as one of several examples to consider for establishing the degree of consideration and implementation of the planning factors. This proposed change has been retained in the final rule. Section 450.306(c) retains similar language. Based on this comment, FHWA and FTA made no changes to the final rule.

Section 450.206(c)(2)

The AASHTO, ID DOT, MT DOT, ND DOT, SD DOT, TX DOT, VT DOT, and WY DOT commented that section 450.206(c)(2) should not reference the performance measures and performance target setting framework that will be established for the performance measures identified in 23 U.S.C. 150(c) at 23 CFR part 490 because it is confusing. The FHWA and FTA do not agree with this comment. The FHWA regulations at 23 CFR part 490 establish the performance measures and the performance target setting framework that the States will need to address when setting performance targets for specific performance measures. These

are the same performance targets required of the States under the planning regulations. The targets will address the specific measures established under 23 CFR part 490.

The NJ DOT commented on section 450.206(c)(2) that States should set performance measures, not FHWA and FTA. The FHWA and FTA response to this comment is that under 23 U.S.C. 150, FHWA is required to set the national performance measures described in 23 U.S.C. 150(c). The FHWA and FTA further note that under 23 U.S.C. 135(d)(2)(B)(i)(I), States are required to set performance targets for those national performance measures. States may set additional performance measures outside of those required under 23 U.S.C. 150(c).

The AASHTO, AR DOT, CO DOT, ID DOT, MN DOT, MT DOT, ND DOT, NYS DOT, SD DOT, TX DOT, and WY DOT commented that there is no specific requirement in the MAP–21 for States to coordinate with Federal land management agencies when setting performance targets and that this provision in section 450.206(c)(2) should be removed from the final rule. The FHWA and FTA agree with this comment and removed the provision.

In the final rule, section 450.208(a)(3) requires that, in carrying out the statewide transportation planning process, each State shall consider the concerns of Federal land management agencies that have jurisdiction over land within the boundaries of the State. The FHWA and FTA believe that, given the requirements of section 450.208(a)(3), States should consider the needs of Federal land management agencies that have jurisdiction over land within the boundaries of the State when setting performance targets. The FHWA and FTA note that there was an error in the section-by-section discussion on this topic in the preamble to the NPRM, as opposed to the proposed regulatory text of section 450.206(c)(2) in the NPRM. The NPRM regulatory text stated that each State should select and establish performance targets in coordination with affected Federal land management agencies as appropriate. The section-by-section discussion in the preamble said States would coordinate the establishment of performance targets with affected Federal land management agencies.

In summary, FHWA and FTA removed the requirement in section 450.206(c)(2) that States should select and establish targets in coordination with Federal land management agencies. However, FHWA and FTA note that under section 450.206(c), target setting is part of the statewide transportation planning process, and that under section 450.208(a)(3), States shall consider the concerns of Federal land management agencies when carrying out the statewide transportation planning process (including target setting).

The AASHTO and VT DOT stated that the final rule should avoid changes to the NPRM that would weaken the States authority to set performance targets. The FL DOT and ASHTD stated the final rule should confirm State discretion in target setting and reporting. The FHWA and FTA respond that the final rule does not weaken the authority of States (or MPOs or public operators of public transportation) to set performance targets. The FHWA and FTA intend to issue guidance on sections 450.216(f)(2) and 450.324(f)(4) after this final rule on State and MPO progress reporting as part of the long-range statewide transportation plan and the MTP.

The NC DOT stated that the final rule should make it clear that the States have the flexibility to set their own performance targets and performance measures. The FHWA and FTA agree that States have the flexibility to set their own performance targets. In setting those targets, they will be required to use the performance measures set by FHWA and FTA in the other related performance management rules or guidance. No changes were made to this section based on these comments.

Section 450.206(c)(3)

Section 450.206(c)(3) provides that in areas not represented by MPOs, States would be required to coordinate, to the maximum extent practicable, the selection of the public transportation performance targets with operators of public transportation to ensure consistency. The AASHTO, CO DOT, ID DOT, MT DOT, ND DOT, SD DOT, and WY DOT commented that in section 450.206(c)(3) the word ''areas'' should be replaced with ''urbanized areas.'' The NPRM preamble discussion in the section-by-section analysis for sections 450.206(c)(3) provides an explanation for FHWA and FTA use of the word ''areas'' instead of ''urbanized areas'' in this section.

In the NPRM, FHWA and FTA noted that 23 U.S.C. 135(d)(2)(B)(ii) and 49 U.S.C. 5304(d)(2)(B)(ii), which refer to ''providers of public transportation'' in ''urbanized areas . . . not represented by a metropolitan planning organization,'' would not be carried forward because by statute, all ''urbanized areas'' continue to be represented by an MPO (23 U.S.C. 134(d)(1) and 49 U.S.C. 5303(d)(1)). Because of this discrepancy, FHWA and FTA used the term ''areas not represented by a metropolitan planning organization'' instead of ''urbanized areas'' because States would need to coordinate with operators of public transportation in these areas not represented by a MPO to select performance targets with respect to 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d). Based on this comment, FHWA and FTA made no changes to the final rule.

The CO DOT commented that, although it feels the general principles in section 450.206(c)(3) are sound, the asset management and safety plans for transit agencies need fine-tuning; that one size does not fit all; and that CO DOT is submitting separate comments on the parallel FTA transit performance rulemakings. The FHWA and FTA response to this comment is that it is outside the scope of the final rule. No changes were made to the final rule based on this comment.

Section 450.206(c)(4)

Section 450.206(c)(4) describes the integration of elements of other State performance-based plans into the statewide planning process. The AASHTO, CT DOT, NJ DOT, and NC DOT commented that FHWA and FTA should eliminate redundant references to integration of goals and objectives from other performance-based plans into the statewide planning process, as proposed in the NPRM in sections 450.206(c)(4) and 450.208(g), because both of those sections present similar information.

The ID DOT, MT DOT, ND DOT, SD DOT, and WY DOT further commented that the specific list of examples of plans and process to be integrated should be eliminated and that it should be up to the State to decide which plans and processes should be integrated into the statewide transportation planning process.

In response, FHWA and FTA note that section 450.206(c)(4) is retained. However, FHWA and FTA eliminated section 450.208(g) in the final rule because it repeats the provisions of section 450.206(c)(4). See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The above States further commented that the terms ''long-range statewide transportation plan'' and ''the transportation planning process'' have different meanings and should not be used interchangeably. In response to this comment, FHWA and FTA do not believe that the terms have been used interchangeably in the final rule.

The NRDC noted that it was in favor of the integration of other plans into the

transportation planning process as described in this sections 450.206(c)(4) and 450.306(d)(4). The commenter further stated that it would like to include other plans as well, such as the Federal Emergency Management Agency (FEMA) Hazard Management Plans and existing regional plans. In response to this comment, FHWA and FTA note that as part of the statewide and nonmetropolitan planning and metropolitan planning processes, States and MPOs are required to coordinate their transportation planning activities or consider other related planning activities, as described in sections 450.308 and 450.316.

The CO DOT commented that it is unclear why section 450.206(c)(4) uses the word ''integrate'' while 450.206(c)(5) uses the word ''consider.'' In response to this comment, FHWA and FTA note that these sections serve different purposes. Section 450.206(c)(4) requires that the State integrate into the planning process elements of other performance-based plans and processes, while section 450.206(c)(5) requires the State to consider the performance measures and targets when developing specific planning products (the long-range statewide transportation plan and the STIP).

Section 450.206(c)(5)

Section 450.206(c)(5) provides that a State shall consider the required performance measures and targets under this paragraph when developing policies, programs, and investment priorities reflected in the long-range statewide transportation plan and the STIP. Several commenters (AASHTO, ID DOT, MT DOT, ND DOT, SD DOT, WY DOT, and TX DOT) stated that they would like the phrase ''targets established under this paragraph'' to be replaced with the phrase ''the State's targets.'' In response to this comment, the FHWA and FTA note that ''targets established under this paragraph'' is intended to refer specifically to the targets required under section 450.206(c)(2). The FHWA and FTA do not believe the phrase ''the State's targets'' would retain the same meaning. No changes are made to the final rule based on this comment. If a State chooses to include more targets than required under section 450.206(c)(2), they may do so. However, the final rule does not require it.

Section 450.206(e) describes the funds available to a State to accomplish the activities described in this subpart. The FMATS commented that it is concerned that a State may take metropolitan planning funds and use them for planning activities outside of MPAs. The FMATS further commented that this section should be revised to make it clear that if the States use funds in this manner, they need to first consult with MPOs. In response to this comment, FHWA and FTA note that 23 U.S.C. 104(d) describes conditions under which a State may transfer metropolitan planning funds for use outside of a MPA. The FHWA and FTA believe that these comments are outside the scope of the final rule as it does not address the administration of planning funds. No changes were made to the final rule as a result of this comment.

Other Comments on Section 450.206

The Partnership for Active Transportation commented on this section that health should also be integrated into the planning process. See section IV(B) (recurring comment themes and other changes proposed by commenters) for more discussion on this issue and FHWA and FTA responses.

The North Central Pennsylvania RPDC commented that States should also coordinate targets with RTPOs (similar to MPOs) when setting targets. The FHWA and FTA agree that this would be a good practice and section 450.210(d) provides that a Governor may establish and designate RTPOs to enhance the planning, coordination, and implementation of the long-range statewide transportation plan and STIP. Sections 450.216(h) and 450.218(c) require that States develop the long-range statewide transportation plan and the STIP in cooperation with affected nonmetropolitan local officials or, if applicable, through RTPOs. The FHWA and FTA believe that, as a best practice, this cooperation should include discussion on performance targets. The FHWA and FTA note that unlike with MPOs, the statute does not require RTPOs to establish targets for the performance measures. Consequently, FHWA and FTA have not made this a requirement in the final rule.

The National Housing Conference requested that housing and community development representatives be included throughout the planning process and that the final rule should require it. The FHWA and FTA note that sections 450.210(a)(1) and 450.316(a) require that the State and MPO must establish early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to affected public agencies. Further, sections 450.216(l)(2) and 450.314(j) require States and MPOs to give affected public agencies a reasonable opportunity to comment on the proposed long-range statewide transportation plan and MTP. The FHWA and FTA believe that the final rule provides for the inclusion of public agencies, such as housing and community development representatives, throughout the planning process and have not made any changes based on this comment.

Section 450.208 Coordination of Planning Process Activities

Section 450.208 describes the coordination of planning process activities. Forty-two commenters (AASHTO, Addison County Regional Planning Commission (RPC), AMPO, ARC, Boone Count Resource Management, Braxo Valley COG, Buckeye Hills-Hocking Valley Regional Development District (RDD), Capital Area MPO, CO DOT, CT DOT, East Texas Officials RPO, Enterprise Community Partners, FMATS, IA DOT, ID DOT, Meramec RPC, MI DOT, Mid-Region TPO and New Mexico RTPOs, MT DOT, NADO, National Housing Conference, NC Association of RPOs, NC DOT, ND DOT, NJ DOT, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, NYS DOT, OR DOT, Pioneer Trails RPC, Region Five Development Commission, Region Nine Development Commission, SEMCOG, SD DOT, South Plains Association of Governments (AOG), Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, TX DOT, Upper Minnesota Valley Regional Development Commission (RDC), WA State DOT, West Central Arkansas Planning and Development District, WI DOT, and WY DOT) submitted comments on this section. Eighteen of the comment letters were received from regional planning organizations, 13 were from States, 4 were from MPOs, 4 were from associations, 2 were from advocacy groups, and 1 was from a local government.

The SEMCOG commented that section 450.208 should be flexible to allow each State and its MPOs to develop procedures that are best for the local situation with regards to the use and implementation of the terms ''cooperation'' and ''coordination'' of planning activities. In response to this comment, FHWA and FTA believe that there is considerable flexibility for the States and MPOs to mutually determine their cooperative relationships and coordination of planning activities. The FHWA and FTA reiterate that the mutually developed and documented metropolitan planning agreement (section 450.314) is an appropriate place

for the States, MPOs, and operators of public transportation to cooperatively determine and document their mutual roles and responsibilities carry out the metropolitan transportation planning process. Section 450.314 identifies the minimum requirements for what is required to be included in the metropolitan planning agreements.

Section 450.208(a)

Addison County RPC, Boone County Resource Management, Brazo Valley COG, Buckeye Hills–Hocking Valley RDD, East Texas Chief Elected Officials RPO, Meramec RPC, Mid-Regional TPO and New Mexico RTPOs, NADO, NARC, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Shenandoah Valley Regional Commission, Pioneer Trails RPC, Region Five Development Commission, Region Nine Development Commission, South Plains AOG, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley RDC, and West Central Indiana Economic Development District (EDD) expressed support that the final rule elevates State involvement with nonmetropolitan local officials from ''consultation'' to ''cooperation'' in the long-range statewide planning process and establishes the option that allows States to recognize RTPOs and a formal framework for a nonmetropolitan transportation planning process.

Section 450.208(a)(4) states that, in carrying out the statewide transportation planning process, each State shall cooperate with affected local and appointed officials with responsibilities for transportation or, if applicable, through RTPOs. The IA DOT commented that in section 450.208(a)(4), FHWA and FTA should clarify whether the shift from consultation to cooperation for nonmetropolitan transportation planning has implications at the NEPA or project development level. The FHWA and FTA response to this comment is that the final rule applies specifically to the transportation planning process and not to the NEPA or project development level. In cases where a State conducts PEL as part of its planning process, a State may want to coordinate PEL with nonmetropolitan local officials.

The CO DOT commented that it is unclear what the change from ''consider'' to ''cooperate'' will mean and that it may be difficult to mandate cooperation. The FHWA and FTA respond that the definitions of the terms ''consider'' and ''cooperate'' are in section 450.104. Those definitions are used when transitioning from ''consider'' to ''cooperate'' with nonmetropolitan affected local elected and appointed officials with responsibility for transportation or, if applicable, through RTPOs. The FHWA and FTA further note that under section 450.210(b), States must have documented processes for cooperating with nonmetropolitan local officials and/or local officials with responsibility for transportation, and that they should be following those processes.

Enterprise Community Partners commented that the transportation planning process should be coordinated with other Federal planning processes. Specifically, State nonmetropolitan and metropolitan transportation planners should be explicitly encouraged to coordinate with all relevant local, regional, and Federal plans and processes, especially Housing and Urban Development (HUD) Consolidated Plans, Sustainable Communities Regional Planning and Community Challenge programs, and FEMA Hazard Mitigation plans.

In response to this comment, FHWA and FTA agree that this coordination is desirable. The FHWA and FTA note that section 450.208(a) identifies broad areas where States shall coordinate as part of the statewide transportation planning process, including metropolitan transportation planning activities, statewide trade and economic development activities, and related multistate planning efforts. The FHWA and FTA also note that section 450.210(d)(3) identifies the duties of an RTPO, if established by the State, which include: Fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans, and programs; and participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas. Furthermore, section 450.316(b) requires MPOs to consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation.

Consequently, FHWA and FTA believe the final rule provides that transportation planning process should be coordinated with other Federal planning processes and will continue to encourage, but not require, States and MPOs to coordinate with these other Federal planning processes. No changes were made to this section based on this comment.

Section 450.208(e)

The AASHTO, CO DOT, ID DOT, MT DOT, ND DOT, OR DOT, SD DOT, TX DOT, and WY DOT expressed concerns with section 450.208(e) in the NPRM. Section 450.208(c) states that, in carrying out the statewide transportation planning process, States shall apply asset management principles and techniques consistent with the State Asset Management Plan for the NHS, the Transit Asset Management Plan, and the Public Transportation Safety Plan. The commenters stated that the statewide planning process is much broader than an asset management plan, and that, as a requirement, it might have unintended consequences. The commenters suggested that it be deleted or modified.

The FHWA and FTA retained this provision. However, the word ''shall'' is changed to ''should'' in the final rule. The FHWA and FTA believe that asset management principles and techniques, consistent with the State Asset Management Plan for the NHS, the Transit Asset Management Plan, and the Public Transportation Safety Plan, should contribute to defining STIP priorities and assessing transportation investment decisions. The word ''shall'' was changed to ''should'' in the final rule because, as noted in the comments received on the NPRM, it is not a statutory requirement. See section IV(B) (recurring comment themes and other changes proposed by commenters) for more discussion on this issue and FHWA and FTA responses.

Section 450.208(g)

The AASHTO, CT DOT, ID DOT, MT DOT, ND DOT, NJ DOT, SD DOT, and WY DOT requested that FHWA and FTA eliminate redundant references to the integration of goals and objectives into the statewide planning process, as proposed in NPRM sections 450.206(c)(4) and 450.208(g). See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The AASHTO commented that section 450.208(g) should state that the integration of other performance-based plans and processes into the statewide transportation planning process can be either direct or by reference. In response to this comment, FHWA and FTA note that section 450.208(g) has been deleted from the final rule based on other comments that are described in the previous paragraph. However, section 450.206(c)(4) retains the requirement to integrate elements of other performance based plans and processes into the statewide transportation planning process and also provides that they may be integrated either directly or by reference. The WY DOT commented that the text in section 450.208(g)

should make it clear that the integration of elements of other performance-based plans and processes into the statewide transportation planning process can be done directly or by reference. The FHWA and FTA reiterate that section 450.208(g) has been removed from the final rule because it is redundant to section 450.206(c)(4). The FHWA and FTA further respond that section 450.206(c)(4) provides for the integration of elements of other performance-based plans and processes into the statewide transportation planning process directly or by reference.

The WA State DOT commented that advancing performance-based planning and programming requires consideration of all modes when linking investment decisions to targets and that the NPRM seems to support this direction.

The NYS DOT commented that, in coordinating performance management requirements in multijurisdictional mega regions, flexibility is needed in the requirement to coordinate among States, MPOs, and interstate agencies or authorities. The commenter further stated that this flexibility is needed due to the complexity of transportation facilities and services that may straddle several MPO and State boundaries.

The SEMCOG commented that there should be flexibility to allow MPOs to develop cooperative procedures for performance based planning that are best for the local situation. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.210 Interested Parties, Public Involvement, and Consultation

Seventy-five entities (AASHTO, Addison County RPC, AK DOT, APTA, Boone County Resource Management, Buckeye Hills-Hocking Valley RDD, Brazo Valley COG, California Association for Coordinated Transportation, CALTRANS, Capital Area MPO, CO DOT, Crystal Hitchings, CT DOT, East Central Iowa COG, East Texas Chief Elected Officials RPO, Enterprise Community Partners, Hunsaker/Region XII COG, IA DOT, ID DOT, Macatawa Area Coordinating Council, MARC, MA DOT, Meramec RPC, MI DOT, Mid-Columbia EDD, Mid-Region TPO and New Mexico RTPOs, MT DOT, NADO, NARC, National Congress of American Indians, National Housing Conference, NC DOT, ND DOT, Nine to Five National Association of Working Women, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, NRDC, NYS DOT, OK DOT, OR DOT, Oregon Chapter of the American Planning Association (APA), Pioneer Trails RPC, Portland Metro, Region Five Development Commission, Region Nine Development Commission, Region XII COG, Rural Counties Task Force, SD DOT, Sierra Club, South Alabama RPC, South Plains AOG, Southeast Alabama RPO, Southern Windsor County RPC, The Leadership Conference on Civil and Human Rights, TN DOT, Two Rivers-Ottauquechee Regional Commission, TX DOT, United Spinal Association, Upper Minnesota Valley RDC, Virginia Association of Planning District Commissions, VT DOT, West Central Arkansas Planning and Development District, West Central Indiana EDD, WA State DOT, WY DOT, and Yurok Tribe Transportation Program) submitted comments on the proposed changes to section 450.210. This section requires States to involve members of the public and nonmetropolitan local officials in the planning process that produces the long-range statewide transportation plan and STIP, described below.

Section 450.210(a)

Section 1202 of FAST amends 23 U.S.C. 135(g)(3) to add public ports and intercity bus operators to the list of entities that a State shall provide early and continuous public involvement opportunities to as part of the statewide transportation planning process. Section 450.210(a)(1)(i) in the final rule is amended to reflect these changes.

Section 450.210(a) provides that the State shall develop and use a documented public involvement process that provides opportunities for review and comment at key decision points. The AASHTO and four States (ID DOT, MT DOT, SD DOT, and WY DOT) commented that the rule would be improved if it were made explicit that a State considers public comment in setting targets. They propose the addition of a new paragraph 450.210(a)(3) to read as follows: ''With respect to the setting of targets, nothing in this part precludes a State from considering comments made as part of the State's public involvement process.'' Section 450.210(a) requires that the public involvement process provide opportunities for review and comment at key decision points in the development of the long-range statewide transportation plan and the STIP.

The FHWA and FTA agree that the establishment of targets is a pivotal decision in the performance-based planning and programming process. The FHWA and FTA concur with this recommendation and amended paragraph (a)(3) in the final rule to emphasize the importance of securing public comment during the target selection process.

The FHWA and FTA also concur with the three advocacy groups (United Spinal Association, National Housing Conference, and Enterprise Community Partners) who highlighted the importance of section 450.210(a)(viii). The section provides that States seek out and consider the needs of the traditionally underserved by existing transportation systems, such as low income and minority households.

The NRDC recommended the creation of a State process for measuring target districts, such as that developed by the Atlanta Regional Council (*http://www.atlantaregional.com/transportation/community-engagement/social-equity*), for greater outreach that can help address gaps in input at both the State and local levels. The CO DOT asked that FHWA and FTA identify other public involvement techniques, particularly electronically accessible ones.

The FHWA and FTA are collecting and disseminating best practices and providing technical support for State and MPO public engagement efforts. As part of the Public Transportation Participation Pilot Program, created as part of the SAFETEA–LU, FTA sponsored applied research to develop innovative approaches to improving public participation in the planning of public transportation. The results of this research can be found at *http://www.fta.dot.gov/12347_5925.html.* Similarly, FHWA has developed material and resources on best practices in public participation that is available at: *http://www.fhwa.dot.gov/planning/public_involvement/.*

Section 450.210(b)

Section 450.210(b) provides that, consistent with MAP–21, the State shall have a documented process for cooperating with nonmetropolitan officials representing units of general purpose local government, and/or local officials with responsibility for transportation, that provides them an opportunity to participate in the development of the long-range statewide transportation plan and the STIP. The change from the term ''consultation'' to ''cooperation'' requires States to work more closely with nonmetropolitan local officials to achieve a common outcome in the development of the long-range statewide transportation plan and STIP.

The NYS DOT expressed support for the requirement to cooperate with

nonmetropolitan local officials in the development of the long-range statewide transportation plan and STIP, noting that this cooperative process will likely require States to reach out to local officials more frequently and on a cooperative basis. However, it believes that the higher level of outreach is achievable with existing resources. One industry organization (NARC) expressed support for the change in this and other sections of the planning NPRM that elevates the relationship between States and nonmetropolitan local officials from consultation to cooperation.

Two industry associations (NADO and NARC) and one MPO (Two Rivers-Ottauquechee Regional Commission) requested that, given the high degree of discretion granted to States as to what constitutes cooperation, additional dialogue from FHWA and FTA would be helpful to understand what the shift to cooperation will mean and how this shift is anticipated to change the planning process. The FHWA and FTA are developing training as to what are the expectations as States and MPOs transition to a more cooperative process.

The AK DOT also sought clarity as to what constitutes cooperation, noting that it found the language addressing cooperation with nonmetropolitan local officials to be vague and confusing. The FHWA and FTA note that cooperation means that the parties involved in carrying out the transportation planning and programming process work together to achieve a common goal or objective (section 450.104).

The MA DOT and TN DOT asked what criteria FHWA and FTA use to determine whether cooperation is taking place if a State elects not to designate RTPOs. In response, FHWA and FTA note that existing section 450.210(b)(1) requires that a State identify the effectiveness of its process to cooperate with nonmetropolitan local officials by soliciting and reviewing comments from nonmetropolitan local officials and other interested parties regarding the effectiveness of the cooperative process, and any proposed changes, at least once every 5 years. While the statute provides that FHWA and FTA shall not review or approve the process, FHWA and FTA will review whether the State has implemented a process to cooperate with the nonmetropolitan local officials through its planning finding as part of the STIP approval process.

The AK DOT noted that sections 450.216(h) and 450.218(c) continue to refer to a State's nonmetropolitan local official consultation process. The commenter is correct in noting that both of these sections refer to the States' ''consultation processes established under 450.210(b).'' To eliminate this confusion, and to emphasize the statutory change from consultative to cooperative, FHWA and FTA revised sections 450.216(h) and 450.218(c) by eliminating the term ''consultation'' to reflect the new requirements for cooperation. The FHWA and FTA do not concur with the commenter's conclusion that the State's existing consultation process with nonmetropolitan local officials satisfies the requirement that States develop and implement a cooperative process, unless it complies with the new requirements provided by MAP–21 and this final rule.

The NRDC, who applauded the focus on greater integration of nonmetropolitan areas into State planning, suggested striking the sentence in 450.210(b) which limits FTA and FHWA authority by explicitly forbidding review or approval of new processes, since Federal agencies should reserve the authority in case State implementation proves inadequate. In response, FHWA and FTA point to 23 U.S.C. 135(f)(2)(B)(ii)[22] and 135(g)(2)(B)(ii),[23] which expressly prohibit the DOT from reviewing or approving a State's consultation process.

Eleven commenters (Crystal Hitchings, Hunsaker/Region XII COG, NADO, North Central Pennsylvania RPO, Pioneer Trails RPC, Region Nine Development Commission, Southeast Alabama RPO, TN DOT, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley RDC, and Virginia Association of Planning District Commissions) asked the DOT to encourage States to establish a timeline for when the shift from consultation to cooperation will occur, and to communicate this to nonmetropolitan stakeholders.

The FHWA and FTA note that section 450.226 provides the schedule for phasing in MAP–21 changes. With respect to the major change that places a new emphasis on nonmetropolitan transportation planning, FHWA and FTA will require that STIPs and long-range statewide transportation plans, adopted on or after a date 2 years after publication of the final rule in the **Federal Register**, must reflect this new emphasis. The FHWA and FTA will only approve STIP amendments or updates that are based on a planning process that incorporates the new emphasis on nonmetropolitan transportation planning, including the development and use of a documented process by the State to provide for cooperation with nonmetropolitan local officials in the development of the statewide long-range plan and STIP. The FHWA and FTA believe this approach is consistent with the MAP–21 requirements (23 U.S.C. 135(l) and 49 U.S.C. 5303(k)) and does not require the State to deviate from its established planning update cycle to implement the MAP–21 changes.

Section 450.210(c)

Section 450.210(c), which concerns areas of States under the jurisdiction of a tribal government, would replace ''Federal land management agencies'' with the ''Department of the Interior'' as the entity with which States must consult when forming the long-range statewide transportation plan and STIP for such areas. One tribal organization (the National Congress of American Indians) expressed concern with this proposed change, asserting that it is very limiting for States and would inhibit the ability of tribes to provide full scale infrastructure planning for their citizens and citizens of surrounding areas. They recommended that the term ''Federal land management agencies'' remain.

The FHWA and FTA note that the Department of the Interior, not the Federal land management agencies, is the Federal agency with responsibility for managing tribal matters and that with this change, tribal governments retain the choice to engage with other Federal entities. The final rule will retain the Department of the Interior as the entity with which States must consult when forming the long-range statewide transportation plan and STIP for such areas. The National Congress of American Indians also reaffirms the requirement in section 450.210(c), which provides that States must, to the maximum extent practicable, develop a documented process that outlines the roles, responsibilities, and key decision points for consulting with tribal governments.

Section 450.210(d)

Section 450.210(d) would provide for an optional formal process for States to establish and designate RTPOs to enhance the planning, coordination, and implementation of the long-range statewide transportation plan and STIP with an emphasis on addressing the needs of nonmetropolitan areas. Fifteen commenters (Addison County RPC, Boone County Resource Management, East Texas Chief Elected Officials RPO, Meramec RPC, NC DOT, North Carolina Association of RPOs, Northern Maine Development Commission, NYS DOT, OK DOT, Portland Metro, Region XII

[22] Also 49 U.S.C. 5304(f)(2)(B)(ii).

[23] Also 49 U.S.C. 5304(g)(2)(B)(ii).

COG, Two Rivers-Ottauquechee Regional Commission, VT DOT, West Central Arkansas Planning and Development District, West Central Indiana EDD) expressed support for this proposal. The MA DOT requested more clarity and direction on the establishment, designation, roles, and responsibilities of RTPOs. The FHWA and FTA offer the following responses to comments on RTPOs to address the request for more clarity and direction.

The MAP–21 provides that States have the authority to establish and designate an RTPO. Section 450.210(d) clarifies that this authority resides in the Governor or the Governor's designee because the Governor is the chief executive of a State. With respect to this section, the OR DOT sought clarification as to the role of the State DOT in the establishment and designation of an RTPO. The FHWA and FTA note that the State DOT could serve as the Governor's designee.

Six commenters (AASHTO, Minnesota Valley Development Commission, CO DOT, IA DOT, Region Five Development Commission, Region Nine Development Commission, and TX DOT) stated that section 450.210(d)(1) appears to indicate that a Governor could establish an RTPO without local agreement and requested FHWA and FTA to clarify that the establishment of an RTPO must include the agreement of the local units of government.

The commenters proposed that the language related to the establishment of RTPOs in section 450.210(d)(1) be changed to be more similar to the language related to the establishment of MPOs in 450.310(b) with respect to the requirement for agreement with units of general purpose local government. The MA DOT questioned the role of nonmetropolitan officials in the establishment of RTPOs.

In response, FHWA and FTA believe that section 450.210(d)(1) is clear that an RTPO shall be a multijurisdictional organization of nonmetropolitan local officials, or their designees who volunteer for such organizations, and representatives of local transportation systems who volunteer for such organizations. The FHWA and the FTA will retain the proposed language in the final rule.

Section 450.210(d) also requires that, if a State and its existing nonmetropolitan planning organizations choose to be established or designated as an RTPO under MAP–21, they must go through the formal process to conform to the structure as described in 450.210(d)(1) and (d)(2). Because an RTPO would conduct planning for a nonmetropolitan region, an RTPO would be a multijurisdictional organization composed of volunteer nonmetropolitan local officials or their designees, and volunteer representatives of local transportation systems. The MT DOT expressed support for the language recognizing that it is at the State's discretion to establish RTPOs.

The MA DOT sought clarification as to the appropriateness of including transit representation on the RTPO if the nonmetropolitan area does not have robust transit service. The FHWA and FTA note that the statute and the final rule provide that an RTPO's policy committee shall include representatives of transportation service operators as appropriate.

The MA DOT also questioned whether the establishment of an RTPO can be reflected in an existing MOU between the State and the nonmetropolitan planning organization. The FHWA and FTA respond that if the State and its existing nonmetropolitan planning organizations choose to be established or designated as an RTPO under the MAP–21, they must go through the formal establishment and redesignation process, and that existing MOUs between them must be updated to reflect the MAP–21 structure, requirements, and duties.

A respondent who works on the Transportation Program for the Yurok Tribe requested that RPTOs: (1) Work with the tribes, individually and through tribal transportation consortiums, to develop performance measures on tribal lands or communities; (2) implement data collection and data management strategies for these performance measures; (3) utilize tribal planning products for developing RTPO planning documents; and (4) partner with tribes on outreach strategies to tribal communities regarding unmet transit needs, the regional planning processes, and projects with regional significance.

In response, FHWA and FTA note that the statute is silent on the inclusion of tribal communities in RTPOs established by the States under 23 U.S.C. 135(l) and 49 U.S.C. 5304(l). Consequently, it would be the decision of the State and local officials as to whether to include tribes on the RTPO. It would be permissible under 23 U.S.C. 135(l)(3) and 49 U.S.C. 5304(l). The FHWA and FTA think it would be a best practice. Furthermore, as the States must develop the long-range statewide transportation plan and STIP in consultation with tribal governments under 23 U.S.C. 135(f)(2)(C), 23 U.S.C.135(g)(2)(C), 49 U.S.C.5304(f)(2)(C), and 49 U.S.C.5304(g)(2)(C), FHWA and FTA would hold the States accountable for consultation with the tribes, regardless of whether tribes were included on the RTPO. In addition, the RTPO's duties require it to consider and share plans and programs with ''neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations'' (23 U.S.C. 135(m)(4)(G)).

The CALTRANS commented that the shift toward working cooperatively should also take tribal governments into consideration. Doing this will lead to more coordinated efforts and will also allow consultation with tribal governments, as required by this final rule, to be more meaningful. The FHWA and FTA agree.

The OR DOT highlighted that Oregon's Area Commissions on Transportation, which encompass large territories in Oregon that include MPOs and adjacent nonmetropolitan areas and whose functions are generally limited to making recommendations on STIP priorities, overlap the Federal responsibilities of MPOs in a way which produces confusion and redundancies between the State and local governments in the regional planning area. The OR DOT and Portland Metro requested that the final rule clearly define the function of RTPOs as serving areas outside of established MPOs. The Portland Metro also requested that the RTPOs' boundaries be periodically updated to reflect updates to MPO boundaries following the Federal census. Conversely, the WA State DOT noted that its State law provides for a different RTPO structure than described in section 450.210(d)(2). Oregon law allows RTPOs and MPOs to share boundaries and staff, which increases the coordination and decreases the workload. As a result, 37 of the State's 39 counties are in an RTPO.

In response, FHWA and FTA note that the final rule states clearly that an RTPO, established and designated or redesignated under the MAP–21, would conduct planning for the nonmetropolitan areas of the State.

The Oregon Chapter of the APA notes that such a formally structured and recognized rural TPO with broad based representation is essential to the development of coordinated regional transportation plans and projects. However, an individual (Crystal Hitchings), an industry association (NADO), and 24 rural transportation planning organizations (Addison County RPC, Boone County Resources Management, Brazo Valley COG, East TX Chief Elected Officials/RPO, Hunsaker/Region XII COG, Meramec

RPC, Mid-Columbia EDD, Mid-Region TPO, New Mexico RTPOs, North Carolina Association of RPOs, North Central Pennsylvania RPO, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Region Five Development Commission, Region Nine Development Commission, Rural Counties Task, South Alabama RPC, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley RDC, Virginia Association of Planning District Commissions, West Central Arkansas Planning and Development Commission, and West Central Indiana EDD) requested that the final rule provide that the make-up of an RTPOs policy committee remain as flexible as possible so that existing models can continue to operate as is. They cited that, in several States, metropolitan and tribal officials are designated participants on an existing RTPO or rural planning partners governing board because of a region's demographic reach. They requested that these officials continue to qualify under the appropriate category in the list of individuals comprising a RTPO's policy committee under the final rule.

One respondent, who represents 26 rural RTPAs in California (Rural Counties Task Force), requested that FHWA and FTA include language in the final rule saying that California's existing RTPA process is equivalent to that of the RTPOs provided for in the NPRM. The respondent explained that State law established California's RTPAs in the early 1970s and that these agencies perform regional transportation planning and programming for an area that typically covers a county and the cities contained within it. The NC DOT asserted that States should have the ability to define the structure and role of RTPOs within their own planning processes. Similarly, three commenters (CALTRANS, NARC, and WA State DOT) noted that it would helpful if the final rule included language that creates flexibility for already established RTPOs.

In response to these requests to limit or expand flexibility with respect to the establishment and structure of an RTPO, FHWA and FTA note that MAP–21 and the final rule provide that the establishment of an RTPO is optional and that a State can choose to retain its existing RPOs. If the State, nonmetropolitan local governments, and operators of transportation in nonmetropolitan areas choose to designate/re-designate an RTPO under MAP–21 because they believe that it will enable the State to better address the needs of its nonmetropolitan areas, the RTPO must comply with the required structure and responsibilities as provided in MAP–21, proposed in the NPRM, and retained in the final rule.

Portland Metro asked that the final rule create clear incentives for States to establish RTPOs to supersede any existing non-MPO planning structures that may exist. They noted that this would ensure Federal oversight and improve coordination of planning activities across both metropolitan and nonmetropolitan areas. Conversely, an individual (Crystal Hitchings), an industry association (NADO), and 24 rural planning agencies (Addison County RPC, Boone County Resources Management, Brazo Valley COG, Buckeye Hills-Hocking Valley Regional Development District, East Texas Chief Elected Officials/RPO, Hunsaker/Region XII COG, Meramec RPC, North Carolina Association of RPOs, Mid-Columbia EDD, Mid-Region TPO and New Mexico RTPOs, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Pioneer Trails RPC, Region Five Development Commission, Region Nine Development Commission, Region XII COG, Rural Counties Task Force, South Alabama RPC, Southeast Alabama RPO, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley RDC, Virginia Association of Planning District Commissions, West Central Arkansas Planning and Development Commission, and West Central Indiana EDD) requested that FHWA and FTA encourage States to maintain the existing working relationship with their nonmetropolitan transportation planning partners, rather than attempt to establish new relationships with other entities to meet the RTPO requirements.

In response to requests for incentives for States either to retain existing nonmetropolitan planning organizations or to re-establish and re-designate them as RTPOs under the MAP–21, FHWA and FTA believe that the MAP–21 provides States the option to determine, in cooperation with nonmetropolitan local officials and nonmetropolitan transportation officials, if re-designating existing nonmetropolitan planning organizations to conform to the MAP–21 structures and responsibilities of an RTPO would better address the needs of the nonmetropolitan areas of the State. The final rule does not provide additional incentives to make that choice.

Section 450.210(d)(3)

Section 450.210(d)(3) describes the duties of an RTPO, including the development of a regional long-range multimodal transportation plan and a regional TIP; providing a forum for public participation in the statewide and regional transportation planning process; and conducting other activities to support and enhance the statewide planning process. The Southeast Alabama RPO requested that RTPO activities be more than those listed in statute. Multiple rural transportation planning agencies (Addison County RPC, Boone County Resources Management, Brazo Valley COG, Buckeye Hills-Hocking Valley RDD, East Texas Chief Elected Officials/RPO, Meramec RPC, Mid-Columbia EDD, Mid-Region TPO and New Mexico RTPOs, NADO, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Pioneer Trails RPC, Region XII COG, South Alabama RPC, South Central Alabama RPC, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, West Arkansas Planning and Development Commission, and West Central Indiana EDD) expressed appreciation that, in listing the duties of an RTPO, MAP–21 and the NPRM make clear that there is no prohibition on an RTPO conducting other transportation planning activities beyond those listed. The California Association for Coordinated Transportation, a State association of RPOs, highlighted that its members perform regional transportation planning and programming for areas that typically cover a county and the cities contained within it. Consistent with MAP–21 and the NPRM, the final rule does not prohibit an RTPO from conducting other transportation planning activities beyond those listed.

The Oregon Chapter of the APA urged the DOT to structure the proposed RTPOs with the same responsibilities and authorities that the MPOs currently exercise. The NC DOT and VT DOT asserted that, due to the nature and area of coverage, RTPOs should not have the same duties defined as those of the metropolitan areas. In response, FHWA and FTA note that MAP–21 and the final rule do not provide RTPOs with the same responsibilities and authorities that an MPO exercises.

One industry organization (NADO) and two MPOs (Hunsaker/Region XII COG and the Two Rivers-Ottauquechee Regional Commission) encouraged FHWA and FTA to include language in the final rule stating that unified regional plans, plans developed by MPOs and RTPOs that are used as a

joint planning document, are an eligible way to structure planning activities, provided that all requirements for metropolitan planning are met through development of the metropolitan portion of the plan. In response, FHWA and FTA note that the final rule states clearly that an RTPO, established and designated or redesignated under MAP–21, would conduct planning for the nonmetropolitan areas of the State.

Multiple rural transportation planning agencies (Addison County RPC, Boone County Resources Management, Brazo Valley COG, East Texas Chief Elected Officials RPO, Meramec RPC, Mid-Region TPO, New Mexico RTPOs, NADO, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Region XII COG, Rural Counties Task Force, South Alabama RPC Commission, Southeast Alabama RPO, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, West Central Arkansas Planning and Development Commission, and West Central Indiana EDD) noted that several States already require RTPOs to follow the same guidelines as MPOs in developing their TIPs. They asked that FHWA and FTA clarify in the final rule that these MPO equivalent TIPs should be fully incorporated into the STIP, as are MPO-developed TIPs. Four States (CO DOT, TN DOT, VT DOT, and WA State DOT) also sought clarity with respect to how the State is to treat an RTPO TIP, questioning whether it has the same requirements (*e.g.,* incorporate directly or by reference) as an MPO TIP. The VT DOT explained that its existing rural planning agencies do not develop a regional TIP, but instead develop regional priorities that the State incorporates into its annual statewide project prioritization process. It noted that this approach is more effective at fostering cooperation than asking each rural planning agency to develop what may sometimes evolve into a wish-list of projects for inclusion in a capital program and STIP. The VT DOT noted that the NPRM does not define regional TIPs, which could lead to confusion and may imply that it carries the same weight as an MPO TIP. It recommends that development of a regional TIP be removed as a required duty of an RTPO, or defined sufficiently to ensure it does not create unrealistic expectations.

In response, FHWA and FTA note that, as provided by MAP–21, the final rule states clearly that RTPOs prepare regional TIPs for consideration by the State. It is the option of the State to determine if the regional TIP prepared by an RTPO is to be fully incorporated into the STIP. This is not a Federal requirement. Consequently, addressing the inquiry of AK DOT, the lack of cooperation by one local nonmetropolitan official cannot bring the long-range statewide transportation plan or STIP planning to a halt. With respect to the request of NADO and the Two Rivers-Ottauquechee Regional Commission, FHWA and FTA encourage States to transparently communicate how the RTPO TIP priorities are considered in the STIP.

The MA DOT asked if RTPOs have separate targets from MPOs and are expected to be involved in setting of State and transit targets. In response, FHWA and FTA note that MAP–21 requires States, MPOs, and operators of public transportation to establish performance targets. It does not give that authority to RTPOs. However, MAP–21 and final rule provide that an RTPO's duties include activities such as developing and maintaining regional long-range transportation plans in cooperation with the State, and developing a regional transportation improvement program for consideration by the State. These RTPO duties would support the State in its responsibilities to establish its performance targets and demonstrate substantial progress toward achieving them.

With the additional requirements and duties for RTPOs and no additional Federal funding to cover them, CT DOT commented that it will not be establishing any RTPOs at this time. The AMPO strongly recommended restrictions on diverting metropolitan planning funds (PL) for nonmetropolitan planning requirements. The FHWA and FTA note that planning for nonmetropolitan areas is not an eligible expense for PL funds.

Twenty-six commenters (Addison County RPC, Boone County Resources Management, Brazo Valley COG, Buckeye Hills-Hocking Valley RDD, East Texas Chief Elected Officials RPO, Meramec RPC, Mid-Region TPO and New Mexico RTPOs, NADO, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Oregon Chapter of the APA, Pioneer Trails RPC, Region Five Development Commission, Region Nine Development Commission, Rural Counties Task Force, Sierra Club, South Plains AOG, Southeast Alabama RPO, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley Regional Development Commission, Virginia Association of Planning District Commissions, West Central Arkansas Planning and Development Commission, and West Central Indiana EDD) also requested that FHWA and FTA provide some discussion of funding options available to RTPOs as MAP–21 provides no dedicated funding for RTPOs. Another respondent, which represents 26 rural regional transportation planning agencies (RTPA) in California (the Rural Counties Task Force), stated that it would be helpful if the rural agencies would also receive Federal funds like the MPOs' PL funds. This would allow the rural agencies to enhance public outreach, performance measurement, maintenance strategies, safety plans, and uniform work programs.

The FHWA and FTA agree that MAP–21 (and FAST) provides no dedicated funding for RTPOs and that eligible funding sources include the State Planning and Research Program and the Surface Transportation Program. The Formula Grants for Rural Areas (49 U.S.C. 5311) funds may also support RTPOs, provided they are in addition to funding awarded to a State under 49 U.S.C. 5305 for planning activities that are directed specifically at the needs of the rural areas in the State.[24]

The AK DOT asked what the State's responsibility is with respect to local officials that are not associated with RTPO. In response, FHWA and FTA cite 23 U.S.C. 135(l)(5) and 49 U.S.C. 5304(l)(5), which provide that, if a State does not choose to establish RTPOs, it must consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

Section by Section Post FAST

Section 450.212 Transportation Planning Studies and Project Development

FAST Act Impacts

The FAST Act amended 23 U.S.C. 168, streamlining and clarifying the PEL authority added by MAP–21 that was the subject of the Section 168 NPRM. The FAST Act amendments eliminated many of the provisions in the MAP–21 version of 23 U.S.C. 168 that generated comments on the Section 168 NPRM, and established revised requirements for the use of that statutory authority. As a result, after conserving the substantial and detailed amendments made by FAST, FHWA and FTA decided that the best course of action would be for the final rule to reference the statute rather than adopt detailed regulatory language. This approach simplifies the final rule

[24] 49 U.S.C. 5311(b)(1)(A).

and avoids a literal restatement of the statutory provisions, while ensuring the availability of the new authority is recognized by those considering the use of PEL. Thus, this final rule adds a reference to the FAST version of the statute in sections 450.212(d) and 450.318(e) and withdraws the provisions proposed in the Section 168 NPRM. For this reason, FHWA and FTA discuss Section 168 NPRM comments in this notice only to the extent those NPRM comments related to topics other than the NPRM's proposal for the implementation of 23 U.S.C. 168. The FHWA and FTA appreciate the commenters' submission of comments in response to the Section 168 NPRM, but do not believe a discussion of comments that were based on the MAP–21 version of 23 U.S.C. 168 would benefit the general public or entities interested in this rulemaking.

General Comments

The FHWA and FTA received general comments on PEL in response to both the planning NPRM and the Section 168 NPRM. Most commenters (AASHTO, AMPO, APTA, ARTBA, ASHTD, CO DOT, FL DOT, H–GAC, Lackawanna Coalition, MA DOT, MDT, MetroPlan, MO DOT, MTC, NC DOT, NCTCOG/RTC, NJ Transit, NYMTC, NYS DOT, SACOG, SANDAG, SCAG, SJCOG, TCA, TriMet, TX DOT, VA DOT, and WY DOT) indicated their support for PEL objectives and cited the benefits of PEL practices to the project delivery process. The benefits cited included avoiding duplication and reducing the time required to complete the environmental review process. The FHWA and FTA appreciate the comments and the overall support for PEL. No response to these general comments is needed.

Comments on Impact of PEL Regulations on Planning and NEPA Processes

Some commenters expressed concern that PEL regulations would be viewed as imposing general requirements on the transportation planning process, or substituting for the transportation planning process. The CO DOT commented that the final rule should make it clear that PEL provisions apply only when an agency wants to facilitate the use of planning products in the NEPA process, and that other planning products do not need to meet those requirements. The CO DOT also asked FHWA and FTA to clarify that planning studies may be undertaken at any point in the planning process, not only in conjunction with the development of the 20-year statewide transportation plan. The MetroPlan recommended FHWA and FTA consider redrafting the final rule to clearly distinguish between baseline planning analyses and other products flowing from the metropolitan planning process, including more detailed studies such as corridor plans that are intended to advance a specific project. The PA DOT registered concerns about whether the planning forms it now uses would require approval under PEL procedures, and its ability to continue to electronically transfer planning-level data into its automated system for documenting the decisionmaking process for categorical exclusions.

In response, FHWA and FTA note that nothing in the final rule is intended to require a change to existing practices with respect to the use of planning data. Both the NPRM and final rule make it clear that all PEL procedures are optional and serve only as mechanisms for facilitating the use of planning outputs in the NEPA process. The FHWA and FTA do not believe the final rule places any requirement or limitation on the creation, form, timing, or use of planning information and data in the transportation planning process under 23 U.S.C. 134 and 135. Nothing in sections 450.212 and 450.318, appendix A, or elsewhere in the final rule affects the long-standing exemption from applying NEPA to the transportation planning process (see, *e.g.,* 23 CFR 450.222 and 450.336 as in effect prior to this final rule [25]). The FAST provision in 23 U.S.C. 168(f) contains the same exemption for the section 168 authority.

The FHWA and FTA do not view the part 450 PEL procedures as limiting, nor forcing alteration of long-standing practices for using planning data during project development, including environmental reviews. Neither the existence nor the use of part 450 PEL procedures precludes any other appropriate process for using decisions, data, or studies in the NEPA process.

The FHWA and FTA received a few comments that indicated a possible misperception about the relationship between the transportation planning process under 23 U.S.C. 134 and 135 and the NEPA process. The Sierra Club urged FHWA and FTA to require a plan to be the product of an environmental evaluation that fully considers the environmental context in which a transportation improvement would occur. In its comments, the Sierra Club listed a series of environmental concerns it suggested ought to be part of a mandatory environmental evaluation of a transportation plan. The Arizona Department of Fish and Game expressed concern about using planning level documents as the sole source of environmental impact analysis in the NEPA process, and requested early and continuing coordination among the NEPA lead agency and resource agencies.

In response, FHWA and FTA note transportation plans are not subject to NEPA (23 U.S.C. 168(f)(1)–(2); 23 CFR 450.224 and 450.338). However, FHWA and FTA consistently encourage consideration of environmental issues early in the planning process and the final rule continues to include such considerations as a part of transportation planning (*e.g.,* sections 450.206(a)(5), 450.216(c), 450.218(b), and 450.306(b)(5)). The FHWA and FTA note that planning documents brought into the NEPA process through PEL or other authorities will not serve as the sole documentation of environmental impact analysis, unless the planning-level analysis meets NEPA-level evaluation and applicable procedural requirements.

The FL DOT commented that the final rule should be clearer about who decides whether to use PEL and which PEL process to use. The AASHTO suggested revisions to the regulatory language that would give the decision to the project sponsor. In response, FHWA and FTA note each PEL authority described in sections 450.212 and 450.318 includes provisions specifying which entities have decisionmaking authority. Sections 450.212(a)–(c) and 450.318(a)–(d) give decisionmaking authority to the NEPA lead agencies. In the case of sections 450.212(d) and 450.318(e), 23 U.S.C. 168 defines the entities with decisionmaking authority as the relevant agency, which is the NEPA lead agency as defined in 23 U.S.C. 139 and cooperating agencies with jurisdiction over the project.

The FHWA and FTA encourage early and ongoing coordination among all parties involved in the development and review of the planning product, including MPOs. The FHWA and FTA believe early coordination is the method for deciding whether and how to lay the groundwork during planning for carrying a planning product into the NEPA process using part 450 PEL authorities, especially where PEL under 23 U.S.C. 168 is being pursued.

[25] In this final rule, sections 450.222 and 450.336 of the prior regulation are renumbered as sections 450.224 and 450.338, respectively. The final rule also renumbers several other provisions carried over from the prior regulation. All subsequent references in the discussion of sections 450.212 and 450.318 use the numbering adopted in this final rule.

NPRM Comments on Relationship Between Pre-Existing PEL Authorities and Section 168

Several commenters (AASHTO, AMPO, ARC, and OR DOT) indicated the preference to retain the pre-existing PEL provisions in the final rule (sections 450.212 (a)–(c) and 450.318(a)–(d) and appendix A) because of the flexibility the existing authorities provide. Commenters (AASHTO, ARC, FL DOT, IDT, MDT, ND DOT, SD DOT, TX DOT, and WY DOT) emphasized the importance of appendix A, (Linking the Transportation Planning and NEPA Processes to Practitioners), and requested that FHWA and FTA retain appendix A and make it clear that it is non-binding guidance. The AASHTO requested that the final rule expressly state that appendix A to part 450 applies only to the PEL provisions contained in sections 450.212(a)–(c) and 450.318(a)–(d) in the final rule, and not to the PEL provision that implements 23 U.S.C. 168.

A number of commenters (AASHTO, CO DOT, FL DOT, H–GAC, MetroPlan, MDT, NC DOT, NCTCOG/RTC, PA DOT, and TX DOT) expressed concern that the MAP–21 section 168 provisions are more restrictive than the pre-existing PEL regulations, and that they would prove so restrictive as to discourage its use. The FHWA and FTA believe this concern may apply to 23 U.S.C. 168 as revised by the FAST Act because the statute includes a number of specific procedural requirements. The H–GAC, NCTCOG/RTC, and TX DOT expressed concern that the section 168 process would be perceived as the required PEL procedure. Some commenters (AASHTO, AMPO, ARC, CO DOT, FL DOT, H–GAC, MA DOT, MDT, NC DOT, NCTCOG/RTC, NYMTC, NYS DOT, Oregon DOT, and TX DOT) requested that FHWA and FTA make it clear in the final rule that the section 168 process is optional, and that it does not supersede PEL authorities that existed prior to the enactment of section 168 in 2012.

The AASHTO submitted language for insertion into sections 450.212(d) and 450.318(e) to emphasize that the new section 168 provisions have no impact on the ability to use pre-existing PEL authorities. The AASHTO also suggested revisions to the organization of the regulatory text to place the pre-existing PEL authorities in different sections than the new 23 U.S.C. 168 PEL authority, as well as changes to the language to further clarify that section 168 implementing regulations supplement the pre-existing PEL authorities.

The FHWA and FTA agree that pre-existing PEL authorities, whether in the part 450 regulations or outside them, were not altered by the enactment of section 168 or its subsequent amendment. The final rule explicitly retains the authorities contained in sections 450.212 and 450.318 prior to this rulemaking. Sections 450.212(d) and 450.318(e) reference 23 U.S.C. 168, which includes a savings clause provision found in 23 U.S.C. 168(f)(3). The statutory provision states that section 168 ''. . . . shall not be construed to affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law. . . .''

The FHWA and FTA agree with the comments requesting retention of appendix A and clarification about its applicability. The final rule retains the non-binding guidance in appendix A and explicitly states in sections 450.212(c) and 450.318(d) that the guidance in appendix A applies only to paragraphs 450.212(a)–(c) and 450.318(a)–(c).

The FHWA and FTA have adopted AASHTO's suggestion to add regulatory language to sections 450.212(d) and 450.318(e) to emphasize that the new section 168 provisions have no impact on the ability to use pre-existing PEL authorities. In the final rule, sections 450.212(d) and 450.318(e) contain language referring to 23 U.S.C. 168(f), and stating: ''The statutory authority in 23 U.S.C 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside of this regulation, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this regulation. . . . The statute does not restrict the initiation of the environmental review process during planning.''

The FHWA and FTA decline to adopt the reorganization of the regulations suggested by AASHTO. The FHWA and FTA believe that a total reorganization of the regulations, as proposed by AASHTO, would be complicated and confusing. However, FHWA and FTA do agree it is important to reduce the potential for confusion about PEL options and requirements. The FHWA and FTA believe their choice to replace detailed regulatory language proposed in the Section 168 NPRM with a short reference to 23 U.S.C. 168 will help accomplish this objective.

With respect to the comments suggesting 23 U.S.C. 168 provisions are too restrictive and will discourage use of its authority, FHWA and FTA point to the changes made by the FAST Act that simplify the applicable procedures for using the authority created in 23 U.S.C. 168. In addition, the final rule is clear that all of the PEL procedures are optional and any PEL authority may be used.

NPRM Comments on Planning NPRM Proposals for Changes to Part 450

In the planning NPRM, FHWA and FTA proposed repealing section 450.318(d) and redesignating the remaining section of 450.318. The language in section 450.318(d), as in effect prior to this final rule, addressed PEL in the context of New Start projects under 49 U.S.C. 5309(d). Under the MAP–21, changes to section 5309 removed the statutory requirement reflected in section 450.318(d). The FHWA and FTA received only one comment on that proposal from the NRDC. The comment supported the repeal. The final rule repeals section 450.318(d) and redesignates 450.318(e) as 450.318(d).

Section 450.214 Development of Programmatic Mitigation Plans

Section 450.214 describes the development of programmatic mitigation plans. The FHWA and FTA received comments from a total of 22 entities on this section, which included 15 States, 3 national non-profit advocacy groups, 2 planning organizations, and 2 industry associations. All commenters were generally supportive of the development and use of programmatic mitigation plans within the transportation planning process.

General Comments

Two States (CALTRANS and NYS DOT) commented on the eligibility for Federal funding for the development of programmatic mitigation plans, noting that without dedicated funding, there may not be enough staff resources to enable the development and review of programmatic mitigation plans. The FHWA and FTA note that the development of programmatic mitigation plans was allowed prior to the enactment of MAP–21 (section 1311) and the inclusion of language on programmatic mitigation plans in the final rule. The availability of Federal funds for such activities would depend on the eligibility requirements for any particular type of Federal funding. However, it is expected that Federal funds normally used for transportation planning activities (such as State Planning and Research and Metropolitan Planning funds) would

likely be potential sources of funding for programmatic mitigation plan development, to be evaluated on a case-by-case basis.

The ARTBA commented on the greater use of programmatic mitigation plans and recommended that FHWA and FTA quantify the benefits of using such plans in terms of time saved. In addition, the group also recommended a clearinghouse for mitigation plans used across the Nation to highlight best practices. The FHWA and FTA acknowledge that programmatic mitigation plans are resourceful tools, but the benefits of such plans cannot be quantified at this time due to insufficient data. A clearinghouse for programmatic mitigation plans is under consideration, and may be developed for use in the future.

The NRDC commended FHWA and FTA for the provisions contained within sections 450.214 and 450.320, noting that early planning can reduce conflicts and delays during environmental reviews performed later in project development. The group specifically noted the preference for requiring the development of programmatic mitigation plans within the transportation planning process. The FHWA and FTA appreciate the comment, but the final rule retains the flexibility in the statutory language (23 U.S.C. 169(a)) by allowing for the development of programmatic mitigation plans within the transportation planning process (pursuant to the framework described in 450.214(a)) or other existing authorities as provided for in 450.214(f)). See discussion under sections 450.214(b) and 450.214(e) for additional information. The NRDC also commented on the appropriate nature of consultation with the resource agencies, making a draft of the mitigation plan available for public review and comment, and addressing the comments in the final plan. The FHWA and FTA concur with the points raised by NRDC for programmatic mitigation plans developed pursuant to the framework in section 450.214(a), and have retained the language in the final rule in section 450.214(b).

The National Mitigation Banking Association, a national non-profit advocacy group, noted that many of the attributes of a programmatic mitigation plan specified in section 450.214 are already in place in mitigation and conservation banks across the Nation, and that it would be prudent public policy to make the acquisition of bank credits from approved mitigation banks a central component of a programmatic mitigation plan element. The group also suggested that the final rule incorporate a reference to existing banks and bank credits as the preferred alternative for offsetting transportation impacts. The FHWA and FTA drafted the final rule to retain the statute's flexibility on how States and MPOs address potential environmental impacts to resources from transportation projects, including the use of mitigation and conservation banks. The FHWA and FTA prefer to retain that flexibility in the final rule.

A planning organization (Mid-America Regional Council) provided a general letter of support on the development and use of programmatic mitigation plans and noted that the final rule should include language indicating that States shall coordinate with MPOs on the development and use of such plans. The FHWA and FTA acknowledge that development of programmatic mitigation plans are complex yet resourceful tools in future environmental reviews. Such plans can only be developed through proper guidance by the agencies involved in carrying out the recommendations of the plan, and with the full cooperation of the agencies with jurisdiction. In an effort to develop such complex plans effectively and efficiently, FHWA and FTA encourage full participation and coordination by all agencies with jurisdiction and special expertise over the resources addressed in the plan, and States and MPOs where such plans take effect.

The CALTRANS commented on two instances of preamble language in the NPRM related to mitigation. The first instance noted that the text describing mitigation be clarified to include the terms ''. . . protecting, preserving, rehabilitating, or creating environmental resources . . .'' The second instance noted that ''minimization should be included'' in the discussion involving mitigation. The FHWA and FTA concur with both interpretations. However, the language in section 450.214(a)(2) of the final rule remains unchanged because the comments do not concern regulatory text, but rather preamble language from the NPRM not carried forward into the final rule.

Section 450.214(a)

Three entities (AASHTO, CT DOT, and H–GAC) commented on the proposed language in section 450.214(a)(2)(ii), stating that the resources addressed in the final rule should not be limited to the examples given. The FHWA and FTA concur that the list of resources mentioned in section 450.214(a)(2)(ii) is not meant to be exhaustive, as the use of the term ''include'' conveys that the list of resources is not limited to those examples set out in the regulatory text. Two of the entities (CT DOT and AASHTO) requested that additional resources be added to the list of examples, including archaeological resources and stormwater banks. The commenters also requested that the term ''threatened and endangered species critical habitat'' be split up into ''threatened and endangered species, and critical habitat,'' recognizing that they are two separate categories of potential impacts.

The FHWA and FTA added stormwater and archaeological resources to the list of examples as they represent common examples, and split the term ''threatened and endangered species'' from ''critical habitat,'' given that they represent different concepts.

Finally, the Partnership for Active Transportation requested that ''an assessment of opportunities to mitigate negative environmental impacts of the transportation infrastructure by expanding access to active transportation facilities and completing active transportation networks'' be added to the list of examples. The FHWA and FTA decline to add the example to the list as it more of a broad concept of environmental impacts rather than a particular impact area. However, expanding access to active transportation facilities and completing active transportation networks will likely be a consideration in the transportation planning process.

The CALTRANS commented on the appropriate scale of the programmatic mitigation plan, and inquired whether MPOs may plan on a scale beyond its MPA boundaries. The scope and scale of the programmatic mitigation plan is outlined within the optional framework of section 450.214(a)(1)(ii), which states that the plan may be developed on a statewide, regional, local, ecosystem, watershed, or any similar scale for which the resource category applies.

Section 450.214(b)

Fifteen entities (AASHTO, CALTRANS, CO DOT, CT DOT, DC DOT, H–GAC, ID DOT, MT DOT, ND DOT, NYS DOT, OR DOT, PA DOT, SD DOT, TX, DOT, and WY DOT) commented on the proposed language in section 450.214(b), which stated: ''If a State chooses to develop a programmatic mitigation plan then it shall be developed as part of the statewide transportation planning process . . .'' These commenters found the text proposed under paragraph (b) to be more restrictive than the text of the statute. Specifically, the commenters stated that paragraph (b) should

preserve the flexibility provided in the statute which allows for States and MPOs to develop programmatic mitigation plans within, or outside, the statewide and metropolitan planning processes.

The FHWA and FTA agree with the commenters and modified the language in paragraph (b) to provide flexibility for States and MPOs to develop programmatic mitigation plans either within the transportation planning process or under another authority, independent of the transportation planning process. Based on comments received on paragraph (b), FHWA and FTA also added a new paragraph (f) to the section to provide additional clarity on the flexibility to develop programmatic mitigation plans outside of the transportation planning process, and then adopt such plans into the transportation planning process.

The CALTRANS inquired about the requirements for public review, and whether the requirement for public review under this authority is congruent to a formal NEPA review. States and MPOs retain the flexibility to adopt a programmatic mitigation plan into the transportation planning process by following the process outlined in paragraph (b). There are no specific timelines involved for public review and comment under the optional framework in the final rule, but FHWA and FTA encourage States and MPOs to utilize public review and comment timelines that are consistent with their transportation planning process. Furthermore, all comments on a programmatic mitigation plan received during the public review and comment period should be considered when developing the final plan.

Section 450.214(d)

The CALTRANS noted appreciation for the support for programmatic mitigation plans, but expressed concerns about acceptance of such plans by Federal and State regulatory agencies. The commenter specifically questioned whether rulemaking to govern the regulatory agencies toward the goal of reaching a higher level of commitment to programmatic mitigation planning activities might be possible.

The FHWA and FTA note that the statutory framework for programmatic mitigation plans that is the subject of this final rule specifically requires consultation with the agency or agencies with jurisdiction over the resource covered by the programmatic mitigation plan (23 U.S.C. 169(b)(4)) and in the regulatory text at 23 CFR 450.214(d) and 320(d). However, the statute does not provide FHWA and FTA with authority to affect the responsibility of resource agencies, which must address their own statutory requirements concerning the resources under their jurisdiction. Consequently, the language found in the NPRM and supported by statute is retained with one exception. In paragraph (d), FHWA and FTA replaced the word ''developed'' with ''adopted,'' to indicate that the adoption process described in paragraph (b) is necessary when utilizing a mitigation plan developed under this authority for use in future environmental reviews. Section 1306 of the FAST Act amends 23 U.S.C. 169(f) to change ''may use'' to ''shall give substantial weight to'' and changes ''any other environmental laws and regulations'' to ''other Federal environmental law'' such that a Federal agency responsible for environmental reviews ''shall give substantial weight to'' the recommendations in the programmatic mitigation plan when carrying out its responsibilities under NEPA or ''other Federal environmental law.'' Sections 450.214(d) and 450.320(d) of the Final Rule are amended to reflect these changes.

Section 450.214(e)

Fifteen entities (AASHTO, CALTRANS, CO DOT, CT DOT, DC DOT, H–GAC, ID DOT, MT DOT, ND DOT, NYS DOT, OR DOT, PA DOT, SD DOT, TX DOT, and WY DOT) commented on preserving the flexibility in the statute for States and MPOs to determine whether to develop programmatic mitigation plans, citing the voluntary nature of programmatic mitigation plans.

The FHWA and FTA concur with the commenters and have edited the language in the NPRM to clarify that the development of the programmatic mitigation plan is entirely optional, as addressed in the introductory language of the regulatory text in section 450.214(a). The FHWA and FTA encourage the development and use of programmatic mitigation plans, but do not require it as part of the transportation planning process. Based on comments received on paragraphs (b) and (e), FHWA and FTA also added a new paragraph (f) to the section to provide additional clarity on the flexibility to develop programmatic mitigation plans outside of the transportation planning process, and then adopt such plans into the transportation planning process.

Section 450.216 Development and Content of the Long-Range Statewide Transportation Plan

Fifty commenters submitted comments on this section (AASHTO, ASHTD, Boone County Resource Mgmt., Braxo Valley COG, Buckeye Hills-Hocking Valley RDD, CO DOT, Crystal Hitchings (private citizen), DC DOT, East TX Chief Elected Officials/RPO, Florida MPO Advisory Council, FMATS, IA DOT, ID DOT, ME DOT, Meramec RPC, MI DOT, Mid-Columbia Economic Development District, Mid-Region Rural Planning Agencies TPO and NM RTPOs, MO DOT, MT DOT, NADO, NARC, National Association of Working Women, National Trust for Historic Preservation, NC DOT, ND DOT, NJ DOT, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, NRDC, NY State Association of MPOs, NYS DOT, OR DOT, Partnership for Active Transportation, Region Five Development Commission, Region Nine Development Commission, SD DOT, South Alabama RPC and RPO, South Plains AOG, Southern Windsor County RPC, TX DOT, Transportation for America, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley RDC, VA DOT, VT DOT, West Central Indiana EDD, WI DOT, and WY DOT). Nineteen of the comment letters were from States, 18 were from regional planning organizations, 8 were from associations representing public transportation agencies, 4 were from advocacy groups, and 1 was from an MPO.

Several RPOs (Boone County Resource Management, Brazo Valley COG, Buckeye Hills-Hocking Valley RDD, East Texas Chief Elected Officials RPO, Meramec RPC, Mid-Columbia EDD, Mid-Region Rural TPO and New Mexico RTPOs, NADO, North Carolina Association of RPOs, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Region Five Development Commission, Region Nine Development Commission, South Alabama RPC and RPO, South Plains AOG, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, Upper Minnesota Valley RDC, and West Central Indiana EDD) and one citizen (Crystal Hitchings) commented that there are several regional plans that States should consider incorporating (by reference or summary) into their long-range statewide transportation plan, particularly in States where an RTPO framework is not in place to provide regional long-range transportation plans. Specific examples provided include the Comprehensive Economic Development Strategies (CEDS), required for EDDs

recognized by the U.S. Economic Development Administration; and regional sustainability plans, recognized by HUD. The commenters stated that these are examples of plans that provide a regional perspective on transportation and land use that may inform the transportation decisionmaking process and encourage coordinated investment across Federal and other public program funds. In response to these comments, the final rule reflects the statutory provision that requires States to cooperate with nonmetropolitan officials with responsibility for transportation or the RTPOs, if applicable, when developing the long-range statewide transportation plan. The RTPOs or nonmetropolitan officials with responsibilities for transportation are encouraged to share these regional plans with the State during this cooperative process. However, this cooperation does not mean that the State must incorporate these plans or their investment strategies into the long-range statewide transportation plan. That is at the discretion of individual States.

The NRDC commented on the section-by-section analysis of the long-range statewide transportation plan in the NPRM, which states that section 450.216 maintains the opportunity for the long-range statewide transportation plan to be comprised of policies and/or strategies, not necessarily specific projects over the minimum 20-year forecast period. The commenter stated that, in addition to policies and/or strategies, the long-range statewide transportation plan should also include specific projects.

In response to this comment, FHWA and FTA believe that in section 23 U.S.C. 135(f), Congress intended to allow States the flexibility to develop a long-range statewide transportation plan that includes policies and/or strategies and not specific projects. The FHWA and FTA have reflected that intention in section 450.216 of the final rule. States may, at their discretion, include projects in the long-range statewide transportation plan. However, 23 U.S.C. 135(f) and the final rule do not require it. No changes are made to this section as a result of the comment.

Section 450.216(b)

Section 1202 of the FAST Act amends 23 U.S.C. 135(f)(8) such that the long-range statewide transportation plan shall include consideration of the role of intercity buses may play in reducing congestion, pollution, and energy consumption. Section 450.216(b) in the final rule is amended to include this new provision.

Section 450.216(d)

Several commenters (AASHTO, MI DOT, NC DOT, and SEMCOG) objected to section 450.216(d), which states that the long-range statewide transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects contained in the HSIP, including the SHSP, and the Public Transportation Agency Safety Plan. The commenters asked that it be struck from the final rule because it is not specifically in the statute. The basis of this provision predates the MAP–21. The integration of safety and the priorities, goals, countermeasures, and projects of the SHSP into the long-range statewide transportation plan was also part of the previous 2007 planning regulations (23 CFR 250.214(d)).

The FHWA and FTA believe the importance of safety, particularly the early consideration of safety, warrants retaining this provision in the final rule. The FHWA and FTA note that compliance with this provision is not mandatory under the old rule or under this final rule. Lastly, safety is one of the key performance areas identified in MAP–21 for performance management of the transportation system and, consequently, is part of the MAP–21 mandated performance based planning process. The FHWA and FTA therefore left this provision in the final rule as proposed.

The New York Association of MPOs commented that in paragraph (d)(2), the language lacks guidance on when targets should be set and how frequently they should be updated. The FHWA and FTA respond that the timeframe for States and MPOs to set targets is tied to the effective dates of the performance management rules, not the planning rule. In sections 450.226 and 450.340, the planning rule sets the timeframe whereby the performance targets must be reflected in the long-range statewide transportation plan and in the MTPs.

The NYS DOT expressed support for a performance-based approach to the development of the long-range statewide transportation plan, with more emphasis on data driven program outcomes, whereas its previous long-range statewide transportation plans have been policy focused and less quantitative in terms of goal setting. The commenter further commented on the need for flexibility in the timeframe for updating the long-range statewide transportation plan and the necessary coordination with MPO long-range planning.

The FHWA and FTA response to this comment is that the planning NPRM and the final rule, in sections 450.226 and 450.340, consistent with 23 U.S.C. 135(l) and 49 U.S.C. 5304(k) provide for a 2-year transition period after the publication of this final rule for the States and MPOs to bring their planning documents (long-range statewide plan, MTP, STIP, and TIPs) into compliance with these requirements.

Section 450.216(f)

Section 1202 of the FAST Act amends 23 U.S.C. 135(f)(7) to change ''should'' to ''shall'' to note that the statewide transportation plan ''shall'' include a description of performance measures and targets and ''shall'' include a system performance report. Sections 450.216(f)(1) and (2) in the final rule are amended to include this new provision.

Section 450.216(f)(2) states that the statewide transportation plan shall include a system performance report, and subsequent updates, evaluating the condition and performance of the transportation system with respect to the performance targets, including progress achieved by the MPOs in meeting the performance targets in comparison with system performance recorded in previous reports. The Florida MPO Advisory Council commented that it is unclear if the performance targets described in this section relate to those set by the State or those set by the MPO, and that it also is not clear the comparison described in this section is to State or metropolitan area system performance recorded in previous reports.

The FHWA and FTA response to this comment is that this report shall include a description of both State and MPO targets and also a description of State and MPO progress at achieving their respective targets. This requirement is based on 23 U.S.C. 135(f)(7) and 49 U.S.C.(f)(7)(B), which state that the long-range statewide transportation plan shall include a system performance report and subsequent updates evaluating the condition and performance with respect to the performance targets, including progress achieved by the MPO in meeting the performance targets in comparison with system performance recorded in previous reports.

The WI DOT commented that section 450.216(f)(2) does not address the inclusion of performance targets in plans adopted shortly after rule publication. The FHWA and FTA response to this comment is that sections 450.226 and 450.340 provide for a 2-year transition period after publication of the final rule for States and MPOs to bring the long-range statewide transportation plan, MTPs, STIPs, and TIPs into compliance. The

IA DOT commented that it is not clear what subsequent updates refers to in section 450.216(f)(2). In response, FHWA and FTA refer the commenter to a similar comment and response at section 450.324(f)(4).

The ME DOT sought further clarification on the system performance report that must be included with updates to the long-range statewide transportation plan. Specifically, the ME DOT asked what would be the required cycle for subsequent updates of the long-range statewide transportation plan. In response, the MAP–21 and the FAST Act do not establish a cycle for updating the statewide long-range transportation plan. It is at the State's discretion to decide when to undertake an update. However, if a State chooses to update its long-range statewide transportation plan after the regulatory phase-in provisions in sections 450.226 and 450.340, the State must reflect the new requirements in that update.

The FMATS emphasized the necessary coordination among the States, MPOs, and operators of public transportation to establish performance targets. The FHWA and FTA agree that coordination between the State, MPOs, and operators of public transportation will be critical to both setting and achieving performance targets for each of the entities.

The FMATS also pointed out that fundamentally, the State develops a long-range statewide transportation plan that is a policy document, whereas the MPO MTP contains a fiscally constrained project list and policies. This might create a disconnect in State and MPO coordination. The FMATS noted that an MPO has no say in which projects actually are implemented, and that may impact the MPO's performance reporting and ability to achieve performance targets. In response, FHWA and FTA feel strongly that interagency coordination is an important part of successful implementation of the 3–C planning process, including the new requirements for performance-based planning. Section 450.314 of the final rule provides that the States, MPOs, and operators of public transportation must identify and document, either through the metropolitan planning agreement or other means, their mutual responsibilities in the implementing a performance-based approach to planning and programming. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.216(l)

Section 1202 of the Fast Act amends 23 U.S.C. 135(f)(3)(A)(ii) to add adds public ports to the list of entities States shall provide a reasonable opportunity to comment on the plan and adds examples of private providers of transportation. Section 450.216(l)(2) in the final rule is amended to include these new provisions.

Section 450.216(n)

The AASHTO, ASHTD, ID DOT, MI DOT, MT DOT, ND DOT, SD DOT, and WY DOT requested that FHWA and FTA delete the language in section 450.216(n) that states that the long-range statewide transportation plan should be informed by the financial plan and the investment strategies from the State asset management plan for the NHS and by the public transit asset management plans. The commenters argue that it infringes on the States' flexibility to determine the content in their long-range transportation plans, including whether to create a policy- or project-based plan. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The VA DOT recommends that FHWA and FTA specifically require that development of the long-range statewide transportation plan includes consideration or integration of the congestion management plans, performance plans and, where applicable, the CMAQ performance plan. The FHWA and FTA response is that under the final rule at sections 450.206(c)(4) and 450.306(d)(4), the States and MPOs are required to integrate the goals, objectives, and performance measures from other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49, into the statewide and metropolitan transportation planning processes. Examples of such plans include the HSIP and SHSP, as defined in 23 U.S.C. 148; the State Asset Management Plan for the NHS, as defined in 23 U.S.C. 119(e); the State Freight Plan (if the State has one), as defined in section 1118 of MAP–21; the Transit Asset Management Plan, as defined in 49 U.S.C.; the Public Transportation Agency Safety Plan, as defined in 49 U.S.C. 5329(d); and, for certain MPOs in metropolitan areas, the congestion mitigation and air quality improvement program performance plan as defined in 23 U.S.C. 149(l), as applicable, and the congestion management process, as defined in 23 CFR 450.322, if applicable. Since the congestion mitigation and air quality improvement performance plan and the congestion management process are unique to certain metropolitan areas, FHWA and FTA limited the integration of those plans to the metropolitan transportation planning process in those areas.

The Nine to Five National Association of Working Women commented that an equitable transportation system is critical to creating thriving communities of opportunity. The commenter stated that where and how we decide to make transportation investments is critical to communities' access to economic opportunity. The commenter further stated that low-income and minority communities face tremendous barriers in access to transportation that can get them to critical places (*e.g.,* school, work, child care, appointments, and grocery stores), and that reducing those barriers will require targeted investments. The commenter further stated that by developing State and metropolitan planning guidance that includes the voices of directly affected communities and prioritizes enhanced mobility and opportunity for the most vulnerable populations, transit investments can go a long way to supporting improved social and economic outcomes in these communities. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The National Trust for Historic Preservation commented that additional language should be added under section 450.216(i) to state that State and local resource protection and historic preservation agencies shall be contacted to obtain existing inventories, and the State may fund the preparation or updating of such inventories, pursuant to this Chapter, if inventories are not current or available.

In response to this comment, FHWA and FTA note that at the time the NPRM was under development, language was added to sections 450.206(b) and 450.306(c) to include section 4(f) properties, as defined in 23 CFR 774.17, as one of several examples to consider for establishing the degree of consideration and implementation of the planning factors. Section 4(f) properties include land of a historic site of national, State, or local significance (23 CFR 774.17). The FHWA and FTA also note that under section 450.216(i), it is already provided that 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. The FHWA and FTA agree that if a State seeks to prepare or update local resource protection and/or historic preservation inventories as part of their update to the long-range statewide transportation plan, they may do so, but are not required.

Two advocacy groups (NRDC and Transportation for America) commented that differences between the State and metropolitan planning sections of the proposed rule should be reconsidered. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The NJ DOT commented that similar to the MPO option to use scenario planning, many States also use scenario planning in the development of their long-range statewide transportation plans. The NJ DOT will be considering the use of scenario planning when it undertakes its next update of the long-range statewide transportation plan. The FHWA and FTA encourage other entities, such as the States, to use scenario planning in their transportation planning process as a best practice, particularly as part of developing the long-range statewide transportation plan.

The VT DOT recommended incorporating climate resilience as one of the components of the statewide transportation planning process. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.216(k)

Several commenters (AASHTO, CO DOT, DC DOT, ID DOT, MT DOT, ND DOT, SD DOT, TX DOT, and WY DOT) commented on the requirement in section 450.216(k) that a long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, and that the State shall develop the discussion in consultation with Federal, State, regional, local, and tribal land management, wildlife, and regulatory agencies. The commenters noted that the consultation referenced in this section is too broad and should only relate to applicable Federal, State, local, and regional agencies and tribes. Specifically, a State's transportation officials should not have to consult on mitigation issues in the southern part of the State with local officials from a distant northern part of the State and that the final rule should be revised to make this clear. The FHWA and FTA agree with this comment and have made this change in section 450.324(f)(10) of the final rule.

The Florida MPO Advisory Council and NARC commented that section 450.216(k) should also include MPOs on the list of entities with which the State must consult when developing the discussion of potential environmental mitigation activities in the long-range statewide transportation plan. The FHWA and FTA response to this comment is that the suggested change is not necessary because States are already required to develop the long-range statewide transportation plan in cooperation with the affected MPOs under section 450.216(g).

The MARC commented that it supports the requirements for State consultation with Federal, State, tribal, regional, and local land management, wildlife, and regulatory agencies when the State is developing discussion on potential environmental mitigation activities for the long-range statewide transportation plan as described in section 450.316(k).

Section 450.216(l)

In section 450.216(l)(2) of the final rule, public ports has been added to the list of interested parties that a State shall provide a reasonable opportunity to comment on the proposed long-range statewide transportation plan exactly as described in the FAST Act section 1201 (23 U.S.C. 135(f)(3)(A)(ii)). Also, in section 450.216(l)(2), examples of providers of private providers of public transportation have been added to the final rule exactly as described in FAST Act section 1202 (23 U.S.C.(f)(3)(A)(ii)) including intercity bus operators, employer based cash-out program, shuttle program, or telework program.

Section 450.216(m)

On sections 450.216(m) (development and content of the long-range statewide transportation plan) and 450.324(f)(11)(iii) (development and content of the MTP), the Partnership for Active Transportation commented that it strongly supports consideration of innovative financing methods in both the long-range statewide transportation plan section and the MTP. The commenter further stated that the proposed revisions in the NPRM should explicitly encourage consideration of innovative financing techniques in the context of active transportation. The commenter also stated that many transportation planners do not currently consider public-private partnerships as a way to finance pedestrian and bicycle projects. The FHWA and FTA believe that the existing language in sections 450.216(m) and 450.324(f)(11)(iii) that encourages an assessment of innovative financing techniques is broad based, and is meant to include all projects in the plan, including the financing of pedestrian and bicycle projects. Therefore, no changes are warranted.

The CO DOT commented that section 450.216(m), which provides that the financial plan for the long-range statewide transportation plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding public-private partnerships, or other strategies) as revenue sources, seems inappropriate and that these financing instruments have been around for a long time. In response to this comment, FHWA and FTA note that even though these techniques might be well-established, this text was included to encourage consideration of financing techniques for projects early on in the planning process (*i.e.,* during the development of the long-range statewide transportation plan). The FHWA and FTA also note that this provision is optional. No changes are made to this section based on this comment.

Section 450.218 Development and Content of the Statewide Transportation Improvement Program

Forty-eight commenters (Addison County RPC, AASHTO, Boone County Resource Management, Brazo Valley COG, Buckeye Hills-Hocking Valley RDD, CT DOT, East Texas Chief Elected Officials RPO, FL DOT, FMATS, GA DOT, Hitchings (private citizen), IA DOT ID DOT, MA DOT, MD DOT, Meramec RPC, Miami-Dade MPO, MI DOT, Mid-Region RTPO and New Mexico RPOs, MN DOT, MT DOT, NADO, NARC, NC DOT, ND DOT, NJ DOT, North Central PA RPDC, Northern Maine Development Commission, NRDC, NYS DOT, OK DOT, Region Five Development Commission, Region Nine Development Commission, RTC and NCTCOG, RI DOT, SD DOT, South Alabama RPC and RPO, Southeast Alabama RPO, SEMCOG, TriMet, Two Rivers-Ottauquechee Regional Commission, TX DOT, Upper Minnesota Valley RDC, US Travel Association, VT DOT, WA State DOT, West Central Arkansas Planning and Development District, West Central Indiana EDD, WI DOT, and WY DOT) submitted comments on this section. Twenty of the comment letters were from States, 17 were from regional planning organizations, 5 were from associations representing transportation agencies, 4 were from MPOs, 1 was from an

operator of public transportation, and one was from an advocacy group.

The NRDC commented that it would like for the FHWA's Federal-aid highway program to be more like the FTA's new starts program. The FHWA and FTA response to this comment is that it is outside the scope of the final rule.

The AASHTO commented that it would like for the final rule to emphasize that the function of the STIP is to provide an annual listing of projects for a period of 4 years to inform the public, partners, and review agencies. In response, FHWA and FTA note that sections 450.218(a)–(q) describe the development and content of the STIP, including requirements to include specific project information, the horizon for the STIP, and State consultation and cooperation with other entities in developing the STIP. Section 450.220 describes FHWA and FTA approvals of the STIP.

Section 450.218(b)

The IA DOT commented on section 450.218(b), seeking clarification if the State's approval of the MPO TIPs constitutes approval or agreement that MPO projects will help make progress toward State and MPO targets. The FHWA and FTA response to this comment is that State (Governor) approval of the MPO TIP does not constitute State approval or agreement that MPO projects in the TIP will help make progress toward State and MPO targets. The FHWA and FTA reiterate that under sections 450.206(c)(2) and 450.306(d)(2)(ii) in the final rule, States and MPOs are required to coordinate State and MPO target setting, and the targets should be consistent to the maximum extent practicable.

Section 450.218(c)

The MN DOT commented that the requirement to develop the STIP in cooperation with affected nonmetropolitan local officials with responsibility for transportation or in cooperation with an RTPO, if applicable, in section 450.218(c) is in conflict with section 450.210(d). Section 450.210(d) provides that an RTPO, if established and designated by the State, shall develop a regional TIP for consideration by the State. The FHWA and FTA do not see this as a conflict. States are required to cooperate with nonmetropolitan local officials or with an RTPO, if applicable, when developing the STIP. However, a State is not required to include an RTPO TIP as part of the STIP.

The OK DOT commented that it does not agree with FHWA and FTA interpretation in section 450.218(c) that the STIP shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through RTPOs. The OK DOT suggested that development should be in consultation rather than with cooperation, given 23 U.S.C. 135(g)(2)(B)(i).

The FHWA and FTA do not agree with this comment and have explained the rationale for using the word ''cooperation'' in this context in the section-by-section discussion in the NPRM. Specifically, the final rule changed the terms ''consultation'' with ''nonmetropolitan'' officials to ''cooperation'' with ''nonmetropolitan'' officials and added cooperation with RTPOs, if applicable. These changes reflect MAP–21 revisions to 49 U.S.C. 5304(g)(2)(B)(i). Whereas 49 U.S.C. 5304 is nearly the same as 23 U.S.C. 135, this is one instance where changes to the two statutes were inconsistent. The MAP–21 revision to section 135(g)(2)(B)(i) does not change ''consultation'' to ''cooperation.''

In updating the final rule, FHWA and FTA determined that it was appropriate to use the term ''cooperation'' rather than ''consultation'' in this paragraph. To have two different processes (a consultation process for Title 23 actions and a cooperation process for Title 49 actions) is overly burdensome. Using the term ''cooperation'' is consistent with the comparable changes that MAP–21 made to the long-range statewide transportation plan provisions (see section 450.216(h)). Because of the long-standing requirement that the STIP be consistent with the long-range statewide transportation plan (section 450.218(k)), the State should follow a similar coordination process for both of these documents. In addition, as defined for purposes of part 450, cooperation requires States to work more closely with nonmetropolitan local officials and RTPOs, if applicable, than consultation. This change is also consistent with the overall MAP–21 approach to increasing the presence of affected nonmetropolitan local officials and regional planning organizations in the statewide planning process. No changes are made to the final rule based on this comment.

Section 450.218(l)

The AASHTO, ID DOT, MT DOT, ND DOT, SD DOT, SEMCOG, and WY DOT commented that in section 450.218(l), only the cost estimates in the STIP should be shown in year of expenditure dollars and not both cost estimates and revenue projections. See section 450.324(f) for more discussion and FHWA and FTA's responses to this and similar comments on this topic.

The ID DOT, MT DOT, ND DOT, SD DOT, and WY DOT commented that although the financial plan is optional, section 450.218(l) requires too much detail. The FHWA and FTA response to this comment is that this provision provides the State the option of including a financial plan with the STIP, and the details provided in this section are intended to help a State use the financial plan to assess the availability of funding in relation to the costs of implementing the program of projects in the STIP.

Section 450.218(o)

The AASHTO, MI DOT, MT DOT, TX DOT, and WY DOT commented on proposed section 450.218(o). The section states that the STIP should be informed by the financial plan and the investment strategies from the State asset management plan for the NHS and by the public transit asset management plans. The commenters suggested that this language is undefined, confusing, and could potentially be interpreted and applied inconsistently. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The TX DOT commented that the final rule should acknowledge that funding sources other than Federal funds may have a role in helping a State achieve performance targets. The FHWA and FTA have deleted section 450.218(o) from the final rule. The FHWA and FTA agree that funding sources other than Federal funds may have a role in helping a State achieve performance targets. However, FHWA and FTA believe that it would be unnecessarily duplicative to restate this in the final rule.

Section 450.218(p)

The WA State DOT commented that section 450.218(p) should be modified to include the phrase ''or phase of the project'' at the end of this paragraph and state that the STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available or the project or phase of the project within the time period contemplated for completion of the project. The FHWA and FTA disagree with this comment. The FHWA and FTA believe that in the language in 23 U.S.C. 135(g)(5)(E), Congress intended that the STIP would be fiscally constrained and that projects in the STIP would be fiscally constrained. As a result, FHWA and FTA used the language from 23 U.S.C.

135(g)(5)(E) in this paragraph. This has been a long-standing interpretation. By making the change that the commenter requested, it would change the meaning of the paragraph by allowing States to include project phases in the STIP without demonstrating funding availability for the entire project. The result would be such projects and the STIP itself would not be fiscally constrained. As such, FHWA and FTA are not making changes to the final rule.

Section 450.218(r)

Section 450.218(r) requires that the STIP include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets identified by the State in the long-range statewide transportation plan or other State performance-based plans linking investment priorities to those performance targets. It further states that this discussion should be consistent with the strategies to achieve targets presented in the long-range statewide transportation plan and other performance management plans such has the highway and transit asset management plans, the SHSP, the public transportation agency safety plan, the CMAQ performance plan, and the State freight plan (if one exists). Several commenters (AASHTO, ID DOT, MT DOT, ND DOT, NY DOT, SD DOT, and WY DOT) objected to the language and suggested instead that this paragraph should track the statutory language.

The FHWA and FTA agree, in part, with this comment and eliminated the list of examples of other performance management plans that was proposed for inclusion in section 450.218(r) because these examples are already listed in section 450.206(c)(4). The FHWA and FTA feel that the provisions in section 450.206(c)(4) are sufficient to ensure the integration of elements of other federally required performance-based plans and processes and so do not need to reiterate. The FHWA and FTA retained the phrase ''or other State performance-based plan(s)'' in this paragraph because, as noted in 23 CFR 450.216(f)(1), a State is not required to include performance targets in the long-range statewide transportation plan. For those States that do not include performance targets in the long-range statewide transportation plan, this provision would make it clear that States are still required to utilize other State performance-based plans for those targets. Section 450.218(r) in the NPRM became section 450.218(q) in the final rule with the changes noted above.

The MN DOT commented that the STIP should not be the identified document for reporting, and that the reporting requirements of section 450.218(r) are too prescriptive. The MN DOT further commented that it would like flexibility in how and where to report.

In response to this comment, FHWA and FTA believe that the intent of Congress in 23 U.S.C. 135(g)(4) is that the STIP will include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets established in the long-range statewide transportation plan, linking investment priorities to those performance targets. The FHWA and FTA have reflected that intent in section 450.218(r) of the NPRM, which became 450.218(q) in the final rule. As previously discussed, the language in the NPRM at section 450.218(r), which required the State to link this discussion in the STIP to the other State performance-based plans and processes, was removed from the final rule.

Several commenters (AASHTO, CT DOT, FL DOT, GA DOT, ID DOT, MT DOT, NC DOT, ND DOT, NYS DOT, SD DOT, TriMet, WI DOT, and WY DOT) commented on section 450.218(r) in the NPRM that States should not be required to include information on individual projects and should not be required to link individual projects with specific performance measures as part of the discussion on the anticipated effect of the STIP toward achieving the performance targets in the long-range statewide transportation plan or other State performance based plan(s). See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses. Section 450.218(r) in the NPRM and section 450.218(q) in the final rule include requirements for States to include a discussion in the STIP of the anticipated effect of the STIP (as a whole) toward achieving the federally required performance targets identified by the State in the long-range statewide transportation plan or other state performance-based plans, linking investment priorities (at a program level) to those performance targets.

At least one commenter suggested that it is unlikely that the projects within a 4-year program will actually result in a target being met. Another commenter suggested requiring the State, not the MPO, to be responsible for establishing and tracking performance in the MPO TIPs. The FHWA and FTA respond that these comments are outside the scope of the final rule and are more appropriate for the other performance management rules.

The AASHTO, ID DOT, MT DOT, ND DOT, SD DOT, and WY DOT commented on proposed section 450.218(r) that the performance reporting should only be limited to federally required performance measures. The FHWA and FTA agree with this comment but do not believe revisions to the regulatory text are necessary.

The AASHTO, CT DOT, IA DOT, MD DOT, NC DOT, VT DOT, and WI DOT commented on section 450.218(r) that States should have discretion regarding the discussion of the anticipated effect of the STIP toward achieving the performance targets. That this may include references to such documents as performance reports that are more user friendly. The FHWA and FTA agree that States and MPOs should be provided some flexibility in how they craft the discussion in the STIP on the anticipated effect of the STIP toward achieving the performance targets, and that States referencing other reports as part of this discussion would be acceptable.

The IA DOT commented that the phrase ''to the maximum extent practicable'' in section 450.218(r) should be clarified with regard to the level of analysis required to demonstrate that projects in the STIP will help meet performance targets.

Based on these comments, FHWA and FTA will consider developing guidance after this final rule and the other performance management final rules are published to provide assistance to the States and MPOs on how this requirement might be met and to what extent they should demonstrate that the projects (program) in the STIP and MPO TIPs will help meet performance targets. Similar comments were submitted on section 450.326(d).

Two States (MN DOT and NJ DOT) commented on section 450.218(r) that the requirements for States to discuss in the STIP the anticipated effect of the STIP toward achieving performance targets goes too far and is overly prescriptive, even with the use of the phrase ''to the maximum extent practicable.'' The MN DOT further stated that it annually publishes a stand-alone transportation performance report. The response to this comment is that FHWA and FTA believe that the intent of Congress in 23 U.S.C. 135(g)(4) is that the STIP include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets established in the long-range statewide transportation plan (or other State

performance-based plans), linking investment priorities to those performance targets.

The U.S. Travel Association commented that linking investment to performance measures is imperative to developing efficient transportation networks that provide mobility choices throughout the Nation. In response to this comment, FHWA and FTA note that section 450.218(r) in the NPRM, which became section 450.218(q) in the final rule, expressly states the STIP shall include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achievement of performance targets, linking investment priorities to those priorities.

Several regional planning organizations (Addison County RPC, Boone County Resource Management, Braxo Valley Council of Government, Buckeye Hills-Hocking Valley RDD, East Texas Chief Elected Officials RPO, Meramec RPC, Mid-Region Rural TPO and New Mexico RTPOs, NADO, Northern Maine Development Commission, Region Five Development Commission, Region Nine Development Commission, South Alabama RPC and RPO, Southeast Alabama RPO, Two Rivers-Ottauquechee Regional Commission, West Arkansas Planning and Development District, and West Central Indiana EDD) and one citizen (Crystal Hitchings) commented that in situations where a State has not designated and established RTPOs that would develop a regional TIP, the State should refer to the regional priorities identified in other regional transportation plans when selecting priorities for the STIP (*e.g.,* regional economic development plans).

In response to this comment, in situations where a State has not designated and established an RTPO, the final rule requires the State to cooperate with nonmetropolitan local officials when developing the STIP. This cooperation might include discussion on regional priorities identified in other regional transportation plans (*e.g.,* regional economic development plans). This cooperation does not mean that States have to refer to these other plans as part of the STIP.

The FMATS commented on NPRM section 450.218(r) that it is essential for the States to develop performance targets in full coordination with the MPOs and the nonmetropolitan planning areas to ensure that performance targets are considered during the development of TIPs and STIPs and investment priorities are tied to targets.

The FHWA and FTA agree that State and MPO coordination is a key part of target setting by the States and the MPOs. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses. It is also important that MPOs and operators of public transportation coordinate in metropolitan areas and that States coordinate with rural operators of public transportation as part of target setting.

The Miami-Dade MPO stated that it is important not only for States to coordinate the STIP with MPOs, but also important that the STIP be consistent with metropolitan plans, especially in TMAs. In response to this comment, FHWA and FTA reiterate that the STIP and the TIP must be consistent with the long-range statewide transportation plan (section 450.218(k)) and the MTP (section 450.326(i)), respectively, and that the STIP must incorporate the TIP without alteration (section 450.218(b)).

The MA DOT commented that it supports transparency within the context of the STIP to provide a more useful public document. The FHWA and FTA agree with this comment. The STIP is a key document for identifying the States program of federally funded projects, and through the public involvement process, it provides transparency on the States planned expenditure of Federal funds on projects.

The NRDC commented that they disapprove of the differences between the sections covering STIPs and those covering TIPs, particularly the use of the terms ''may'' and ''shall.'' The NRDC argues that the provisions in the final rule for the State STIP should mirror those for the MPO TIP. For example, in section 450.218(l), the STIP may include a financial plan, whereas in section 450.324(f)(11), the TIP shall include a financial plan. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.218(r) in the NPRM requires that the STIP shall include, to the maximum extent practicable, a discussion of its effect toward achieving the performance targets identified by the State in the long-range statewide transportation plan or other state performance-based plans. The NJ DOT commented that using the STIP as the vehicle for reporting is too prescriptive.

The FHWA and FTA respond that they believe it was the intent of Congress in 23 U.S.C. 135(g)(4) that the STIP shall include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets. Therefore, FHWA and FTA included this provision in the final rule at section 450.218(q).

The NJ DOT also stated that the STIP and the final rule should not require States to include performance information on specific projects or link individual projects to specific performance measures. The FHWA and FTA respond that this comment is outside the scope of the final rule and will depend on the specific performance measures identified in the other FHWA and FTA rules or guidance.

The NJ DOT further stated that large portions of the NHS are supported by non-Federal funding sources, such as independent toll authorities, and that projects funded by non-Federal sources may appear in the STIP for information purposes. The commenter further stated that the final rule should acknowledge that funding sources other than Federal funds may have a role in meeting performance targets. The FHWA and FTA agree that funding sources other than Federal funds may be used on the NHS. However, the FHWA and FTA do not feel that it is necessary to mention this specifically in the final rule because section 450.218(g) already states that the STIP is only required to include projects proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.

Section 450.220 Self-Certification, Federal Findings, and Federal Approvals

Seven advocacy groups (Community Labor United, Front Range Economic Strategy Center, National Association of Social Workers, Partnership for Working Families, Policy Link, The Leadership Conference on Civil and Human Rights, and United Spinal Association) provided comments on this section. They provided comments about the relationship of the transportation planning process to traditionally underserved populations, including EJ and Title VI of the Civil Rights Act of 1964. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.222 Project Selection From the STIP

Three commenters (AASHTO, NC DOT, and WA State DOT) submitted comments on this section. The AASHTO requested that the phrase ''with responsibility for transportation'' be removed from the phrase

''nonmetropolitan local officials with responsibility for transportation'' in section 450.222(c) because it is redundant with the definition of the term ''local officials'' that is provided in section 450.104.

The FHWA and FTA response to this comment is that the proposed definition for local officials was removed from the final rule (see discussion under 450.104 in the section by section). However, the final rule retains the long-standing definition for nonmetropolitan local officials. The phrase ''with responsibility for transportation'' means elected and appointed officials of general purpose local government who have responsibility (decisionmaking authority) for transportation either through ownership, operation, maintenance, implementation, or other means.

The NC DOT requested clarification on the definition of a ''nonmetropolitan local official with responsibility for transportation'' in paragraph (c). The FHWA and FTA response is that section 450.104 contains a definition for nonmetropolitan local official. In section 450.104, a nonmetropolitan local official with responsibility for transportation means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

The WA State DOT sought clarification on how FHWA or FTA could approve a project or know of the funding for operating assistance if the project is not programmed in the STIP. The commenter recommended clarifying these situations in section 450.222(a).

In response, projects are funded through grant requests that are submitted to FTA by eligible recipients for authorization and requests to authorize projects and obligate funds submitted to FHWA by the States. Section 450.222(a) refers to sections 450.218(g) and 450.220(d), which describe specific situations where projects do not have to be in the STIP. Section 450.220(d) is a long-standing regulatory provision that allows FHWA and FTA to approve operating assistance for specific projects or programs without including a project or program in the STIP. The FHWA and FTA also note that, as described in section 450.218(g), there are also other categories of projects that do not have to be included in the STIP. Based on these comments, FHWA and FTA made no changes to the final rule.

Section 450.224 Applicability of NEPA to Statewide Transportation Plans and Programs

The AASHTO, Boone County Resource Management, Brazo Valley COG, Buckeye Hills-Hocking Valley RDD, Crystal Hitchings, East Texas Chief Elected Officials RPO, Meramec RPC, Mid-Region Rural TPO and New Mexico RTPOs, NADO, North Carolina Association of RPOs, North Central Pennsylvania RPDC, Northern Maine Development Commission, Northern Shenandoah Valley Regional Commission, Region XII COG, South Alabama RPC and RPO, Southern Windsor County RPC, Two Rivers-Ottauquechee Regional Commission, West Central Arkansas Planning and Development District, and West Central Indiana EDD submitted comments on this section to the docket.

The commenters suggested that RTPOs should be mentioned as contributors to the NEPA review process since they may be involved in establishing the purpose and need for subarea corridor plans. In response to this comment, FHWA and FTA feel that RTPOs could contribute to the purpose and need for the NEPA review process given their role in conducting regional planning. However, it is up to the State and the RTPO in their cooperative planning process to determine the role of the RTPO in contributing to purpose and need in NEPA review. Many of the planning products developed thorough an RTPO's regional planning process, such as the regional transportation plan and corridor studies, are potentially helpful toward contributing to the purpose and need for a project. This supports stronger linkages between the planning and environmental processes and provides an opportunity to streamline the project development process.

The FHWA and FTA do not believe that a change is warranted in the final rule because the establishment of RTPOs and their use to contribute to purpose and need for a project is optional. The FHWA and FTA will consider opportunities for including discussion on potential roles for RTPOs in contributing to PEL in future guidance, case studies, and peer exchanges.

The AASHTO commented that the new authority for PEL described in section 1310 of the MAP–21 makes the project development process more complex and cumbersome. The AASHTO recommends that existing authorities for PEL under appendix A to the final rule be retained. The FHWA and FTA response to this comment is that this section 450.224 is not affected by section 1310 of MAP–21. The language in sections 450.212 and 450.318 is affected by the new authorities for PEL that resulted from section 1310 of the MAP–21. See discussion on those sections in the preamble and in the final rule for details. The FHWA and FTA have made no changes to the final rule based on this comment.

Section 450.226 Phase-In of New Requirements

Thirty-six commenters (AASHTO, AK DOT, Albany MPO, ASHTD, California Association for Coordinated Transportation, CO DOT, CT DOT, DC DOT, DRCOG, ID DOT, MT DOT, ND DOT, SD DOT, GA DOT, H–G AC, IA DOT, MD DOT, ME DOT, MI DOT, MN DOT, MO DOT, NADO, NARC, NC DOT, NJ DOT, NYMTA, NYS DOT, OR DOT, PSRC, RI DOT, San Luis Obispo MPO, SEMCOG, TX DOT, WA State DOT, WI DOT, and WY DOT) submitted comments on this section. Twenty-five of the comment letters were from States, six were from MPOs, three were from associations, one was from an operator of public transportation, and one was from an advocacy group.

Many of the commenters (AASHTO, AK DOT, Albany MPO, ASHTD, CO DOT, CT DOT, GA DOT, H–GAC, IA DOT, MD DOT, MI DOT, MN DOT, MO DOT, NARC, NC DOT, NYS DOT, PSRC, RI DOT, San Luis Obispo COG, SEMCOG, and TX DOT) suggested that all of the new performance management requirements final rules should have a single effective date and that the planning requirements should be coordinated with the implementation of the other performance management requirements. The commenters argued that a single effective date would prevent States and MPOs from creating conflicts in establishing and incorporating targets with differing time periods and performance measures during the planning process. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The NYS DOT commented that sections 450.226(a)–(f) should use the phrase ''substantially meets the requirements in this part'' instead of ''meets the requirements in this part.'' In response, FHWA and FTA believe that this clarification would not change the meaning of this section and is not necessary. No changes are made as a result of this comment.

One commenter suggested that FHWA and FTA consider changing the language in the final rule such that only STIP updates would be required to

comply with the performance management requirements after the 2-year transition period instead of requiring compliance with STIP amendments and STIP updates. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

One commenter stated that the phase-in schedule is unclear. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The AASHTO, ID DOT, MT DOT, ND DOT, NJ DOT, NYS DOT, SD DOT, and WY DOT commented that in sections 450.226(e) and 450.226(f), the phrase ''meets the performance based planning requirements'' as part of the larger phrase ''FHWA/FTA will only approve an updated or amended STIP that is based on a statewide transportation planning process that meets the performance based planning requirements in this part and in such a rule,'' is unnecessary and overreaching and should be deleted. See section 450.340 for a detailed discussion and response on this comment.

The IA DOT asked whether the 2-year compliance date also applies to amendments to long-range statewide transportation plans. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The WI DOT questioned how States would demonstrate coordination with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP. In response to this comment, FHWA and FTA note that, as described in section 450.210(b), States must have a documented process for cooperating with nonmetropolitan local officials, that is separate and distinct from the public involvement process, and provides opportunity for nonmetropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State is required to review and solicit comments from nonmetropolitan local officials regarding the effectiveness of the cooperative process at least once every 5 years (section 450.210(b)(1)). The FHWA and FTA further note that the final rule defines cooperation in section 450.104. Cooperation means that the State and the nonmetropolitan local officials involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective. The FHWA and FTA believe that evidence that the State is following its documented process for cooperating with nonmetropolitan local officials helps to demonstrate that the requirement for cooperation with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP is being met.

Subpart C—Metropolitan Transportation Planning and Programming

Section 450.300 Purpose

One comment was received on this section. While the RI DOT agrees with, and supports the performance-based approach to the planning process described in the NPRM, they are concerned with balancing the need for a performance-based approach and public participation. In response, FHWA and FTA acknowledge that public participation is an important part of the statewide and nonmetropolitan and the metropolitan transportation planning processes, and that the use of a performance-based approach to the planning process by the States and the MPOs does add to the complexity of the public participation process. The FHWA and FTA note that States and MPOs should engage the public in the performance-based planning process and consider their input when making decisions about system performance, including when setting performance targets for performance measures and making investment decisions for the statewide long-range transportation plan, MTP, STIP, and TIP.

Sections 1202 and 1201 of the FAST Act, codified at 23 U.S.C. 135(a)(2) and 23 U.S.C. 134(a)(1) respectively, added intermodal facilities that support intercity transportation, including intercity bus facilities and commuter van pool providers to the purpose of the statewide and metropolitan multimodal transportation planning processes. The Final Rule at sections 450.200 and 450.300 is amended to reflect this change.

Section 1201 and 1202 of the FAST Act amends 23 U.S.C. 134(a)(1) and adds ''takes into consideration resiliency needs'' to the purpose of the of the metropolitan transportation planning process and the statewide and nonmetropolitan transportation planning process (23 U.S.C. 135(a)(2)). The Final Rule at sections 450.300(a) and 450.200 are amended to add this change.

Section 450.302 Applicability

Section 450.302 discusses the applicability of subpart C to organizations and entities responsible for the transportation planning and programming processes in MPAs. Subpart C are the provisions for metropolitan transportation planning and programming. No comments were received on this section. The FHWA and FTA did not propose any changes in the NPRM or make any changes in the final rule to this section.

Section 450.304 Definitions

Section 450.304 describes the terms defined and used in this subpart C. No comments were received on this section. The FHWA and FTA did not propose any changes in the NPRM or make any changes in the final rule.

Section 450.306 Scope of the Metropolitan Transportation Planning

Comments were received from Albany MPO, AMPO, APTA, ARTBA, Board of the French Broad River MPO, California Association for Coordinated Transportation, CALTRANS, Capital Area MPO, Charlotte MPO, Community Labor United, CT DOT, DC DOT, DVRPC, Enterprise Community Partners, Florida MPO Advisory Council, FMATS, Front Range Economic Strategy Center, Houston MPO, MAG, MARC, Maui MPO, MD DOT, ME DOT, Memphis MPO, MET Council, MTC, MN DOT, NACTO, NARC, National Association of Social Workers, National Housing Conference, National Trust for Historic Preservation, NCTCOG/RTC, NJ DOT, NJPTA, Northeast Ohio MPO, New York Association of MPOs, NRDC, NYMTA, NYMTC, NYS DOT, OK DOT, PA DOT, Partnership for Active Transportation, Partnership for Working Families, Policy Link, Portland Metro, Public Advocates, River to Sea TPO, SACOG, San Luis Obispo MPO, SANDAG, Santa Cruz County MPO, SCAG, Sierra Club, SJCOG, South Florida MPO, TriMet, TX DOT, United Spinal Association, VA DOT, WA State DOT, Westchester County Department of Public Works, WFRC, Wilmington MPO, and WMATA. Twenty-three comments were received from MPOs, 15 from advocacy organizations, 13 from States, 6 from transportation associations, 4 from operators of public transportation, and 1 from a local government.

Sections 1202 and 1201 of the FAST Act amended 23 U.S.C. 134(h)(1) and 23 U.S.C. 135(d)(1) respectively to add two new planning factors to the scope of the statewide and nonmetropolitan and the metropolitan transportation planning processes: Improve resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and enhance travel and tourism. The Final Rule at sections 450.206(a)(9) and (10)

and 450.306(b)(9) and (10) are amended to reflect these new planning factors.

The San Luis Obispo COG and SCCRTC commented about issues with State and MPO coordination on performance based planning and programming. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.306(d)(2) discusses the establishment of performance targets by the MPO. The Memphis Urban Area MPO commented that the final rule should clarify to what extent parties should proceed with harmonized targets. The FHWA and FTA response to this comment is that section 450.306(d)(2)(i) requires States and MPOs to coordinate target setting to ensure consistency, to the maximum extent practicable, for the measures described in 23 U.S.C. 150(c). Section 450.306(d)(2)(iii) requires MPOs to coordinate with public transportation operators, to the maximum extent practicable, when selecting performance targets that address performance measures described in 49 U.S.C. 5326(c) and 5329(d). No changes were made based on these comments.

Section 450.306(d)(4) in the NPRM would require an MPO to integrate into the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, and any plans developed under 49 U.S.C. chapter 53 by operators of public transportation. Examples of such plans include the State asset management plan for the NHS, described under 23 U.S.C. 119(e); the transit asset management plan, described under 49 U.S.C. 5326; the SHSP, described under 23 U.S.C. 148; and the Public Transportation Agency Safety Plan, described under 49 U.S.C. 5329(d). The Albany MPO, AMPO, DVRPC, NARC, NYMTC, New York State Association of MPOs, PA DOT, and San Luis Obispo COG commented that this requirement appears to be in conflict with sections 450.306(d)(2)(i), (ii), and (iii), which state that each MPO shall establish performance targets and the selection of targets shall be coordinated with the State and, to the maximum extent practicable, operators of public transportation. The FHWA and FTA response to this comment is that these provisions do not conflict. They reflect the need for close coordination among States, MPOs, and operators of public transportation during the target setting process to ensure that the targets are coordinated and consistent to the maximum extent practicable. This would suggest that coordination during the development of other performance-based plans (such as asset management plans, safety plans, freight plans, and congestion plans) is also desirable because these plans could affect the performance targets and the investments that support those targets set by the State, MPO, and the operator of public transportation. Both of these provisions are based on statute.

The AMPO commented on section 450.306(d)(4) that it is concerned about what the integration of other performance-based plans and processes into the metropolitan transportation planning process might mean. The FHWA and FTA response to this comment is that integration of other performance-based plans and processes into the metropolitan transportation planning process means, as described in section 450.306(d)(4), that an MPO integrates the goals, objectives, performance measures, and targets described in State transportation plans and processes, and any plans developed by operators of public transportation under 49 U.S.C. chapter 53, into the metropolitan transportation planning process. The FHWA and FTA believe that this integration means that as MPOs develop the MTP and TIP as part of their metropolitan transportation planning process, they should be considering the goals, objectives, performance measures, and targets that are described in these other performance-based plans and processes. Examples of these performance-based plans and processes are included in section 450.306(d)(4).

The Metropolitan Council MPO commented on section 450.306(d)(4) concerning the required integration of elements of other State performance based plans and processes. It suggested that the MPO should determine which plans should be integrated into its performance-based planning process. In response, FHWA and FTA note that the statutory requirement, at a minimum, is for the integration of elements (goals, objectives, performance measures, and targets) of other federally required performance-based plans and processes developed by the State or recipients of assistance under chapter 53. An MPO would only integrate those elements that are appropriate to the MPA of the MPO. In developing this provision, FHWA and FTA closely followed the statutory provisions. The FHWA and FTA have listed examples of these federally required plans in this section.

One operator of public transportation (WMATA) commented that the agency level plans that are required to be integrated into the planning process under this paragraph have limited direct relevance to the MAP–21's overarching mandate for effective performance management of transportation systems. The WMATA further noted that these plans are relevant at the agency level, but not at the larger transportation system level.

The FHWA and FTA respond that the requirement to integrate elements of other performance-based plans into the transportation planning process is limited to elements of the federally required State transportation plans and processes and any plans developed by operators of public transportation under 49 U.S.C. chapter 53. A list of examples is provided in paragraph (d)(4) of this section.

The AMPO, APTA, Metropolitan Council MPO, and WFRC commented that the use of performance measures and targets should be programmatic and not project specific. The FHWA and FTA response to this comment is that it is outside of the scope of the final rule and more appropriate to other performance management rules. This final rule does not establish performance measures or the target setting process.

Several commenters (AMPO, APTA, Board of the French Broad River MPO, and CALTRANS) commented that, under the performance management regulations, existing data collection and reporting mechanisms should be utilized whenever possible and standards should not be created outside of the existing structure. The commenters suggested that the creation of new data collection and reporting requirements would be expensive, unclear, potentially duplicative, and ultimately counterproductive. The FHWA and FTA response to this comment is that it is outside of the scope of the final rule.

The WA State DOT commented on section 450.306(d)(4) that it is unclear how an MPO can integrate an unconstrained plan into a constrained MTP. The FHWA and FTA response to this comment is that section 450.306(d)(4) does not require an MPO to integrate an unconstrained plan into a constrained MTP. Section 450.306(d)(4) requires an MPO to integrate the goals, objectives, performance measures, and targets described in other State transportation plans and processes, either directly or by reference, into the metropolitan transportation planning process.

The NRDC noted that it was in favor of the integration of other plans into the transportation planning process as described in sections 450.206(c)(4) and

450.306(d)(4). The commenter further stated that it would like to include other plans such as FEMA Hazard Management Plans and existing regional plans. See discussion and the FHWA and FTAs response to this comment in section 450.206(c)(4).

The APTA commented that transit agencies operate with different management structures and operating environments and across varying modes and sizes. The APTA suggested that performance measures that do not take into account these divergent operating situations would risk failure. The APTA further stated that individual agencies must be allowed to set their own targets and that they must be simple, understandable, and high-level to be meaningful to the process. The FHWA and FTA response to this comment is that it is outside the scope of the final rule.

The California Association for Coordinated Transportation stated that it agrees with the new provisions for performance-based planning and programming. However, it is concerned that one size does not fit all as there are great differences between urban and rural communities.

The CALTRANS commented that the final rule should require States to consider the impact of VMT during the development of long-range statewide transportation plans and MTPs. The CALTRANS also commented that FHWA and FTA should coordinate the development of any transit-related performance measures to ensure the identified metrics are comparable to performance measures for other transportation modes. The FHWA and FTA response is that these comments are outside the scope of the final rule.

The CALTRANS stated that FHWA and FTA should specifically require that Tribes be consulted when performance targets are being set due to the lack of data on many Tribal lands. The FHWA and FTA response to this comment is that under section 450.208(a)(5), in carrying out the statewide transportation planning process, States are required to consider the needs of Tribal governments that have jurisdiction over land within the boundaries of the State. Similarly, section 450.316(c) requires MPOs to appropriately involve Tribal governments in the development of the MTP and TIP when the MPA includes Tribal lands. Because MPOs are required to describe targets in the MTP (section 450.324(f)(3)) and report on target achievement in the TIP (section 450.326(d)), FHWA and FTA believe the involvement of Tribal governments should include involvement during the development of federally required performance targets for the national performance measures.

The AMPO and APTA commented that the final rule should recognize the unique timing, durations, and requirements of long-range statewide transportation plans, MTPs, and individual system transit asset management plans and that FHWA and FTA should not attempt to alter those unique processes to somehow make them fit neatly together. The FHWA and FTA agree with this comment. Consistent with MAP–21, FHWA and FTA developed phase-in provisions in the final rule (sections 470.226 and 450.340). The final rule takes into consideration the established planning update cycles for the States and the MPOs. The phase-in does not require a State or MPO to deviate from its established planning update cycle to implement changes made by this section. States and MPO shall reflect the changes made to their transportation plan and to the STIP or TIP not later than 2 years after the date of issuance of the final performance management rules for the performance management requirements.

The APTA commented that performance measures should remain unchanged over a number of years. The APTA commented that these performance targets are unlikely to change significantly from year-to-year so updating should not be necessary on an annual basis. The FHWA and FTA response to this comment is that it is outside of the scope of the final rule.

The ARTBA commented that prior to MAP–21, the mission of the Federal highway program was clouded, and that since MAP–21, the establishment of national performance measures by FHWA and FTA will form the basis for Federal highway investment. In response to this comment, FHWA and FTA reiterate that sections 450.206(c)(1) and 450.306(d)(1) in the final rule provide that the statewide and the metropolitan transportation planning processes shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. The commenter provided specific examples of suggested performance measures for consideration by FHWA and FTA. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The Capital Area MPO suggested that the 180-day deadline required for MPOs to select performance targets after the State and/or operator of public transportation sets performance targets should be changed to 2 years. The DC DOT commented that the 180-day period should be changed to 1 year to account for the fact that there are multiple States (DC DOT, MD DOT, and VA DOT) in the Washington, DC area, each of which may set different performance targets, and the MPO would set performance targets after the States.

The FHWA and FTA do not agree with these comments. The FHWA and FTA believe the final rule should reflect the 180-day statutory requirement and reiterate the importance of interagency coordination during the target setting process to achieve consistency of the State and MPO targets to the maximum extent practicable. In order to achieve the 1-year time frame for setting of State targets and the 180-day requirement for MPOs to set targets after the State sets targets, State and MPO coordination on target setting is critical. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The FMATS commented that after the initial round of State, MPO, and public operator of transportation target setting, it would be helpful for a deadline to be set by the States regarding target updates so that the MPOs and operators of public transportation have a predictable and scheduled deadline for their subsequent target updates. The FHWA and FTA response to this comment is that it is outside the scope of the final rule. The final rule and MAP–21 require coordination between the State, MPOs, and operators of public transportation when setting performance targets for the federally required performance measures.

The TX DOT commented that there should be one effective date for all of the performance management rules to enable the States and MPOs to work together and ensure the necessary data and analysis techniques are available. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The MAG commented that the NPRM does not clearly define the term ''system.'' It would be important to define the term if the measures are to be consistent across the different components of the system. The FHWA and FTA response to this comment is that the definition of the term ''system'' will vary depending on the type of program or performance measure being discussed. For the purposes of this final rule, the definition should remain flexible in order to preserve the

necessary distinctions in subsequent performance measure rules.

Several commenters (H–GAC, MARC, Maricopa Association of Governments, and NCTCOG/RTC) emphasized the importance of coordination among all metropolitan planning partners, including the States, MPOs, and operators of public transportation for successful implementation of performance management. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

At least two commenters (CT DOT and NJ DOT) suggested that FHWA and FTA provide sufficient flexibility such that a State and MPO might establish targets through the coordination process that are either the same or complementary. The FHWA and FTA response to this comment is that State and MPO targets are required to be consistent to the maximum extent practicable (section 450.206(c)(2)).

The NARC commented that the State or local agencies often have a decisive role in determining which projects are constructed. The NARC commented that this leaves MPOs in a difficult position in that they will be held accountable for progressing toward their stated targets, but are in a limited position to decide which projects actually get built.

The FHWA and FTA respond that this comment highlights the need for coordination between the States, MPOs, and operators of public transportation during the target setting process. This coordination should include the process of deciding investment priorities for the MPA that contribute toward achievement of the MPOs performance targets. It also highlights the importance of the MPO MTP and the TIP. When setting targets, MPOs should consider selecting targets in coordination with the State that are reasonable and achievable. The investment priorities that are identified by the MPO in cooperation with its member agencies in the metropolitan transportation plan and the TIP should support the achievement of the MPO's performance targets. As such, the cooperatively developed and adopted MTP and TIP that are prepared by the MPO become key documents for discussing the goals, objectives, performance measures, and targets for a metropolitan region. The projects and strategies in the cooperatively developed MTP and TIP should support achievement of the performance targets. The MPOs and State DOTs are accountable for meeting the performance-based planning and programming process requirements discussed in this final rule and 23 U.S.C. 134 and 135. The FHWA and FTA will periodically review MPO and State DOT accountability for the implementation of the performance-based planning and programming process requirements of this final rule as part of the TMA MPO planning certification reviews required under section 450.336 and the planning finding required under section 450.220. Under these same sections, MPOs and State DOTs are required to self-certify compliance with these performance-based planning and programming requirements as part of the broader requirements for transportation planning under 23 U.S.C. 134 and 135. Through the self-certifications, the certification reviews, and the planning finding, MPOs and States will be held accountable by FHWA and FTA for the implementation of the performance based planning process requirements of this rule.

Many comments were received on the topic of interagency coordination in relation to the new requirements for performance-based planning and programming in section 450.306(d). The DC DOT and the Northern New Jersey Transportation Planning Authority commented on the difficulty of coordinating target setting in situations where there may be multiple States, MPOs, and/or multiple operators of public transportation involved, such as in bi-State or tri-State metropolitan regions. The MTC, SACOG, SANDAG, SCAG, and SJCOG, commented on the difficulty of coordination on target setting when there are a large number of agencies. The MTC, SACOG, SANDAG, SCAG, and SJCOG further stated that funding constraints may make it difficult to move in the desired direction for many performance targets, and that they are concerned about the implementation costs and resources required of smaller MPOs. The WA State DOT commented that there is a need for more explicit explanations on the relationships and roles between the States and MPOs. The commenter further stated that it is unclear if MPOs are required to match the targets set by the State.

The FHWA and FTA respond that States and MPOs are each required to set performance targets for the federally required performance measures. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The Florida MPO Advisory Council and River to Sea TPO expressed their concern about the potential of a direct linkage between project funding and performance-based planning and programming. Specifically, they expressed concern that States that have not performed well in certain areas would receive larger shares of discretionary funding to help them address those areas where they underperform. The FHWA and FTA response to this comment is that neither the NPRM nor the final rule proposed to tie funding allocations for discretionary funding programs to performance.

The TriMet commented that individual transit agencies operate with widely differing conditions and that they must be allowed to set their own targets. The FHWA and FTA response to this comment is that transit agency target setting for specific transit related performance measures will be addressed in separate NPRMs and is outside the scope of the final rule.

The MD DOT commented that the implementation of the final rule, including the performance-based planning and programming provisions, should not undermine the shared goal of reducing project delivery time frames. The FHWA and FTA response to this comment is that the scope of the transportation planning process, as described in 23 U.S.C. 135(d)(2)(B), is supposed to support the national goals described in 23 U.S.C. 150(b) and 49 U.S.C. 5302(c). Reduced project delivery delay is one of the seven national goal areas identified in 23 U.S.C. 150(b). This is reflected in the final rule at section 450.206(c)(1).

The Memphis Urban Area MPO and the NRDC commented that they would like to see the standardization of data collection at the State or Federal level as part of the implementation of performance management. The FHWA and FTA response to this comment is that it is outside the scope of the final rule.

The MN DOT asked if there is a distinction made between MPOs for regions with populations below 200,000 and MPOs for TMAs for coordination efforts on target setting. The FHWA and FTA response to this comment is that all States and all MPOs, regardless of size, are required to set performance targets and coordinate with each other or operators of public transportation when setting performance targets.

Several commenters (NARC, San Luis Obispo COG, SSC RTC, and WFRC) suggested that locally developed goals, performance measures, and targets should also be considered in the metropolitan planning process. The FHWA and FTA agree with this comment. The States and MPOs are encouraged to include locally developed goals, performance measures, and targets as part of the metropolitan transportation planning process.

The River to Sea TPO commented that it is concerned that performance-based planning will limit their decisionmaking and ability to take into account other factors such as economic development and redevelopment. In response, FHWA and FTA encourage, but do not require, States and MPOs to include goals, objectives, and performance measures in their performance-based transportation planning processes that are locally determined; provided that, at a minimum, they include the performance measures that are federally required.

The Westchester County Department of Public Works and Transportation commented that MPOs should have the flexibility to establish their own region-specific targets, and each transportation operator should be afforded the flexibility to address requirements to best suit their unique characteristics. The commenter further observed that the size and scale of a particular transportation system could lend itself to significantly different targets than what another entity might use for a different sized system. The FHWA and FTA response to this comment is that States, MPOs, and operators of public transportation have the flexibility to set their own targets to suit their unique needs for those targets outside of the federally required performance measures. For the federally required measures, this comment is outside the scope of the final rule.

The Wilmington MPO commented that it has concerns about additional burdens being placed on MPO member jurisdictions in terms of data collection for the State Asset Management Plan for the NHS and other aspects of performance-based planning. The FHWA and FTA note that this comment is outside the scope of the final rule.

The Sierra Club commented that it supports the new focus on performance-based planning, but is concerned that it should be implemented in an environmentally sound manner and not used for retribution purposes. They commenter further commented that performance targets and outcomes should be appropriate for the communities served and consistent with the ridership goals of operators of public transportation. The commenter requested an explanation of how FHWA and FTA expect to perform their oversight roles to ensure that the results are truly equitable and will achieve national and State goals.

In response to this comment, FHWA and FTA agree that a performance management based approach to planning should be conducted in an environmentally sound manner. The FHWA and FTA also agree that in a performance-based approach to planning, it is important to support all modes of transportation, including public transportation. With respect to the question on how FHWA and FTA expect to perform oversight for performance-based planning, FHWA and FTA will include consideration of performance-based planning along with the other federally required planning process elements from 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304 when conducting planning certification reviews of TMAs and when preparing a State planning finding.

The Maui DOT commented that FHWA and FTA may have dramatically underestimated the costs of implementing the final rule for smaller MPOs. The commenter further stated that smaller MPOs often have limited resources and dual roles. The FHWA and FTA note that MPOs do have the option of adopting and supporting State performance targets in lieu of setting their own targets. This might be particularly helpful to the smaller MPOs with limited staff, budgets, and resources. See RIA section for more discussion on this topic.

Several commenters (Community Labor United, Enterprise Community Partners, Front Range Economic Strategy Center, National Association of Social Workers, Partnership for Working Families, PolicyLink, Public Advocates, and United Spinal Association) suggested that the use of performance measures and prioritization of projects should encourage the States and MPOs to consider the transportation needs of traditionally underserved populations and the expansion of economic opportunity for low-income and minority communities and through improved transportation. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The National Trust for Historic Preservation commented that this section should also include historic resources as one of the planning factors to show that that historic preservation may be related to the planning process. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The San Luis Obispo COG is concerned that the NPRM imposes different requirements on the State and MPOs. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The VA DOT commented that the final rule should be led by criteria FHWA and FTA will be developing in response to 23 U.S.C. 135(h). Section 23 U.S.C. 135(h) requires FHWA and FTA to establish criteria to evaluate the effectiveness of the performance-based planning processes of the States and to make a report to Congress evaluating the overall effectiveness of performance-based planning and programming as a tool for guiding transportation investments. The FHWA and FTA response to this comment is that this rule discusses the requirements for States and MPOs to implement a performance-based planning and programming process. The FHWA and FTA criteria for evaluating the effectiveness of the performance-based planning and programming processes of the States and MPOs will be based on the requirements for performance-based planning and programming contained in this final rule.

The Partnership for Active Transportation and Sierra Club stated that health should be integrated into the transportation planning process. In response to this comment, FHWA and FTA conduct research and develop resources on the integration of health into transportation. These resources are available at: *http://www.fhwa.dot.gov/planning/health_in_transportation/*. Based on this comment, no changes have been made to the final rule. See section VI.(B) (recurring comment themes) for more discussion on this topic.

Several commenters suggested specific performance measures that they felt should be considered by FHWA and FTA. See section VI(B) (recurring issues) for more discussion on this topic.

Section 450.308 Funding for Transportation Planning and Unified Planning Work Programs

The Board of the French Broad River MPO, DC DOT, DRCOG, Maui MPO, DRCOG, National Trust for Historic Preservation, NC DOT, North Front Range MPO, NYMTC, Puget Sound Council of Governments (PSCOG), TX DOT, WFRC, and Wilmington MPO provided comments on this section. The Board of the French Broad River MPO, DC DOT, NC DOT, NYMTC, PSRC, WFRC, and Wilmington Urban Area MPO noted that the MPO transition to performance-based planning will be a challenge for MPOs and will require additional staff time without an allocation of additional funding. One commenter correctly noted that in addition to PL funds, metropolitan transportation planning activities undertaken by MPOs, including performance-based planning may be funded through other Federal-aid fund categories such as 23 U.S.C. 104(d), 49

U.S.C. 5305(d), and 49 U.S.C. 5307. As described in section 450.308 of the final rule, the States may provide funds received under 23 U.S.C. 104(b)(2) and 23 U.S.C. 505 to MPOs for metropolitan transportation planning.

The Maui DOT commented that they feel that the FHWA and FTA cost estimates for the implementation of the additional requirements related to performance management may be low. See the RIA section for further discussion on this issue. No changes were made to the final rule based on these comments.

Section 450.310 Metropolitan Planning Organization Designation and Redesignation

The FHWA and FTA received comments from 68 entities (AASHTO, AMPO, APTA, ARC, BART, California Association for Coordinated Transportation, CALTRANS, Charlotte MPO, Community Labor United, CT DOT, DVRPC, Enterprise Community Partners, Florida MPO Advisory Council, FMATS, Front Range Economic Strategy Center, H–GAC, Lincoln MPO, MA DOT, Macatawa Coordinating Council, MARC, Maricopa AOG, MD DOT, MI DOT, Miami-Dade MPO, MO DOT, MTC, NACTO, NARC, National Association of Social Workers, National Housing Conference, National League of Cities, NC DOT, NCTCOG/RTC, New York Association of MPOs, NJ DOT, NJTPA, North Front Range MPO, Northwestern Indiana Regional Planning Commission (NIRPC), NRDC, NYMTC, NYS DOT, PA DOT, Partnership for Working Families, Policy Link, Public Advocates, Richmond Area MPO, River to Sea TPO, SACOG, Safe Routes to School Partnership, SANDAG, San Joaquin Transit, San Luis Obispo MPO, Santa Barbara Metropolitan Transit District, SCAG, Sierra Club, SJCOG, South Florida Regional Transit Authority, Southeast Wisconsin MPO, TN DOT, TriMet, TX DOT, US Travel Association, WA State DOT, Westchester County Department of Public Works and Transportation, WFRC, WI DOT, and WMATA) on the proposed revisions to section 450.310. Section 450.310, consistent with MAP–21 and FAST requirements, would require the structure of an MPO serving a TMA to include representation by operators of public transportation, in addition to the officials identified in the existing regulations; and that each MPO serving a TMA satisfy the structure requirements no later than October 1, 2014. Commenters provided their perspectives and recommendations on a range of issues related to the structure of MPO policy boards that serve an area designated as a TMA. Nine commenters (Community Labor United and the Public Transit-Public Good Coalition, Enterprise Community Partners, Front Range Economic Strategy Center, National Association of Social Workers, NRDC, Partnership for Working Families, Policy Link, Public Advocates, Safe Routes to School Partnership, and the National Housing Conference) recommended that the final rule require that MPO boards be more representative of the economic and racial make-up of the communities they serve to help ensure that transportation planning is sensitive to the needs of all residents.

The FHWA and FTA note that the final rule will continue to require MPOs, through their public participation processes, to seek out and consider the needs of those traditionally underserved by existing transportation systems, such as low-income and minority communities, who may face challenges accessing employment and other services. The final rule requires MPOs to periodically review the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process. Through certification reviews of MPOs in areas that serve TMAs, FHWA and FTA work to confirm that these MPOs are meeting their public participation requirements.

However, 23 U.S.C. 134(d)(1)(A) and 49 U.S.C. 5303(d)(1)(A) require that MPOs be designated either 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) or by procedures in applicable State or local laws. These sections also provide that each MPO policy board that serves an area designated as a TMA shall consist of local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by operators of public transportation; and appropriate State officials. The FHWA and FTA are fully committed to an inclusive transportation planning process. However, the statute assigns the authority to the Governor and local government officials to decide which local elected officials, officials of public agencies, and appropriate State officials will serve on an MPO policy board; or to procedures established by applicable State or local law.

The U.S. Travel Association requested that each MPO or regional planning board include a representative of the travel industry, noting that it has a deep impact on the Nation's economy and workforce. The data collected by the travel industry provides unique insights into transportation trends and infrastructure needs across the country.

In response, FHWA and FTA reiterate that the statute [26] requires that each MPO that serves an area designated as a TMA must consist of local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by operators of public transportation; and appropriate State officials, except those MPOs that are exempt under 23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3). The FHWA and FTA note that the final rule does include a new planning factor in sections 450.206(a)(10) and 450.306(b)(10) on enhancing travel and tourism for States and MPOs to consider and implement as part of their transportation planning processes as provided for in FAST sections 1201 and 1202 and in 23 U.S.C. 134(h)(1)(J) and 135(d)(1)(J). It also includes a new requirement in section 450.316(b) that MPOs should consult with agencies and officials responsible for tourism when developing metropolitan transportation plans as described in FAST Act section 1201 and in 23 U.S.C. 134(g)(3)(A).

The WA State DOT recommended revising section 450.310(c) to specify that only urbanized areas with more than 200,000 individuals can be a TMA rather than allowing a Governor and MPO to request that an urbanized area be designated a TMA. In response to this comment, FHWA and FTA note that the statute at 23 U.S.C. 134(k)(1)(B) and 49 U.S.C. 5304(k)(1)(B) provides that the Secretary shall designate any additional area at the request of the Governor and the MPO designated for the area. Consequently, no changes are made to this section based on this comment.

The proposed regulatory language in section 450.310(d) that ''each metropolitan planning organization that serves an area designated as a transportation management area shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation, and appropriate State officials'' replicates the statutory language of 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). The MAP–21 further provides that an MPO may be restructured to meet the requirement of including representation by operators of public transportation without

[26] 23 U.S.C. 134(d)(1)(a) and 49 U.S.C. 5303(d)(1)(a).

undertaking a re-designation (an action that would require an agreement between the Governor and units of general purpose government that together represent at least 75 percent of the existing planning area population including the largest incorporated city). Consequently, the final rule provides that MPOs that serve a TMA must include a formally designated representative of operators of public transportation.

The FHWA and FTA also proposed in the preamble to the NPRM that representatives of operators of public transportation would have equal decisionmaking rights and authorities as other officials who are on the policy board of an MPO that serves a TMA. The BART, CALTRANS, Charlotte RTPO, Enterprise Community Partners, MA DOT, MO DOT, National Housing Conference, NCTCOG/RTC, NRDC, NYMTA, River to the Sea TPO, Santa Barbara Transit, SFRTA, Sierra Club, SJRTD, and WFRC, expressed support for the proposal that a representative of operators of public transportation is both included on MPO policy boards and given equal decisionmaking rights. The MA DOT expressed support for the requirement for public transportation membership on the policy board of an MPO and the equality of decisionmaking rights by transportation officials or their representative staff. The MA DOT also noted that each of the 10 MPOs and 3 RTPOs in the Commonwealth of Massachusetts have active representation and participation of their respective public transportation operators on the boards by regional transit administrators and/or transit staff.

The FHWA and FTA believe that the long-standing requirement to include public transportation representation on each MPO serving a TMA, made explicit in MAP–21 and FAST, supports the new performance requirements for operators of public transportation, including: The coordination of MPO targets with operators of public transportation, the coordination of public transportation operator targets with MPOs, and the integration of public transportation performance plans into the metropolitan transportation planning process. Given these new performance responsibilities, the FHWA and FTA believe that operators of public transportation need to participate in the MPO's decisionmaking process. The FHWA and FTA do not concur with the comment by the DVRPC that there are a number of effective ways for transit agencies to be fully represented in the metropolitan planning process apart from voting membership on the MPO board. Consequently, the final rule provides that, similar to section 1201 of the FAST Act which amends 23 U.S.C. 134(d)(3)(C), the representative of public transportation has responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in section 450.310(d)(1).

The MA DOT sought more clarity covering what constitutes a transit provider since there are sometimes a wide range of service providers in a single MPO, including RTAs, TMAs, and health care transit operations. In response, FHWA and FTA note that the final rule defines the term ''public transportation operator'' in section 450.104. According to this definition, a public transportation operator is the public entity or government approved authority that 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 a 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 sightseeing, school bus, charter, certain types of shuttle service, intercity bus transportation, or intercity passenger rail transportation provided by the National Railroad Passenger Corporation (also known as ''Amtrak'').

The FHWA and FTA stated in the preamble to the NPRM that it is up to the MPO, in cooperation with operators of public transportation, to determine how this representation will be structured and established.

The APTA expressed appreciation for this broad latitude afforded to MPOs as it accounts for varying governance models. However, it requested that FHWA and FTA categorically state that an MPO member based on elective or appointed office that coincidentally sits on a transit board does not fulfill the MAP–21 requirement for representation by operators of public transportation. This position is supported by all other operators of public transportation who submitted comments to the docket (BART, FMATS, NYMTA, Orange County Transit Authority, Santa Barbara Transit Authority, SJCOG, TriMet, and WMATA, and the Sierra Club).

The BART noted that ''While many city and county representatives currently serving on MPOs are sincere in their efforts to incorporate the needs and perspectives of public transit, it is only through direct participation of the providers themselves that MPOs can best understand the complex and technical needs of public transit providers.'' The WMATA noted that it could not easily imagine how the transportation modes in general, and public transportation in particular, can be assured of exercising the equal decisionmaking rights and authorities essential to realizing the MAP–21 intentions if MPO board members are allowed to ''wear two hats.'' However, the statute was changed in the FAST Act to explicitly allow that the representative of an operator of public transportation may simultaneously represent a local municipality. Therefore the final rule in section 450.310(d)(3)(ii) reflects section 1201 of the FAST Act (23 U.S.C. 134(d)(3)(B)) which allows, subject to the bylaws or enabling statute of the MPO, a representative of an operator of public transportation may also serve as a representative of a local municipality.

Thirty-five of the respondents (AAHSTO, ARC, CT DOT, DVRPC, Florida MPO Advisory Council, H–GAC, MA DOT, Macatawa Area Coordinating Council, MARC, MI DOT, Miami-Dade MPO, MTC, NACTO, NARC, National League of Cities, NC DOT, NIRPC, NJTPA, NYMTA, NYMTC, NYS DOT, PA DOT, River to Sea TPO, SACOG, San Luis Obispo COG, SANDAG, Southeastern Wisconsin RPC, Westchester County Department of Public Works and Transportation, and WI DOT) requested that the final rule ensure MPOs have maximum flexibility in determining how they are constituted and operate. Fifteen MPOs (ARC, DVRPC, Florida MPO Advisory Council, H–GAC, Macatawa Area Coordinating Council, MARC, MTC, NIRPC, NJTPA, NYMTC, River to Sea TPO, SACOG, SANDAG, SCAG, SJCOG, and Southeastern Wisconsin RPC), three MPO associations (AMPO, Florida MPO Advisory Council, and NARC), and one State (WI DOT) requested that the final rule provide each MPO with the maximum latitude to determine how operators of public transportation are represented in the decisionmaking process, including allowing a single official to serve in multiple capacities. Five California MPOs (MTC, SACOG, SANDAG, SCAG, and SJCOG) expressed the view that the language included in the MAP 21 provides broad flexibility as to how MPOs may comply with the requirement to include representation by operators of public transportation. They argued that Congress did not prescribe a specific method for representation; require that all or any particular kinds of transit operators serving a region be represented; or require that a seat be dedicated solely to

a board member who is appointed by a transit agency. The government of Westchester County, NY noted its long history of elected officials effectively representing both the county's residents and its transit system on the MPO. It strongly believes that, via a single vote, an elected official can serve in multiple capacities on an MPO. The NYMTC argued against any requirement that would give an MPO member more than one non-independent vote and affirmed that State and local elected officials have effectively represented multiple modes of transportation since the MPO was established. The ARC argued that it would not be appropriate for a staff member of a transit agency governed by a city or county to serve on a policy body with the chief elected official from that same jurisdiction. The ARC argued that it would place the transit representative in a subordinate position, potentially compromising the expertise and knowledge that the operator could bring to policy discussions and votes. The River to Sea TPO argued that requiring transit agency staff to sit as a voting member on an MPO board along with elected officials who are members of their own governing board would potentially create a conflict with Florida's Sunshine Law and make it difficult for staff to brief their policy board on transit matters.

The FHWA and FTA concur that a single official can serve in multiple capacities, which would be particularly appropriate in instances where the local elected official represents a local government that operates a transit system. Therefore, FHWA and FTA revised the final rule to provide that, consistent with the FAST Act's amendment to 23 U.S.C. 134(d)(3)(B), subject to the bylaws or enabling statute of the MPO, a representative of a provider of public transportation may also serve as a representative of a local municipality (section 450.310(d)(3)(ii)). The final rule in section 450.310(d)(3)(i) reflects the revision to 23 U.S.C. 134(d)(3)(A) made by FAST, which provides that the designation or selection of officials or representatives under section 450.310(d)(1) shall be determined by the MPO according to the bylaws or enabling statute of the organization.

Eight MPOs (Miami-Dade MPO, MTC, NIRPC, River to Sea TPO, SACOG, SANDAG, SCAG, and SJCOG) asserted that their governing structures were codified by State law, which would preclude them from changing the structure of their policy board to include voting representation by operators of public transportation. As noted by one industry association, NARC, as many as one-quarter of all MPOs that serve a TMA are created by, and the constitution of their policy board is outlined in, State statute. Thus, to change the structure of the MPO board would require a change in the State enabling legislation, which may result in unintended consequences.

In response, FHWA and FTA agree that a change in State enabling legislation may be necessary to bring an MPO into compliance with the structuring requirements of 23 U.S.C. 134(d)(2), 49 U.S.C. 5303(d)(2), and the final rule. This would be the case if State law would prevent an MPO from satisfying the statutory structure requirement. An exception is available for those MPOs that qualify under the ''grandfathering'' provision in 23 U.S.C. 134(d)(4). Section 134(d)(4) of 23 U.S.C. provides that 23 U.S.C. 134(d) should not be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities (A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and (B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law. The grandfathering provision was first enacted in 1991 and remains relatively unchanged.[27]

Such MPOs may continue to operate without complying with the statutory structure provisions in 23 U.S.C. 134(d)(2), 49 U.S.C. 5303(d)(2), and the final rule. Alternatively, a grandfathered MPO may restructure to meet the statutory requirements without losing its protection under the grandfathering provision if it can do so without a change in State law with respect to the structure or organization of the MPO. The statute (23 U.S.C. 134(d)(6)(2)) and section 450.310(d) of the final rule, explicitly authorize MPOs to restructure to meet the requirements of 23 U.S.C. 134(d)(2) and 49 U.S.C. 5303(d)(2) without undertaking a redesignation. However, FHWA and FTA emphasize that an exempt MPO is still required to provide the officials described in 23 U.S.C. 134(d)(2) an opportunity to actively participate in the decision making processes of the MPO in accordance with 23 U.S.C. 134(i)(6)(A), (j)(1)(B), and (j)(4).

The NARC sought clarification of FHWA and FTA application of the grandfathering exemption. The NARC suggested that the statutory language means that ''any MPO operating under a State statute on [December 18, 1991] is exempt from the requirements of 450.310(d)(1),'' and stated that it has found no evidence of the FHWA and FTA interpretation as presented. The NARC requested that FHWA and FTA clarify that any MPO operating under a State statute on that date is exempt from the requirements of section 450.310(d)(1). Five California MPOs (MTC, SACOG, SANDAG, SCAG, and SJCOG) also took issue with the interpretation that a change to the board structure since December 18, 1991, disqualifies an MPO from falling under the grandfather provision.

In response, FHWA and FTA note the grandfathering provision in 23 U.S.C. 134(d)(4) and 49 U.S.C. 5303(d)(4), was first enacted in 1991 and remains relatively unchanged. As explained in the June 2, 2014 Policy Guidance on Metropolitan Planning Organization (MPO) Representation, 79 FR 31214. The FHWA and FTA have determined that the grandfathering provision does still apply to any MPO that: (1) Operates pursuant to a State law that was in effect on or before December 18, 1991; (2) such State law has not been amended after December 18, 1991, with regard to the structure or organization of the MPO; and (3) the MPO has not been designated or re-designated after December 18, 1991. 79 FR 31216. The agencies reiterated the interpretation in the NPRM for this final rule. Subsequently, Congress enacted the FAST Act, which included amendments to 23 U.S.C. 134 and 49 U.S.C. 5303. The FAST Act clarified requirements relating to an MPO's designation or selection of officials or representatives to an MPO in light of the FHWA/FTA Policy Guidance and NPRM, but did not amend the grandfathering provision. Congress' enactment of these statutory changes while leaving the grandfathering provision intact is a strong indication that Congress concurs with the FHWA and FTA interpretation of that provision. The provision is included in the final rule in section 450.310(d)(4). Because of changes to the structuring requirements of MAP–21 and FAST, FHWA and FTA are including the grandfathering provision in the Final Rule to clarify when the provision may be exercised by an MPO.

The NARC's interpretation of the exemption or grandfather provision would apply incorrectly the December 18, 1991, cutoff date to the MPOs rather than their authorizing statutes, and would grandfather any MPO operating under a State statute as of that date, regardless of subsequent changes in the State law. To the contrary, the grandfather provision's conditional clause ''under any State law in effect on

[27] Section 1024, Public Law 102–240, December 18, 1991. codified at 23 U.S.C. 134(b)(3).

December 18, 1991'' applies the cutoff date to the State law under which an MPO operates, not the MPO itself. A State law or amendment that was enacted after the cutoff date was not in effect on the cutoff date.

At the request of APTA, FHWA and FTA clarified that the structure of MPOs that serve TMAs and were designated or re-designated as an MPO after December 18, 1991, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, and appropriate State officials. As of October 2014, the structure of these MPOs must include representation by operators of public transportation.

The APTA also requested that FTA and FHWA require that any claim for this exemption must be publicly documented in order for it to be effective. The APTA stated that some MPOs claim the exemption with no public justification or discussion. The FHWA and FTA agree that an MPO that serves a TMA must provide documentation to support a claim for an exemption to the MPO structure required by statute and regulation. The FHWA and FTA require this documentation to be provided as part of its certification review process.

Multiple respondents from Florida (Florida MPO Advisory Council, Miami-Dade MPO, and SFRTA) highlighted the recent revisions to Florida State Law 339.175, which allows the structure of MPOs in the State to be in alignment with the expectations of the MAP–21, to include ''representation by providers of public transportation.'' The Florida statute expands the maximum voting membership from 19 to 25 apportioned members. It continues to require that voting members of an MPO be elected officials of general-purpose local government and that an MPO may include, as part of its apportioned voting members, an official of an agency that operates or administers a major mode of transportation. Interestingly, the Florida statute addresses the ''two hats'' issues raised by many of the respondents to this docket. It provides that in metropolitan areas in which transportation authorities or agencies have been created by law, the authority may be provided voting membership on the MPO. In instances where the transportation operator is represented by elected officials from general-purpose local governments, the MPO must establish a process to express and convey the collective interests of the public transportation agencies that provide transit service in their MPA.

The MA DOT noted that there are several RTAs within the Commonwealth of Massachusetts that service multiple TMAs in varying capacities. The MA DOT requested that the final rule clearly define the MPO involvement of the public transportation representative in regions that the RTA provides services but is not exclusively located. In response, FHWA and FTA believe that the representative of operators of public transportation needs to express and convey the collective interests of the public transportation agencies that provide transit service in their MPA.

As required by MAP–21, the final rule states that each MPO that serves a TMA must include representation by operators of public transportation no later than October 1, 2014. The NARC sought direction as to what MPOs that serve TMAs must do as of October 1, 2014. Another industry association, AMPO, requested that the final rule recognizes that many MPOs are subject to State laws governing the MPO policy board membership and that compliance may require amendments to State law. The AMPO requested that the final rule include more time for these MPOs to work with their States to adjust policy boards if necessary. In response, FHWA and FTA expect that, at a minimum, each MPO that serves a TMA identify a voting member of their board who represents the collective interests of operators of public transportation in the MPA by October 1, 2014. The final rule supersedes the FHWA and FTA June 2, 2014, Policy Guidance on MPO Representation.

Two commenters (Enterprise Community Partners and Sierra Club) requested that the final rule requires all operators of public transportation in an MPA to be on the board of MPOs that serve TMAs. The MAP–21 provides for representation by operators of public transportation. The FHWA and FTA believe that it is the MPO's decision whether to include all operators of public transportation on its decisionmaking body.

In addition to the representation by providers of public transportation provision, FHWA and FTA sought comments on whether any of the following questions should be addressed in the regulation and, if so, how.

Should the regulations clarify who appropriate officials may be?

Of the thirteen commenters (ARC, CT DOT, Florida MPO Council, H–GAC, Miami-Dade MPO, MTC, NJTPA, NYMTC, NYS DOT, River to Sea TPO, SACOG, SANDAG, SCAG, SJCOG, TX DOT, and WI DOT) who submitted a response to the question, two States (MA DOT and WI DOT) requested that the final rule clarifies who an appropriate official may be. The WI DOT noted that MPOs throughout Wisconsin have approached this issue of including representation by operators of public transportation on their MPO boards differently. Some designate officials that are already on the board and have transit interests as the transit representation while others are working to add additional membership to their MPOs. The WI DOT recommends allowing MPOs the discretion to make these representation decisions at a local level.

The FHWA and FTA concur. The final rule provides MPOs with the flexibility to determine how best to include representation by operators of public transportation. The FHWA and FTA will not specify who appropriate officials may be in the final rule.

Can staff members or other alternates be substituted for the 'officials' identified in paragraph (d)(1)?

Twenty-eight commenters (AASHTO, AMPO, ARC, CT DOT, Florida MPO Advisory Council, FMATS, H–GAC, MD DOT, MI DOT, Miami-Dade MPO, MTC, NARC, NCTCOG/RTC, NJ DOT, NJTPA, NYMTA, NYMTC, NYS DOT, Richmond Area MPO, River to Sea TPO, SANDAG, SCAG, SJCOG, TN DOT, TX DOT, WI DOT, and WMATA) responded to this question. Three MPOs (ARC, FMATS, and NCTCOG/RTC) expressed concern that a staff member or other alternate be substituted for officials on the MPO decisionmaking body.

The ARC stated that it does not believe it is appropriate for staff members of transit agencies to have equal standing on policy committees as elected and appointed officials, asserting that clear lines of demarcation in the decisionmaking hierarchy need to be maintained through committees comprised exclusively of technical staff or elected/appointed policy officials. The NCTCOG/RTC believes that staff members or other non-elected alternates should not be substituted for local elected officials in section 450.310(d)(1) due to the policy making function of the MPO policy board. The NCTCOG and RTC requested that FHWA and FTA carefully consider this question in the context of accountability to the public. They noted that the strength of MPO policy making is a result of its policy board being made up of primarily local elected officials who are directly accountable to the voting public. However, in situations where modal operators are not governed by an elected body, MPO policy boards should have

discretion to determine the appropriate level of representative for these entities. Another MPO, FMATS, noted that as this requirement only applies to TMAs, staff members or alternates should not be allowed to participate because larger MPOs would have sufficient representation from other entities' officials and so additional representation of public transportation would not skew the policy board. The Florida MPO Advisory Council believes that alternates for officials identified in subparagraph (d)(l) should be of the same general background (*i.e.,* a local elected official should act as the alternate for another local elected official) and that any clarifying language should state as such.

Multiple respondents noted that it is their current practice to allow staff members or other alternates to substitute for the officials identified in subparagraph (d)(1). Per an MOU among NYMTC member agencies, all members, including elected officials, may be represented at council meetings by designated substitutes, provided such designation has been made in writing to the Secretary of NYMTC. The NYMTC recommends that FHWA and FTA continue to allow these designees to be substituted for officials identified in subparagraph (d)(1) for purposes of voting on council business. The NYMTA requested that the term ''local official'' refer to elected or appointed officials of general purpose local government with responsibility for transportation, and that this include the elected or appointed official's formally designated proxy.

The TN DOT noted that all MPOs in Tennessee allow for policy board members to appoint a proxy. Not being able to do this would limit the ability of the MPOs to conduct official business requiring a quorum of members. Under the NJTPA by-laws, each elected official may appoint one designated alternate. This requires notification in writing to the NJTPA. The NJTPA notes that this arrangement allows for greater flexibility and participation by the board's member jurisdictions and agencies and should continue to be allowed.

Three respondents (MA DOT, Richmond Area MPO, and WI DOT) sought clarification as to who can serve as an official on the MPO. The MA DOT sought clarity regarding public transportation representative designation and latitude to designate another person who may perform duties on their behalf. The WMATA stated that an official in any of the three statutory MPO board categories should be able to expressly delegate routine duties to qualified staff but suggests that future guidance strongly encourage such officials to commit themselves to attentive and direct engagement with policy-making efforts by their MPO boards. The majority of respondents to this question (AASHTO, AMPO, CT DOT, H–GAC, MD DOT, MI DOT, Miami-Dade MPO, MTC, NARC, NYS DOT, SACOG, SANDAG, SCAG, TX DOT, WI DOT, and WMATA) support the position that the decision whether staff members or other alternates may be substituted for the officials identified in subparagraph (d)(1) should remain local and be resolved at the State or local level.

In response, FHWA and FTA concur with the majority of respondents that the decision as to whether staff members or other alternates may be substituted for the 'officials' identified in subparagraph (d)(1) should remain local and be resolved at the State or local level.

Should the regulations provide more specificity on how each of the officials identified in paragraph (d)(1) should be represented on the MPO?

While the WI DOT indicated that the final rule should provide more specificity on how each of the officials identified in subparagraph (d)(1) (*i.e.,* local elected officials, officials who operate major modes of transportation, and appropriate State officials), the other 21 respondents to this question (AASHTO, ARC, CT DOT, Florida MPO Advisory Council, FMATS, MD DOT, MI DOT, Miami-Dade MPO, MTC, NARC, NJTPA, NYMTC, NYS DOT, River to Sea TPO, SACOG, SANDAG, SCAG, SJCOG, TX DOT, and Westchester County, NY) urged FHWA and FTA to provide MPOs with maximum flexibility as each MPO's circumstances is unique.

The FHWA and FTA concur with these respondents and will not include more specificity on how each of the officials identified in subparagraph (d)(1) should be represented on the MPO in the final rule. However, at the request of WI DOT and CT DOT, FHWA and FTA will provide additional guidance on this topic, separate from this final rule.

Can an official in paragraph (d)(1) serve in multiple capacities on the MPO board (*e.g.,* can a local elected official or State official serve as a representative of a major mode of transportation)?

Thirty-one respondents (AASHTO, APTA, ARC, CT DOT, Florida MPO Advisory Council, FMATS, H–GAC, MARC, MD DOT, MI DOT, Miami-Dade MPO, NARC, NCTCOG/RTC, NJ DOT, North Front Range MPO, NYMTA, NYMTC, River to Sea TPO, SACOG, SANDAG, SCAG, Sierra Club, SJCOG, TN DOT, TriMet, TX DOT, Westchester County, NY, WI DOT, and WMATA) provided their perspectives on the question of whether an official in subparagraph (d)(1) can serve in multiple capacities on the MPO board.

Six respondents (APTA, FMATS, NYMTA, Sierra Club, TriMet, and WMATA) argued definitively that public officials should not be asked, or allowed, to have ''divided loyalties.'' The Sierra Club claimed that such an attempt could well rise to a legal situation of incompatibility of offices. The TriMet, whose general manager has long held a voting seat on the Portland MPO from which it effectively advocates for the interests of operators of public transportation in the region, shared this perspective. It noted that assigning a local official, tasked with representing their jurisdiction on the MPO, to advocate a different, perhaps contrary, position as the representative of public transportation operators creates an inherent conflict of interest. The FMATS also cited the potential for conflict of interest, noting that a city or county mayor may appoint the transportation official which could inhibit the transportation official in making decisions that are truly in the best interest of the operators of public transportation. The North Front Range MPO stated that if the transit agency is a stand-alone entity and not part of a local government that is already a voting member of the MPO, a separate membership with equal voting rights makes sense. The APTA, NYMTA, Sierra Club, TriMet, and WMATA requested that FTA and FHWA categorically state that an MPO member based on elective or appointed office that coincidentally sits on a transit board does not fulfill the MAP–21 requirement. The APTA, NYMTA, Sierra Club, TriMet, and WMATA all supported the position that the transit representative must be a member of the MPO solely as the transit representative.

Eight other respondents (MTC, NYMTC, NYS DOT, SACOG, SANDAG, SCAG, SJCOG, and Westchester County, NY) noted that in their experience, board members who are local elected officials and also sit on independent or municipal transit agencies frequently bring the priorities and perspectives of the transit agency on which they serve to the MPO decisionmaking table. The TN DOT noted that some MPOs have a requirement that only elected officials serve on the policy board, the thinking being that only elected officials, accountable to the voting public, should

set policy. It proposed that in such instances, the MPO may insist that the requirement to have representation for operators of public transportation be fulfilled by an elected official who serves on the governing board of an operator of public transportation, or who oversees one that operates as part of city or county government.

The FHWA and FTA note again that any MPO that serves a TMA that was designated/re-designated after December 18, 1991, shall consist of: Local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area including representation by operators of public transportation; and appropriate State officials. Both the Florida MPO Advisory Council and the River to Sea TPO cited the Florida statute [28] which specifies that, where representatives of operators of public transportation are to be represented by elected officials from general-purpose local government, the MPO shall establish a process by which the collective interests of such agencies are expressed and conveyed.

The majority of respondents (AASHTO, ARC, CT DOT, H–GAC, MARC, MD DOT, MI DOT, Miami-Dade MPO, MTC, NARC, NCTCOG/RTC, NJ DOT, NYS DOT, River to Sea TPO, SACOG, SANDAG, SCAG, SJCOG, TN DOT, TX DOT, and Westchester County NY) urged FHWA and FTA to provide maximum flexibility to MPOs in designating representation by operators of public transportation.

The FHWA and FTA will provide maximum flexibility to MPOs in designating representation by operators of public transportation. The final rule provides that the official(s) who represents the operators of public transportation in the MPA may be an official of an agency that operates or administers public transportation in the metropolitan area or an elected official from general-purpose local governments.

Should the regulations include more information about MPO structure and governance?

The twenty-four commenters (AASHTO, AMPO, ARC, CT DOT, FMATS, H–GAC, MD DOT, Miami-Dade MPO, MTC, NARC, NJ DOT, NJTPA, North Front Range MPO, NYMTA, NYMTC, NYS DOT, SACOG, SANDAG, SCAG, SJCOG, TX DOT, Westchester County, NY, and WI DOT) who provided a response to this question universally requested that FHWA and FTA not include more information about MPO structure and governance in the final rule. In response, the final rule does not include more information about MPO structure and governance. However, per the request of CT DOT and WI DOT, FHWA and FTA will provide additional guidance on this topic, separate from the final rule.

Section 450.312 Metropolitan Planning Area Boundaries

Section 450.312 discusses MPA boundaries. The WA State DOT provided comments on this section. The commenter was concerned that in situations where there are bi-State MPOs and/or where multiple MPOs straddle State boundaries, each MPO might have a different format for reporting on system performance. The WA State DOT was concerned that it will be difficult to coordinate system performance reporting responses and it will create problems for all involved.

In response to this comment, FHWA and FTA note that section 450.312 strongly encourages the States, MPOs, and operators of public transportation to coordinate transportation planning for the entire multi-State area. Section 450.314(f) of the final rule provides that where the boundaries of the urbanized area or MPA extend across State lines, the States, appropriate MPOs, and operators of public transportation must coordinate transportation planning for the entire multi-State area and may enter into agreements or compacts to do so. See discussion in section 450.314, metropolitan planning agreements, for more specific discussion on State, MPO, and operator of public transportation coordination on performance-based planning. (See also section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.) This would help to ensure consistency when there are multiple MPOs in a multi-State region. The FHWA and FTA have made no changes to the NPRM language for section 450.312 in the final rule.

Section 450.314 Metropolitan Planning Agreements

Section 450.314 discusses the requirement that the States, MPOs, and the operators of public transportation serving an MPA cooperatively establish a metropolitan planning agreement. These agreements determine the mutual responsibilities of the parties in carrying out the metropolitan transportation planning process. Forty-three commenters (AASHTO, Albany MPO, AMPO, APTA, ARC, Board of the French Broad River MPO, CALTRANS, Charlotte Regional TPO, CO DOT, CT DOT, DC DOT, DRCOG, DVRPC, FL DOT, Florida MPO Advisory Council, FMATS, H–GAC, HI DOT, IA DOT, MAG, Metropolitan Transportation Council MPO, MARC, MT DOT, MTC, NACTO, NARC, NC DOT, New York State Association of MPOs, NJTPA, North Florida TPO, NYMTA, NYMTC, NYS DOT, OR DOT, PA DOT, River to Sea TPO, SACOG, SANDAG, SCAG, SJCOG, Transportation for America, TX DOT, and Wilmington MPO) provided comments on sections 450.314(a), (e), and (g). This section concerns the requirement proposed in the NPRM for including performance-based planning and programming and the collection of data for the State asset management plan as part of the metropolitan planning agreement. Twenty-one of the commenters on these sections were from MPOs, 13 from States, 7 from transportation associations, 1 from an operator of public transportation, and 1 from an advocacy organization. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

In the NPRM, FHWA and FTA proposed at section 450.314(b) that the States, MPOs, and the operators of public transportation should periodically review and update the metropolitan planning agreement, as appropriate, to reflect effective changes. Five commenters (AASHTO, FL DOT, MT DOT, NYS DOT, and TX DOT) provided comments on this provision. All five of the commenters stated that the provision was unnecessary and should be deleted. Two commenters (AASHTO and MT DOT) stated that agreements are generally already revised as necessary when changes are made to regulations and when dictated by other circumstances. They further commented that section 450.314(b) would create a new obligation to review agreements even when that review is unnecessary. The FL DOT commented that section 450.314(b) could be interpreted as a new requirement and that periodic review and updating should occur only as appropriate. The NYS DOT and TX DOT commented that section 450.314(b) could be interpreted to set a specific time frame or regular updates for review of the existing agreements, even when it is not needed.

In response, FHWA and FTA included this provision in the NPRM to ensure that States, MPOs, and operators of public transportation are aware that agreements can become outdated and that they need to be periodically reviewed by the States, MPOs, and operators of public transportation to ensure that they are up to date. The FHWA and FTA did not intend for this provision to set a specific time frame for the review and updates to the

[28] Florida Statute 339.175(3).

agreements and have specifically stated in section 450.314(b) that it should be done when it is appropriate to do so. The commenters have pointed out that for those metropolitan regions were the agreements are being kept up to date, this would typically not be an issue. However, FHWA and FTA note that for those regions where agreements have become outdated, this provision is an important reminder that they should be periodically reviewed and updated. The need for updating an agreement might occur for a number of reasons. Examples of reasons for updating the agreements might include: The passage of new national transportation legislation, issuance of new Federal regulations, and changes in the roles and responsibilities of the States, MPOs, and/or operators of public transportation in the metropolitan transportation planning process. The FHWA and FTA believe that it is important that in order to maintain a 3–C planning process for a metropolitan region, States, MPOs, and the operators of public transportation should periodically review and update the metropolitan planning agreement, as appropriate, to reflect effective changes in their responsibilities for conducting the planning process. For these reasons, the provision for periodically updating the metropolitan planning agreement in section 450.314(b), as proposed in the NPRM, is retained by FHWA and FTA in the final rule without alteration.

Section 450.316 Interested Parties, Participation and Consultation

Section 450.316 describes interested parties, participation, and consultation as part of the metropolitan transportation planning process. It requires an MPO to use a documented participation plan to provide individuals, 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. Eight commenters (Nine to Five Association of Working Women, Denver COG and the RTD, Enterprise Community Partners, National Housing Conference, New York State Association of MPOs, The Leadership Conference on Civil and Human Rights, TX DOT, and United Spinal Association) submitted comments on this section. The Nine to Five Association of Working Women, Enterprise Community Partners, National Housing Conference, and the Leadership Conference on Civil and Human Rights expressed strong support for the requirement that States and MPOs develop participation plans that engage populations ''traditionally underserved by existing transportation systems, such as low-income and minority households.'' The United Spinal Association requested that FHWA and FTA ensure that the required necessary accommodations for traditionally underrepresented organizations and community members are provided.

The FHWA and FTA note that an MPO's public participation process, including efforts to seek out and consider 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, is reviewed as part of the MPO certification process.

The DRCOG and RTD sought clarification on the requirement that an MPO include, as part of the final MTP and TIP, a summary, analysis, and report on the disposition of significant written and oral comments it receives on the draft MTP and TIP. The FHWA and FTA clarify that the summary and disposition of these comments can be a separate document incorporated by reference or made available on the applicable Web site. The FHWA and FTA have made no changes to section 450.316 in the final rule.

Section 1201 of the FAST Act amends 23 U.S.C. 134(i)(6)(A) to add public ports to the list of entities that an MPO shall provide a reasonable opportunity to comment on the metropolitan transportation plan. This change is amended into the final rule at section 450.316(a). Section 1201 of the FAST Act amends 23 U.S.C. 134(i)(6)(A) to provide a list of examples of private providers of transportation. This change is amended into the final rule at section 450.316(a).

Section 1201 of the FAST Act amends 23 U.S.C. 134(g)(3)(A) to add officials responsible for tourism and natural disaster risk reduction to the list of agencies and officials that an MPO should consult with in developing metropolitan transportation plans and TIPs. This change is amended into the final rule at section 450.316(b).

Section 450.318 Transportation Planning Studies and Project Development

The comments and responses relevant to section 450.318 are discussed under section 450.212, and are incorporated by reference into this section.

Section 450.320 Development of Programmatic Mitigation Plans

Similar to section 450.214, section 450.320 describes the development of programmatic mitigation plans. The FHWA and FTA received comments from a total of 26 entities on this section (AASHTO, AMPO, ARTBA, CALTRANS, CT DOT, DRCOG, DVRPC, Enterprise Community Partners, H–GAC, MARC, MTC, NARC, National Mitigation Banking Association, New York State Association of MPOs, NJ DOT, North Front Range MPO, OR DOT, PA DOT, RTD, SACOG, SANDAG, SCAG, SCCRTC, SJCOG, and TX DOT). All commenters were generally supportive of the development and use of programmatic mitigation plans within the transportation planning process.

The responses to the following comments are provided in section 450.214

General Comments

- Seven organizations (CALTRANS, MTC, SACOG, SANDAG, SCAG, SCCRTC, and SJCOG) commented on the eligibility for Federal funding for the development of programmatic mitigation plans.
- The ARTBA commented on the greater use of programmatic mitigation plans and recommended that FHWA and FTA quantify the benefits of using such plans in terms of time saved. In addition, the group also recommended a clearinghouse for mitigation plans used across the Nation to highlight best practices.
- Enterprise Community Partners and NRDC commended FHWA and FTA for the provisions contained in sections 450.214 and 450.320, noting that early planning can reduce conflicts and delays during environmental reviews performed later in project development. The group specifically noted the preference for requiring the development of programmatic mitigation plans within the transportation planning process.
- The NRDC also commented on the appropriate nature of consultation with the resource agencies, making a draft of the mitigation plan available for public review and comment, and addressing the comments in the final plan. Please see response in Section 450.214.
- The National Mitigation Banking Association noted that many of the attributes of a programmatic mitigation plan specified in section 450.320 are already in place in mitigation and conservation banks across the country. The group also noted that it would be

prudent public policy to make the acquisition of bank credits from approved mitigation banks a central component of a programmatic mitigation plan element. The group also suggested that the final rule incorporate a reference to existing banks and bank credits as the preferred alternative for offsetting transportation impacts.

• The Mid-America Regional Council provided a general letter of support on the development and use of programmatic mitigation plans and suggested that the final rule should include language indicating that States shall coordinate with MPOs on the development and use of such plans.

Section 450.320(a)

• Six entities (AASHTO, CT DOT, H–GAC, NARC, OR DOT, and TXDOT) commented on the proposed language in section 450.320(a)(2)(ii), stating that the resources addressed in the final rule should not be limited to the examples given.

• The CALTRANS and NJ DOT sought further clarification on the scope and scale of the programmatic mitigation plan. Specifically, NJ DOT inquired whether the plan should be restricted to one project (discussing an array of resources) or an array of transportation projects (covering one resource category for discussion). The CALTRANS commented on the appropriate scale of the programmatic mitigation plan and inquired whether MPOs may plan on a scale beyond its MPA boundaries.

Section 450.320(b)

• Nine entities (AASHTO, AMPO, CT DOT, H–GAC, NARC, New York State Association of MPOs, OR DOT, SCCRTC, and TX DOT) commented on the proposed language in section 450.320(b) which they found to be more restrictive than the text of the statute. Specifically, the commenters suggested that paragraph (b) should preserve the flexibility provided in the statute, which allows for States and MPOs to develop programmatic mitigation plans within or outside the statewide and metropolitan planning processes.

Section 450.320(d)

• The CALTRANS expressed appreciation for the support for programmatic mitigation plans, but also concerns about acceptance of such plans by Federal and State regulatory agencies. The commenter specifically questioned whether rulemaking to govern the regulatory agencies toward the goal of reaching a higher level of commitment to programmatic mitigation planning activities might be possible.

The responses to comments not previously raised or addressed in section 450.214 follow:

General Comments

The North Front Range MPO expressed general support for the development and use of programmatic mitigation plans, but noted that the development of such plans would require additional staff time for review. Such a delay in conducting the review would offset any benefits derived from the development of the plan. The organization also noted that the development of programmatic mitigation plans may be a duplicative effort, especially if a NEPA review is necessary or underway.

The FHWA and FTA acknowledge that the development and review of programmatic mitigation plans would likely require additional staff time from resource agencies, States, and MPOs. But FHWA and FTA also note that a programmatic mitigation plan can be integrated with other resource plans including, but not limited to, watershed plans, ecosystem plans, species recovery plans, growth management plans, State wildlife plans, climate change action plans, and land use plans. Integrating the development of programmatic mitigation plans with other resource planning efforts streamlines the process and reduces points of duplication, thereby reducing the overall burden of staff time for review.

Section 450.320(b)

The DRCOG and RTD noted that the analysis of environmental impacts of a project or program under NEPA may result in identification of a different set of impacts and possible mitigation than what is stated in a programmatic mitigation plan. Therefore, the framework for development of such plans and future use within NEPA should be reviewed and approved by the CEQ.

The FHWA and FTA acknowledge that in certain rare instances, a programmatic mitigation plan may not capture the best possible data for impact discussion and possible mitigation. For this reason, this section retains the flexibility for States and MPOs to decide if and when they choose to develop programmatic mitigation plans and how such plans can be used to address the potential impacts of transportation projects. The FHWA and FTA also point out that, as stated in section 450.320(b), early and ongoing coordination with the resource agencies with jurisdiction over the environmental resource is a pragmatic solution to avoiding future conflicts associated with the NEPA process.

Section 450.320(d)

Four entities (DVRPC, NARC, PA DOT, and SCCRTC) commented on the proposed text in section 450.320(d), advocating for stronger language (*i.e.,* the use of the word ''shall'' in the regulatory text in section 450.320(d)) that would require Federal agencies to consider the recommendations developed under a programmatic mitigation plan when conducting future environmental reviews.

The FHWA and FTA can encourage the development and use of programmatic mitigation plans in future NEPA reviews, but cannot interpret the statutory provision (23 U.S.C. 169(f)) in a manner that would make it more restrictive for States and MPOs to utilize effective mitigation efforts, if developed through another authority or during an environmental review for a specific project or program. Furthermore, if a mitigation plan is developed, it may not necessarily be aligned in time with the environmental review of a project or program. In these instances, delaying the environmental review of a project or program for the development and adoption of a programmatic mitigation plan may not be in the best interest of the State or MPO. This final rule retains the language proposed in the NPRM.

Five planning organizations (MTC, SACOG, SANDAG, SCAG, and SJCOG) commented on broadening the scope of paragraph (d) through the removal of the word ''Federal.'' They suggested that this would clarify that any agency may use a programmatic mitigation plan, developed under this authority, that has been adopted for use within the transportation planning process in future environmental reviews.

Paragraph (d) is applicable to any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project. The final rule does not prohibit non-Federal agencies wishing to utilize programmatic mitigation plans developed by States or MPOs under this authority.

Section 1306 of the FAST Act amends 23 U.S.C. 169(f) to change ''may use'' to ''shall give substantial weight to'' and changes ''any other environmental laws and regulations'' to ''other Federal environmental law'' such that a Federal agency responsible for environmental reviews ''shall give substantial weight to'' the recommendations in the programmatic mitigation plan when carrying out its responsibilities under NEPA or ''other Federal environmental law.'' Sections 450.214(d) and

450.320(d) of the final rule are amended to reflect these changes.

Section 450.322 Congestion Management Process in Transportation Management Areas

Seven entities (ARC, DRCOG, Enterprise Community Partners, MARC, National Housing Conference, New York State Association of MPOs, and WA State DOT) submitted comments on this section. One comment was from a State, three from MPOs, two from advocacy organizations, and one from an association.

The DRCOG commented that the term ''acceptable,'' as used in section 450.322(c), related to system performance should be defined in the final rule by describing how and by whom acceptability will be determined. In response, FHWA and FTA note that for the CMP, as described in section 450.322(c), it is the responsibility of State and local transportation officials to determine the level of system performance they deem acceptable. As a result of this comment, no changes to the final rule were made.

Enterprise Community Partners and the National Housing Conference commented that intensive development near transit such as transit oriented development and joint development should be included in the final rule as congestion management strategies. In response, FHWA and FTA note that several examples of congestion management strategies are provided in the NPRM and in the final rule. These strategies are consistent with those suggested in the comment, such as growth management and public transportation improvements. Therefore, no changes were made to the final rule.

The DRCOG commented on section 450.322 that single occupancy vehicles (SOV) projects or facilities do not exclusively serve SOVs. The New York State Association of MPOs commented that decisions about congestion are variable, and that flexibility in defining and addressing congestion is important. The FHWA and FTA agree that SOV facilities might not exclusively serve SOVs and feel the final rule provides MPOs the flexibility to define and address congestion.

The MARC noted that the CMP has a linkage to the performance-based planning process. The FHWA and FTA response to this comment is that the CMP and the performance-based planning and programming processes do have linkages. Specifically, section 450.306(d)(4)(vii) requires that an MPO shall integrate them into the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets from other federally required performance-based plans and process, such as the CMP.

The New York State Association of MPOs commented that they support a coordinated plan for data collection and propose that the last sentence in section 450.322(d)(3) mention that public safety agencies are a potential source of data related to incident management and non-recurring congestion. The FHWA and FTA have reviewed this comment and have decided not to specifically add language that public safety agencies could be a source of safety data because this section does not specifically provide a list of agencies and the data they might provide.

The New York State Association of MPOs noted that intelligent transportation system (ITS) technologies are not a congestion management strategy, and that it is more appropriate to reference the importance of implementing the adopted ITS regional architecture. In response, FHWA and FTA note that the final rule describes ITS technologies as they relate to the regional ITS architecture as a congestion management strategy, and so no change was made.

Section 1201 of the FAST Act amended 23 U.S.C. 134(k)(3)(A) to add a list of examples of travel demand reduction strategies and to add job access projects as a congestion management strategy. The final rule at section 450.322(a) is amended to reflect this change.

Section 1201 of the FAST Act amended 23 U.S.C. 134(k)(3)(C) to allow that an MPO serving a TMA may develop a congestion management plan. The final rule at section 450.322(h)(1) and (2) is amended to reflect this change.

Section 450.324 Development and Content of the Metropolitan Transportation Plan

Fifty-one commenters (AASHTO, Albany MPO, AMPO, ARC, CALTRANS, Community Labor United, CT DOT, DVRPC, DRCOG, Enterprise Community Partners, Florida MPO Advisory Council, FMATS, Front Range Economic Strategy Center, IA DOT, MAG, Macatawa MPO, MARC, Maui MPO, ME DOT, MET Council, MTC, MO DOT, NARC, National Housing Conference, National Trust for Historic Preservation, New York State Association of MPOs, NJ DOT, North Florida MPO, NRDC, NYMTA, NYMTC, PA DOT, Partnership for Active Transportation, Partnership for Working Families, Policy Link, Portland Metro, PSCOG, Public Advocates, SACOG, San Luis Obispo MPO, SANDAG, Santa Cruz County MPO, SCAG, SEMCOG, SJCOG, TX DOT, United Spinal Association, VA DOT, WA State DOT, Westchester County Department of Public Works, WFRC, and WMATA) submitted comments on this section to the docket. Twenty were from MPOs, 11 from States, 12 from advocacy groups, 5 from transportation associations, and 3 from public transit agencies.

Section 450.324(a)

At least three MPOs (Albany MPO, San Luis Obispo COG, and WFRC) commented that in section 450.324(a) the regulations should allow for a MTP that has more than a 20-year planning horizon. The FHWA and FTA respond that these regulations allow for MTPs with a 20-year or greater planning horizon.

The NARC stated that section 450.324(a) is inconsistent, in that it states that the metropolitan transportation plan shall address no less than a 20-year planning horizon as of the effective date. However, section 450.324(a) further states that in formulating the MTP, the MPO shall consider the factors described in section 450.306 as they relate to a 20-year period. The NARC further stated that many MPOs prepare MTPs that forecast beyond a 20-year horizon. This section appears to limit the consideration of factors to only a 20-year horizon, and NARC further suggests inserting the word ''minimum.'' The FHWA and FTA agree with this comment and changed the section to state that the MPO shall consider factors described in section 450.306 as the factors relate to a minimum 20-year forecast period to be consistent with the fact that the MTP horizon may exceed 20 years.

Section 450.324(c)

More than one commenter (DVRPC, NJ DOT, and PA DOT) suggested that FHWA and FTA should consider changing the review and update cycle for MTPs in areas that are classified as air quality nonattainment and maintenance areas from 4 to 5 years. The FHWA and FTA respond to this comment that the statute requires MTPs in nonattainment and maintenance areas to be updated at least every 4 years and as a result, in keeping with the statutory requirement, the final rule requires updates at least once every 4 years.

Section 450.324(f)

The PSRC and WA State DOT asked what the term ''current'' means in section 450.324(f)(1). The WA State DOT further commented that the word

''current'' in this section might mean that the MTP will have to be updated annually. The WA State DOT suggested the use of the word ''baseline'' instead of the word ''current.''

The FHWA and FTA response to these comments is that the word ''current'' means at the time the plan is under development. The use of the word ''current'' is not meant to mean the same as ''baseline.'' The FHWA and FTA further respond that this provision does not mean that MTPs have to be updated annually. The FHWA and FTA reiterate that section 450.324(c) clearly states that the MPO shall review and update the MTP at least every 4 years in air quality nonattainment and maintenance areas and at least every 5 years in attainment areas.

The MARC commented that it wanted clarification in section 450.324(f)(1) on how current demand of persons and goods should be reflected in the plan. The FHWA and FTA response is that it is up to each MPO to determine how to meet this requirement.

The DRCOG and DVRPC commented that the requirement in section 450.324(f)(2) that the MTP includes pedestrian and bicycle facilities is extremely difficult, burdensome, and unclear. In response to this comment, FHWA and FTA believe that Congress intends for a multimodal approach to the transportation planning process. Title 23 U.S.C. 134(b)(2) states that the MTPs and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the MPA and as an integral part of an intermodal transportation system for the State and the United States.

In drafting the NPRM and the final rule, FHWA and FTA fulfilled this intent by requiring that the MTP include, among other things, short- and long-range strategies/actions and existing and proposed transportation facilities that provide for pedestrian walkways and bicycle facilities that function as part of an integrated metropolitan transportation system (23 CFR 450.324(f)(2) and 23 CFR450.324(b)). The FHWA has recently completed the Statewide Pedestrian and Bicycle Planning Handbook, which is available at: *http://www.fhwa.dot.gov/planning/processes/pedestrian_bicycle/pedestrian_bicycle_handbook/fhwahep14051.pdf.* A metropolitan version of the handbook is under development and will be available soon.

The DRCOG and RTD commented that both sections 450.324(f)(2) and 450.324(f)(12) contain references requiring the MPO MTP to include pedestrian walkways and bicycle facilities. The FHWA and FTA response to this comment is that the commenter is correct. Reference to pedestrian walkways and bicycle facilities is included in the two sections for added emphasis, however, the context of each section is slightly different. Section 450.324(f)(2) refers overall to including existing and proposed transportation facilities such as major roadways, transit, multimodal and intermodal facilities, and nonmotorized transportation facilities, including pedestrian walkways and bicycle facilities that should function as an integrated transportation system in the MTP. Section 450.324(f)(12) refers specifically to including pedestrian walkway and bicycle transportation facilities in the MTP. No changes were made as a result of this comment.

Section 1201 of the FAST Act amended 23 U.S.C. 134(i)(2)(A)(i) to add public transportation facilities and intercity bus facilities to the list of existing and proposed transportation facilities to be included in the metropolitan transportation plan. The final rule at section 450.324(f)(2) is amended to reflect this change.

Several commenters (DVRPC, NYMTC, and PA DOT) commented that the system performance report in the MTP (section 450.324(f)(4)) should only consider conditions and trends at the system level, and should not be required to conduct a project specific analysis. The MARC commented that it would like flexibility in how the systems performance report required under section 450.324(f)(4) is integrated into the MTP. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

At least two commenters (IA DOT and New York State Association of MPOs) commented that it is not clear what the term ''subsequent updates'' refers to in sections 450.324(f)(4) and 450.216(f)(2). The FHWA and FTA response is that the term ''subsequent update'' refers to the update of the MTP or the long-range statewide plan and is defined in section 450.104. Update of the MTP or the long-range statewide transportation plan means making a MTP or a long-range statewide transportation plan current through a comprehensive review. Updates require public review and comment; a 20-year horizon for MTPs and long-range statewide plan; a demonstration of fiscal constraint for the MTP; and a conformity determination for MTPs in nonattainment and maintenance areas. Section 450.324(c) requires the MPO to review and update the MTP at least every 4 years in air quality nonattainment and maintenance areas and at least every 5 years in attainment areas.

Section 450.324(f)(4) requires that with the update to the metropolitan plan, and each update thereafter, the MPO also will update the evaluation of the condition and performance of the transportation system with respect to the performance targets described in section 450.306(d) as part of the update of the MTP. Similarly, 405.216(f)(2) means the State will update the evaluation of the condition and performance of the transportation system with respect to the performance targets described in section 450.206(c)(2) as part of the update of the long-range statewide transportation plan. No changes to the final rule are required as a result of this comment.

The NYMTA commented on section 450.324(f)(4) that the cycle for subsequent updates to the system performance report should be clarified. Specifically, it wanted to know if this means each MTP update, or if more frequent updates to the system performance report are required independent of the MTP update. The FHWA and FTA response to this comment is that the system performance report in the MTP has to be updated when the MTP is updated. Update cycles for the MTP are described in section 450.324(c).

The IA DOT commented on section 450.324(f)(4)(ii) that it appears that the analysis of how the preferred scenario has improved the conditions and performance of the transportation system is a requirement, when the use of scenario planning is optional. The FHWA and FTA response to this comment is that for those MPOs that elect the option to conduct scenario planning in the development of their MTPs, the provision in section 450.324(f)(4)(ii) is a requirement (23 CFR 450.324(f)(4)(ii) and 23 U.S.C. 134(i)(2)(C)(ii)).

For section 450.324(f)(4)(ii), the WA State DOT requests revision to clarify that the analysis of how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets can be a general discussion of broad policy. In response to this comment, FHWA and FTA do not believe that this additional clarification is necessary. As written, the requirement is fairly nonprescriptive

in how it would be carried out. The FHWA and FTA believe that it is up to the MPO, within reason, to decide how to meet this requirement. After publication, FHWA and FTA plan to issue guidance and share best practices on this requirement. No changes were made as a result of this comment.

Section 1201 of the FAST Act amends 23 U.S.C. 134(i)(2)(G) to add ''reduce the vulnerability of the existing transportation infrastructure to natural disasters'' to the assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure in the metropolitan transportation plan. Section 450.324(f)(7) of this final rule is amended to include this new provision.

Section 1201 of the FAST Act amends 23 U.S.C. 134(i)(2)(H) to add consideration of the role intercity buses may play in reducing congestion, pollution, and energy consumption as part of the metropolitan transportation plan. Section 450.324(f)(8) of this final rule is amended to include this new provision.

The ARC supports the optional provision in section 450.324(f)(11)(iii) for including an assessment of the appropriateness of innovative finance techniques as revenue sources for the projects in the MTP. However, ARC states that it is unclear to what level of detail is expected. In response, FHWA and FTA note that FHWA has previously issued guidance on fiscal constraint, which includes guidance on innovative finance techniques and fiscal constraint.[29]

The Florida MPO Advisory Council commented that this provision is an important step in not only encouraging MPOs to consider new and innovative financing techniques very early in the planning process, but also places emphasis on the feasibility of implementing those financing techniques. The Partnership for Active Transportation commented that the consideration of innovative financing techniques should encourage those techniques in the context of active transportation such as pedestrian and bicycle projects. The FHWA and FTA response is that this provision is intended to be considered for all types of transportation projects, including bicycle and pedestrian projects.

For section 450.324(f)(11)(iii), the WA State DOT recommends the section be revised to clarify that the discussion of strategies for ensuring their availability can be a general discussion of the types of actions that would be necessary to implement new revenue sources. In response to this comment, FHWA and FTA note that they have issued guidance on fiscal constraint that includes information on this specific topic that an MPO can use to understand how to carry out this requirement. No changes were made as a result of this comment.

The ARC suggested that for section 450.324(f)(11)(iv), FHWA and FTA provide guidance on the topic of ''year of expenditure.'' The FHWA and FTA have previously issued guidance on this topic. It is available at: *http://www.fhwa.dot.gov/planning/guidfinconstr_qa.cfm.*

The AASHTO stated that year of expenditure should only apply to costs and not to revenues in the MTP (section 450.324(f)(11)(iv)). Similar comments were received on section 450.218(l) (development and content of the STIP) and section 450.326(j) (development and content of the MTP). The FHWA and FTA disagree with these comments. Year of expenditure is applied to both costs and revenues in the NPRM and final rule for the MTP, TIP, and STIP to provide for consistency and comparability of costs and revenues in these documents. The requirement for adjustment to year of expenditure applies to revenue and cost estimates developed for the STIP (section 450.218(l)), MTP (section 450.324(f)(11)(iv)), and TIP (section 450.326(j)). The FHWA and FTA made no changes to those sections based on the comments. The FHWA and FTA note that this is consistent with the previous regulations (72 FR 7224, 23 CFR 450.216(l), and section 450.324(h)).

Section 450.324(g)

Section 450.324(g) describes MPO consultation 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. Section 450.324(g)(2) states that the consultation shall involve, as appropriate, the comparison of transportation plans to inventories of natural or historic resources, if available. The National Trust for Historic Preservation commented that section 450.324(g)(2) should include additional language requiring State and local resource protection and historic preservation agencies to be contacted to obtain existing inventories, and that MPOs may fund the preparation or updating of such inventories, pursuant to this chapter, if inventories are not current or available.

In response, FHWA and FTA reiterate that the existing language in section 450.324(g)(2) already requires that the MPO shall consult, as appropriate, with State and local agencies responsible for natural resources, environmental protection, and historic preservation and a comparison of transportation plans to inventories of natural or historic resources, if available. The FHWA and FTA also respond that funding eligibility for activities necessary to support metropolitan transportation planning under the final rule is described in section 450.308. No changes were made as a result of these comments.

Section 450.324(h)

The WAMTA commented on section 450.324(h) that it does not want the safety plans such as the HSIP (including the SHSP required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan) integrated into the MTP as described in this section. In response to this comment, FHWA and FTA note that the basis for this provision in the regulation predates the final rule. The FHWA and FTA also note that transportation safety is a major priority for DOT. The MAP–21 and the final rule call for the integration of the goals, objectives, performance measures, and targets from the various federally required performance-based plans and processes into the statewide and metropolitan transportation planning processes either directly or by reference, including federally required transportation safety plans (23 U.S.C. 134(h)(2)(D) and 135(d)(2)(C)). No changes were made to the final rule.

Section 450.324(i)

Many MPOs (Albany MPO, AMPO, ARC, Metropolitan Council MPO, Portland Metro, SCCRTC, and WMATA), some States (CALTRANS, CT DOT, and NJ DOT), and one advocacy organization (NRDC) commented that they support the voluntary option for MPOs to utilize scenario planning in the development of an MTP as described in section 450.324(i). A few commenters (DVRPC and PA DOT) commented that scenario planning is already being used in the development of their MTPs. The NRDC stated that they liked the detailed description of scenario planning in this section and the definition of the term ''visualization'' in section 450.104. The

[29] ''Guidance on Financial Planning and Fiscal Constraint for Transportation Plans and Programs, FHWA, April 17, 2009, *http://www.fhwa.dot.gov/planning/guidfinconstr.cfm.*

NRDC and WAMATA further commented that FHWA and FTA should provide detailed training, guidance, and additional resources on scenario planning. The WAMATA also commented that FHWA and FTA should use the final rule to promote scenario planning as a best practice and tie scenario planning to performance measures and targets.

In response, FHWA and FTA note that they have developed guidance, training, peer exchanges, and examples of practice on scenario planning and visualization, which is available at: *http://www.fhwa.dot.gov/planning/scenario_and_visualization/scenario_planning/index.cfm*. The FHWA and FTA regularly update this material. The FHWA and FTA are researching the use of scenario planning with performance-based planning. The FHWA and FTA note that section 450.324(f)(4)(ii) states that MPOs that voluntarily elect to develop multiple scenarios as part of the development of the MTP shall conduct an analysis of how the preferred scenario has improved conditions and performance of the transportation system as part of the system performance report required under section 450.324(f)(4).

Several MPOs (MTC, NARC, SACOG, SANDAG, SCAG, and SJCOG) and the TN DOT suggested changes to the language on scenario planning in this paragraph. The MTC, SACOG, SANDAG, SCAG, and SJCOG stated that they are supportive of scenario planning and its inclusion in the final rule. However, they believe that the language in the NPRM describing what specific scenarios MPOs should analyze is overly prescriptive. They further commented that instead of identifying specific performance-driven scenarios that should be evaluated, the language should be clarified that MPOs should develop a range of reasonable scenarios and carefully consider their performance impacts.

In response to this comment, FHWA and FTA reiterate that the use of scenario planning by MPOs as described in section 450.324(i) is voluntary, and that the examples of scenarios described under section 450.324(i)(1) are only for consideration. No changes were made to the final rule based on this comment.

The ARC commented that since scenario planning is optional, the elements considered when doing scenario planning should also be optional for the MPO in section 450.324(i). In response to this comment, FHWA and FTA reiterate that scenario planning is optional under section 450.324(i) and that it is up to the MPO to determine the elements to be considered when doing scenario planning. However, section 450.324(f)(4)(ii) requires that for MPOs that voluntarily elect to develop multiple scenarios, the metropolitan transportation plan shall include an analysis of how the preferred scenario has improved conditions and performance of the transportation system as part of its systems performance report (23 U.S.C. 134(i)(2)(c)(ii)).

Section 450.324(i) states that an MPO may voluntarily elect to develop multiple scenarios for consideration as part of the development of the MTP. The TN DOT suggested that this language could be strengthened by replacing the phrase ''an MPO may voluntarily elect'' with the phrase ''MPOs are encouraged to develop multiple scenarios.'' In response to this comment, FHWA and FTA believe that Congress intended for the use of scenario planning by MPOs to be voluntary (23 U.S.C. 134(i)(4)(A)) and FTA and FHWA want to convey that intent. No changes were made to the final rule based on this comment.

The NARC suggested that the language concerning scenario planning in section 450.324(i) be changed from ''an MPO may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan plan'' to ''an MPO may voluntarily elect to develop multiple scenarios for consideration as part of the development of the MTP.'' In response to this comment, FHWA and FTA believe that an MPO may want to be sensitive to the needs and complexity of its community as it decides whether or not to use scenario planning and the extent to which it might use it as part of developing its MTP. No changes were made to the final rule based on this comment.

The NARC also suggested a change to section 450.324(i)(1)(iv), which states ''a scenario that improves the conditions for as many of the performance measures identified in section 450.306(d) as possible'' be changed to ''a scenario that improves the baseline conditions for one or more of the performance measures identified in section 450.306(d).'' In response to this comment, FHWA and FTA reiterate that an MPO may create scenarios that improve the baseline conditions for one or more of the performance measures identified in section 450.306(d). Section 450.324(i)(1)(iv) encourages that at least once scenario improve the baseline conditions for as many of the performance measures identified in section 450.306(d) as possible. No changes were made to the final rule based on this comment.

The AMPO commented on section 450.324(i) that it does not want scenario planning to be a factor in FHWA and FTA planning certification reviews of TMAs. The FHWA and FTA response to this comment is that, although the use of scenario planning is optional, FHWA and FTA will typically include discussion on scenario planning in planning certification reviews to assess the state of the practice with scenario planning and to promote it as a best practice.

The MARC commented on section 450.324(i)(2) that it supports the provision in this section whereby an MPO may evaluate scenarios developed using locally developed measures in addition to the performance areas identified in 23 U.S.C. 150(c), 49 U.S.C. 5326(c), 49 U.S.C. 5329(d), and 23 CFR part 490.

At least seven advocacy groups (Community Labor United, Front Range Economic Center, National Association of Social Workers, Partnership for Working Families, PolicyLink, Public Advocates, and United Spinal Association) suggested that scenario planning be used by MPOs to analyze the impact of investments and policies on the transportation system including prioritizing the needs of low-income populations, minorities, or people with disabilities. The National Housing Conference suggested that MPOs should consider housing needs when conducting scenario planning. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.324(j)

Section 1201 of the FAST Act amends 23 U.S.C. 134(i)(6)(A) to add public ports to the list of entities that an MPO shall provide a reasonable opportunity to comment on the metropolitan transportation plan and adds a list of examples of private providers of transportation. Section 450.324(j) of this final rule is amended to include these new provisions.

The AMPO commented that States, MPOs, and operators of public transportation should not be subject to financial consequences or additional reporting requirements for not achieving established targets. The FHWA and FTA response is that under the final rule, MPOs, and operators of public transportation are not subject to financial consequences or additional reporting requirements for not achieving established targets. The comment is outside the scope of the final rule. As

there may be consequences for not achieving established targets under the other performance management rules for the States (not the MPOs), the commenter is encouraged to review the other performance management rules. Although there are no consequences for failing to meet established performance targets under this final rule, there may be consequences for not meeting the performance-based planning and programming requirements under this final rule and 23 U.S.C. 134 and 135. The consequences might be identified through the STIP approval and statewide transportation planning finding of the FHWA and FTA (23 CFR 450.220); the planning certification reviews of TMAs (23 CFR 450.336); or other means such as transportation planning certification reviews in TMAs.

Several commenters (FMATS, NARC, and NRDC) suggested that the States and MPOs should be subject to the same requirements. For example, MPOs are required to include federally required performance targets in their MTPs, but due to amendments to 23 U.S.C. 135(f)(7) made by FAST, it is now required that States to include federally required performance targets in the long-range statewide transportation plan. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.326 Development and Content of the Transportation Improvement Program (TIP)

Thirty-five entities (AASHTO, Albany MPO, AMPO, ARC, Center for Social Inclusion, DRCOG, DVRPC, Enterprise Community Partners, Florida MPO Advisory Council, FMATS, French Broad River MPO, H–GAC, IA DOT, KY TC, MAG, MARC, MET Council, MTC, NARC, National Housing Conference, NCTCOG/RTC, New York State Association of MPOs, North Florida MPO, NRDC, NYMTA, NYMTC, Orange County Transit, PA DOT, SACOG, San Luis Obispo MO, SANDAG, Santa Cruz MPO, SCAG, SJCOG, TriMet, TX DOT, WA State DOT, and Wilmington MPO) submitted comments on this section. Eighteen comment letters were submitted by MPOs, 6 by States, 5 by associations representing transportation agencies, 4 by advocacy organizations, and 2 by operators of public transportation.

Section 450.326(a)

The WA State DOT commented on section 450.326(a) that it is unclear why only the investment priorities are singled out as an element that must be reflected in the TIP, as opposed to ensuring that projects in the TIP are consistent with the MTP. The commenter further recommended that section 450.326(a) be rewritten to state that the TIP shall be consistent with the MTP; cover a period of no less than 4 years; be updated at least every 4 years; and be approved by the Governor and the MPO. The WA State DOT recommends deleting the phrase ''that the TIP shall reflect the investment priorities established in the current MTP.''

In response to this comment, FHWA and FTA reiterate that section 450.324(a) states that the TIP shall reflect the investment priorities established in the MTP, shall cover a period of no less than 4 years, and shall be updated at least every 4 years. The FHWA and FTA note also that in 23 U.S.C. 134(j)(1)(ii), Congress specifically stated that the MPO shall develop a TIP for the metropolitan area that reflects the investment priorities established in the current MTP. The FHWA and FTA further state that section 450.326(i) requires that each project or project phase included in the TIP shall be consistent with the approved MTP. Based on this comment, no changes were made to the final rule.

The DVRPC asked what is meant by ''the cycle for updating the TIP must be compatible with the STIP development process in section 450.326(a).'' The DRCOG and RTD questioned why the TIP and STIP cycles must be compatible if the TIP is supposed to be incorporated in the STIP without changes. In response, FHWA and FTA reiterate that the TIP shall include capital and non-capital surface transportation projects within the boundaries of the MPA proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53, as described in section 450.326(e). Furthermore, the STIP must include the TIP without change in accordance with section 450.218(b). The provision in section 450.326(a) which states that the cycle for updating the TIP must be compatible with the STIP development process means that the TIP update cycle must be compatible so that the MPO TIP may be incorporated into the STIP by the State, and so that the proposed projects for the STIP may be incorporated into the MPO TIP.

Section 450.326(c)

The DRCOG and RTD stated that it is unclear in section 450.326(c) what is meant by the statement that ''the TIP shall be designed such that once implemented, it makes progress toward achieving the performance targets.'' This sentence means that, as the MPO develops the TIP, the program of projects shall be developed such that the investments in the TIP help achieve the performance targets set by the MPO for the region.

The Enterprise Community Partners and FMATS commented on section 450.326(c) that they support increased accountability in the Federal transportation program by linking spending decisions to performance outcomes. The FHWA and FTA agree that transportation investment decisions should be linked to transportation performance outcomes as described in section 450.326(c) and in 23 U.S.C. 134(j)(1)(A)(iii) and 134(j)(2)(D).

The National Housing Conference and the Center for Social Inclusion commented that spending decisions should be linked to performance measures and ensure that those measures promote sustainable development and a more holistic view of how transportation investments can serve the broader community. The commenters also noted that an equity analysis which includes performance measures specific to equity should be done on the MTP and the TIP. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.326(d)

Several commenters (AASHTO, Albany MPO, DVRPC, Florida MPO Advisory Council, H–GAC, IA DOT, MAG, MARC, NARC, North Florida TPO, Orange County Transportation Authority, PA DOT, San Luis Obispo COG, SCCRTC, and TriMet) commented that the required discussion in section 450.326(d) on the anticipated effect of the TIP toward achieving the federally required performance targets should not be on a project basis. They suggested instead that it should be on the basis of the entire program in the TIP. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The KY TC commented on section 450.326(d) that it feels it will be difficult to have a TIP include a description of the anticipated effect of the TIP toward achieving the performance targets in the plan because it has a short timeframe and includes projects that would not be fully implemented. The KY TC suggested that it would rather see this requirement as part of the MTP.

In response to this comment, FHWA and FTA believe that Congress intended for the TIP to include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets established in the MTP, linking investment priorities to those

performance targets (23 U.S.C. 134(j)(2)(D)). The FHWA and FTA believe that this requirement is reasonable, given that the TIP implements the first 4 years of the MTP, and the investment priorities of the TIP should be linked to the MTP. The MPOs are encouraged to coordinate with their States and operators of public transportation when developing this discussion. The FHWA and FTA anticipate issuing guidance after the final rule is published to aid States and MPOs in meeting this requirement. The FHWA and FTA note that there is a separate requirement in section 450.324(f)(4) that MPOs include a system performance report in the MTP evaluating the condition and performance of the transportation system with respect to the performance targets described in section 450.306(d) that includes a description of progress achieved by the MPO in meeting the performance targets.

The ARC commented on section 450.326(d) that it is unlikely that the projects within a 4-year program will actually result in a target being met. The FHWA and FTA note that this comment is outside the scope of the final rule.

The IA DOT commented on section 450.326(d) that the definition of ''maximum extent practicable'' is unclear. The term ''to the maximum extent practical'' means capable of being done after taking into consideration the cost, existing technology, and logistics of accomplishing the requirement. The FHWA and FTA note that States and MPOs should include work tasks and funding in their State planning and research and unified planning work programs for carrying out the requirements necessary for the implementation of performance-based planning and programming requirements, including the requirements of this section, in their federally required metropolitan and statewide transportation planning work programs to accomplish the purposes of this part and section. The FHWA and FTA intend to issue guidance on the requirements of section 450.326(d) after the publication of this final rule and the other performance related rules.

One commenter stated that in section 450.326(d), it is unclear what the difference is between TIP investments and investment priorities. In response, TIP investments and investment priorities are the same thing. They are the program of projects in the TIP.

The FMATS stated that as the long-range statewide transportation plan, MTPs, STIPs, and TIPs direct investment priorities, it is critical to ensure that performance targets are considered during the development of these documents. The FHWA and FTA agree with this comment and reiterate that the final rule requires that the TIP be designed such that once implemented, it makes progress toward achieving the performance targets established under section 450.306(d). The final rule also requires that the TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets identified in the metropolitan plan, linking investment priorities to those performance targets (section 450.326(e)). Similarly, the STIP shall include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets identified by the State in the long-range statewide transportation plan or other State performance-based plan(s), linking investment priorities to those performance targets (section 450.218(q)).

The NYMTC commented that section 450.326(d) should only apply with updates to the TIP but not to TIP amendments. The FHWA and FTA response to this comment is that the requirements in section 450.326(d) only apply to TIP updates.

Several commenters (Metropolitan Council MPO, NCTCOG/RTC, NYMTC, and Regional Transportation Council) objected to the provision in section 450.326(d) that the discussion of the anticipated effect of the TIP toward achieving the performance targets identified in the MTP should be consistent with the strategies to achieve targets presented in the MTP and other performance management plans such as the highway and transit asset management plans, the SHSP, the public transportation agency safety plan, the CMAQ performance plan, and the State freight plan (if one exists). The commenters stated that this overreaches and that FHWA and FTA should remain within the statutory requirements.

The FHWA and FTA agree with this comment and are eliminating the provision on consistency with the list of other performance management plans that was proposed for inclusion in section 450.326(d). The FHWA and FTA note that under section 450.306(d)(4), MPOs are required to integrate the goals, objectives, performance measures, and targets described in other State plans and processes and any plans developed under 49 U.S.C. chapter 53 by operators of public transportation into the metropolitan transportation planning process. Examples of other plans or processes are listed in section 450.306(d)(4). The FHWA and FTA believe that the provisions in section 450.306(d)(4) are sufficient to ensure the integration of elements of other federally required performance-based plans and processes.

Section 450.326(e)

The KY TC commented that in section 450.326(e)(2) and 450.326(e)(4), FHWA and FTA inadvertently left out reference to NHPP funds, while reference to NHS funds was appropriately deleted. The FHWA and FTA response to this comment is that this was deliberate. Reference to the NHPP funds was not included because planning projects are not eligible for NHPP funds. This was a change in MAP–21, section 1106(a), and 23 U.S.C. 119(d).

On sections 450.326(e)(2) and 450.326(e)(4), KY TC commented that it is not clear to what the term ''metropolitan planning projects'' refers. In response to this comment, FHWA and FTA clarify that metropolitan planning projects are planning projects that fund activities necessary to support the requirements of 23 U.S.C. 134. No changes were made as a result of this comment.

The NYMTC and NYS DOT supported the optional exclusion of emergency relief projects from the TIP, as described in section 450.326(e)(5). The FHWA and FTA retained this provision without changes in the final rule.

The NYS DOT and NY MTA commented that section 450.326(e)(5) should clarify that the repair of damaged assets in an operational right-of-way is not a substantial functional, locational, or capacity change in regards to emergency relief projects. The FHWA and FTA respond that this comment is outside the scope of the final rule.

Section 450.326(j)

The AASHTO suggested that in section 450.326(j), only the cost estimates in the TIP should be subject to an adjustment to be shown in year of expenditure dollars, and not both cost estimates and revenue projections. Another commenter suggested that FHWA and FTA should develop a national inflation rate that all MPOs could use at their option for adjustment of the TIP to year of expenditure. The ARC commented that FHWA and FTA should provide additional guidance on year of expenditure, given that there is considerable variation in assumptions made by MPOs around the Nation regarding inflation rates. See FHWA and FTA responses to similar questions in section 450.324(f) in the section-by-section analysis.

The North Florida TPO commented that the requirement in section

450.326(j) that the TIP contain a financial plan is redundant because funding availability is demonstrated in the MTP. In response, FHWA and FTA note that the requirement to include a financial plan with the TIP is long-standing and specifically required by statute (23 U.S.C. 134(j)(2)(B)). The FHWA and FTA note that the time horizons of the MTP and TIP are different. The financial plan for the TIP demonstrates how the approved TIP, which covers a 4-year period, can be implemented. The MTP covers a 20-year horizon and the financial plan for the metropolitan plan describes how the 20-year MTP can be implemented. Based on this comment, no changes were made to the final rule.

Section 450.326(m)

The TX DOT commented that the language stating that the TIP should be informed by the financial plan and the investment strategies from the State asset management plan for the NHS and by the public transit asset management plan is confusing and could potentially be interpreted and applied inconsistently. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Additional Section 450.326 Comments

The FMATS commented that it is essential for the States and MPOs to develop performance targets in full coordination with each other to ensure that performance targets are considered during the development of STIPs and TIPs, and that investment priorities are tied to targets. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses

The AMPO commented that there should be no financial consequences or additional reporting requirements for not achieving established targets. See section 450.324 in the section-by-section analysis for the FHWA and FTA response to this recurring comment.

The Board of the French Broad River MPO and Wilmington MPO commented that FHWA should encourage the State, rather than the MPOs, to be responsible for establishing and tracking performance in the TIP. In response to this comment, FHWA and FTA reiterate that the final rule requires the States and the MPOs to establish performance targets and to track progress in achieving performance.

The Center for Social Inclusion suggested that FHWA and FTA incentivize States and MPOs by establishing a competitive grant program, similar to TIGER, to assist with coordination, planning, and implementation efforts that aligns and coordinates all agency long- and short-term transportation plans. In response, FHWA and FTA note that the TIGER competitive grant program was specifically established and funded by Congress through statute. Congress has not provided authority for a program similar to the one suggested in the comment.

The NRDC commented that they disapprove of the differences between the sections covering TIPs and the sections covering STIPs, particularly the use of the words ''may'' and ''shall.'' See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Section 450.326(n) of the NPRM discussed procedures or agreements that distribute sub-allocated Surface Transportation Program (STP) funds or funds under 49 U.S.C. 5307 to individual jurisdictions or modes within the MPA by predetermined percentages or formulas inconsistent with the legislative provisions that require the MPO, in cooperation with the State and operator of public transportation, to develop a prioritized TIP. In the final rule, section 450.326(n) became 450.326(m) and the phrase ''or funds under 49 U.S.C. 5307'' was deleted because this provision does not apply to 49 U.S.C. 5307 funds. The FHWA and FTA deleted the phrase ''or funds under 49 U.S.C. 5307'' from the final rule because it is not consistent with FTA Circular C9030.1E, which permits section 5307 funds to be sub-allocated according to a formula.

The FHWA and FTA note that section 450.326(p) in the NPRM became 450.326(o) in the final rule, and is unchanged. Section 450.326(q) became section 450.326(p), and is unchanged.

Section 450.328 TIP Revisions and Relationship to the STIP

The APTA commented that performance targets should be updated when the TIP is updated, and should not require updating when the TIP is amended. In response, FHWA and FTA note that FHWA and FTA are required to establish national performance measures by rulemaking under 23 U.S.C. 150(c), 49 U.S.C. 5326(c), and 49 U.S.C. 5329(d). Each MPO is required to establish performance targets not later than 180 days after the date on which the relevant State or operator of public transportation establishes the performance targets, as provided in section 450.306(d)(3). The performance measures and targets are required to be reflected in the MPO MTP with the next plan update on or after the date that is equal to, or greater than, the date that is 2 years after the performance measures rules are effective, and with each subsequent MTP update (section 450.340).

The final rule and MAP–21 require that the TIP shall include, to the maximum extent practicable, a description of its anticipated effect toward achieving the performance targets identified in the MTP. This requirement applies to each update of the TIP. See section 450.340 for a description of the phase-in of the new requirements for performance-based planning and programming.

The FHWA and FTA made no changes to the final rule.

Section 450.330 TIP Action by FHWA and FTA

The WA State DOT requested that the language in section 450.330(c) be modified to state that the 12-month conformity lapse grace period applies to TIP amendments. The FHWA and FTA response is that section 450.326(p) describes the impacts of the conformity lapse grace period to the TIP. The FHWA also issued guidance on the implications of a conformity lapse grace period in a memorandum dated May 29, 2012.[30] This guidance includes information on the implications of a conformity lapse grace period on the MTP and TIP. There is also information available on the implications of the conformity lapse grace period in the January 24, 2008, amendments to the final rule on transportation conformity.[31] Because section 450.326(p), the guidance, and the amended EPA conformity regulations are available, FHWA and FTA do not believe it is necessary to make changes to section 450.330(c). Based on this comment, no changes were made to this section.

Section 450.332 Project Selection From the TIP

Three commenters (New York Association of MPOs, RTC of Southern Nevada, and Transportation for America) submitted comments on this section. The RTC of Southern Nevada requested that the language that describes project selection procedures

[30] FHWA Memorandum dated May 29, 2012, ''Subject: Information: Frequently Asked Questions on the Transportation Conformity Lapse Grace Period,'' *http://www.fhwa.dot.gov/environment/air_quality/conformity/reference/faqs/lapsegrace.cfm.*

[31] **Federal Register**, Vol. 73, No. 16, January 24, 2008, EPA Final Rule, Transportation Conformity Rule Amendments to Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), *http://www.gpo.gov/fdsys/pkg/FR-2008-01-24/pdf/E8-597.pdf.*

for projects on the NHS be removed from the final rule. The RTC of Southern Nevada recommended instead that project selection be based on the underlying responsibility (ownership) for the roadway. The commenter's reasoning for their recommendation is that with the expansion of the NHS, many more miles of NHS roadway are now on non-State, locally owned roads, and that the State will now be responsible for selecting projects on roads over which it has no jurisdiction.

In response to this comment, FHWA and FTA believe that Congress intended that States have project selection authority for projects on the NHS. Title 23 U.S.C. 134(k)(4) states that projects carried out on the NHS within the boundaries of an MPA serving a TMA shall be selected for implementation from the approved TIP by the State, in cooperation with the MPO designated for the area. This requirement is long-standing and was continued under the MAP–21 and FAST. The FHWA and FTA made no changes to the final rule based on this comment.

The New York State Association of MPOs and Transportation for America suggested that MPOs that do not serve TMAs should have the same project selection authority as MPOs that serve TMAs. In response, FHWA and FTA believe that it is the intent of Congress that the selection of federally funded projects in metropolitan areas not designated as a TMA shall be carried out by the State for projects funded under title 23 and by the designated recipients of public transportation funding under chapter 53 of title 49 (23 U.S.C. 134(j)(5)). This requirement is long-standing and was continued under the MAP–21 and FAST. Based on these comments, FHWA and FTA made no changes to the final rule.

Section 450.334 Annual Listing of Obligated Projects

This section concerns the requirements for an annual listing of obligated projects in metropolitan areas. Section 450.334 requires that, in MPAs, the States, MPOs, and operators of public transportation cooperatively develop a list of projects for which funds under 23 U.S.C. or chapter 53 of 49 U.S.C. were obligated in the preceding program year. The MARC suggested that the final rule include a requirement that FHWA division offices and FTA regional offices provide information to MPOs from their databases on obligations that could be used in producing this list so that citizens have access to the best information available.

In response to this comment, FHWA and FTA encourage States, MPOs, and operators of public transportation to work with their FHWA division and FTA regional offices to ensure that the information provided on annual listing of obligated projects is accurate. The FHWA and FTA find that no changes to this section are necessary.

Section 450.336 Self-Certifications and Federal Certifications

Nine entities (Community Labor United, DRCOG, Front Range Economic Strategy Center, MARC, National Association of Social Workers, New York State Association of MPOs, Partnership for Working Families, Policy Link, The Leadership Conference on Civil and Human Rights, and United Spinal Association) provided comments on this section. The comments were received from seven advocacy groups and two MPOs.

Several commenters (Community Labor United, Front Range Economic Strategy Center, National Association of Social Workers, Partnership for Working Families, Policy Link, The Leadership Conference on Civil and Human Rights, United Spinal Association) suggested that FHWA and FTA should include EJ as a topic in the Federal certification review process and should require States and MPOs to self-certify compliance with E.O. 12898. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

The MARC suggested that it is a duplication of effort for States and MPOs to self-certify when FHWA and FTA conduct certification reviews of the planning process in TMAs. The FHWA and FTA disagree with this comment. Each of these certification requirements is intended to meet different purposes. The Federal certification of the planning process in TMAs is a Federal review of compliance with the planning requirements in TMAs to ensure that the requirements of 23 U.S.C. 134 are being met. The State and MPO self-certifications are self-assessments on compliance with the requirements of 23 U.S.C. 134 and 135. The FHWA and FTA also make a planning finding on the statewide and metropolitan planning process at the time of STIP approval. This finding assesses compliance of the planning process with 23 U.S.C. 134 and 135.

The first sentence in section 450.336(a) reads as follows: ''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 4 years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements.'' The DRCOG commented that this sentence is confusing and suggested that it be rewritten as follows: ''. . . concurrent with the submittal of the entire proposed TIP, at a maximum of at least every 4 years, to the FHWA and FTA . . .'' The FHWA and FTA have reviewed the commenter's proposed language and believe that it is unclear and does not provide additional clarity. Based on these comments, no changes were made to the final rule.

The ARC commented on section 450.336 that when FHWA and FTA are conducting certification reviews of the TMAs, they should focus on the requirements of the final rule (*i.e.,* the ''musts'' and ''shalls'') rather than on those things that are not required by the final rule (*i.e.,* the ''should'' and ''mays''). In response, FHWA and FTA note that they focus on the requirements of the final rule when conducting certification reviews in TMAs. However, FHWA and FTA also often review planning practices that are not required under the final rule to glean best practices that can be shared with other MPOs and make recommendations for improvement in priority topic areas.

The Community Labor United, Front Range Economic Strategy Center, and Partnership for Working Families suggested that FHWA and FTA certifications should be conducted every 3 years instead of every 4 years. In response to this comment, FHWA and FTA believe that Congress intended for FHWA and FTA to conduct certification reviews in TMAs on a 4-year cycle (23 U.S.C. 134(k)(5)(A)(ii)) and have reflected that in section 450.336(b). The FHWA and FTA believe that doing certification reviews more frequently than every 4 years would have limited benefits and would place an unnecessary increased burden on MPOs serving TMAs, their respective States and operators of public transportation, and the FHWA and FTA field offices because of the resources involved in preparing for, participating in, and conducting the review. Based on these comments, FHWA and FTA made no changes to the final rule.

Section 450.336(a)(5) has been updated to reflect changes in the statutory citations resulting from FAST; section 1101(b) of MAP–21 and 49 CFR part 26 in this section becomes section 1101(b) of FAST and 49 CFR part 26.

Section 450.338 Applicability of NEPA to Metropolitan Transportation Plans

The AASHTO commented that the new authority for PEL described in the

MAP–21 (section 1310) makes the project development process more complex and cumbersome, and recommended that existing authorities for PEL under appendix A to the final rule be retained. The FHWA and FTA response is that this same comment was received previously on section 450.224. See section 450.224 of the section-by-section analysis for the FHWA and FTA response to this comment. The FHWA and FTA have made no changes to the final rule.

Section 450.340 Phase-In of New Requirements

Section 450.340 describes the phase-in of the new requirements in metropolitan areas. Twenty-eight entities (AASHTO, Albany MPO, AMPO, ARC, Board of the French Broad River MPO, California Association for Coordinated Transportation, CT DOT, FMATS, GA DOT, H–GAC, IA DOT, MD DOT, ME DOT, MET Council, MI DOT, NARC, NYMTA, NJ DOT, North Florida MPO, NYMTC, RMAP, San Luis MPO, SEMCOG, TriMet, TX DOT, WA State DOT, WFRC, and Wilmington MPO) submitted comments on this section. Nine of the comment letters were from States, 14 from MPOs, 3 from associations, 1 from an operator of public transportation, and 1 from an advocacy group.

Several commenters (AASHTO, CT DOT, FMATS, IA DOT, ME DOT, NJ DOT, and NYMTC) commented that they felt the 2-year phase-in period for the final rule is too short and that more time and flexibility is needed. The New York State Association of MPOs stated that the 2-year phase-in period for requiring MPOs to comply with the new rule is adequate. The FHWA and FTA believe that the 2-year phase-in schedule for MPOs is sufficient. The FHWA and FTA rationale for the 2-year phase-in for MPOs was described in the NPRM. It is based on the 2-year phase-in for the States, as provided for in 23 U.S.C. 135(l). The FHWA and FTA made no changes to the final rule based on this comment. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Some commenters (NJ DOT, WA State DOT, and WI DOT) suggested that FHWA and FTA allow for an additional 90-day comment period once all of the performance management related NPRMs are issued to give States and others the opportunity to review and possibly revise their earlier comments. The Sierra Club commented that it liked this comment.

The FHWA and FTA believe that each of the rules has provided an robust comment period sufficien to allow stakeholders to submit comments. No changes were made to the final rule based on the comment.

The WA State DOT commented that FHWA and FTA should consider delaying the implementation of the performance management requirements of the final rule from 2 years after the publication date of the final rule and the issuance of guidance. See section IV(B) (recurring comment themes) for more discussion on this issue and FHWA and FTA responses.

Several commenters (Board of the French Broad River MPO, IA DOT, and Wilmington MPO) requested that FHWA and FTA further clarify the phase-in requirements and processes. Two commenters (California Association for Coordinated Transportation and WA State DOT) suggested that FHWA and FTA make available graphic materials to explain the timelines and relationships of the various new and continuing provisions, programs, and funding sources to make it easier to understand and comply. They further commented that technical assistance from FHWA and FTA will be important. In response, FHWA and FTA intend to provide guidance and technical assistance on the phase-in requirements and processes of the various performance related rulemakings.

Two commenters (IA DOT and WRFC) provided comments on compliance with the 2-year phase-in provisions in this section. See section IV(B) (recurring comment themes, common effective date, and phase-in of new requirements) for additional discussion and responses on this issue.

The NYMTC commented that MPOs should be able to incorporate goals and targets included in agency-specific plans into MTPs by reference because many of these other plans are on a schedule that is not consistent with the publication of the TIP or the MTP. The FTA and FTA response to this comment is that performance measures and targets would only have to be included in the MTP at the time it is updated. The performance measures and targets should be included directly in the MTP at the time it is updated.

The NYMTA and TriMet commented that FHWA and FTA should allow agencies to utilize existing processes and procedures whenever possible. The FHWA and FTA agree that States, MPOs, and operators of public transportation should utilize existing processes and procedures to ease the implementation of performance management when possible.

The Metropolitan Council MPO commented that in sections 450.340(e) and 450.340(f), the phrase ''meets the performance based planning requirements in this part and in such a rule'' is unnecessary and should be deleted. The FHWA and FTA do not agree with this comment and are leaving the phrase unchanged because it delineates that these paragraphs apply specifically to meeting the performance-based planning requirements in this part and in other (performance management) rules.

The RMAP asked for clarification on how FHWA and FTA will evaluate MPOs serving TMAs during Federal TMA planning certification reviews on the progress of incorporating performance measures. The FHWA and FTA respond that after the transition period, they will be evaluating the progress of MPOs serving TMAs in implementing performance management based on the requirements for MPOs in the MAP–21 and the final rule. These requirements include, but are not limited to: Target setting for the federally required performance measures; progress in achieving targets; coordination on target setting among States, MPOs, and operators of public transportation linking the program of investments in the TIP to performance target achievement; and documentation of targets and progress toward achieving targets in the MTP.

Section 771.111, Early Coordination, Public Involvement, and Project Development

The FHWA and FTA received no comments specific to section 771.111. No substantive changes were made in the final rule.

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

Appendix A to part 450 is nonbinding information that provides additional discussion on linking the transportation planning and NEPA processes. Fifteen entities provided comments on appendix A. Eleven comments were submitted by States, two by MPOs, one by an association representing public transportation agencies, and one by an advocacy organization.

Several of the States (ID DOT, MT DOT, ND DOT, SD DOT, TX DOT, and WY DOT) and one association representing public transportation agencies (AASHTO) asked that DOT clarify that appendix A is nonbinding guidance. The FHWA and FTA agree that appendix A is nonbinding guidance. The text in the opening paragraph of appendix A states that appendix A is intended to be nonbinding and should not be

construed as a rule of general applicability. This is unchanged from the previous 2007 rule.

The AASHTO and MT DOT stated that the new statutory authority for linking the planning and NEPA processes under section 1310 of the MAP–21 (23 U.S.C. 168) is too complex and cumbersome and may deter States from undertaking planning and environmental linkages. The commenters stated that they would like to retain the ability to use the existing process to adopt analysis and decisions made during the transportation planning process.

The FHWA and FTA response is that the existing authorities to adopt analysis and decisions made during the transportation planning process are retained in the final rule. Appendix A is unaltered by section 1310 of the MAP–21 or the FAST Act changes to 23 U.S.C. 138. See the section-by-section analysis (sections 450.212 and 450.318) for more discussion on the new statutory authority for linking the planning and NEPA processes from the MAP–21 and the retention of the existing authorities for PEL from the 2007 rule.

The ARTBA expressed concerns over the use of the phrase ''significant new information'' in appendix A in determining whether or not an existing planning document may be used during the NEPA review. The FHWA and FTA believe that if there is significant new information since the development of planning document, it should be reviewed to determine if the planning document is still valid or needs updating. That review should be conducted by the State or other entity responsible for preparing the NEPA document in cooperation with the lead Federal agency and other affected entities (*e.g.,* MPOs, local governments, operators of public transportation, and State and Federal resource agencies).

The ARTBA also suggested that FHWA and FTA establish a clearinghouse to share and highlight examples of the successful implementation of planning products into NEPA reviews. The FHWA and FTA response is that FHWA maintains a Web site to share existing practices on planning and environmental linkages. The Web site is accessible at: *http://www.environment.fhwa.dot.gov/integ/*.

The FL DOT suggested that FHWA and FTA provide further clarity on the role of appendix A in order to reduce the risk of misinterpretations in some States and division offices. The FHWA and FTA response is that the use of appendix A is optional and nonbinding. There is additional information on the aforementioned Web site on the use of planning and environmental linkages. It provides examples of effective practices, a checklist, and a guidebook on using PEL as part of a corridor study.

The ARC expressed support for the language in appendix A and recommended no changes.

Several commenters (AASHTO, CT DOT, and OR DOT) requested that the comment period be extended so that there is sufficient overlap with the separate NPRMs on planning and environmental linkages. The FHWA and FTA agreed with this comment and extended the comment period of the planning NPRM for 30 days to provide a 30-day overlap with the PEL NPRM.

Another MPO (SCCRTC) correctly commented that the NPRM does not extend NEPA to MTPs or transportation improvement programs.

In the text of appendix A, FHWA and FTA updated the number of positions funded for long-term, on-call staff that are detailed to an agency for temporary assignments to support focused and accelerated project review by a variety of Federal, State, tribal, and local agencies. The 2003 number of ''246 positions'' has been updated to ''over 200.''

Title 49 CFR part 613, Metropolitan Transportation Planning; Statewide and Nonmetropolitan Transportation Planning

This section is revised to refer to the proposed regulations in 23 CFR part 450. Because FHWA and FTA jointly administer the transportation planning and programming process, the regulations were kept identical.

VI. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures

The FHWA and FTA have determined that this rulemaking is a nonsignificant regulatory action within the meaning of EO 12866, and under DOT regulatory policies and procedures. In addition, this action complies with the principles of EO 13563. After evaluating the costs and benefits of these amendments, FHWA and FTA have determined that the economic impact of this rulemaking would be minimal. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The FHWA and FTA anticipate that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not necessary. The changes proposed herein would add new analysis, coordination, and documentation requirements (*e.g.,* performance-based planning and programming; cooperation with local officials responsible for transportation or, if applicable, RTPOs; and new requirements for TMA MPO policy board membership). In preparing this final rule, FHWA and FTA have sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations, and to use existing processes to accomplish any new tasks or activities.

The FHWA and FTA have conducted a cost analysis identifying each of the regulatory changes that would have a cost impact for States, MPOs, or operators of public transportation, and have estimated those costs on an annual basis. This cost analysis is included as a separate document titled ''Regulatory Cost Analysis of Final Rule,'' and is available for review in the docket.

Regulatory Cost Assessment and Burden Analysis Response to Comments

The regulatory analysis estimates the economic impact, in terms of costs and benefits, on States, MPOs, and operators of public transportation regulated under this action. The FHWA and FTA estimated the cost burden of this rule to be 2.6 percent of the total planning program. The FHWA and FTA concluded that the economic impact of this rulemaking would be minimal and the benefits of implementing this rulemaking would outweigh the costs.

Sixteen respondents (AASHTO, ARC, AR DOT, CALTRANS, County of Maui DOT, CT DOT, DVRPC, Florida MPO Advisory Council, MD DOT, NJ DOT, North Florida MPO, NYMTC, PA DOT, River to Sea TPO, VA DOT, and WA State DOT) submitted comments to the docket regarding the regulatory burden associated with complying with the proposed rule described in ''Economic Assessment: Statewide and Nonmetropolitan Transportation Planning and Metropolitan Transportation Planning Notice of Proposed Rule Making'' (Docket No. FHWA–2013–0037).

Ten commenters (AASHTO, CT DOT, DVRPC, Florida MPO Advisory Council, MD DOT, NJ DOT, North Florida TPO, River to Sea TPO, VA DOT, and WA State DOT) indicated that the estimated annual burden of $30.8 million documented in the NPRM underestimated the annual costs in terms of both funds and hours. They

commented that complying with the changes proposed in the NPRM and the introduction of performance-based planning and programming will significantly increase the workloads for States and MPOs.

The NJ DOT expressed concern that the estimated 2.6 percent of total planning program funds to carry out the requirements of this NPRM is too low, especially in the short-term implementation phase. The NJ DOT commented that the FHWA and FTA assumption that the additional work will increase the annual cost of preparing a long-range transportation plan, STIP, and TIP by States, MPOs, and operators of public transportation by 15 percent, on average, seems low. The NJ DOT commented that implementation of MAP–21 performance-based planning and programming will require more effort than the additional 2,400 annual burden hours and indicated a large amount of up front work is needed to collect, format, store, and analyze data. States also need to consult, coordinate, and cooperate with many entities when conducting the STIP and statewide planning and provide oversight of MPOs. The ARC and WA State DOT asked that FHWA and FTA explain the assumptions behind these costs and assumed benefits.

In response, FHWA and FTA estimated that the incremental cost of implementing the performance-based planning provisions of the final rule will increase the costs of preparing State and MPO long-range plans, STIPs, and TIPs by an average of 15 percent. This estimate is based on an analysis of current costs of States and MPOs that have implemented a performance-based approach to transportation planning and programming. Based on discussions with three States and three MPOs, FHWA and FTA believe that this assumption is reasonable.

Based on this assumption, the total cost for implementation of changes to the planning process resulting from this final rule is estimated to be $30.9 million annually (as compared to the estimate of $30.8 million in the NPRM). To implement the proposed changes in support of a more efficient, performance-based planning process, FHWA and FTA estimate that the aggregate increase in costs attributable to the final rule for all 50 States, the District of Columbia, and Puerto Rico and 409 MPOs is approximately $28.4 million per year (as compared to the estimate of $28.3 million in the NPRM). These costs are primarily attributable to an increase in staff time needed to meet the new requirements. For the estimated 600 operators of public transportation that operate within MPAs, the cost would be $2.5 million per year to coordinate with MPOs in their selection of performance targets for transit state of good repair and transit safety.

Four commenters (AASHTO, CT DOT, MD DOT, and NJ DOT) requested that FHWA and FTA conduct an analysis to estimate the costs to specific States and MPOs based on local wage rates. The NJ DOT noted that there are wide variations in labor wage rates and overhead rates among States and MPOs. The NJ DOT also noted that some States have a large network of roadways and transit services which will require greater resources to carry out this effort, as will those States that are responsible for the entire roadway network within their State.

In response, FHWA and FTA note that they do not have the information necessary to calculate the incremental cost of the rule by State and MPO as it does not know the current costs of preparing each State and MPO long-range plan, STIP, and TIP. The estimate of 15 percent could be applied by each State or MPO to estimate their respective incremental costs. The FHWA and FTA agree that the estimate is an average and the incremental costs to specific States and MPOs may differ as they vary considerably across agencies, depending on staff resources and priorities, and local political environment.

The WA State DOT questioned the assumption that the average State's cost is similar to the cost to a large MPO. The WA State DOT suggested that FHWA and FTA re-evaluate these costs because the average State incurs more costs than a large MPO for these reasons: (1) The State is required to consult, coordinate, and cooperate with many more entities/individuals than any single MPO would be required; (2) the State has the responsibility for the STIP, MPOs do not; and (3) the State has two roles, statewide planning and providing oversight to MPOs.

In response, FHWA and FTA believe the scope and complexity of the responsibilities of the 54 MPOs that serve an urbanized area with a population greater than 1 million is comparable to the scope and complexity of the responsibilities of a State DOT.[32] The FHWA and FTA agree that the estimate is an average and that the incremental costs to specific States and MPOs may differ.

The County of Maui, HI questioned why FHWA and FTA estimated that the incremental cost of implementing the performance-based planning provisions would increase the costs of preparing State and MPO long-range plans, STIPs, and TIPs by an average of 15 percent based only on discussions with three States and three MPOs. The FHWA and FTA respond that there is limited experience in implementing a performance-based approach to planning and programming and invited States and MPOs to submit comments on this assumption in the NPRM. While three respondents (AASHTO, CT DOT, and NJ DOT) did indicate that the estimate of a 15 percent increase in the cost of preparing State and MPO long-range plans, STIPs, and TIPs was too low, none provided documentation to support a different assumption.

The WA State DOT noted that it is difficult to provide informed comments on costs estimates because not all of the MAP–21 performance management related rules impacting costs are complete. In response, FHWA and FTA note that the estimates of the burden of the final rule focus on the incremental costs of preparing performance-based State and MPO long-range plans, STIPs, and TIPs. However, the burden of some data collection, target setting, and reporting is estimated in other rulemakings that implement the MAP–21 performance management requirements.

The FHWA will estimate the costs of additional data collection, target setting, and reporting through three separate rulemakings for performance measures and other associated requirements (National Performance Management Measures: Highway Safety Improvement Program Final Rule (RIN 2125–AF49), National Performance Management Measures: Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program NPRM (RIN 2125–AF53), and National Performance Management Measures: Assessing Performance of the National Highway System, Freight Movement on the Interstate, and the Congestion Mitigation and Air Quality Improvement Program NPRM (RIN 2125–AF52)).

To estimate costs for these rules, FHWA assessed the level of effort, expressed in labor hours and the labor categories needed to comply with each component of the rule. The FHWA derived the costs of each of these components by assessing the expected increase in level of labor effort to standardize and update data collection and reporting systems of States, and the increase in level of labor effort for States

[32] Forty-three of the fifty States have a population greater than 1 million people.

and MPOs to establish and report targets. The incremental annualized costs, discounted at 7 percent and 3 percent, respectively, are: $7.7 million to $7.1 million to implement the HSIP; $21.2 million to $20.3 million to implement the NHPP; and $18.9 million to $18.6 million to assess the performance of the NHS, Freight Movement on the Interstate System, and CMAQ Improvement Program.

Similarly, FTA estimated the burden of data collection, plan preparation, target setting, and reporting through two separate rulemakings: National Transit Asset Management System NPRM (RIN: 2132–AB07) and the Public Transportation Agency Safety Plan NPRM (RIN: 2132–AB23). The estimated costs of the proposed National Transit Asset Management (TAM) System include the cost for the operators of public transportation to assess their assets, develop TAM plans, and report certain information to FTA. The incremental annualized costs, discounted at 7 percent and 3 percent, respectively, are $7.7 million to $7.1 million to implement the National TAM System. To implement the Public Transportation Agency Safety Plan rule, three main cost areas were estimated: (1) Developing and certifying safety plans; (2) implementing and documenting the SMS approach; and (3) associated record keeping. Staff time was monetized using data on wage rates and benefits in the transit industry. Over the 20-year analysis period, total costs are estimated at $976 million in present value (7 percent discount rate), or the equivalent of $92 million per year.

Thus, the total estimated burden of implementing performance-based planning and programming, including the costs estimated in this and other related rulemakings that implement the MAP–21 performance management requirements, ranges from $175 million to $177 million per year. This cost estimate represents 3.6 million labor hours annually at $48.69 per hour.

The WA State DOT anticipates incurring additional costs to provide assistance to rural transit agencies to develop public transportation agency safety plans. The WA State DOT noted that it is unclear if these additional costs are captured in the FHWA and FTA analysis. In response, FHWA and FTA note that those costs are discussed in the Public Transportation Agency Safety Plan NPRM and not within the scope of this rulemaking.

The WA State DOT also noted the uncertainties regarding the expectations for performance reports. There is no required and consistent format and no common method to collect, store, report, and update data.

The FHWA and FTA note that each of the performance rules will identify their respective reporting format and the anticipated costs of reporting. The FHWA and FTA agree that the final rule will increase the level of effort and costs associated with carrying out several specific transportation planning functions, including the development of metropolitan and long-range statewide transportation plans, STIPs, and TIPs. The FHWA and FTA agree that the estimate is an average. The incremental costs to specific States and MPOs may differ. The costs associated with these functions vary considerably across agencies, depending on staff resources and priorities, local political environment, and other considerations. However, while the final rule changes existing processes and procedures, in most cases it does not require completely new activities. Given the experience of States and MPOs that have implemented a performance-based approach to planning, and that the costs of some data collection, data analysis, target setting, and reporting are included in other rulemakings implementing performance-based planning and programming, the FHWA and FTA will continue to assume that implementing the performance-based planning provisions of the final rule will increase the costs of preparing State and MPO long-range plans, STIPs, and TIPs by an average of 15 percent.

The Macatawa Area Coordinating Council commented that the final rule appears to place additional data collection and reporting responsibilities on smaller MPOs without additional funding to collect this data. The Albany MPO stated that the final rule should seek to reduce the cost and labor burden of data collection, analysis, and any related activities wherever possible. The commenter stated that MPOs face very constrained funding, and the final rule (and any subsequent rules) should take this into account.

In response, FHWA and FTA encourage States and MPOs to review and comment on the other rulemakings implementing the MAP–21's performance management framework as they propose scalable approaches to lessen the burden on smaller MPOs and operators of public transportation.

The AMPO pointed out that, in a 2010 report by FHWA, approximately 50 percent of MPOs reported that existing Federal resources were insufficient to complete the current 3–C planning and programming process. The ARC noted that, with regard to the fact that 80 percent of the costs are reimbursable through existing Federal funding programs, those resources are already being fully utilized for other planning efforts directly related to the MPO mission. More than half of the respondents (AASHTO, AR DOT, CT DOT, DVRPC, Macatawa Area Coordinating Council, Maui DOT, MD DOT, NJ DOT, NYMTC, and PA DOT) who submitted comments on the Regulatory Cost Assessment and Burden Analysis requested that FHWA and FTA identify and/or provide additional funding to support new activities related to performance-based planning.

Four commenters (AR DOT, Maui DOT, NYMTC, and WA State DOT) noted that Congress did not provide new or dedicated funding to help States, MPOs, and operators of public transportation cover the administrative burdens associated with performance-based planning as envisioned in the MAP–21. The AMPO stated that, without adequate resources to conduct the performance-based planning expected by Congress and anticipated in the final rule, MPOs may fall short of meeting the intended purpose of the MAP–21. The AMPO commentated that many MPOs are concerned that the final rule will result in an unfunded mandate if it does not provide the commensurate funding, time, and flexibility for MPOs to address its requirements.

In response, FHWA and FTA note that it is Congress that appropriates funds to support the statewide, metropolitan, and nonmetropolitan transportation planning programs. Under MAP–21, Congress authorized and appropriated $995 million for distribution to the States and MPOs in FY 2013 and $1.007 billion for distribution in FY 2014. This represents an increase of 8 percent over SAFETEA–LU funding levels for these programs and supports an additional 20.6 million hours (assuming a salary rate of $48.69 per hour). The FHWA and FTA note that in the FAST Act, Congress authorized $1.240 billion for distribution to the States and MPOs in FY 2016. This represents a 24 percent increase over MAP–21 levels.

The Florida MPO Advisory Council and the River to Sea TPO commented that not all States and MPOs shared equally in the increased MAP–21 funding. State departments of transportation and MPOs in 22 States received a less than 9 percent increase in metropolitan planning and State planning and research funds.

The FHWA and FTA note that States and MPOs have the option to use other program funds that are available to support the development of the performance-based program plans, including data collection. The FTA

section 5307 urbanized area formula grants and section 5311 formula grants for rural areas can be used to support the development of transit asset management plans and transit agency safety plans. The FHWA NHPP, STP, and State Planning and Research and Planning funds can also be used to develop performance-based plans including data collection.

The FHWA and the FTA also invited comments on the following:

The FHWA and FTA assumed that implementing the performance-based planning provisions of the proposed rule will increase the costs of preparing State and MPO long-range plans, STIPs, and TIPs by an average of 15 percent. Based on telephone discussions with three States, and three MPOs, FHWA and FTA believe that this assumption is reasonable. The FHWA and FTA invite States and MPOs to submit comments on this assumption.

While three respondents (AASHTO, CT DOT, and NJ DOT) indicated that the estimate of a 15 percent increase in the cost of preparing State and MPO long-range plans, STIPs, and TIPs was too low, none provided documentation to support a different assumption. The CT DOT stated that it believes the new costs are likely to be much higher and could increase costs as much as 50 percent in some of the larger regions and statewide. The NJ DOT wrote that the FHWA and FTA assumption that the additional work will increase the annual cost of preparing a long-range transportation plan, STIP, and TIP for States, MPOs, and operators of public transportation by 15 percent, on average, seems low.

The potential costs and benefits that might be associated with the option for MPOs to use scenario planning during development of the metropolitan transportation plan.

The North Front Range MPO, commented that preparing and obtaining public comment, and then running the scenarios takes considerable additional time and/or more staff. With only 4 years between plans for nonattainment areas, this adds another requirement into the packed schedule. In response, FHWA and FTA note that the use of scenario planning during the development of the MTP is an optional best practice.

The potential costs and benefits that might be associated with the option for States and MPOs to develop a programmatic mitigation plan as part of the statewide or metropolitan transportation planning process.

No comments were received in response to this request.

The final rule will promote transparency by requiring the establishment of performance targets in key areas, such as safety, infrastructure condition, system reliability, emissions, and congestion and expressly linking investment decisions to the achievement of such targets. This would be documented in plans developed with public review. The final rule will promote accountability through mandating reports on progress toward meeting those targets.

Beyond improved transparency and accountability, there are several other benefits of the final rule. Other elements of the rule may improve decisionmaking, such as representation by operators of public transportation on each MPO that serves a TMA, updating the metropolitan planning agreements, requiring States to have a higher level of involvement with nonmetropolitan local officials, and providing an optional process for the creation of RTPOs.

The final rule will enhance the statewide and nonmetropolitan transportation planning process by requiring States to cooperate with nonmetropolitan local officials or RTPOs, if applicable, when conducting rural transportation planning. This gives local officials or RTPOs a stronger voice in the development of planning products and project selection.

The option for MPOs to use scenario planning in the development of their MTPs provides a framework for improved decisionmaking through comparison of the performance tradeoffs of various locally determined scenarios for transportation investment. Although conducting scenario planning entails costs, savings from improved implementation could offset these costs. These benefits will improve the transportation planning process.

The option for States and MPOs to develop a programmatic mitigation plan as part of the statewide and the metropolitan transportation planning processes provides a framework whereby States and MPOs may identify environmental resources early in the planning process. As a result, they could potentially minimize or avoid impacts to these resources. This has the potential to streamline project development and protect environmental resources, and may have benefits that outweigh the costs of performing the analysis.

With respect to the NPRM on ''Additional Authorities for Planning and Environmental Linkages'' (Docket No. FHWA–2014–0031; FHWA RIN 2125–AF66; FTA RIN 2132–AB21), which proposed revisions to the statewide and nonmetropolitan and metropolitan transportation planning regulations related to the use of, and reliance on, planning products developed during the transportation planning process for project development and the environmental review process, it is anticipated that the economic impact of this rulemaking would be minimal. The changes that this rule proposed are intended to streamline environmental review. These provisions are optional and would not have a significant cost impact for States, MPOs, or operators of public transportation. If used, it is anticipated that these optional provisions could potentially result in cost savings for the States, MPOs, and operators of public transportation by minimizing the duplication of planning and environmental processes and improving project delivery timeframes.

In summary, FHWA and FTA estimate the total cost of this final rule is $30.9 million. Of this total, the estimated costs for all 50 States, the District of Columbia, and Puerto Rico and an estimated 409 MPOs would be approximately $28.4 million per year. Eighty percent of these costs are directly reimbursable through Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(f) and 49 U.S.C. 5303(h)) and for State planning and research (23 U.S.C. 505 and 49 U.S.C. 5313). The estimated cost to 600 operators of public transportation would be approximately $2.5 million per year. Eighty percent of these costs are directly reimbursable through Federal transportation funds allocated for urbanized area formula grants (4 U.S.C. 5307, 49 U.S.C. 5311).

The FAST increased the mandatory set-aside in Federal funds for metropolitan transportation planning or Statewide Planning and Research funding. The States, MPOs, and operators of public transportation have the flexibility to use other categories of Federal highway funds for transportation planning, such as STP funds, if they so desire. Consequently, the increase in the non-Federal cost burden attributable to the final rule is estimated to be $6.2 million per year. Under FAST, in FY 2016, the total Federal, State, and local cost of the planning program is $1,488 million. As the cost burden of the final rule is estimated to be 2.1 percent of the total planning program, FHWA and FTA believe that the economic impact would be minimal and the benefits of implementation would outweigh the costs.

The FHWA and FTA also conducted a break-even cost analysis as part of the regulatory cost analysis to determine at

what point the benefits from the final rule exceed the annual costs of complying with it. The total annual FAST funding programmed through this process is $39.7 billion in FHWA funds and $11.7 billion in FTA funds in FY 2016. The annual average cost of the final rule is estimated to be $30.9 million per year. If return on investment increases by at least 0.060 percent of the combined FHWA and FTA annual funding programs, the benefits of the final rule exceed the costs.

Information Collection—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) prior to conducting or sponsoring a collection of information. The FHWA and FTA have determined that the final rule contains collections of information for the purposes of the PRA. The reporting requirements for metropolitan planning UPWP, transportation plans, and TIPs are currently approved under OMB control number 2132–0529. Separately, FHWA is updating the information reporting requirements for State planning and research work programs, which has been approved by the OMB under control number 2125–0039. These State planning and research work program are governed under a separate regulation at 23 CFR 420. The FHWA is updating 23 CFR 420 and will be issuing a separate NPRM soon. The FTA conducted the analysis supporting this approval on behalf of both FTA and FHWA because 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 estimates in this justification include the burden hours and costs developed for the RIA prepared as part of the final rule for the Metropolitan Transportation Planning Program and the Statewide and Nonmetropolitan Planning Program to implement provisions of the MAP–21. To develop the estimates for the RIA, FHWA and FTA first estimated the pre-MAP–21 costs for specific MPO planning functions on the basis of costs identified through a sample of MPO annual work programs. The FHWA and FTA sampled a total of 17 TMA and 12 non-TMA MPOs to calculate costs for States and MPOs. The FHWA and FTA then estimated the average annual burden hours of effort and cost to implement the MAP–21 changes to the MPO planning functions which include: A transition to a performance-based (statewide and metropolitan) planning and programming process; cooperation by the State with local officials or RTPOs, if applicable, when conducting the statewide transportation planning process; and representation by operators of public transportation on MPOs that serve TMAs. The FHWA and FTA assumed that this additional work will increase the annual cost of preparing a long-range transportation plan, STIP, and TIP by the State, MPOs, and operators of public transportation by 15 percent, on average. The paragraphs below describe the burden analysis conducted by FHWA and FTA for the planning requirements in the final regulation, which include the changes introduced by MAP–21.

Historically, FHWA and FTA have used a methodology not based on sampling to estimate the burden hours required of States and MPOs to meet the planning requirements. The historical methodology assumed very limited increase in the costs of developing the planning products.

Burden Analysis for the Planning Requirements in the Final Rule

The UPWP identifies transportation planning activities in metropolitan areas and supports requests for funding under both FHWA and FTA planning programs in metropolitan areas. A similar list of planning activities is prepared on a statewide level as the basis for FHWA and FTA State planning and research (SP&R) funding. The metropolitan plan and statewide plan reflect the long-range goals and objectives determined through the metropolitan and statewide transportation planning processes, respectively, and have a 20-year planning horizon. The STIP and TIP are short-range 4-year listings of highway and transit improvement projects which are consistent with the metropolitan and statewide plans and support the request for Federal transportation funding under 23 U.S.C. and chapter 53 of 49 U.S.C.

The FTA and FHWA jointly carry out the Federal mandate to improve metropolitan and statewide transportation under the authority of 23 U.S.C. and chapter 53 of 49 U.S.C. Title 23 U.S.C. 104(f) and 49 U.S.C. 5305(g) authorize funds to support transportation planning at metropolitan and statewide levels. As a condition to receive this funding, requirements are established for metropolitan and statewide transportation planning under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304. These sections call for development of transportation plans and TIPs in all States and metropolitan areas. The information collection activities to prepare federally required plans and programs, and the planning studies proposed for funding in UPWPs and SP&R work programs, are necessary to monitor and evaluate current and projected usage and performance of transportation systems nationwide, statewide, and in each urbanized area.

The MTP and TIP are required by 49 U.S.C. 5303 and 23 U.S.C. 134, which state that ''metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State.'' Title 49 U.S.C. 5304 and 23 U.S.C. 135 require that each ''State shall develop a long-range transportation plan and STIP for all areas of the State.'' Both statutory sections require that ''the process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive.'' The States and MPOs use metropolitan and statewide plans, STIPs, and TIPs as the basis for investing Federal and non-Federal capital funds for transportation infrastructure investments. (Note: PRA requirements for preparation of the STIP are covered by OMB control number 2125–0039.)

Title 23 CFR part 450 implements these statutory requirements. (Note: 23 CFR part 450 is identical to, and cross-referenced by, the equivalent regulation in 49 U.S.C. (49 CFR part 613).) The MPO, together with the State and operators of public transportation, prepares MTPs for each urbanized area. The State develops a long-range statewide transportation plan which, in metropolitan areas, is developed in cooperation with affected MPOs. These plans form the basis for development of STIPs and TIPs, the short-range programming documents for federally funded transportation capital investments.

The UPWP is required by 23 CFR 450.308 for all MPOs in TMAs. The MPOs in urbanized areas with populations of less than 200,000, with prior approval by the State, FHWA, and FTA, may use a simplified statement of work as their planning grant application instead of developing a full UPWP. Details of the required planning processes supported by FHWA and FTA metropolitan planning funds, as required by 23 U.S.C. 134 and 49 U.S.C. 5303, are set forth in 23 CFR part 450. The planning grant application is based upon the UPWP and is the mechanism by which grantees request Federal funding. The information contained in the UPWP is necessary to establish the

eligibility of the activities for which funding is being requested.

Preparation of UPWPs, project listing for SP&R funding, metropolitan and statewide plans, STIPs, and TIPs are essential components of decisionmaking by State and local officials for planning and programming Federal transportation funds to support the priority transportation investment needs of their areas. In addition to serving as the grant application by States for FHWA and FTA planning funds in metropolitan areas, UPWPs are used by FHWA and FTA to establish national out-year budgets and regional program plans; develop policy on using funds; monitor State and local consistency with national planning and technical emphasis areas; respond to congressional inquiries and prepare congressional testimony; and ensure efficiency in the use and expenditure of Federal funds by determining that planning proposals are reasonable, cost effective, and supportive of full compliance with all applicable Federal laws and regulations.

Title 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304 require the development of plans and programs in entire States and all urbanized areas, respectively. After approval by the Governor and MPO, metropolitan TIPs in attainment areas are to be incorporated directly into the STIP. For nonattainment and maintenance areas, as required by the Clean Air Act Amendments of 1990, FHWA and FTA must make a conformity finding on these plans and TIPs before TIPs are incorporated into STIPs.

The complete STIP is then jointly reviewed and approved by FHWA and FTA. With that action comes a joint determination or finding by FHWA and FTA that metropolitan and statewide planning processes are in compliance with all applicable Federal laws and regulations. These findings, conformity determinations, and approval actions constitute the determination that State and metropolitan area transportation planning processes are complying with Federal law and regulatory requirements as a condition of eligibility for receiving Federal-aid. Without the supporting documents, these findings and planning approvals cannot be made as the basis for making project level grant awards.

Since a STIP and TIP is made up of various types of capital and non-capital surface transportation projects, from equipment acquisition to major highway and transitway construction, it is essential that these projects be identified and described. Because the STIP/TIP is the basis for subsequent programming and obligation of both Federal-aid highway and FTA capital funds, there must be an indication of project cost and Federal funds required (estimated cost). The STIP and TIP is an integrated FHWA and FTA program. Because both agencies have several statutory sources of funds, each with different eligibility requirements, it is necessary to know what projects are proposed to be funded from which fund (source of Federal funds). Because the STIP and TIP is an integrated program of highway and transit improvements, many potential capital grant recipients have projects included in the document (identification of the recipient). For FTA funding, it is necessary that each individual project identify the likely capital grant applicant. The STIP and TIP requirement reduces the burden to potential capital grant applicants by imposing the programming requirements at one point and setting one response to these requirements.

The SP&R program, UPWP, metropolitan and statewide plan, STIP, and TIP are adaptable to computer generation and revision. The FHWA and FTA have extensive technical assistance programs that encourage application of computer techniques. These programs reduce burdens by achieving time savings in technical analysis, report revisions, and clerical activities through automation.

While the transit and highway funding programs for planning and project implementation are unique to FHWA and FTA, they cooperate to avoid duplication of effort. Most visible is the consolidation of statutory requirements for planning through the issuance of joint planning regulations. The States and MPOs prepare a single set of UPWPs, plans, STIPs, and TIPs to satisfy both FHWA and FTA requirements.

The information contained in projects proposed for funding under the SP&R programs, UPWPs, metropolitan and State plans, STIPs, and TIPs are not contained in any other federally required document. However, where this information is already contained in State and local planning documents, FHWA and FTA can accept those documents provided that all their requirements are met, which further reduces duplication and unnecessary burden. The SP&R programs, statewide plans, UPWPs, metropolitan plans, STIPs, and TIPs have been submitted to FHWA and FTA for many years to support funding of the transportation planning and capital improvement programs for urbanized and non-urbanized areas. Continuing contact among FHWA division staff, FTA regional staff, States, MPOs, and grantees provides opportunity for grantees to seek changes. No major problems have developed regarding this requirement. The FHWA and the FTA have not received a petition to establish, amend, or repeal a regulation pursuant to 49 CFR 106.31.

A 60-day **Federal Register** Notice on information collection was published on November 22, 2013 (78 FR 70094), soliciting comments prior to submission to OMB. The DOT received comments from the FL DOT and AASHTO. Both expressed concern that many respondents will exceed the 8,017 burden hours per respondent estimated in the Notice of Request for Revision of an Approved Information Collection. The DOT concurs that some States and MPOs may exceed the estimated 8,017 average burden hours to meet the metropolitan and statewide transportation planning requirements. This is because the burden hour estimate is based upon the average for all States and MPOs. A 30-day **Federal Register** notice was published on January 29, 2014 (79 FR 4808).

Since that time, the estimates have been updated to include the current number of MPOs in urbanized and non-urbanized areas established as a result of the 2010 U.S. Census; a revised number of designated Clean Air Act attainment and non-attainment areas; a 3 percent increase in the labor rates; and the total burden hours and costs to meet the requirements of the final rule. On the basis of these changes, the estimated burden hours per respondent are 9,109 hours.

The following table summarizes the estimated burden hours for the collection of information for the purposes of developing and completing UPWPs, metropolitan and statewide transportation plans, STIPs, and TIPs, as required by the final rule, and provides an explanation of the methodology used to calculate the number of hours required per submission.

UNIFIED PLANNING WORK PROGRAMS (UPWPS)—FINAL RULE

Urbanized area (UZA) population	Total number of entities	Burden annual submissions	Total annual hours per submission	Burden hours
Under 200,000	208	208	200	41,600
Over 200,000	201	201	300	60,300
Total	409	409	.....	101,900

TRANSPORTATION IMPROVEMENT PROGRAMS (TIPS AND STIPS)—FINAL RULE

Entity	Number of entities	Average annual submissions	Burden hours per submission	Total annual burden hours
MPOs in Attainment Areas	276	69	6,026	415,779
MPOs in Nonattainment and Maintenance Areas	133	33	22,230	739,164
States	52	13	20,548	267,042
Total	461	115	.....	1,421,985

TRANSPORTATION PLANS—FINAL RULE

Entity	Number of entities	Average annual submissions	Burden hours per submission	Total annual burden hours
MPOs in attainment areas	276	69	10,886	600,884
MPOs in Nonattainment or Maintenance Areas	133	33	48,861	1,624,612
States	52	13	34,608	449,898
Total	461	115	.....	2,675,394

The respondent's cost is the cost of the State and MPO staff time required to compile and produce the UPWP. The UPWPs must be developed by identifying work activities over the next 1- or 2-year period. Given the complex nature of the planning requirements, we estimate that an average of 300 hours per respondent will be required by MPOs to prepare UPWPs in TMAs and 200 hours per respondent in non-TMAs. Note that although 23 CFR 450.308 allows MPOs in the 208 non-TMAs to prepare simplified statements of work, FHWA and FTA know of no MPOs that are developing such simplified statements. Using a staff salary of $32.59 per hour (based on annual staff salary of $67,732), total respondent cost is estimated at $3,320,921. Assuming a 54 percent overhead rate, the total annualized cost with overhead is estimated to be $5,114,218.

The OMB has previously approved the burden on respondents to develop SP&R work programs under FHWA control number 2125–0039.

Metropolitan TIPs are prepared by MPOs in cooperation with the State and operators of public transportation. The TIPs are required every 4 years. Plans in nonattainment and maintenance areas must be updated and submitted every 4 years and in attainment areas every 5 years. Although the requirements for metropolitan TIPs and plans are complex, particularly in nonattainment and maintenance areas, current burden estimates have been generated from past experiences, informal discussion with FHWA and FTA field staff and respondents, and a comparison of recent trends in the allocation of resources by respondents to meet the requirements. We estimate that MPOs in attainment areas will spend approximately 6,026 person hours in the development of the TIP document. Furthermore, considering the more stringent requirements relating to the implementation of transportation control measures in nonattainment and maintenance areas, and the fact that most of these areas are in the Nation's largest metropolitan areas with the most projects to program, we estimate that an average of 22,230 person hours per submission are required for these TIPs.

The development by States of a STIP draws heavily on the work cooperatively done by States and MPOs in the preparation of metropolitan TIPs. This work burden has already been calculated in this section. However, to the extent that STIPs must reflect the programming of transportation projects in nonmetropolitan areas, there exists some marginal burden in the development of the overall statewide program. We estimate that burden is 20,542 person hours for each STIP. Total respondent burden hours for the STIP/TIP development are estimated to be 1,421,985. Total respondent cost for STIP/TIP development without overhead is estimated to be $46,342,491. Total respondent cost for STIP/TIP development, assuming a 54 percent overhead rate, is estimated to be $71,367,436.

The final rule requires that plans in nonattainment and maintenance areas are updated and submitted to FHWA and FTA every 4 years and that plans in attainment areas are updated every 5 years. We estimate that burden is 48,861 person hours for the preparation of the MTP in a nonattainment area. These plans are updated every 4 years. We estimate that burden is 10,886 person hours for the preparation of the MTP in an attainment area. These plans are updated every 5 years.

The development by States of a long-range statewide transportation plan draws heavily on the work cooperatively done by States and MPOs in the preparation of metropolitan TIPs and plans. This work burden has already been calculated in this section. However, to the extent that statewide plans must reflect the planning of

transportation projects in nonmetropolitan areas, there exists some marginal burden in the development of the overall plan. We estimate that burden is 34,608 person hours for the preparation of the long-range statewide transportation plan. Assuming an average rate of $32.59 per hour, we estimate that the respondent cost for the metropolitan plan is $72,528,915 and $14,662,176 for the statewide plan. Total respondent cost for plan development, assuming a 54 percent overhead rate, is estimated to be $134,274,280.

There are no capital or start-up costs associated directly with the collection of information required by the UPWPs, STIPs, TIPs, and plans. Any capital equipment used to provide this information in most cases would have been purchased to carry out general transportation and air quality planning activities. The total annual overhead (operation and maintenance costs) of providing the requested information is $73,991,049 as calculated in the table below:

TOTAL ANNUAL BURDEN COSTS TO THE STATES AND MPOS

Task	Total costs with overhead (2015$)	Total costs without overhead (2015$)
UPWP	$5,114,218	$3,320,921
TIP	57,964,972	37,639,592
Metropolitan Plans	111,694,529	72,528,915
STIPs	13,402,464	8,702,899
Statewide Plans	22,579,751	14,662,176
Total	210,755,934	136,858,503

TOTAL ANNUAL BURDEN HOURS TO THE STATES AND MPOS

Task	Total burden hours
UPWP	101,900
TIP	1,154,943
Metropolitan Plans	2,225,496
STIPs	267,042
Statewide Plans	449,898
Total	4,199,279

Please note that each State also submits a statewide planning and research work program, which serves as the basis of the State's application for Federal financial assistance for planning and research activities. The information collection requirements of the SP&R work program have been previously approved by OMB under FHWA control number 2125–0039.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FHWA and FTA have determined that States and MPOs are not included in the definition of a small entity, as set forth in 5 U.S.C. 601. Small governmental jurisdictions are limited to representations of populations of less than 50,000. The MPOs, by definition, represent urbanized areas having a minimum population of 50,000. Because the final rule is primarily intended for States and MPOs, FHWA and FTA have determined that the action would not have a significant economic impact on a substantial number of small entities. Therefore, we certify that the action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The final rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The final rule would not result in the expenditure of non-Federal funds by State, tribal, and local governments, in the aggregate, or by the private sector, of $155 million in any one year (2 U.S.C. 1532). Eighty percent of the costs attributable to the final rule are directly reimbursable through Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(f) and 49 U.S.C. 5303(h)) and for SP&R (23 U.S.C. 505 and 49 U.S.C. 5313).

Additionally, the definition of the term ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, tribal, or local governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program and Federal Transit Act permit this type of flexibility to the States.

Executive Order 13132 (Federalism)

The FHWA and FTA have analyzed this action in accordance with the principles and criteria contained in EO 13132 and have determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA and FTA do not believe that this rulemaking will have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The FHWA and FTA have also determined that this action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

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 EO 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs and were carried out as part of the outreach on the federalism implications of this rulemaking. This EO applies because State and local governments would be directly affected by the final rule, which is a condition on Federal-aid highway funding.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and

directives) and 771.117(c)(1) (activities that do not lead directly to construction) for FHWA, and 23 CFR 771.118(c)(4) (planning and administrative activities which do not involve or lead directly to construction) for FTA. The FHWA and FTA have evaluated whether the action would involve unusual or extraordinary circumstances and have determined that this action would not.

The final rule provides the policies and requirements for statewide and MTPs and transportation improvement programs. The rule follows closely the requirements in 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304. In addition, 23 U.S.C. 134(q), 135(k), and 168(f)(1) and 49 U.S.C. 5303(q) and 5304(j) establish that NEPA does not apply to decisions by the Secretary concerning a metropolitan or statewide transportation plan or transportation improvement programs under those sections.

Executive Order 11988 (Floodplain Management)

The FHWA and FTA have evaluated this action under EO 11988 (Floodplain Management). The agencies have determined that this action does not have an adverse impact associated with the occupancy and modification of floodplains and does not provide direct or indirect support of floodplain development. The final rule provides the States and MPOs with the option of developing a programmatic mitigation plan as part of the transportation planning process. Floodplains could be one of the resources evaluated as part of these programmatic mitigation plans to help the States and MPOs avoid or minimize impacts to flood plains by future projects. The final rule also encourages early coordination by States and MPOs with Federal and State environmental resource agencies during the planning process in the interest of avoiding or minimizing impacts. When FHWA and FTA make a future funding or other approval decision on a project basis, they consider floodplain management.

Executive Order 13653 (Climate Preparedness and Resilience)

The FHWA and FTA have evaluated this action under EO 13653 (Climate Preparedness and Resilience). The FHWA and FTA have determined that the final rule provides an option for the States and MPOs to consider the effects of climate change and resilience in the context of the transportation planning process, such as during the development of statewide or MTPs. Scenario planning, which is discussed in the final rule, is another option where MPOs could consider climate change and resilience as part of scenarios evaluated during the development of the MTP. The FHWA and FTA have determined that the final rule provides an option States and MPOs to assess climate change and resilience as part of the transportation planning process.

Executive Order 12988 (Civil Justice Reform)

The final rule meets applicable standards in sections 3(a) and 3(b)(2) of EO 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under EO 13045 (Protection of Children from Environmental Health Risks and Safety Risks). The final rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The final rule would not effect a taking of private property or otherwise have taking implications under EO 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

Executive Order 13175 (Tribal Consultation)

The FHWA and FTA have analyzed this action under EO 13175. The FHWA and FTA believe that the final rule would not have substantial direct effects on one or more tribes; would not impose substantial direct compliance costs on tribal governments; and would not preempt tribal laws. The final rule contains requirements for States to consult with tribal governments in the planning process. Tribes are required under 25 CFR part 170 to develop long-range plans and a Tribal Transportation Program (TTP) for programming projects. However, the requirements in 25 CFR part 170 would not be changed by this final rule. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA and FTA have analyzed this action under EO 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). The FHWA and FTA have determined that the final rule is not a significant energy action under that EO because, although it is a significant regulatory action under EO 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 5610.2(a) (Environmental Justice)

The EO 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534 (available online at *http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*)) require DOT agencies to achieve EJ as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. The DOT agencies must address compliance with EO 12898 and the DOT Order in all rulemaking activities.

The FHWA and FTA have issued additional documents relating to administration of EO 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A (FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations (available online at *http://www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*)). On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for States and MPOs to incorporate EJ into their planning processes (available online at *http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf*).

The FHWA and FTA have evaluated the final rule under the EO, the DOT Order, the FHWA Order, and the FTA Circular. The EJ principles, in the context of planning, should be considered when the planning process is being implemented at the State and local level. As part of their stewardship and oversight of the federally aided transportation planning process of the States, MPOs and operators of public transportation, FHWA and FTA encourage these entities to incorporate EJ principles into the statewide and metropolitan planning processes and documents, as appropriate and consistent with the applicable Orders and the FTA Circular. When FHWA and FTA make a future funding or other approval decision on a project basis, they consider EJ.

Nothing inherent in the final rule would disproportionately impact

minority or low-income populations. The final rule establishes procedures and other requirements to guide future State and local decisionmaking on programs and projects. Neither the final rule nor 23 U.S.C. 134 and 135 dictate the outcome of those decisions. The FHWA and FTA have determined that the final rule would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

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 Part 450

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

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and record keeping requirements.

49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation.

Issued in Washington, DC, on May 13, 2016, under authority delegated in 49 CFR 1.85 and 1.91.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

Carolyn Flowers,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, FHWA and FTA amend title 23, Code of Federal Regulations, parts 450 and 771, and title 49, Code of Federal Regulations, part 613, as set forth below:

Title 23—Highways

■ 1. Revise Part 450 to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Transportation Planning and Programming Definitions

Sec.

Subpart B—Statewide and Nonmetropolitan Transportation Planning and Programming

Sec.

Subpart C—Metropolitan Transportation Planning and Programming

Sec.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303 and 5304; 49 CFR 1.85 and 1.90.

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, a redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).

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 or changing the number of stations in the case of fixed guideway transit projects). 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 and a redemonstration of fiscal constraint. If an amendment involves ''non-exempt'' projects in nonattainment and maintenance areas, a conformity determination is required.

Asset management means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and

replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

Attainment area means any geographic area in which levels of a given criteria air pollutant (*e.g.,* ozone, carbon monoxide, PM_{10}, $PM_{2.5}$, 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 in this section) 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 an Expedited Grant Agreement (or equivalent) with the DOT shall be considered a multiyear 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 or any required interim emission reductions or other milestones in any nonattainment or maintenance area. The transportation conformity regulations (40 CFR part 93, subpart A) 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 travel demand reduction and 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 Metropolitan Planning Organizations (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 section 450.216(j) and sections 450.324(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 and 5304, by the Governor 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 urbanized areas of 200,000 or more in population, or a State or 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, and actions that, over time, will serve to avoid, minimize, rectify, reduce or eliminate impacts to environmental resources associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan.

Expedited Grant Agreement (EGA) means a contract that defines the scope of a Small Starts project, the Federal financial contribution, and other terms and conditions, in accordance with 49 U.S.C. 5309(h)(7).

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 2 years of the TIP and STIP only if funds are ''available'' or ''committed.''

Freight shippers means any entity that routinely transport cargo from one location to another by providers of freight transportation services or by their own operations, involving one or more travel modes.

Full Funding Grant Agreement (FFGA) 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(k)(2).

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

Highway Safety Improvement Program (HSIP) means a State safety program with the purpose to reduce fatalities and serious injuries on all public roads through the implementation of the provisions of 23 U.S.C. 130, 148, and 150 including the development of a Strategic Highway Safety Plan (SHSP), Railway-Highway Crossings Program, and program of highway safety improvement projects.

Illustrative project means an additional transportation project that may 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 Environmental Protection Agency (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 (42 U.S.C. 7505a).

Management system means a systematic process, designed to assist decision makers 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 Agreement means a written agreement between the MPO, the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.

Metropolitan Planning Area (MPA) means the geographic area determined by agreement between the 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 the MPO develops, adopts, and updates 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 (42 U.S.C. 7409).

Nonattainment area means any geographic region of the United States that EPA designates as a nonattainment area under section 107 of the Clean Air Act (42 U.S.C. 7407) for any pollutants for which an NAAQS exists.

Nonmetropolitan area means a geographic area outside a designated metropolitan planning area.

Nonmetropolitan local officials means elected and appointed officials of general purpose local government in a nonmetropolitan 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 State or designated recipient authorized and committed the supporting Federal funds in preceding or current program years, 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 maximize the safety and mobility of people and goods.

Performance measure refers to ''Measure'' as defined in 23 CFR 490.101.

Performance metric refers to ''Metric'' as defined in 23 CFR 490.101.

Performance target refers to ''Target'' as defined in 23 CFR 490.101.

Project selection means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first 4 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 cargo from one location to another for others or for itself.

Public transportation agency safety plan means a comprehensive plan established by a State or recipient of funds under Title 49, Chapter 53 and in accordance with 49 U.S.C. 5329(d).

Public transportation operator means the public entity or government-approved authority that 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 a 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 sightseeing, school bus, charter, certain types of shuttle service, 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 regulations (40 CFR part 93, subpart A)) that is on a facility that 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 an alternative to regional highway travel.

Regional Transportation Planning Organization (RTPO) means a policy board of nonmetropolitan local officials or their designees created to carry out the regional transportation planning process.

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.''

Scenario planning means a planning process that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. This activity should provide information to decision makers as they develop the transportation plan.

State means any one of the 50 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) (42 U.S.C. 7602(q)), the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA (42 U.S.C. 7410), or promulgated under section 110(c) of the CAA (42 U.S.C. 7410(c)), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA (42 U.S.C. 7601(d)) 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 4 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 comprehensive, multiyear, data-driven plan, developed by a State DOT in accordance with the 23 U.S.C. 148.

Transit Asset Management Plan means a plan that includes an inventory of capital assets, a condition assessment of inventoried assets, a decision support tool, and a prioritization of investments.

Transit Asset Management System means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, throughout the life cycles of those assets.

Transportation Control Measure (TCM) means any measure that is specifically identified and committed to in the applicable SIP, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in section 108 of the CAA (42 U.S.C. 7408) 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 4 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 for metropolitan transportation plans and long-range statewide transportation plans, a 4-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 (UZA) 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 GIS- or web-based surveys, inventories, maps, pictures, and/or displays identifying features such as roadway rights of way, transit, intermodal, and non-motorized transportation facilities, historic and cultural resources, natural resources, and environmentally sensitive areas, to promote improved understanding of existing or proposed transportation plans and programs.

Subpart B—Statewide and Nonmetropolitan Transportation Planning and Programming

§ 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135, 23 U.S.C. 150, and 49 U.S.C. 5304, as amended, which require each State to carry out a continuing, cooperative, and comprehensive performance-based statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and 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, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity bus facilities and commuter van pool providers) and that fosters economic growth and development within and between States and urbanized areas, and take into consideration resiliency needs 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.,* MPOs, RTPOs 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 and nonmetropolitan 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 nonmetropolitan 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;

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

(9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and

(10) Enhance travel and tourism.

(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 (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(c) *Performance-based approach.* (1) The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301.

(2) Each State shall select and establish performance targets in coordination with the relevant MPOs to ensure consistency to the maximum extent practicable. The targets shall address the performance areas described in 23 U.S.C. 150(c), and the measures established under 23 CFR part 490, where applicable, to use in tracking progress toward attainment of critical outcomes for the State. States shall establish performance targets that reflect the measures identified in 23 U.S.C. 150(c) not later than 1 year after the effective date of the DOT final rule on performance measures. Each State shall select and establish targets under this paragraph in accordance with the appropriate target setting framework established at 23 CFR part 490.

(3) In areas not represented by an MPO, the selection of public transportation performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(4) A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this section, in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by providers of public transportation in areas not represented by an MPO required as part of a performance-based program. Examples of such plans and processes include the HSIP, SHSP, the State Asset Management Plan for the National Highway System (NHS), the State Freight Plan (if the State has one), the Transit Asset Management Plan, and the Public Transportation Agency Safety Plan.

(5) A State shall consider the performance measures and targets established under this paragraph when developing policies, programs, and investment priorities reflected in the long-range statewide transportation plan and statewide transportation improvement program.

(d) The failure to consider any factor specified in paragraph (a) or (c) of this section shall not be subject to review 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.

(e) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 49 U.S.C. 5307, 5310, and 5311 may also be used for statewide transportation planning. A State shall document statewide transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 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) Cooperate with affected local elected and appointed officials with responsibilities for transportation, or, if applicable, through RTPOs described in section 450.210(d) in nonmetropolitan 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) In carrying out the statewide transportation planning process, States should apply asset management principles and techniques consistent with the State Asset Management Plan for the NHS and the Transit Asset Management Plan, and Public Transportation Agency Safety Plan in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) For non-NHS highways, States may apply principles and techniques consistent with other asset management plans to the transportation planning and programming processes, as appropriate.

(g) 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.

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

§ 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 individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators), 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 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.

(3) With respect to the setting of targets, nothing in this part precludes a State from considering comments made as part of the State's public involvement process.

(b) The State shall provide for nonmetropolitan 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 cooperating with nonmetropolitan 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 cooperative process(es), the State shall provide copies of the process document(s) to the FHWA and the FTA for informational purposes.

(1) At least once every 5 years, the State shall review and solicit comments from nonmetropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the cooperative process and any proposed changes. The State shall direct a specific request for comments to the State association of counties, State municipal league, regional planning agencies, or directly to nonmetropolitan local officials.

(2) The State, at its discretion, is 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 nonmetropolitan 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 the 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 Department of the Interior in the development of the long-range statewide transportation plan and the STIP.

(d) To carry out the transportation planning process required by this section, a Governor may establish and designate RTPOs to enhance the planning, coordination, and implementation of the long-range statewide transportation plan and STIP, with an emphasis on addressing the needs of nonmetropolitan areas of the State. In order to be treated as an RTPO for purposes of this Part, any existing regional planning organization must be established and designated as an RTPO under this section.

(1) Where established, an RTPO shall be a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(2) An RTPO shall establish, at a minimum:

(i) A policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(ii) A fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(3) The duties of an RTPO shall include:

(i) Developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(ii) Developing a regional TIP for consideration by the State;

(iii) Fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(iv) Providing technical assistance to local officials;

(v) Participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(vi) Providing a forum for public participation in the statewide and regional transportation planning processes;

(vii) Considering and sharing plans and programs with neighboring RTPOs, MPOs, and, where appropriate, Indian Tribal Governments; and

(viii) Conducting other duties, as necessary, to support and enhance the statewide planning process under § 450.206.

(4) If a State chooses not to establish or designate an RTPO, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

§ 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. The guidance in Appendix A applies only to paragraphs (a)–(c) in this section.

(d) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.214 Development of programmatic mitigation plans.

(a) A State may utilize the optional framework in this section to develop programmatic mitigation plans as part of the statewide transportation planning process to address the potential environmental impacts of future transportation projects. The State in consultation with FHWA and/or FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) *Scope.* (i) A State may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) *Contents.* The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value, and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects, which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A State may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A State may integrate a programmatic mitigation plan with other plans, including, watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) or other Federal environmental law.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the statewide and nonmetropolitan transportation planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.216 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 including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy

consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated. 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), as appropriate, that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects contained in the HSIP, including the SHSP, required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan.

(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) The statewide transportation plan shall include:

(1) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.206(c); and

(2) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.206(c), including progress achieved by the MPO(s) in meeting the performance targets in comparison with system performance recorded in previous reports.

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

(h) For nonmetropolitan areas, the State shall develop the long-range statewide transportation plan in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through RTPOs described in § 450.210(d) using the State's cooperative process(es) established under § 450.210(b).

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

(j) The State shall develop the long-range statewide transportation plan, 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.

(k) 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 State shall develop the discussion in consultation with applicable Federal, State, regional, local and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation.

(l) In developing and updating the long-range statewide transportation plan, the State shall provide:

(1) To nonmetropolitan local elected officials, or, if applicable, through RTPOs described in § 450.210(d), an opportunity to participate in accordance with § 450.216(h); and

(2) To individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators, employer-based cash-out program, shuttle program, or telework program), 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 use the public involvement process described under § 450.210(a).

(m) The long-range statewide transportation plan may include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may include additional projects that the State would include in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were to become available. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public-private partnerships, or other strategies) as revenue sources.

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

(o) The State shall publish or otherwise make available the long-range statewide transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(p) 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.

(q) The State shall provide copies of any new or amended long-range statewide transportation plan documents to the FHWA and the FTA for informational purposes.

§ 450.218 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 4 years and shall be updated at least

every 4 years, or more frequently if the Governor of the State elects a more frequent update cycle. However, if the STIP covers more than 4 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), the State may develop a partial STIP covering the rest of the State.

(b) For each metropolitan area in the State, the State shall develop the STIP in cooperation with the MPO designated for the metropolitan area. The State shall include each metropolitan TIP 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 nonmetropolitan area in the State, the State shall develop the STIP in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through RTPOs described in § 450.210(d) using the State's consultation process(es) established under § 450.210(b).

(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) Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access 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. 201(c)(4).

(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 alternatives and associated transit improvements; Tribal Transportation Program projects, Federal Lands Transportation Program projects, and Federal Lands Access Program projects; HSIP projects; trails projects; and accessible pedestrian walkways and bicycle facilities), except the following that may 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(d) and 49 U.S.C. 5305(d);

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

(4) State planning and research projects funded with Surface Transportation Program funds;

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

(6) Research, development, demonstration, and deployment projects funded under 49 U.S.C. 5312, and technical assistance and standards development projects funded under 49 U.S.C. 5314;

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

(8) State safety oversight programs funded under 49 U.S.C. 5329.

(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 4 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 regulations (40 CFR part 93, subpart A). 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 § 450.216 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.324.

(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 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 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. Revenue and cost estimates for the STIP must use an inflation rate to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.

(m) In nonattainment and maintenance areas, projects included in the first 2 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. 5302).

(n) Projects in any of the first 4 years of the STIP may be advanced in place of another project in the first 4 years of the STIP, subject to the project selection requirements of § 450.222. In addition, subject to FHWA/FTA approval (see § 450.220), the State may revise the STIP at any time under procedures agreed to by the State, MPO(s), and public transportation operators consistent with the STIP development procedures established in this section, as well as the procedures for participation by interested parties (see § 450.210(a)). Changes that affect fiscal constraint must take place by amendment of the STIP.

(o) 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.

(p) In cases where 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.

(q) A STIP shall include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets identified by the State in the statewide transportation plan or other State performance-based plan(s), linking investment priorities to those performance targets.

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

(a) At least every 4 years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. The State must also submit STIP amendments 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 FAST Act (Pub. L. 114–357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT 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) 23 U.S.C. 324, 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 by the State; 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 4 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 4 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.

§ 450.222 Project selection from the STIP.

(a) Except as provided in § 450.218(g) and § 450.220(d), only projects in a FHWA/FTA approved STIP are 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 § 450.332.

(c) In nonmetropolitan areas, with the exclusion of specific projects as described in this section, the State shall select projects from the approved STIP in cooperation with the affected nonmetropolitan local officials, or if applicable, through RTPOs described in § 450.210(e). The State shall select transportation projects undertaken on the NHS, under the Bridge and Interstate Maintenance programs in title 23 U.S.C. and under sections 5310 and 5311 of title 49 U.S.C. Chapter 53 from the approved STIP in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(d) Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 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, § 450.332(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.

§ 450.224 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 the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 450.226 Phase-in of new requirements.

(a) Prior to May 27, 2018, a State may adopt a long-range statewide transportation plan that has been developed using the SAFETEA–LU requirements or the provisions and requirements of this part. On or after May 27, 2018, a State may only adopt a long-range statewide transportation plan that it has developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may approve a STIP update or amendment that has been developed using the SAFETEA–LU requirements or the provisions and requirements of this part. On or after May 27, 2018, FHWA/FTA may only approve a STIP update or amendment that a State has developed according to the provisions and requirements of this part, regardless of when the State developed the STIP.

(c) On and after May 27, 2018 (2 years after the publication date of this rule), the FHWA and the FTA will take action on an updated or amended STIP developed under the provisions of this part, even if the State has not yet adopted a new long-range statewide transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP–21.

(d) On or after May 27, 2018, a State may make an administrative modification to a STIP that conforms to either the SAFETEA–LU requirements or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, FHWA/FTA will only approve an updated or amended STIP that is based on a statewide transportation planning process that meets the performance-based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may adopt a long-range statewide transportation plan that it has developed using the SAFETEA–LU requirements or the performance-based provisions and requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may only adopt a long-range statewide transportation plan that it has developed according to the performance-based provisions and requirements of this part and in such a rule.

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, 23 U.S.C. 150, and 49 U.S.C. 5303, as amended, which:

(a) Set forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process, including the development of a metropolitan transportation plan and a 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, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) fosters economic growth and development, and takes into consideration resiliency needs, 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) To accomplish the objectives in § 450.300 and § 450.306(b), metropolitan planning organizations designated under § 450.310, in cooperation with the State and public transportation operators, shall develop long-range transportation plans and TIPs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

(b) 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;

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

(9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and

(10) Enhance travel and tourism.

(c) Consideration of the planning factors in paragraph (b) 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 (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(d) *Performance-based approach.* (1) The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301(c).

(2) *Establishment of performance targets by metropolitan planning organizations.* (i) Each metropolitan planning organization shall establish performance targets that address the performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c), and 49 U.S.C. 5329(d) to use in tracking progress toward attainment of critical outcomes for the region of the metropolitan planning organization.

(ii) The selection of targets that address performance measures described in 23 U.S.C. 150(c) shall be in accordance with the appropriate target setting framework established at 23 CFR part 490, and shall be coordinated with the relevant State(s) to ensure consistency, to the maximum extent practicable.

(iii) The selection of performance targets that address performance measures described in 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d) shall be coordinated, to the maximum extent practicable, with public transportation providers to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(3) Each MPO shall establish the performance targets under paragraph (d)(2) of this section not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(4) An MPO shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under 49 U.S.C. chapter 53 by providers of public transportation, required as part of a performance-based program including:

(i) The State asset management plan for the NHS, as defined in 23 U.S.C. 119(e) and the Transit Asset Management Plan, as discussed in 49 U.S.C. 5326;

(ii) Applicable portions of the HSIP, including the SHSP, as specified in 23 U.S.C. 148;

(iii) The Public Transportation Agency Safety Plan in 49 U.S.C. 5329(d);

(iv) Other safety and security planning and review processes, plans, and programs, as appropriate;

(v) The Congestion Mitigation and Air Quality Improvement Program performance plan in 23 U.S.C. 149(l), as applicable;

(vi) Appropriate (metropolitan) portions of the State Freight Plan (MAP–21 section 1118);

(vii) The congestion management process, as defined in 23 CFR 450.322, if applicable; and

(viii) Other State transportation plans and transportation processes required as part of a performance-based program.

(e) The failure to consider any factor specified in paragraph (b) or (d) 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.

(f) An MPO shall carry out the metropolitan transportation planning process in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(g) 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.

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

(i) 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 this part, taking into account the complexity of the transportation problems in the area. The MPO shall develop simplified procedures 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(d), 49 U.S.C. 5305(d), and 49 U.S.C. 5307, are available to MPOs to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 23 U.S.C. 505 may also be provided to MPOs for metropolitan transportation planning. At the option of the State and operators of public transportation, funds provided under 49 U.S.C. 5305(e) may also be provided to MPOs for activities that support 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)(4) for

metropolitan transportation planning activities.

(b) An MPO shall document metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 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 1- or 2-year period by major activity and task (including activities that address the planning factors in § 450.306(b)), 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 shall include a description of the major activities to be performed during the next 1- or 2-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, as amended (Program Guidance for Metropolitan Planning and State Planning and Research Program Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, an 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) The FHWA and the FTA shall identify as a 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 urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(d) TMA structure:

(1) Not later than October 1, 2014, each metropolitan planning organization that serves a designated TMA shall consist of:

(i) Local elected officials;

(ii) Officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(iii) Appropriate State officials.

(2) An MPO may be restructured to meet the requirements of this paragraph (d) without undertaking a redesignation.

(3) *Representation.* (i) Designation or selection of officials or representatives under paragraph (d)(1) of this section shall be determined by the MPO according to the bylaws or enabling statute of the organization.

(ii) Subject to the bylaws or enabling statute of the MPO, a representative of a provider of public transportation may also serve as a representative of a local municipality.

(iii) An official described in paragraph (d)(1)(ii) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (d)(1) of this section.

(4) Nothing in this section shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(i) To develop the plans and TIPs for adoption by an MPO; and

(ii) To develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(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) 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.

(j) 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.

(k) 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).

(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 (j) of this 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 described in paragraph (d) of this section 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.

(m) 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.

§ 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.

(1) 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.

(2) 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, the appropriate 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 MPO (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall adjust them 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, improves access to 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 providers of public transportation 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 providers of public transportation 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 the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO, the State(s), and the providers of public transportation should periodically review and update the agreement, as appropriate, to reflect effective changes.

(c) 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 regulations (40 CFR part 93, subpart A). 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.

(d) 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.

(e) 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.

(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, 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.

(g) 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).

(h)(1) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plan for the NHS for each of the following circumstances:

(i) When one MPO serves an urbanized area,

(ii) When more than one MPO serves an urbanized area, and

(iii) When an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA.

(2) These provisions shall be documented either:

(i) As part of the metropolitan planning agreements required under (a), (e), and (g) of this section, or

(ii) Documented in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), 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 MPO shall develop the participation plan 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 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 that 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, subpart A), 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, tourism, natural disaster risk reduction, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, the MPO shall develop the metropolitan transportation plans and TIPs 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. 201–204.

(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) 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. The guidance in Appendix A applies only to paragraphs (a)–(c) in this section.

(e) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside of this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.320 Development of programmatic mitigation plans.

(a) An MPO may utilize the optional framework in this section to develop programmatic mitigation plans as part of the metropolitan transportation planning process to address the potential environmental impacts of future transportation projects. The MPO, in consultation with the FHWA and/or the FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) *Scope.* (i) An MPO may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) *Contents.* The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgement of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A MPO may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) or other Federal environmental law.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the metropolitan planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.322 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 (including intercity bus operators, employer-based commuting programs such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), job access projects, 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.

(c) 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, improve transportation system management and operations, and improve efficient service integration within and across modes, including highway, transit, passenger and freight rail operations, and non-motorized transport. 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.

(d) 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 underlying 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, including providers of public transportation;

(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 decision makers and the public to provide guidance on selection of effective strategies for future implementation.

(e) 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.

(f) 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.

(g) 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.

(h) *Congestion management plan.* A MPO serving a TMA may develop a plan that includes projects and strategies that will be considered in the TIP of such MPO.

(1) Such plan shall:

(i) Develop regional goals to reduce vehicle miles traveled during peak commuting hours and improve transportation connections between areas with high job concentration and areas with high concentrations of low-income households;

(ii) Identify existing public transportation services, employer based commuter programs, and other existing transportation services that support access to jobs in the region; and

(iii) Identify proposed projects and programs to reduce congestion and increase job access opportunities.

(2) In developing the congestion management plan, an MPO shall consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

§ 450.324 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 formulating the transportation plan, the MPO shall consider factors described in § 450.306 as the factors relate to a minimum 20-year forecast period. 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 provide for the development of an integrated multimodal transportation system (including accessible pedestrian walkways and bicycle transportation facilities) 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 4 years in air quality nonattainment and maintenance areas and at least every 5 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 MPO shall approve the transportation plan (and any revisions) and submit it 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 used 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 current and 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, public transportation facilities, intercity bus facilities, multimodal and intermodal facilities, nonmotorized transportation facilities (*e.g.,* 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.

(3) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.306(d).

(4) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.306(d), including—

(i) Progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports, including baseline data; and

(ii) For metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

(5) 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;

(6) 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.

(7) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters. 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.

(8) Transportation and transit enhancement activities, including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated, and including transportation alternatives, as defined in 23 U.S.C. 101(a), and associated transit improvements, as described in 49 U.S.C. 5302(a), as appropriate;

(9) 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 regulations (40 CFR part 93, subpart A). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(10) 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 MPO shall develop the discussion in consultation with applicable Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(11) 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 the 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. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public private partnerships, or other strategies) as revenue sources for projects in the plan.

(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. 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 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.

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

(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 integrate the priorities, goals, countermeasures, strategies, or projects for the metropolitan planning area contained in the HSIP, including the SHSP required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan, and may incorporate or reference applicable emergency relief and disaster preparedness plans and strategies and policies that support homeland security, as appropriate, to safeguard the personal security of all motorized and non-motorized users.

(i) An MPO may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan.

(1) An MPO that chooses to develop multiple scenarios under this paragraph (i) is encouraged to consider:

(i) Potential regional investment strategies for the planning horizon;

(ii) Assumed distribution of population and employment;

(iii) A scenario that, to the maximum extent practicable, maintains baseline conditions for the performance areas identified in § 450.306(d) and measures established under 23 CFR part 490;

(iv) A scenario that improves the baseline conditions for as many of the performance measures identified in § 450.306(d) as possible;

(v) Revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

(vi) Estimated costs and potential revenues available to support each scenario.

(2) In addition to the performance areas identified in 23 U.S.C. 150(c), 49 U.S.C. 5326(c), and 5329(d), and the measures established under 23 CFR part 490, MPOs may evaluate scenarios developed under this paragraph using locally developed measures.

(j) The MPO shall provide individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cashout program, shuttle program, or telework program), 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).

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

(l) A State or MPO is not required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(11) of this section.

(m) 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, subpart A). A 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. 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, subpart A. 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.

§ 450.326 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 reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO and the Governor. However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO may update the TIP 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, subpart A).

(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 MPO shall publish or otherwise make readily available the TIP 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 be designed such that once implemented, it makes progress toward achieving the performance targets established under § 450.306(d).

(d) The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets identified in the metropolitan transportation plan, linking investment priorities to those performance targets.

(e) 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 alternatives; associated transit improvements; Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects; HSIP projects; trails projects; accessible pedestrian walkways; and bicycle facilities), except the following that may 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(d), and 49 U.S.C. 5305(d);

(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, metropolitan planning projects funded with Surface Transportation Program 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.

(f) 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.

(g) 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 4 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 that 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 regulations (40 CFR part 93, subpart A); and

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

(h) 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 regulations (40 CFR part 93, subpart A). 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.

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

(j) 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)(6)) and public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may 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. 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).

(k) 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 2 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 regulations (40 CFR part 93, subpart A) and shall provide for their timely implementation.

(l) 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.

(m) Procedures or agreements that distribute suballocated Surface Transportation Program funds 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.

(n) 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.

(o) In metropolitan nonattainment and maintenance areas, a 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, according to the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. 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.

(p) Projects in any of the first 4 years of the TIP may be advanced in place of another project in the first 4 years of the TIP, subject to the project selection requirements of § 450.332. In addition, the MPO may revise the TIP 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 § 450.330).

§ 450.328 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. The MPO shall use public participation procedures consistent with § 450.316(a) in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO and the Governor, the State shall include the TIP without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, the FHWA and the FTA must make a conformity finding on the TIP 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 it has included a TIP including projects under the jurisdiction of these agencies in the STIP.

§ 450.330 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 § 450.336, 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 an MPO has not updated the metropolitan transportation plan in accordance with the cycles defined in § 450.324(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 § 450.326(a). Until the MPO approves (in attainment areas) or the FHWA and the FTA issue a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the MPO may not amend the TIP.

(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 § 450.220(b).

(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.

§ 450.332 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 § 450.326 has been developed and approved, the first year of the TIP will 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, the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s) shall jointly develop a revised ''agreed to'' list of projects. 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, the State and/or the public transportation operator(s), in cooperation with the MPO shall select projects to be implemented using title 23 U.S.C. funds (other than Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects) or funds under title 49 U.S.C. Chapter 53, from the approved metropolitan TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(c) In areas designated as TMAs, the MPO shall select all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the NHS and Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program) in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. The State shall select projects on the NHS in cooperation with the MPO, from the approved TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(d) Except as provided in § 450.326(e) and § 450.330(f), projects not included in the federally approved STIP are not 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, subpart A).

§ 450.334 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 § 450.326(g)(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.

§ 450.336 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 4 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 FAST Act (Pub. L. 114–357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT 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 4 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 the MPO and the Governor have approved a TIP, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and the MPO and the Governor have approved a TIP, 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 4 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 FHWA and the FTA shall notify the MPO(s), the State(s), and public transportation operator(s) 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.

§ 450.338 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 the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 450.340 Phase-in of new requirements.

(a) Prior to May 27, 2018, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA–LU requirements or the provisions and requirements of this part. On or after May 27, 2018, an MPO may not adopt a metropolitan transportation plan that has not been developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may determine the conformity of, or approve as part of a STIP, a TIP that has been developed using SAFETEA–LU requirements or the provisions and requirements of this part. On or after May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may only determine the conformity of, or approve as part of a STIP, a TIP that has been developed according to the provisions and requirements of this part, regardless of when the MPO developed the TIP.

(c) On and after May 27, 2018 (2 years after the issuance date of this rule), the FHWA and the FTA will take action (*i.e.,* conformity determinations and STIP approvals) on an updated or amended 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 MAP–21.

(d) On or after May 27, 2018 (2 years after the publication date of this rule), an MPO may make an administrative modification to a TIP that conforms to either the SAFETEA–LU or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, and 49 U.S.C. 5329 FHWA/FTA will only determine the conformity of, or approve as part of a STIP, a TIP that is based on a metropolitan transportation planning process that meets the performance based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA–LU requirements or the performance-based planning requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may only adopt a metropolitan transportation plan that has been developed according to the performance-based provisions and requirements of this part and in such a rule.

(g) A newly designated TMA shall implement the congestion management process described in § 450.322 within 18 months of designation.

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 decision-making 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.

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 or the ''Least Environmentally Damaging Practicable Alternative'' under the Clean Water Act.

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.

Development of planning Alternatives Analysis studies, required prior to MAP–21 for projects seeking funds through FTA's Capital Investment Grant program, are now optional, but may still be used to narrow the alternatives prior to the NEPA review, just as other planning studies may be used. In fact, through planning studies, 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. 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), STP, and Equity Bonus); and
- FTA planning and research funds (49 U.S.C. 5303), 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 2015), over 200 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 work plans 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 Web site (*http://www.fhwa.dot.gov/environment/index.htm*) and FTA's environmental streamlining Web site (*http://www.environment.fta.dot.gov*). Another source of information and case studies is NCHRP Report 8–38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at *http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8-38.* In addition, AASHTO's Center for Environmental Excellence Web site is continuously updated with news and links to information of interest to transportation and environmental professionals (*www.transportation.environment.org*).

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 2. The authority citation for part 771 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 106, 109, 128, 138, 139, 168, 315, 325, 326, and 327; 49 U.S.C. 303; 40 CFR parts 1500–1508; 49 CFR 1.81, 1.85; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, sections 1310, 1315, 1316, 1317, and 1318.

■ 3. Amend § 771.111 as follows:
■ a. Remove footnote 3;
■ b. Redesignate footnotes 4 and 5 as footnotes 3 and 4, respectively;
■ c. Revise paragraph (a)(2) to read as follows:

§ 771.111 Early coordination, public involvement, and project development.

* * * * *

(a) * * *

(2) The information and results produced by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR 1502.21, and 23 CFR 450.212(b) or 450.318(b). In addition, planning products may be adopted and used in accordance with 23 CFR 450.212(d) or 450.318(e), which implement 23 U.S.C. 168.

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§ 771.139 [Amended]

■ 4. Redesignate footnote 6 as footnote 5.

Title 49—Transportation

■ 5. Revise 49 CFR part 613 to read as follows:

PART 613—METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN PLANNING

Subpart A—Metropolitan Transportation Planning and Programming

Sec.
613.100 Metropolitan transportation planning and programming.

Subpart B—Statewide and Nonmetropolitan Transportation Planning and Programming

Sec.
613.200 Statewide and nonmetropolitan transportation planning and programming.

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 1.85, 1.51(f) and 21.7(a).

Subpart A—Metropolitan Transportation Planning and Programming

§ 613.100 Metropolitan transportation planning and programming.

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

Subpart B—Statewide and Nonmetropolitan Transportation Planning and Programming

§ 613.200 Statewide and nonmetropolitan transportation planning and programming.

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

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